

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District MIDDLE
Name (under which you were convicted): THEODORE MEAD KIMBLE		Docket or Case No.:
Place of Confinement: (x)		Prisoner No.: 0599011
Petitioner (include the name under which you were convicted) THEODORE MEAD KIMBLE		Respondent (authorized person having custody of petitioner) v. (x)
The Attorney General of the State of (x)		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Guilford County Superior Court, Greensboro, North Carolina 27402

(b) Criminal docket or case number (if you know): 99 CAS 23161; 39501; 99 CAS 23101; 99 CAS 23244-48
- (a) Date of the judgment of conviction (if you know): January 28, 1999

(b) Date of sentencing: March 5, 1999
- Length of sentence: 1,289 Minimum Months to 1451 Maximum Months
- In this case, were you convicted on more than one count or of more than one crime? Yes No
- Identify all crimes of which you were convicted and sentenced in this case: Second Degree Murder, First Degree Arson, Conspiracy to Commit First Degree Murder, and 8 Counts of Solicitation to Commit First Degree Murder.
- (a) What was your plea? (Check one)

(1) Not guilty (3) Nolo contendere (no contest)

(2) Guilty (4) Insanity plea

An ALFORD Plea to 8 Counts 99 CAS 2324-48.

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? Guilty: Second Degree Murder, First Degree Arson, Conspiracy to Commit First Degree Murder
ALFORD PLEAS: 8 Counts of Solicitation to Commit First Degree Murder.

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only N/A

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: North Carolina Court of Appeals

(b) Docket or case number (if you know): COA99-1518

(c) Result: DENIED

(d) Date of result (if you know): December 19, 2000

(e) Citation to the case (if you know): State v. Kimble, 141 N.C. App 144, 539 S.E. 2d (2000)

(f) Grounds raised: Appeal and Error Preservation of Issues, sufficiency of evidence to support ALFORD Pleas - No objection - Evidence to support Aggravated Factors - No objection - Prejudice of Plain Error.

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: North Carolina Supreme Court

(2) Docket or case number (if you know): 37P01

(3) Result: DENIED

(4) Date of result (if you know): April 5, 2001

(5) Citation to the case (if you know): State v. Kimble, 141 NC, App 144, 539 SE. 2d (2000)

(6) Grounds raised: Discretionary Review from North Carolina Court of Appeals Denied, Appeal and Error - Preservation of Issues - sufficiency of evidence to support ALFORD PLEAS - No objection - Evidence to support Aggravated Factors - No objection - Prejudice of Plain Error

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes No

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Guilford County Superior Court

(2) Docket or case number (if you know): 99CRS 23456; 39581; 98CRS 23486; 99CRS 23241-48

(3) Date of filing (if you know): October 29, 2003

(4) Nature of the proceeding: Motion for Appropriate Relief

(5) Grounds raised: Conflict of Interest, Prosecutor Misconduct, ILLEGAL Sentence, Invalid Indictments, Conviction obtained by Plea of Guilty which was Unlawfully Induced or Not made Voluntary with Understanding of the nature of the Charge or Consequences of the Plea, Conviction obtained by Unconstitutional Failure of the State to disclose to the defendant evidence favorable to Defendant, Denial of Right to Appeal, Conviction obtain by violation of the Privilege against self incrimination, Conviction obtained by use of Coerced Confession, obtained by Double Jeopardy, Denial of Effective Assistance of Counsel, Denial of Counsel at a critical stage of the Proceedings

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DENIED

(8) Date of result (if you know): November 20, 2003

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: North Carolina Court of Appeals

(2) Docket or case number (if you know): COAPOS 456

(3) Date of filing (if you know): December 16, 2003

(4) Nature of the proceeding: Writ of Certiorari

(5) Grounds raised: Same Issues Raised Above (see 11.A-5) All the same

Constitutional Violations. Also Ineffective Assistance of Trial and

Appellate Counsel. Extreme Miscarriage of Justice, The Superior

Court Judge Albright fail to address "Many" violations raised in M.A.R.

Gave inaccurate Summary of M.A.R. Facts of Record. Fail to address Illegal Sentences,

the Petitioner entered an ALFORD Plea to 8 Counts of Solicitation, But the States

factual showing proved one solicitation ONLY. Plea Agreement stated the Defendant was to receive consecutive sentences on each CASE, NOT each COUNT. Petitioner was sentenced 8 times for (1) Case (Counsel Fail to Object) Fail to Address "Denial of Counsel" at the Pro se Motion to Withdraw, Conflict of Interest, Counselor Zimmerman's prior sentencing of the Petitioner. Several unaddressed issues

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DENIED

(8) Date of result (if you know): January 13, 2004

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: North Carolina Court of Appeals

(2) Docket or case number (if you know): COA03-956

(3) Date of filing (if you know): October 27, 2003

(4) Nature of the proceeding: Motion for Relief from The Judgement

(5) Grounds raised: (See 11-A-5) Same Grounds raised as in the motion for appropriate relief. Especially "Conflict of Interest; Counsel acting as Judge Zimmerman sentenced the Petitioner to prison, then came off the Bench to act as Petitioner's defense Counsel. "Judicial Misconduct."

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: DISMISSED

(8) Date of result (if you know): November 24, 2003

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: Appealed Result of First Petition to Supreme Court N.C., DENIED it without the State filing as to why it should be denied. Appealed DENIAL of M.A.R (11-B) To the N.C. Court of Appeals; By Law No further Appeal possible.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Conviction obtained by plea of guilty which was unlawfully induced or not made voluntary with understanding of the nature of the charge & the consequences of the plea.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner was unaware of the consequences of his plea, because Counsel lied to him and his parents (see Affidavits) He said Petitioner would receive no more than 20 years. The Prosecutor VIOLATED the Plea Agreement. It stated Petitioner was to receive consecutive sentences on all CASES (There was 4) But Petitioner was sentenced (11 times) on all CASES & COUNTS. State's factual showing proved only (1) Solicitation of Murder Case. Prosecutor deceived the Petitioner by assigning each (8) Count with it's own case number after the fact. Petitioner was sentenced in the Aggravated Range B of 11 sentences, but Mitigating Factors favored 3rd. Petitioner tried to withdraw his Plea. Denied.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro, North Carolina 27402

Docket or case number (if you know): 97CRS 23656, 34581, 98CRS 23482, 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): See Attachment as requested (4 pages)

M.A.R. was DENIED. Judge Albright gave an inaccurate MAR Summary & Facts of the Record. Fail to address many Constitutional violations. Clarified in Writ of Certiorari

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals;
Raleigh, North Carolina

Docket or case number (if you know): COAPO3-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED"; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Filed "Motion For Relief From The Judgment" (10-27-03) N.C. Court of Appeals COAPO3-956, DISMISSED (11-24-03). "Motion in Arrest of Judgment (11-3-03) N.C. Court of Appeals COAPO3-956 DISMISSED (11-24-03) etc...
Writ of Mandamus (11-7-03) COAPO3-956 DENIED (11-24-03)

GROUND TWO: Conviction obtained by a violation of the protection against double-jeopardy

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): On Nov. 3, 97 Petitioner was indicted on "91CRS23656 count one" Arson of an Unoccupied Dwelling. But in pertinent parts it clearly stated the Dwelling WAS occupied. The Prosecutor realized his error, tried to cover-up by RE-Indicting on July 6, 98 "First Degree Arson" #98CRS23496. Even used the same words, thus Petitioner was charged TWICE for the same crime. Petitioner pointed out more details in his M.A.R. pages #24, 25, But M.A.R. was DENIED. Since Petition was Denied effective assistance of counsel, his Conviction was obtained by a violation of the protection against double-jeopardy. His Plea should NOT relinquish his Rights.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel. Refused to file M.A.R. to raise new evidence, Fail to notice errors, Abandon issues,

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion for Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro, North Carolina 27402

Docket or case number (if you know): 91CRS 23656, 34581, 98CRS 23486, 99CRS 23841-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages) DENIED; Judge Albright claimed Petitioner lost his Constitutional Right when he entered plea. Ineffective Assistance of Counsel, never advised Petitioner of his rights.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals; Raleigh, North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) Simply "DENIED," No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Motion For Relief From The Judgment (10/27/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03) Motion In Arrest of Judgment (11/2/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03) writ of Mandamus (11/7/03)
N.C. Court of Appeals COA03-956 DENIED (11/24/03)

GROUND THREE: Denial of defendant's Right to Appeal, without a knowing, voluntary and valid waiver by defendant of his Right to Appeal

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Since Petitioner entered his Pleas (Guilty & Alford) Counsel stated he had no Right to Appeal. Counsel FAIL & NEGLECTED to advise the Petitioner, refused to aid in the withdraw Hearing. Appellate Counsel was to file a M.A.R. and raise Prosecutor/Counsel Misconduct, Conflict of Interest, and other new Evidence, Establishing the Unlawfulness of Petitioner's sentences, yet Counsel FAIL to file a M.A.R. She ABANDON issues of illegal sentences on 2 Courts of single case

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Denial of Effective Assistance of Counsel

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief
Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97CRS 23456; 98CRS 23486; 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages)
DENIED; Many issues unaddressed in Ruling.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals,
Raleigh, North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED"; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Motion For Relief From The Judgment (10/27/03)

NC Court of Appeals COA03-956; "DISMISSED" (11/24/03) Motion In Arrest of Judgment (11/3/03)

NC Court of Appeals COA03-956; DISMISSED (11/24/03) Writ of Mandamus (11/4/03); "DENIED"

GROUND FOUR: Conviction obtained by Denial of Counsel at a Critical
stage of Proceedings; without a knowing, voluntary, & valid waiver by Defendant of the right to Counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): When the
Petitioner requested to withdraw his Pleas and go to Trial, He was DENIED
the Right to Counsel. He was forced to proceed in Prose. Form. Counsel
ABANDON him. Counsel told the Court they would remain NEUTRAL, which
left the Petitioner defenseless. Once Motion was DENIED, the Court went straight
into Sentencing, further denying the Petitioner the Right of Appeal. The Petitioner

Knew NOTHING of the LAW, and was blind-sided. Counsel was working with the Prosecution against the Defendant.

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Denial of Effective Assistance of Counsel.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina

Docket or case number (if you know): 97CRS 23656; 39591; 98CRS 53486; 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages) DENIED; Did NOT address this issue. Denied Petitioner his Constitutional Rights.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals; Raleigh North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) Simply DENIED; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

Motion For Relief From The Judgment (11/27/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03) Motion In Arrest of Judgment (11/3/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03) Writ of Mandamus (11/7/03)
N.C. Court of Appeals COA03-956 DENIED (11/24/03)

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: John Bryson & Bob McCullen; Greensboro & High Point NC.

(b) At arraignment and plea: Butch Zimmerman & Fred Crumpler

(c) At trial: N/A

(d) At sentencing: Butch Zimmerman 114 W. 2nd Ave. Lexington NC 27292 (336) 238-3118

Fred G. Crumpler Jr. 301 North Main St. Winston Salem NC 27150 (336) 725-1304

(e) On appeal: Danielle M. Carman; N.C. Appellate Defender; 123 West Main Street Suite 600 Durham NC 27701

(f) In any post-conviction proceeding: Pro-se

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro-se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No Consecutive/Unconstitutional

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No N/A

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

See: 28 USC Sec 2244; Between the final Ruling (Dec 2002) to this very day, Applicant has been DEPRIVED of his legal Materials and personal property by Counsel, Prosecution, and State Prison Staff. Such impediment prevented Full Fair access to the Courts, and opportunity to be heard in a timely process, creating a Due Process Violating First, Fourth, and Fourteenth U.S. Constitutional violation. (Government Impediment)

NEWLY DISCOVERED EVIDENCE; Prosecutor Misconduct in the form of "suppressed Evidence" "Keeps" coming to light. Although claims were raised in earlier Motions (M.A.C.) I now have NEW evidence to support the claims. Example, STAR witness Janet Smith was threaten several times by the Prosecution. She is willing to testify. The Prosecution still has not turned over statements from STAR witness James Ogburn, who was interviewed several times by Det Church and DA Parish. Mr Ogburn swore this Applicant and his Co-defendant were in front of him 15 miles away at the time of the crime, but he was threaten by the state to remain silent. Edna Kunkle watched Det Church interview Mr Ogburn and is willing to testify (See Affidavits to follow) New Evidence "proves 3 State witnesses, Pardee, Nicholas, and Dyers each committed PERJURY at the Co-defendants trial. Each had Plea Agreements in exchange. New Evidence proves Det Bowman and DA Parish committed PERJURY. Through Due Diligence Applicant could NOT have litigated ProSe and met such a time period limitation. Only after filing Grievances with the NC Bar did one Attorney turn over part of the case. Discover the other Counsel still has not complied. (Letters sent to Counsel follow as Exhibits in the Supporting Memorandum) Counsel have refused to cooperate. The NC Dept of Correction has moved the Applicant several times, and in the course destroyed parts of his legal property (See 28 USC 1746 Sworn Declaration Affirmation.)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

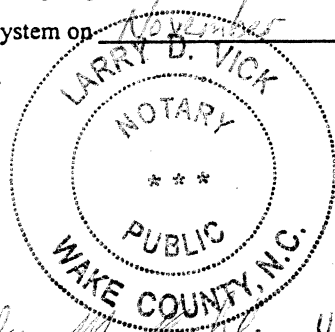
Therefore, petitioner asks that the Court grant the following relief: Reversible Error Committed Requiring
Vacate Judgment, Remand to trial Court for Evidentiary Hearing, Appointment of
Counsel, Resentencing...

or any other relief to which petitioner may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on November
7th, 2005 (month, date, year).

Executed (signed) on 11-7-05 (date).



Theodore M. Kimble 11-7-05
Signature of Petitioner Larry D. Vick
My Commission Expires 1-5-2009

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing
this petition. _____

THEODORE M. KIMBLE
CENTRAL PRISON
1300 WESTERN BLVD.
RALEIGH, N.C. 27606

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND FIVE: Conviction obtained by the unconstitutional failure of the Prosecution to disclose to the defendant evidence favorable to the Defendant.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): State's witness Jeff Clark testified (See Co-defendant's Transcript Exhibit) that Det. Church showed him pictures, told him facts, wrote his FALSE statement, and signed his name in places (See N.C. BAR Grievance) D.A. Parosky lied to the court and said State's witness William Stewart was released from Prison only (2) weeks early in exchange for his statement. D.O.C. records show it was (3) MONTHS early. Detectives & Prosecution interview STAR witness James Ogburn several times yet never turned over the statements. Ogburn swore the Defendants were 15 miles away at the time of the crime. Edna Kimble witness Ogburn's interview and is willing to testify. (See Affidavit)

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Denial of Effective Assistance of Counsel

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97 CRS 23151-39581, 98 CRS 23481, 99 CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 Pages)
DENIED; Many issues unaddressed in Ruling. The claims were raised, but I now have new evidence which proves my case.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals;
Raleigh, North Carolina

Docket or case number (if you know): COAPO3-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED," No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

Motion For Relief From The Judgment (10/27/03)
N.C. Court of Appeals COAPO3-956 DISMISSED (11/24/03) Motion In Arrest of Judgment (11/3/03) N.C.
Court of Appeals COAPO3-956 DISMISSED (11/24/03) Writ of Mandamus (11/7/03) DENIED (11/24/03)

GROUND SIX: Conviction obtained by denial of the defendant's right to present evidence in his own defence.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Within days of entering his Pleas Petitioner wrote his Counsel and asked to Withdraw and go to trial, After 3 weeks and No response, the Petitioner wrote all parties involved with the request to Withdraw and go to trial. Not until March 4, 1999 was the Petitioner taken to Court, and without notice told he was there for an Evidentiary Hearing, once in the Courtroom Counsel instructed the Petitioner, "WE PLAN TO SIT THIS ONE OUT." Counsel told the Judge they plan to remain "NEUTRAL". The Evidentiary Hearing went forward in Pro Se form. The Petitioner was blindsided, ambushed, and railroad. Petitioner had no defence, and had to make do. Had NO opportunity to prepare, in order to properly present the FACTS. Once DISMISSED the Court went straight into SENTENCING. Also: No opportunity to appeal.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel, Refused to file M.A.R. and raise new evidence, Abandon Issues

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97CRS 23656; 39581; 98CRS 23486; 99 CAS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages) DENIED; Judge Albright made reference to the Evidentiary Hearing, but completely ignored the fact Counsel ABANDON the Petitioner.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals Raleigh, North Carolina

Docket or case number (if you know): COAP03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page) simply "DENIED"; No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two:

Motion For Relief From The Judgment (10/27/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Motion In Arrest of Judgment (11/3/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Writ of Mandamus (11/7/03)
N.C. Court of Appeals COA03-956 DENIED (11/24/03)

GROUND SEVEN: Conviction obtained by Use of Coerced Confession.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner showed up at Court surrounded by a S.W.A.T. team carrying M-16's, for a "CHANGE OF VENUE" hearing as the Record shows. Just prior to the hearing Counsel "BULLIED" the Petitioner to sign a Plea Agreement, And 8 Bill of Information Waivers. Petitioner signed while over medicated on Paxil and Vistaral, and only after Counsel told him his life was in DANGER! Petitioner "NEVER" wanted to take a Plea Agreement, it was "ALWAYS" his desire to go to trial. Petitioner was under "DURESS." Prosecution was threatening the defence witnesses.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Gulford County Superior Court, Greensboro North Carolina 27402

Docket or case number (if you know): 97 CRS 23656, 39581, 98 CRS 23486, 99 CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 page)
"DENIED", Many issues unaddressed.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals
Raleigh, North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
DENIED, no reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

Motion For Relief From The Judgment (10/31/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Motion In Arrest of Judgment (11/3/03)
N.C. Court of Appeals COA03-956 DISMISSED (11/24/03)
Writ of Mandamus (11/7/03) DENIED (11/24/03)

GROUND EIGHT: Denial of effective assistance of counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): when Petitioner

tried to withdraw his Guilty and Alford Pleas, Counsel DENIED him, told the Court
they would remain "NEUTRAL", which proved "Conflict of Interest" Counsel Fail to
study indictments 97CRS 23656 + 98CRS 23486, and raise claim of "DOUBLE JEOPARDY"

(*) FAIL TO: Prepare for trial; interview witnesses; take statements; subpoena witnesses; recover
and study Co-defendants transcripts; Report Prosecutor misconduct; Fail to object when

Petitioner was illegally sentence 8 times on a single case, in violation of Plea Agreement.
The N.C. Defender Manual (Oct 2002, Vol. 2, Ch. 21: Guilty Pleas) Uses MY CASE as an EXAMPLE of what NOT to do!

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Guilford County Superior Court, Greensboro North Carolina

Docket or case number (if you know): 97CAS 23656; 39581; 98CRS 23486; 99CAS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages)
"DENIED"; Gave an inaccurate Summary; "IGNORED" the Facts.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals
Raleigh North Carolina

Docket or case number (if you know): COA03-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED".

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND NINE: Conviction obtained by a violation of the privilege against self-incrimination.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Petitioner was wrongfully "COERCED" into entering a plea which was contrary to his Best interest. I can now prove (see EXHIBITS) three of the State's STATE witnesses each committed Perjury in Co-defendants trial. There is NO physical evidence, never was, only the testimony of perjured witnesses. Petitioner never wrote or signed a statement of Confession, because he is NOT Guilty. But only entered Guilty and Alford Pleas, after being "Threaten" with death by Counsel, who told the Petitioner and his family at most a 20 year sentence would be the total.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Ineffective Assistance of Counsel; Newly Discovered evidence.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Motion For Appropriate Relief

Name and location of the court where the motion or petition was filed: Gulford County Superior Court, Greensboro North Carolina

Docket or case number (if you know): 99CRS 23656; 39591; 99CRS 23486; 99CRS 23241-48

Date of the court's decision: November 20, 2003

Result (attach a copy of the court's opinion or order, if available): Attached as requested (4 pages)
DENIED; New evidence to support claims; unavailable at the
time Judge Albright Ruled.

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: North Carolina Court of Appeals;
Raleigh, North Carolina

Docket or case number (if you know): COAPO3-956

Date of the court's decision: January 13, 2004

Result (attach a copy of the court's opinion or order, if available): Attached as requested (1 page)
Simply "DENIED", No reason why.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Motion For Relief From The Judgment (10/27/03)

N.C. Court of Appeals COAPO3-956; DISMISSED (11/24/03) Motion in Arrest of Judgment (11/3/03)

N.C. Court of Appeals COAPO3-956; DISMISSED (11/24/03) Writ of Mandamus (11/7/03) DENIED (11/24/03)

GROUND TEN: Denial of defendant's Right to cross-examine his or her
ACCUSER.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): The Blounts
of "Solicitation to Commit First Degree Murder" came about in the word of habitual felon
inmate William Stewart, while the petitioner was in prison on unrelated charges, other
inmate(s) were reading of the high profile case in the newspaper, then writing the
Prosecutor trying to get time out from their prison sentence, in exchange for their
testimony. During sentencing the trial Court allowed State's witness Det. James Bowman to
testify of statements made by inmate William Stewart, But the Detective and State admitted
to having no idea where Stewart was at that time. Det Bowman testified inmate Stewart was
released from prison a few days early, The Prosecution spoke up and said a couple weeks early, and
that the State had a special order signed by a Judge to release Stewart. NEWLY DISCOVERED EVIDENCE
proves both Det Bowman and Prosecutor Panesh committed PERJURY. D.A.C. records prove Stewart was

(a) (CONT.) released "3" MONTHS EARLY! The Petitioner's Rights were violated because he was denied the opportunity to Cross Examine his Accuser (William Stewart) Four other inmates marched into Court and testified inmate Stewart had bragged to them about lying to get out of prison early. The State's factual showing proved only (1) Solicitation, which had 8 names, so the State violated the Plea Agreement & assigned each name it's own case number. Instead of (1) Sentence, Petitioner was sentenced (8)

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No Procedurally Barred; Raised on Direct Appeal.

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

97 CrS 23656, 39581

98 CrS 23484, 99 CrS 23241-48

RECEIVED
MAY 25 11 12 AM '06
GUILFORD COUNTY, C.S.C.

cdj

STATE OF NORTH CAROLINA,

ORDER

v.

THEODORE MEAD KIMBLE,
Defendant.

This matter is before the Court on a paper writing filed by the Clerk on October 29, 2003. It is captioned "Motion for Appropriate Relief" and is signed by the defendant acting pro se.

In the motion, the defendant alleges ineffective assistance of counsel, in that his trial lawyer promised the conspiracy charge would be dismissed pursuant to plea agreement, that his lawyer told him the reason the dismissal wasn't in the plea agreement was because the deal was secret, that the conspiracy charge was not so dismissed, and that he received an additional sentence for conspiracy; that he was tricked and deceived in unspecified ways by his attorneys into waiving indictment by the grand jury to eight counts of solicitation to commit murder which charges were not supported by any evidence other than the testimony of "a known habitual liar, thief, homosexual"; that his attorneys told him if he did not accept the plea bargain he would get the death penalty "for sure;" that one of his attorneys had a conflict of interest in that the attorney had, while serving as a judge of the Superior Court, earlier sentenced the defendant for an earlier conviction; that defendant's attorney on appeal did not raise all of these various errors before the North Carolina Court of Appeals; that his appellate counsel refused to file a Motion for Appropriate Relief on his behalf; that his attorneys failed and refused to assist him when he filed his pro se motion to withdraw his guilty plea; and that his attorneys failed to get an affidavit from defendant's "star" witness, who then disappeared after defendant's attorneys allowed the District Attorney to threaten the witness.

The defendant further alleges that the sentences imposed were illegal and unauthorized by law in unspecified ways; that the state failed to provide the defendant and the Court with the results of a pre-sentence investigation report in violation of his right to due process; that the new arson charge to which defendant pled guilty violated his right against double jeopardy, having previously been dismissed by the state; that the District Attorney threatened various witnesses for the defendant that if they testified for the defendant they would be prosecuted for other crimes, thus depriving him of key

witnesses; and that the defendant was on unspecified medication on the day he pled guilty and did not know what he was doing.

A review of the file, including the decision by the North Carolina Court of Appeals, shows the following facts of record:

1. On 7 April 1997, Defendant was indicted by a Guilford County grand jury for first-degree murder based on the death of Patricia Gail Kimble (Kimble), Defendant's wife. The indictment alleged Kimble was murdered on 9 October 1995. On 3 November 1997, Defendant was indicted for arson and conspiracy to commit first-degree murder based on the 9 October 1995 incident, and on 6 July 1998, Defendant was indicted for first-degree arson based on the 9 October 1995 incident. Finally, on 28 January 1999, the State filed bills of information charging Defendant with eight counts of solicitation to commit first-degree murder. The eight counts of solicitation to commit first-degree murder related to incidents that occurred after the 9 October 1995 death of Kimble.
2. On 25 January 1999, Defendant pled guilty to second-degree murder, conspiracy to commit first-degree murder, and first-degree arson. Defendant also pled guilty to the eight counts of solicitation to commit first-degree murder. Sentencing was continued.
3. On 26 February 1999, Defendant filed a pro se motion to withdraw his guilty pleas on the ground he was "pressured into [his] earlier plea." The trial court subsequently held a hearing on the motion. At the conclusion of the hearing, the trial court denied Defendant's motion to withdraw his guilty pleas.
4. On 4 March 1999 through 5 March 1999, the trial court held Defendant's sentencing hearing. At the conclusion of the hearing, the trial court found aggravating and mitigating factors existed as to some of the crimes. The defendant was sentenced consistently with his plea agreement.
5. Defendant thereafter filed a Notice of Appeal. The Court entered appellate entries and appointed the Appellate Defender to represent the defendant. The Court of Appeals found no error.

Based on the record, the Court concludes that:

1. A defendant who voluntarily and intelligently enters an unconditional guilty plea waives all non-jurisdictional defects in the proceeding, including constitutional violations that occurred before entry of the plea. See State v. Reynolds, 298 N.C. 380, 395, 259 S.E.2d 843, 852 (1979) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty.") By pleading guilty, defendant has waived his claims concerning the alleged defects in the indictment and concerning the prosecutor's conduct; as to the latter, the defendant was aware of all the facts he now claims show prosecutorial misconduct at the time he pled guilty based on the documents he provided with his motion. Moreover, when a defendant pleads guilty, the state no longer has to prove its case beyond a reasonable doubt. By his plea, the defendant has waived any argument he had that the State's evidence was insufficient.

2. A person is presumed competent. "Everyone is presumed to be sane until the contrary appears." Ridings v. Ridings, 55 N.C.App. 630, 633, 286 S.E.2d 614, 616, disc. rev. denied, 305 N.C. 586 (1982). The judge who accepted defendant's guilty plea had the opportunity to examine the defendant in person, and thereafter found the defendant competent to proceed. Nothing in the defendant's motion and attachments gives rise to any question about his ability to understand the nature and object of the proceedings against him, to comprehend his own situation, or to assist counsel in a rational way. NCGS § 15A-1001. Defendant's unsupported post-conviction assertions that he was incompetent at the time of the guilty plea because he was taking medicine do not overcome the Court's properly entered findings and do not require an evidentiary hearing.

3. The record further shows that the defendant was satisfied with his attorneys when he pled guilty. The defendant at that time stated under oath that he was satisfied with his attorney's services. Moreover, the defendant has already had the opportunity for a hearing on this issue in front of the judge who accepted his guilty plea and who sentenced him, when the matter was raised by the defendant in his motion to set aside the guilty plea. Any error in that decision should have been raised on appeal. The defendant's motion does not raise a question of fact and even if it did, it is procedurally barred.

4. A guilty plea is not voluntary and intelligent unless it is "entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel . . .," Brady v. United States, 397 U.S. 742, 755, 25 L. Ed. 2d 747, 760 (1970) (quoting Shelton v. United States, 246 F.2d 101, 115 (5th Cir. 1957) (Tuttle, J., dissenting)); Bryant v. Cherry, 687 F.2d 48, 49 (4th Cir. 1982), cert. denied, 459 U.S. 1073, 74 L. Ed. 2d 637, and is not "the product of such factors as misunderstanding, duress, or misrepresentation by others." Blackledge v. Allison, 431 U.S. 63, 75, 52 L. Ed. 2d 136, 147-148 (1977); State v. Loye, 56 N.C. App. 501, 289 S.E.2d 870 (1982).

The defendant's claim that his lawyers told him the conspiracy charge would be dismissed is belied by the record, including his own sworn statement and his attorneys' certification. The record unambiguously reveals that the defendant was correctly informed of the applicable maximum sentence and that there was no promise made to him that the conspiracy charge would be dismissed. The defendant swore that no other promises had been made to him, and he signed a plea agreement that did not contain any other promises. State v. Wilkins, 131 N.C. App. 220 (1998) (Defendant knew or should have known that she did not have a plea agreement with the State where the defendant signed a plea transcript which detailed the charge to which she was pleading guilty but contained no plea agreement.) Moreover, he was asked in open court about his plea agreement and he did not inform the Court at that time that he had been guaranteed dismissal of the conspiracy charge and indeed specifically pled guilty to the conspiracy charge and denied that any promises other than those in the plea agreement had been made. This unambiguous record creates a "formidable barrier" to defendant's claim. Blackledge v. Allison, 431 U.S. at 73-74. Only extraordinary circumstances would

entitle defendant to relief. Blackledge v. Allison, 431 U.S. at 80 n.19. There are no such extraordinary circumstances here and absolutely no independent indicia that the defendant's claim has merit. Cf. United States v. Cervantes, 132 F.3d 1106, 1110 (5th Cir. 1998)(must be independent indicia of the likely merit of defendant's allegations, such as one or more affidavits from reliable third parties).

5. Every criminal defendant is entitled to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Strickland establishes a two-prong test for ineffective assistance of counsel: first, that counsel's performance must fall below an objective standard of reasonableness, and second, that the deficient representation must be so serious as to deprive defendant of a fair trial. See State v. Braswell, 312 N.C. 553, 324 S.E.2d 241 (1985) (adopting Strickland standard for ineffective assistance claims). Here, the defendant has failed to raise any issues of material fact about his attorneys' representation or the specific effect of the alleged conflict of interest. While he has made a laundry list of allegations, they are unsupported by any competent evidence. Moreover, there has been no showing that a different result would have obtained had defense counsel handled any one of these matters differently. Finally, as noted above, the defendant stated under oath at the time of his guilty plea that he was satisfied with his attorneys and he has already had a hearing on many of the issues he raises in the Motion for Appropriate Relief when he his motion to withdraw his guilty plea was heard.

6. The sentencing report is on file herein and there is no evidence that it was not available to the trial court and to the defendant before sentencing. Even if it was not, that is not a constitutional violation.

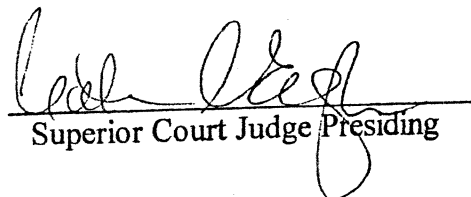
7. An attorney appointed to represent a criminal defendant on appeal has no obligation to file a Motion for Appropriate Relief on behalf of that criminal defendant.

8. There is nothing in the record to support the defendant's claims that the sentences he received are illegal. The sentences he received are valid and within the ranges allowed by the legislature for the crimes to which the defendant pled guilty.

It is therefore ORDERED that:

1. The Defendant's Motion for Appropriate Relief is DENIED.
2. The Clerk shall mail a copy of this Order to the defendant, to the District Attorney for the Eighteenth Judicial District, and to the North Carolina Department of Corrections.

This 20 day of November, 2003.


Superior Court Judge Presiding

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

v

THEODORE MEAD KIMBLE

From Guilford
(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

FILED
JAN 13 PM 2:09
COURT OF APPEALS
OF NORTH CAROLINA

ORDER

The following order was entered:

The petition filed in this cause on the 16th day of December 2003 and designated "Petition For Writ Of Certiorari" is denied.

By order of the Court this the 13th day of January 2004.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 13th day of January 2004.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig
cc:
Mr. Theodore Kimble
Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford

(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03/10/24 PM 3:35
OFFICE OF THE CLERK
NORTH CAROLINA COURT OF APPEALS

ORDER


The following order was entered:

The motion filed in this cause on the 27th day of October 2003 and designated "Motion For Relief From The Judgment" is dismissed.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:
Mr. Theodore Kimble
Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford

(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03 NOV 24 PM 3:35
COURT OF APPEALS
OF NORTH CAROLINA

ORDER

The following order was entered:

The motion filed in this cause on the 3rd day of November 2003 and designated "Motion in Arrest of Judgment" is dismissed.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:
Mr. Theodore Kimble
Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford
(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

OFFICE OF THE CLERK
OF NORTH CAROLINA

03 NOV 24 PM 3:35

ORDER

The following order was entered:

The petition filed in this cause on the 7th day of November 2003 and designated "Petition For Writ Of Mandamus" is Denied.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:

Mr. Theodore Kimble

Ms. Kathleen U. Baldwin

No. COAP03-956

North Carolina Court of Appeals

STATE OF NORTH CAROLINA

V

THEODORE MEAD KIMBLE

From Guilford
(97CRS23656, 97CRS39581, 98CRS23486,
99CRS23241-48)

03 NOV 24 PM 3:37
COURT OF APPEALS
OF NORTH CAROLINA

ORDER

The following order was entered:

The petition filed in this cause on the 18th day of November 2003 and designated "Petition For Writ Of Mandamus" is Denied.

By order of the Court this the 24th day of November 2003.

The above order is therefore certified to the Clerk of Superior Court Guilford County.

Witness my hand and official seal this the 24th day of November 2003.



John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig

cc:

Mr. Theodore Kimble

Ms. Kathleen U. Baldwin

SUPREME COURT OF NORTH CAROLINA

(State v Theodore Mead Kimble)

State of North Carolina
v
Theodore Mead Kimble

RECEIVED
APR 10 2001
CLERK OF THE SUPREME COURT

From NC Court of Appeals
(COA99-1518)
(97CRS23656)
(97 CRS 39581)
(98 CRS 23486)
(99CRS23241-48)

ORDER

Upon consideration of the petition filed by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 5th day of April 2001.

s/ Butterfield, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 2001.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina



Carol B. Templeton
Assistant Clerk



Copy to:
North Carolina Court of Appeals
Ms. Danielle M. Carman, Assistant Appellate Defender, For Kimble
Mr. Edwin W. Welch, Special Deputy Attorney General, For State
Mr. Horace M. Kimel, Jr., District Attorney
Mr. David Churchill, Clerk of Superior Court
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Lexis-Nexis

NO.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

37P01

COA99-1518

STATE OF NORTH CAROLINA

FROM: GUILFORD COUNTY

97 CRS 23656; 97 CRS 39581;

98 CRS 23486; 99 CRS 23241-48.

V.

THEODORE MEAD KIMBLE

x x x x x x x x x

MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

x x x x x x x x x

TABLE OF CONTENT

TABLE OF AUTHORITYS	i
ARTICLES AND STATUTES	ii
LIST OF EXHIBITS	iii
STATEMENT OF CASE	1
ISSUES PRESENTED	4
ARGUMENT	4-13
CONCLUSION	14
VERIFICATION	15

1. ARMSTRONG v. MONZO, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S.Ct. 1187 (1965) -10-
2. BERGER v. U.S., 295 U.S. 78, 88, 79, L. Ed. 134, 55 S.Ct. 629 (1935) -5-
3. BORJA v. KEANE, 83 F.48 (2nd Cir 1996) -12-
4. BOYLE v. MILLION, 201 F.3d. 711 (6th Cir 2000) -5-
5. COSS v. LACKWANNA COUNTY DISTRICT ATTORNEY, 204, F.3d. 453 (3rd 2000) -9-
6. CRAWFORD v. WASHINGTON, No 02-9410. Argued Nov 10, 2003; Decided March 8, 2004 -12-
7. GARDINER v. U.S., 679 F. Supp. 143 (D. W.V. 1988) -8; 9-
8. HART v. GOMEZ, 174, F.3d. 1067 (9th Cir 1999) -9-
9. HOLLINESS v. ESTELLE, 569, F. Supp. 146 (W.D. Tex 1983) -11-
10. JACKSON v. LEONARD, 162, F.3d. 81 (2nd Cir 1998) -4-
11. LORD v. WOOD, 184 F.3d. 1083 (9th Cir 1999) -9-
12. LOZADA v. DEEDS, 488 U.S. 430, 112, L. Ed. 2d 956, 111 S.Ct. 260 (1991) -11-
13. MATTHEWS v. ELDRIDGE, 424 U.S. 319, 333, 47, L. Ed. 2d. 18, 96 S.Ct. 892 (1976) -10-
14. MEDINA v. BARNES, 71 F.3d. 363 (10th Cir 1995) -9-
15. MOORE v. U.S. 950 F.2d. 656 (10th Cir 1991) -12-
16. PARKUS v. DELE, 33 F.3d. 933, 939-940 (8th Cir 1994) -11-
- ⊛ 17. STATE v. KIMBLE, 141 N.C. App. 144, 539 S.E.2d. 342 (2000) -8-
18. STATE v. RICH, 130 N.C. App. 113, 502, S.E. 2d. 49 (1998) -5-
19. TONY v. GAMMON, 79 F.3d. 693, 697 (8th Cir 1996) -11-
20. TREJO v. U.S., 66 F. Supp. 2nd 1274 (S.D. Fla. 1999) -12-
21. UNGER v. COHEN, 718 F. Supp. 185 (S.D. N.Y. 1989) -12-
22. U.S. v. AGUILAR, 90 F. Supp. 1152 (D. Cal. 2000) -5-
23. U.S. v. ALVAREZ-TAUTIMEZ, 160 F.3d. 573 (9th Cir 1998) -10-
24. U.S. v. CONTRERAS, 249, F.3d. 595 (9th Cir 2001) -13-

(CONT. p. 2 of 2)

CASES AND AUTHORITIES

Page[#]

25. U.S. v. DOE, 860 F.2d. 488 (9th Cir 1988)

-13-

26. U.S. v. ELLISON, 798 F.2d. 1102 (7th Cir 1998)

-10;12-

27. U.S. v. ESTRADA, 849 F.2d. 1304 (10th Cir 1998)

-5-

28. U.S. v. HAMMONDS, 435 F.2d. 597 (D.C. Cir 1970)

-8-

29. U.S. v. HERRERA-ROJAS, 243 F.3d. 1139 (9th Cir 2001)

-13-

30. U.S. v. JOHNSON, 995 F. Supp. 1259 (D. Kansas 1998)

-9-

31. U.S. v. SANDERSON, 595 F.2d. 1021 (5th Cir 1979)

-9-

32. U.S. v. SCOTT, 625 F.2d. 683 (5th Cir 1981)

-9-

33. U.S. v. TAYLOR, 139 F.3d. 924 (D.C. Cir 1998)

-9-

34. U.S. v. LINGER, 665 F.2d. 25 (8th Cir 1981)

-12-

ARTICLES AND STATUTES

PAGE#

- CANONS 2A and 3A(1)

Re: MARTIN, 333 N.C. 242, 424 SE 2d 118(1993) -7-

- N.C.G.S. 15A-1340.14 -5-

- N.C.G.S. 15A-1420 (c)(1) and (4) -13-

EXHIBITS

A.) MOTION FOR APPROPRIATE BELIEF

B.) PAGES #16 & #17, N.C. Defender Manual / Oct 2002 / © Institute of Government

C.) NEW EVIDENCE: Affidavit by JANET SMITH

D.) PROOF OF PERJURY by D.A. PANOSH; Det. JAMES BOWMAN

E.) GRIEVANCE TO THE N.C. STATE BAR; PROSECUTOR MISCONDUCT

F.) DIRECT APPEAL: by Appellate Defender DANIELLE CARMAN

G.) PETITION FOR WRIT OF CERTIORARI: to N.C. of APPEALS

H.) MOTION FOR RELIEF FROM THE JUDGMENT / RESPONSE TO STATE'S ANSWER

I.) MOTION IN ARREST OF JUDGMENT / RESPONSE TO STATE'S ANSWER

J.) PROOF OF PERJURY by STATE'S STAR WITNESS ROBERT NICHOLS

K.) PROOF OF PERJURY by STATE'S STAR WITNESS PATRICK PARDEE

L.) PROOF OF PERJURY by STATE'S WITNESS JOY DYERS

M.) LETTERS TO COUNSEL PLEADING FOR CASE RECORDS

No. #

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

STATE OF NORTH CAROLINA }
vs. }
THEODORE MEAD KIMBLE, }

37P01

COA99-1518

FROM: GUILFORD COUNTY

97 CAS 23656; 97 CAS 39581

98 CAS 23486; 99 CAS 23241-48

x x x x x x x x x x x x x

MEMORANDUM IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

STATEMENT OF CASE

Petitioner Theodore Mead Kimble, was arrested on April 1, 1997 thereafter indicted on First Degree Murder; Conspiracy To Commit First Degree Murder; Arson of an Unoccupied Dwelling; First Degree Arson; and coerced to sign "Bill of Waivers" on 8 Counts of Solicitation to Commit First Degree Murder; Presiding Judge: Peter M. McHugh.

• On December 3, 1998, the trial court "Errored" and appointed the Petitioner Counselor (retired Judge) H.W. Zimmerman, which sentenced the Petitioner to prison on December 8, 1997, for unrelated charges. Clearly a "CONFLICT OF INTEREST" from the beginning; Thus a violation

of DUE PROCESS, and Petitioner's Constitutional Right to Effective Assistance of Counsel. Petitioner was also represented by attorney Fred Crumpler Jr., whom acted as Mr Zimmerman's puppet throughout.

- On January 28, 1999, Petitioner was taken from "Solitaire Confinement" at Southern Correctional (Troy, NC) to Guilford County Superior Court for a Change of Venue hearing. But after arrival Counselor Zimmerman bullied, threaten, and deceived the Petitioner into signing a Plea Agreement and eight Bills of Information, which Counsel said was NOT final until after sentencing. The Plea Agreement reads as follows:

"The State of North Carolina agrees to accept a plea to Second Degree Murder in 99CRS39581. Count 1 of 99CRS23656 shall be dismissed. In return, the Defendant agrees to enter guilty pleas to Second Degree Murder in 99CRS39581, Conspiracy to Commit First Degree Murder in 99CRS23656, First Degree Arson in 98CRS22486, and eight counts of Solicitation to Commit First Degree Murder in Bills of Information which are to be filed this date. The Defendant agrees and understands that he will receive consecutive sentences in each of these cases. Further, the Defendant agrees to return the ashes of Patricia Blakley Kimble to the Blakley family. The State agrees to dismiss any Breaking and Entry or Larceny indictments against Theodore Meade Kimble which are presently pending in Guilford County."

"The parties stipulate that the Defendant is a level II offender, and that under the Structured Sentencing Act the maximum sentence he can receive for each B-2 felony is 254 months, for each Class C felony 159 months, and for the Class D felony 108 months."

- On January 28, 1999, Petitioner was coerced to enter a Guilty

Plea to all cases per Plea Agreement, except an ALFORD PLEA was entered on the eight counts of Solicitation. Counsel assured the Petitioner that regardless of what the Plea Agreement said a 20 year sentence was arranged. The eight counts of Solicitation was a single case, thus Petitioner was to receive only (4) four sentences, for a total of four cases.

- On January 29, 1999, Petitioner wrote Counselor Zimmerman and asked to withdraw and go to trial, And letters to others.
- On February 24, 1999, Petitioner became worried because he had not heard from Counselor Zimmerman, so Petitioner wrote letters to ALL parties.
- On March 4, 1999, Petitioner was returned to Court for what was suppose to be the Sentencing Date, But instead Petitioner was granted an Evidentiary Hearing, which became a "Prose Withdrawal Hearing." Counselor Zimmerman told the Petitioner, he was embarrassing, and that Counsel would sit-out this hearing. Counselor Crumpler told the Court that Counsel would remain "NEUTRAL". Petitioner was FORCED to represent himself. Clearly a violation of Petitioner's Constitutional Right to Counsel a "CRITICAL STAGE" of the proceedings. Nor was Petitioner given opportunity to prepare "Evidence." The Court DENIED Petitioner's request to Withdrawal and go to trial. Then went straight into Sentencing, Further violating Petitioner's Right of Appeal.
- On March 5, 1999, Petitioner was illegally sentenced on all CASES and COUNTS; in violation of LAW and Plea Agreement. Counsel fail to object to anything, and sat there as if Petitioner had no-counsel. Instead of (4) four Sentences, Petitioner received (11) eleven Sentences. A sentence for each CASE and for each of the eight COUNTS of Solicitation, despite the State's factual

showing which proved only (1) one CASE.

- On April 5, 1999, Petitioner's Discretionary Review was DENIED by the Supreme Court of North Carolina, having already been DENIED on Direct Appeal by the North Carolina Court of Appeals. Counsel ABANDON issues of the illegal sentences, fail to file a M.A.R. and raise New evidences.

ISSUES PRESENTED

Did the State deny Petitioner's Rights under Federal law by imposing sentences that were NOT authorized by applicable State or Federal Laws, and denying his Motion For Appropriate Relief without a hearing; And his Right to Effective Assistance of Counsel under State and Federal Laws?

ARGUMENT

1) Petitioner is serving sentences which are Not authorized by applicable State or Federal Law; in violation of the protection against Double-Jopardy.

(U.S. Const. Am. 5, 14; N.C. Const. Art. I, Sec. 19, 23.)

Petitioner was sentenced under "DOUBLE JEOPARDY" in cases[#] 97 CRS 23656 and[#] 98 CRS 23486. (See **EXHIBIT A M.A.R.**; Pages[#] 24 and[#] 25.) Also see JACKSON v. LEONARD, 162 F. 3d 81 (2nd cir. 1998). Petitioner does NOT relinquish his protection under Constitution Rights, if he did NOT have Effective Assistance of Counsel. The Prosecution and Counsel "DECEIVED" the Petitioner by dismissing Case[#] 97 CRS 23656 (count 1) as part of the Plea Agreement, without listing the title of the charge.

2) Petitioner's conviction was obtained by the unconstitutional failure of the

state to disclose to the defendant evidence favorable to the defendant.

(U.S. Const. AM. 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 23.)

Petitioner has SCREAMED "Prosecutor Misconduct" from the beginning, but no one would listen. New Evidence proves the claims raised in the Motion For Appropriate Relief. For more details (See Exhibit A M.A.R., there in Exhibit S Affidavit by T.M. Kimble.) Witness Jeff Roberts and James Ogburn were interviewed several times, but the State SUPPRESSED the Evidence. The state coerced witnesses to change their statements, or threaten them to keep silent. Edna Kimble is prepared to testify as a witness to Detectives interview James Ogburn, who swore the Defendants were 15 miles away at the time of the crime. The state violated the Petitioner's Constitutional Rights. See State v. RICH, 130 N.C. App. 113, 502, SE. 2d. 49 (1998); BOYLE v. MILLION, 201 F.3d 711 (6th Cir 2000), and BERGER v. U.S., 295 U.S. 78, 88, 79, L. Ed. 1314, 55 S. Ct. 629 (1935). Also in violation of N.C.G.S. 15A-1340.14; For More Evidence. (See Exhibit C Affidavit by Janet Smith) Yet another witness threaten by the state, and willing to testify. Ms. Smith was threaten to change her statement and go against the Petitioner. See U.S. v. ESTRADA, 819 F.2d. 1304 (10th Cir 1998) and U.S. v. AGUILAR, 90 F. Supp. 1152 (D. Col. 2000). There's so many acts of Prosecutor Misconduct over Withheld Evidence, Petitioner prepared a brief. (See Exhibit E; Grievance to the N.C. State BAR.) Contained therein is more NEW Evidence with supporting Exhibits to prove claims as FACTUAL. Petitioner Prays this honorable Court will make a perusal of these important Exhibits. Although these claims were raised in the M.A.R.; it lacked these Exhibits. Especially note STATE'S witness Jeff Clark, who testified lead Detective

J. D. Church showed him pictures of the crime, told him facts about the case, wrote a false statement for him to sign, even signed Jeff's name in places. At this time, the Petitioner can now prove 3 Star witnesses for the State (Nichols, Pardee, Dyers) each committed PERJURY at the Co-defendant's trial, all of which had Plea Arrangements in exchange for their false testimony. (See Exhibits J; K; L.)

The Prosecution is NOT allowed to "CUT DEALS" with witnesses on pending charges (or) threaten with severe prosecution if they don't say what he wishes, which is SELECTIVE PROSECUTION, (See Exhibit A M.A.R., therein Exhibit BB TTP #165 Lines 3-15) Also, Robert Nichols STOLE Petitioner's new trailer and the Prosecution REFUSED to do anything, and in FACT, COVERED-UP the CRIME! (See Exhibit A M.A.R. therein Exhibit CC TTP #176 Lines 15-19) (Also therein Exhibit S Affidavit by T.M. Kumble) New Evidence as to this CRIME is "STILL COMING" to light.

3) Petitioner's conviction was obtained by a plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charges and consequences of the plea.

(U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 19, 23.)

Petitioner's plea of guilty was unlawfully induced when Counselor Zimmerman had him enter the plea with the belief it was NOT final until the sentencing. Further, the Petitioner could NOT have known the consequences of the plea, because of the DECEPTIVE wording of the Plea Agreement. Case in point, when the agreement said the Petitioner was to receive consecutive sentences on all "CASES," it listed each CASE, and then

said, "eight counts of Solicitation". The State's factual showing proved only one "CASE" of Solicitation, but the Petitioner was illegally sentenced on each COUNT. Instead of being sentenced to four CASES, Petitioner was sentenced to 3 CASES and 8 COUNTS. Petitioner could NOT have known the State would pull a "fast-one" and assign each Count it's own Case number (99CRS 23241-42) after the fact. It was not listed on the Plea Agreement. The Judge should have known, and not sentenced the Petitioner 8 consecutive times for the same Case. The same Rule Applies as Follows in Comparison:

KNOWING ERRONEOUS CONVICTION - Convicting Defendants of reckless driving when they were charged with Driving while Impaired was an act which respondent Judge knew or should have known to be improper and **ULTRA VIRES**, (Unauthorized; Beyond the scope of power allowed or granted by a corporate charter or by law) or beyond the powers of his office; Therefore, Respondent's actions constituted conduct in violation of **CANONS 2A and 3A (1)** of the Code of Judicial Conduct. In Re MARTIN, 333 N.C. 242, 424 S.E. 2d 118 (1993) Same "Standards" apply above in case at bar.

Further **DECEPTIVE** wording in the Plea Agreement shows the dismissal of case #99CRS 23656 (Count 1), but never listed what the indictment was, because the Dist. wanted to cover up the fact he committed Double-Jopardy. Yet the Judge never read the indictment title into the record, simply dismissed it. Also, Judge McHugh illegally sentenced the Petitioner in 8 of 11 sentences, in the Aggravative Range using the same supporting evidence, which under Sentencing Rules is only allowed twice. In all cases the

Mitigating Factors out-weighed the Aggravating Factors 3 to 1, but the Clerk of Court marked the wrong box on the findings in each case.

4.) Petitioner's conviction was obtained due to the ineffectiveness of trial and/or appellate defense counsel.

(U.S. Const. Am. 5, 6, 14; N.C. Const. Art I, Sec. 19, 23.)

Petitioner's case is used in the N.C. Defender's Manual as an example of what Attorneys should NOT do. (See Exhibit B; Page 2 of 2 / From: N.C. Defender Manual | Oct 2002 | @Institute of Government Vol. 2, Ch. 21: Guilty Pleas) "In STATE v. KIMBLE, 141 N.C. App. 144, 539 S.E.2d 342 (2000), the defendant pled guilty to eight counts of soliciting to murder, but the state's factual showing proved one solicitation only. The appellate court upheld Kimble's convictions because the defense lawyer did not move to withdraw the defendant's plea on the grounds of the inadequacy of the factual basis." When the Petitioner was sentenced 8 times for a single CASE, Counsel "Fail" to Object. On Appeal Counselor Carman (Appellate Defender) "Fail" to withdraw the plea on the proper grounds, thus the Court upheld the convictions. This ERROR cost 70-90 years, to be added to the Petitioner's sentence. The Exhibit used above is "New Evidence".

Counselor Zimmerman had a "Conflict of Interest" from the beginning in that he sentenced the Petitioner to Prison. (See Exhibit A and therein Exhibit EE; Judgment and Commitment by Judge Zimmerman) (Also therein Page #3) See GARDINER v. US 679 F. Supp. 1143 (D. ME 1988) Counsel FAIL to request bond, See U.S. v. HAMMONDS, 425 F.2d 597 (D.C. Cir 1970) Counsel FAIL to get

statement from Star Witness. See U.S. v. JOHNSON, 995 F.Supp 1259 (D. Kansas 1998);
See Exhibit A MAR; therein AH T[#] 149-150; See ROSS v. LACKWANA COUNTY DISTRICT ATTORNEY, 204 F.3d. 453 (3rd Cir. 2000); Also HART v. GOMEZ, 174 F.3d. 1067 (9th Cir. 1999).
It was FAULTY legal advice to have the Petitioner sign 8 Bills of Information on charges that would have been dismissed. See U.S. v. SCOTT 625, F.2d. 683 (5th Cir. 1981);
LORD v. WOOD, 184 F.3d. 1083 (9th Cir. 1999); U.S. v. TAYLOR, 139, F.3d. 924 (D.C. Cir. 1998);
Also See U.S. v. SANDERSON, 595, F.2d. 1021 (5th Cir. 1979). Counsel and Appellate Counsel FAIL to report Prosecutor Misconduct. (See Exhibit A MAR; therein Exhibit I, Witnesses Statements) Counsel "FAIL" to investigate State's witnesses. See MEDINA v. BARNES, 71, F.3d. 363 (10th Cir. 1995). Fail to raise Double-Jeopardy.
For more information on Ineffective Assistance of Counsel; See Exhibit A MAR; Pages[#] 25-33.

5.) Petitioner's conviction was obtained by denial of counsel at a critical state of the proceedings, without a knowing, voluntary and valid waiver by defendant of the right to counsel.

(U.S. Const. Am. 5, 6, 14; N.C. Const. Art I, Sec. 19, 23.)

Petitioner was DENIED the right to Counsel at the Pro-se Withdrawal Hearing. The Petitioner was NOT given notice of the Hearing. Only once at Court did Counsel notify the Petitioner they plan to, "Sit out this Hearing." Clearly there was a "Conflict of Interest", when Counselor Crumpler stood up and told the Court they plan to remain "NEUTRAL". See Exhibit A MAR; therein Exhibit X T[#] 3) See GARDINER v. U.S., 679 F.Supp 143 (D.Me. 1988). Counsel refused to represent the Petitioner, thus the Petitioner was FORCED to defend himself. Denial of DUE PROCESS.

See U.S. v. ALVAREZ-TANTINEZ, 160 F.3d 513 (9th Cir 1998); U.S. v. ELLISON, 798 F.2d 1102 (7th Cir 1986).

6) Petitioner's conviction was obtained by denial of the defendant's right to present evidence in his own defence.

(U.S. Const. Am. 5, 6, 14; N.C. Const. Art I, Sec. 18, 19, 21, 23.)

Petitioner's right to DUE PROCESS was DENIED at his Evidentiary Hearing; i.e. Pro-Se Withdrawal Hearing, Counselor Zimmerman, nor the Court notified the Petitioner that such a hearing had been granted. The Petitioner was "BLIND-SIDED" and "AMBUSHED"; NO opportunity was granted to the Petitioner to prepare a defense or to present the **FACTS** with **SUPPORTING EVIDENCE**. **A)** Due Process requires as general matter, opportunity to be heard at meaningful time and in a meaningful manner. **B)** Citizen must be afforded Due Process before deprivation of life, liberty, or property. See ARMSTRONG v. MONZO, 380 U.S. 545, 552, 14 L.Ed. 2d 62, 85 S.Ct. 1187 (1965); MATTHEWS v. ELDRIDGE, 424 U.S. 319, 333, 47 L.Ed. 2d 18, 96 S.Ct. 892 (1976). By all the "NEWLY DISCOVERED EVIDENCE", the Petitioner has been DENIED the right to present the evidence, because of Prosecutor Misconduct.

7) Petitioner's conviction was obtained do to the denial of defendant's right to appeal, without a knowing, voluntary and valid waiver by defendant of his right to appeal.

(U.S. Const. Am. 5, 6, 14; N.C. Const. Art. I, Sec. 18, 19, 21, 23.)

Petitioner listed several ways his Right to Appeal was denied in his

Motion For Appropriate Relief. (See Exhibit A M.A.R. / Pages #15-17.)

The trial Court denied Petitioner's Pro-Se Motion to Withdrawl erroneously, and went straight into sentencing, thus denying the Petitioner his right to appeal. See LOZADA v. DEEDS, 488 U.S. 430, 112, L. Ed. 2nd 956, 115 Ct. 860 (1991); PARKUS v. DELE, 33 F.3d. 933, 939-940 (8th Cir 1994); And TONY v. GAMMON, 79 F.3d. 693, 697 (8th Cir 1996).

8.) Petitioner's conviction was obtained by a violation of the privilege against self-incrimination.

(U.S. Const. AM. 5, 14; N.C. Const. Art I, Sec. 19, 23.)

Petitioner's Counsel never seem to care about the FACT of "INNOCENCE" despite the Petitioner's pleas. See HOLLINESS v. ESTELLE, 569 F.Supp. 146 (W.D. Tex. 1983). Counsel knew the Petitioner was innocent, yet had him enter a plea with the belief it would NOT be final until the Sentencing. Counsel never tried to talk with EYE-WITNESS James Ogburn or other witnesses who could verify the Defendant's location at the time of the crime. Also See Exhibit A M.A.R. Pages #19-20.

9.) Petitioner's conviction was obtained by the denial of his right to cross-examine witnesses against him.

(U.S. Const. AM. 6, 14; N.C. Const. Art I, Sec. 19, 23)

Petitioner's sixth U.S. Constitutional Right was DENIED when the trial Court errored and allowed State's witness Det James Bowman

take the stand during sentencing, and testify to what is known as HEARSAY-EVIDENCE. Mr Bowman testified as to statements made by third party (inmate) William Stewart. Those statements were in reference to the eight counts of Solicitation, which the Petitioner did NOT plead Guilty; An ALFORD Plea was entered, thus the Constitutional Right should "NOT" be waived. The U.S. Supreme Court ruled on the Right to Confront witnesses just last year. See CRAWFORD v. WASHINGTON (No. 02-9410. Argued Nov 10, 2003 - Decided March 8, 2004.) (See Exhibit D^(*))

10) Petitioner's conviction was obtained by use of a coerced or illegally obtained confession.

(U.S. Const. Am 5, 6, 14; N.C. Const. Art I, Sec 19, 23.)

Petitioner covered this throughout his M.A.R Counselor Zimmerman coerced the Petitioner to sign a Plea Agreement, with the belief it would NOT be final until sentencing. Counsel assured the Petitioner and his family a sentence of 20 years total would be granted, listed Petitioner received over 100 years. See MOORE v. US, 950 F.2d 656 (10th Cir 1991); BOBIA v. KEANE, 83 F.48 (2nd Cir 1996); Also See TREJO v. U.S., 666 F.Supp. 2nd 1274 (S.D. Fla 1999) Counsel and Prosecutor TRICKED the Petitioner into believing he would receive 4 sentences on four cases, NOT 11 sentences for three cases and eight counts. (See Exhibit A MAR Pages 6, 7, and 8) Petitioner was threaten the penalty of Death. See U.S. v. ELLISON 998 F.2d 1102 (7th Cir 1998); U.S. v. UNGER, 665 F.2d 25 (8th Cir 1981) Compare case at bar with UNGER v. COHEN, 718 F.Supp 185 (S.D. N.Y. 1989) (clearly

mirrors how Petitioner was SHANGHEID.

The Defendant in a Criminal case is entitled to Assistance of Counsel at all stages, where Counsel's performance was sub-standard and ineffective, Plaintiff's Right to "DUE PROCESS" of Law is violated. When Counselor Crumpler and Zimmerman refused to defend the Petitioner, "Conflict of Interest" became a FACT. Petitioner has proven the two prong test necessary to show ineffective assistance of counsel:

- 1) The Counsel's performance for a fact deviated from the ethical standards in the community, and
- 2) That Petitioner was prejudiced thereby.

The Prosecutor's failure to disclose James Cagburn's statement, or Janet Smith is in fact a denial of Due Process of Law. See U.S. Constitution, Am V, VI and XIV; N.C. Const Art. I sec 18, 19, 23. Due Process requires a defendant be sentenced on basis of ACCURATE information. See U.S. v. HERRERA-ROJAS, 243 F.3d 1139 (9th Cir 2001). If the District Court fails to make the required findings or determinations during sentencing, the sentence must be VACATED and the Defendant resentenced, see U.S. v. CONTRERAS, 249 F.3d 595 (7th Cir 2001). Sentencing determination must be based on RELIABLE evidence. See U.S. v. DOE, 860 F.2d 488 (1st Cir 1988).

Finally, Petitioner was DENIED DUE PROCESS of Federal Law by DENIAL of his MMR, without a hearing. (see N.C.G.S. 15A-1420(c)(1) and (4))

CONCLUSION

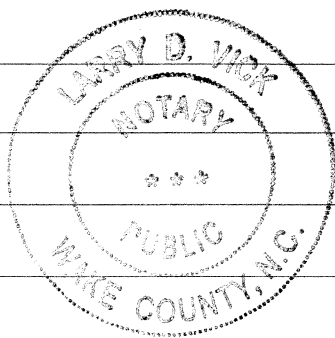
The State Trial Court should be ordered to give the Petitioner a RESENTENCING HEARING, (or) DISMISS THE CASE

IF the Record, enclosed Motions, Exhibits, and Facts, are not sufficient to establish the ILLEGALITY of his present sentences, (or) that he was convicted "WITHOUT" Due Process of Law, The order of the Trial Court Dismissing the Petitioner's MWR, without a hearing should be VACATED, and the Court should be Ordered to give the Petitioner an Evidentiary Hearing in accordance with applicable State Law.

Pro-sec: Theodore M. Kimble

Respectfully Submitted this
the 7th Day of NOVEMBER 2005.

THEODORE M. KIMBLE
1300 WESTERN BLVD.
RALEIGH N.C. 27606



My Commission Expires 1-5-2008.

Larry D Vick

VERIFICATION

I, THEODORE MEAD KIMBLE, Being first Duly Sworn depose and say, I am the Petitioner in the foregoing Memorandum in Support of Petition for Writ of Habeas Corpus, I have drafted and read the same, And the statements contained therein are True, As for any statements made on information and belief, Are made in good faith, And I believe to be True. Signed under penalty of perjury this the 7th day of November 2005.

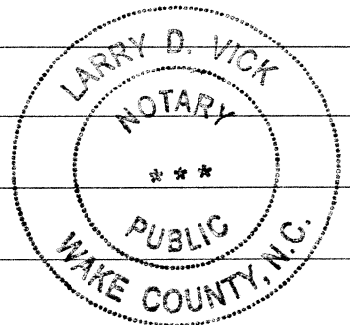
Pro-Se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Sworn to and before me this the 7th Day
of November 2005.

Witness: Larry D Vick

My Commission Expires: My Commission Expires 1-5-2009.



STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED

2003 OCT 29 AM 11: 23

GUILFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA

v.

THEODORE MEAD KIMBLE

DEFENDANT.

IN THE GENERAL COURT

OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO.'s 97 CRS 23656

97 CRS 39581; 98 CRS 23486

99 CRS 23241-48

MOTION FOR APPROPRIATE RELIEF

x x x x x x x x x x x x

NOW COMES, THE DEFENDANT, THEODORE MEAD KIMBLE PRO-SE

IN THE ABOVE-CAPTIONED CASE'S, AND RESPECTFULLY MOVE THIS HONO-

RABLE COURT, PURSUANT TO N.C.G.S. 15A-1411, ET. SEQ., FOR APPROPRIATE

RELIEF FROM THE DEFENDANT'S CONVICTION AND SENTENCES IN SAID

CASES. IN SUPPORT OF THIS MOTION, DEFENDANT SHOWS THE COURT'S

FACTS

1.) I AM ASKING THE COURT TO REVIEW THE LEGALITY OF THE FOLLOWING

CONVICTIONS WHICH I AM PRESENTLY OBLIGATED TO SERVE: DATE OF CON-

VICTION WAS MARCH 5, 1999. PRESIDING JUDGE PETER M. McHUGH,

IT WAS A GUILTY PLEA TO SECOND DEGREE MURDER 97 CRS 39581;

FIRST DEGREE ARSON 98 CRS 23486; THE CHARGE OF CONSPIRACY TO

COMMIT FIRST DEGREE MURDER CASE # 97 CRS 23656 WAS "SUPPOSED"

TO BE "DISMISSED" PER PLEA AGREEMENT UPON PLEA OF GUILTY,

However Petitioner was sentenced to 163-205 months REGARDLESS.

Petitioner took an "ALFORD" plea in cases 99 CRS 23241-48, After being "TRICKED" and "DECEIVED" into signing "WAIVERS" to waive the Findings and the Return of Bills of Indictment, and agreed that the above said cases may be tried upon the above information on the BILL OF INFORMATION SHEETS, by prosecutor RICHARD PANOSH, and attorneys H.W. ZIMMERMAN JR., FRED G. CRUMPLER JR., on January 28, 99 making me believe it was in my best interest, for which Petitioner received a total of a minimum of 840 months and maximum of 1,084 months on those "8" charges alone, which equals 70 to 90.4 years, So by counsel deceiving Petitioner into signing those papers, Petitioner was actually "THROWING HIS LIFE AWAY" without even having the Grand Jury show they be-
lieved there would be enough evidence to indict on said charges, Solely on the word of a known Jailhouse thief, Homosexual, and habitual liar, which "FOUR" other witnesses testified to those facts, So it's as if counsel was working against Petitioner, which was obviously Ineffective Assistance of Counsel. As if Petitioner had no counsel at all. Petitioner wants to bring out the "FACT" attorney H.W. ZIMMERMAN "WAS" the sentencing JUDGE whom had sentenced Petitioner on December , 1997 to a total of 50-60 months, For B.E./ Larceny charges, and while serving that sentence Mr Zimmerman came off the bench and went into private practice, Petitioner and his family hired F.G. Crumpler Jr. from a law firm in Winston-Salem (N.C.) Mr Zimmerman had just started working at the same law firm. Mr Zimmerman wanted to team-up with Mr Crumpler to represent Petitioner. (Judge) Zimmerman told Petitioner and his family that he could win the case for \$60,000 dollars; That since he had served as a Judge he could "ARRANGE" everything. A month or so after retired Judge Zimmerman took my case and had received full payment, he started asking Petitioner's family for more money, when Mr Zimmerman learned they had no-more money to give, Mr Zimmerman changed his statement from how he could

WIN the case, to how Petitioner must take a "20 year PLEA BARGAIN". IF Petitioner did NOT take the 20 year plea bargain he would be put to death. Petitioner had hired H.W. Zimmerman out of DURESS, after his previous attorneys had told him the same thing. Mr. Zimmerman coerced Petitioner to sign the said WAIVERS. He assured Petitioner everything was ARRANGED, Petitioner was to get 20 years sentence total for "Everything," Although it wasn't shown on the Plea Bargain when signed. As Mr. Zimmerman stated, he had "PULL" with the Judge (Peter McHugh) and Prosecutor (Richard Panosh), as he worked with them when he was a Judge HIMSELF, when sentenced, Petitioner received a total of 1,289 minimum months and 1,651 maximum months on all sentences, which were all ran consecutively. Attorney (Judge) Zimmerman showed prejudice toward Petitioner, his own client. Clearly a Miscarriage of Justice and conflict of interest. ^{EXHIBIT} (EE)

2). Petitioner's attorney filed Notice of Appeal in the N.C. Court of Appeals on March 12, 1999.

3). On October 7, 1999 Petitioner's appellate counsel assigned, MS. DANIELLE M. CARMAN filed The Proposed Record on Appeal, ON APRIL 20, 2000, Appellate Counsel sent Petitioner a copy of the State's brief. Petitioner had told Appellate Counsel to make sure that she brought it to the Courts attention in her assignment of Errors, The "FACT" that Mr. Zimmerman WAS the sentencing JUDGE who sentenced Petitioner on the unrelated charges (to begin with), and how he had assured Petitioner and his family how he had everything under control, How he would use his INFLUENCE from being a former Judge to ensure that Petitioner won his case, How a WIN changed to a 20 year plea agreement when no more money could be sent. Petitioner would receive a 20 year sentence on ALL charges, how Petitioner was told the reason it couldn't be in the Plea Bargain because it would draw ATTENTION and may arouse SUSPICION that it had all been PRE-ARRANGED secretly, When in FACT, Mr. Zimmerman's only GOAL was to

send Petitioner away for the Rest of HIS LIFE! And get PAID \$50,000 for Doing It!

Yet Appellate Counsel Carman fail to say one word about these FACTS in her ASSIGNMENT of ERRORS! Which shows Ineffective Assistance of Appellate Counsel, and Grave Miscarriage of Justice!

4). The entire time Petitioner's appeal was in the N.C. Court of Appeals, Petitioner repeatedly told Appellate Counsel to file a motion for Appropriate Relief, To bring out FACTS that were NOT able to be put in her brief. Like the FACT Mr. Zimmerman was the previous sentencing JUDGE, and how he TRICKED Petitioner into allowing him to represent Petitioner through FALSE Promises, And at the threat of receiving a DEATH Penalty. Still Appellate Counsel refused to fill a M.A.R., which would be allowed to be filed in the Court of Appeals, Instead of in Superior Court of Guilford County where Petitioner was "SHANGHAIED" and many of his RIGHTS were violated, STATE and CONSTITUTIONAL RIGHTS, and Petitioner was sentenced ILLEGALLY, But Counsel Carman stated she does NOT file Motions for Appropriate Relief. Counsel could have brought out all kinds of facts NOT included in her brief, As Rules state, Pursuant to 15A-1418, which Provides in pertinent parts as FOLLOWS:

A). When a case in the Appellate Division is there for review based upon grounds set out in N.C.G.S. 15A-1415 must be made in the Appellate Division. For the purpose of this section, A case is in the Appellate Division when the jurisdiction of the Trial Court has been divested as provided in G.S. 15A-1418 (OR) when a Petitioner for Writ of Certiorari has been granted. Petitioner seeks Relief upon the following grounds:

The sentence imposed was unauthorized at the time imposed, Contained A type of sentence disposition or A term of imprisonment NOT authorized for the particular class of offense and prior record, and conviction level was ILLEGALLY imposed, or is otherwise invalid as a matter of Law. (N.C.G.S. 15A-1415(B)(9)) Ineffective Assistance of

Trial Counsel North Carolina General Statute 15A-1415 (E). But Counsel Carman **REFUSED** to file a Motion for Appropriate Relief and Petitioner's appeal was **DENIED**.

The Court did **NOT** have an opportunity to review all the State and Federal rules and laws that were **VIOLATED** in Petitioner's case and **ILLEGAL** sentence.

5). Thereafter, Petitioner pleaded with Appellate Counsel Danielle Carman to file a Motion for Appropriate Relief again repetitiously, and Counsel finally said she would, **HOWEVER**, Appellate Counsel did just the **OPPOSITE**, on April 10, 2001 Petitioner was mailed a letter from Appellate Counsel Carman along with a **ORDER** from the N.C. **SUPREME** Court denying a petition she filed for **DISCRETIONARY REVIEW** dated April 6, 2001 **AGAINST MY KNOWLEDGE** and against my will! By Counsel filing a petition for Discretionary Review, the court simply denied my appeal. This did **NOT** enable her to bring out the **FACTS** and **ISSUES** that can be brought out in a **M.A.R.**, As Petitioner constantly instructed her to file. This was a Gross Display of Ineffective Assistance of Appellate Counsel. Ms. Carman never brought it to the Court's attention that Mr. Zimmerman was the previous sentencing **JUDGE**, and what a **GRAVE CONFLICT** of **INTEREST** it was by him representing Petitioner. Ms. Carman stated it would **NOT** do any good to bring up those **FACTS**, and speaking on that issue would only cause trouble for her. She **FEARED REPROCUCTIONS** from all involved if she pointed those facts out!

STATEMENT OF FACTS

6). This Motion comes within N.C. G.S. 15A-1415.

A). My convictions were obtained in violation of Due Process of Law, (U.S. Const. AM. 5, 6, 14; N.C. Const. ART. I, sec 18, 19, 23,) as well as other provisions of the United States and North Carolina Constitutions. G.S. 15A-1415.

B). Even if my convictions were valid, there was a problem **"IN THE WAY"** I was sentenced

and my sentences are INVALID, see N.C.G.S. 15A-1415 (B)(1)(3)(4)(5)(8)(C)(E)(G).

OTHER CONSTITUTIONAL VIOLATIONS

A). Conviction obtained by Plea of Guilty which was Unlawfully Induced or **NOT** made VOLUNTARY with understanding of the nature of the charge and the consequences of the plea.

U.S. Const. AM 5, 6, 14; NC Const. ART I sec. 19, 23.

1). Movest was represented by and through attorneys H.W. Zimmerman Jr. and Fred G. Cumppler Jr. As such Movest was of the impression and understanding that said attorneys were skilled and trained in the laws of N.C. Movest was advised (**COMPELLED/INDUCED**) to take a Plea Bargain by the forenamed Counsel, They stated that it was in my best interest, Mr. Zimmerman told Petitioner that everything was all **PRE-ARRANGED** for a "20 year sentence", That Mr. Parosh only wanted a **CONVICTION** because of all the **Publ-icity**. If the tax payers had to pay all the unnecessary money to go to trial, the D.A. would make sure I was sentenced to **DEATH** no matter what, see **MOORE v. U.S.**, 950 F2d 656 (10TH CIR 1991) Coercion by Trial Counsel or the Prosecutor to induce A GUILTY plea render the plea INVOLUNTARY. Also see **U.S. v. ELLISON**, 798 F2d 1102 (7TH CIR 1998) and **U.S. v. UNGER**, 665 F2d 251 (8TH CIR 1981) Defendant's assertion that Counsel advised her that if she plead guilty to kidnapping charges, she would be given probation, and that if she went to trial and was found guilty, that she would probably get the Death Penalty, Stated a valid claim of Ineffective Assistance of Counsel, which **"REQUIRED an EVIDENTIARY HEARING."** In this case at bar, Petitioner was told **IF** he plead guilty, he would get a sentence of 20 years. If he went to trial, he would **POSITIVELY** be found Guilty, And get the Death Sentence **FORESURE!** It was later ascertained just recently, upon Movest having time to study N.C. Laws and Procedures, and studying the Court transcript records, That Movest's attorneys

COMPELLED/INDUCED him to sign waivers which would ensure him 70 to 90.4 years on "8" counts alone. The fact Mr. Zimmerman "was" a JUDGE, leaves NO-EXCUSE for such a Gross Miscarriage of Justice! Making Petitioner sign 8 waivers knowing the charges would positively be DISMISSED if Petitioner did NOT sign! This is A conflict of Interest! And it is obvious that Mr. Zimmerman wanted to make absolutely sure that Petitioner would spend the rest of his life in prison. See U.S. v. SANDERSON, 595 F2d 1021 (5TH CIR 1979) (Trial Counsel's misrepresentation of material facts, withholding information, And exerted pressure on Defendant to induce a guilty plea, Constitutes Ineffective Assistance of Counsel and REQUIRES an Evidentiary Hearing to Resolve Claim.) In case at bar, Prosecutor had already tried to have Petitioner "indicted on all (8) counts, But solely on the word of one inmate William Wayne Stewart, And FOUR people saying Stewart was lying, No indictment could ever be considered on such FLIMSEY-HERESY. Mr. Panosh needed a conviction on those 8 counts to give Petitioner 70 to 90.4 years, which was twice as much time at the original charges put together. Mr. Panosh himself had offered a 20 year plea agreement to Petitioner prior to Co-defendant's trial. Petitioner fully believed Counselor Zimmerman when he gave assurance of a 20 year plea agreement, that all charges would be combined, that the state only wanted a conviction! After Counselor Zimmerman had Petitioner sign waivers, he had Petitioner plead Guilty to a charge that was INVALID and DISMISSED, But later (Approx. 8 months) being RE-CHARGED with a different case number (98 CRS 23486) and changed the name of the charge to First Degree Arson, with the same wording as the previous charge from 8 months earlier, which was then case number (97 CRS 23656) Arson of an Unoccupied Building, However as the WORDING states in pertinent parts "Burn or cause to be burned a the Dwelling house INHABITED by PATRICIA KIMBLE." Obviously a charge titled

UNOCCUPIED can't also be INHABITED at the same time, so it naturally had to be dismissed as a matter of Law. However, Counsel had Movant believe that particular charge and "ENTIRE" case #97 CRS 23656 was being dismissed as part of the plea bargain, Counsel FAIL to note the RE-INDICTMENT (DOUBLE-JEOPARDY) for the same offense, Only this time as case #98 CRS 23486 titled "First Degree Arson," with the same exact wording as in previous dismissed case #97 CRS 23656. Which was Ineffective Assistance of Counsel and Due Process of Law, see U.S. v. GIARDINO 797 F.2d 30 (1st Cir 1986) Trial Counsel lied to Defendant to induce a Guilty Plea, Constitutes Ineffective Assistance of Counsel and REQUIRES the plea to be set aside. Case at bar, Counselor Zimmerman lied when he told Petitioner everything had been Arranged for the 20 year plea agreement, that Petitioner should NOT question his authority. Clearly a Conflict of Interest for Mr. Zimmerman was the JUDGE that first sent Petitioner to prison, He can NOT possibly be looking out for Petitioner's best interest, To prove it just look at Petitioner's 107-134 YEAR SENTENCE!

B). Conviction obtained by the Unconstitutional Failure of the State to disclose to the Defendant evidence favorable to the Defendant. U.S. Const. AM. 5, 6, 14;
N.C. Const. ART. I, sec 18, 19, 23.

1). State "FAIL" to provide the Defendant and the Court with the results of the (PRE-SENTENCE- INVESTIGATION-REPORT), Despite the fact the lady was subpoenaed, By Court records "2" weeks prior to March 5, 99 sentencing! It's a violation of Due Process of law not to be given the chance to have the Judge consider the recommendations of the P.S.I. Report, Defeating the whole purpose of the P.S.I. Rules, And Defendant was sentenced ANYWAY! see U.S. v. DAVENPORT, 151 F.3d 1325 (11th Cir. 1998) Pre-Sentence Report must be disclosed to BOTH defense Counsel and Defendant at least TEN (10) Days prior to sentencing as MANDATED by Statute. Also see U.S. v. GORDON 173 F.3d

(10TH Cir. 1999) and U.S. v. BARTHOLOMEN 974 F2d (5TH Cir. 1992) Trial Counsel NOT only didn't have a chance to object to any inaccuracies or errors in the P.S.I. Report, "NO P.S.I. Report was ever produced!" A casual perusal of the record shows that Petitioner was denied all his State and Constitutional Rights from "DAY ONE", why start following the Rules at this point, Sentence Petitioner anyway! see WEST v. U.S. 994 F2d 518 (8TH Cir. 1993) Trial Counsel's FAILURE to object to errors in the Pre-Sentence Report can constitute Ineffective Assistance." In case at bar, Trial Counsel did NOT even care that NO Pre-Sentence Report was even produced! No less object to any errors in it! Counselor Zimmerman was a JUDGE, there's "NO" excuse, He just sat there and did NOTHING! Blatantly prejudice and malice toward Petitioner.

2.) State NOT only FAIL to advise the Petitioner that the charge of "ARSON OF AN UNOCCUPIED" Dwelling IND #97CRS 23656 DATED Nov. 3, 1997 had been Dismissed by Law. Because the Dwelling WAS OCCUPIED by Patricia Kimble, The indictment was in fact a mistake, Making it "NULL AND VOID!" Even the words underneath the charge states in pertinent part, "The Dwelling house INHABITED by PATRICIA KIMBLE." Therefore this can't be an "UNOCCUPIED DWELLING!" Yet, Instead of making these facts known, The State made the Petitioner believe Conspiracy to Murder 97CRS 23656 charge would be DISMISSED as part of the plea bargaining, then committed "DOUBLE JEOPARDY" by RE-SUBMITTING the charge to the Grand Jury as case #98CRS 23486 titled "FIRST DEGREE ARSON", this time dated JULY 6, 1998, For further "PROOF" if this was not in fact TRUE then WHY wasn't Petitioner charged with "FIRST DEGREE ARSON" on Nov. 3, 1997, and was instead MISTAKENLY charged with 97CRS 23656 "Arson of an Unoccupied Building"? The "FACTS" speak for themselves in this issue. BOTH Indictments had the same exact wording. Which was also Ineffective Assistance of Counsel for NOT saying anything about it! And Due Process of Law. See JACKSON v. LEONARD 162 F3d 81 (2ND Cir. 1998) Appellate Counsel's failure

to raise Double-Jeopardy claim where it was apparent that Jackson's two charges of First Degree Robbery and Criminal use of a Firearm in the First Degree rested on the same FACTUAL Predicate. Constitutes Ineffective Assistance of Counsel. In case at bar, Not only was Appellate Counsel Ineffective for Not putting it in her Assignment of Errors, But Trial Counsel HAD PETITIONER PLEAD GUILTY TO IT! which calls to mind WILLIAMS V. TURPIN 87 F3d 1204 1211 (11th Cir 1996) Petitioner entitled to Evidentiary Hearing if Petitioner succeeds in demonstrating Ineffective Assistance of Appellate Counsel, then the Evidentiary Hearing maybe considered in court. With the underlying claim of Ineffective Assistance of Trial Counsel. In case at bar, The record and Appellate Counsel's Assignment of Errors show clearly that Petitioner just PROVED the above Ineffectiveness of BOTH Counsel at the same time for a FACT! Appellate counsel Carman has a duty to report any miscarriage of Justice, Not only in her Assignment of Errors, She should also have reported the fact that Mr Zimmerman was the prior sentencing Judge to the State Bar, Plus with all the other obvious misconduct from all parties involved, All the "ILLEGAL" state and Federal law violations that were used to get these convictions, All should have Immediately been reported to the State Bar, NOT only did she FAIL to Report ANYTHING, she did NOT put ANY of these FACTS in her Brief! The Prosecutor CONNED Petitioner into believing the ENTIRE indictment (#97CRS 23656) would in fact be dismissed by his Plea of Guilty. By just referring to case #97CRS 23656 which was the ONE and ONLY indictment that had "2" counts, Out of all the indictments. The State tricked Petitioner with the aid of Counselor Zimmerman, into believing by Pleading Guilty to that charge, it would be DISMISSED, Even in the Jan. 28, 99 transcript of the proceedings Page 11 Lines 18-19 The Court stated, "In Case 97CRS 23656 shall be dismissed by the state upon your plea of guilty." On Jan 28, 99 The only charge in case 97CRS 23656 was in fact "Conspiracy First Degree Murder," so Petitioner naturally figured that was the

charge - the court was talking about, and Mistake or Not the Judge in fact Dismissed

"Conspiracy First Degree Murder." See SCOTT v. WAINWRIGHT 698 F2d 427 429-30 (11th Cir. 1983) Trial

Counsel's FAILURE to learn the facts and familiarize himself with the law in relation to Plea Constitutes Ineffective Assistance of Counsel. HERBING v. ESTELLE, 491 F2d 135 (5th Cir. 1974)

Trial Counsel's FAILURE to familiarize himself with the facts, Law relevant to the case in relation to the guilty plea Constitutes Ineffective Assistance of Counsel and renders

the plea INVOLUNTARILY ENTERED. In case at bar, After plea was entered Petitioner discovered his trial Counsel only possessed 3 of 20 plus volumes covering his co-defendant's trial, Counsel never even recovered much of the notes and information from

Petitioner's previous Counsel. Clearly Trial and Appellate Counsel did NOT read the

*Indictments or they would have noticed Petitioner was charged TWICE for ARSON.

Petitioner "was" ignorant of the law, but even now with limited knowledge the ERROR

is plain to the eye. The Prosecutor had to have knowledge of these facts as he is the one who used TRICKERY by Re-Submitting the crime charge to begin with, but concealing these facts to make Petitioner believe he was getting some kind of break in a plea deal,

And Counsel went right along with the Prosecutor in this "CONSPIRACY" they committed against Petitioner, As if Petitioner had Counsel acting as the Prosecution working against him, Because Counsel surely didn't do ANYTHING to help Petitioner in ANY, SHAPE, or FORM!

On July 6, 1998 The State ILLEGALLY RE-INDICTED Petitioner on 98CRS 23486 calling it in fact

"First Degree Arson," this time with the same exact wording! See JACKSON v. LEONARD 162 F3d 81

(2ND Cir. 1998) Prosecutor this time committed Double Jeopardy, by using the same case twice,

to raise the charge, Changing the title, But SAME WORDING, Same FACTUAL PREDICATED!

And PROSECUTOR MISCONDUCT! Petitioner was given 163-205 months for an ILLEGAL RE-INDICTMENT.

The State didn't even type the right charge number correctly on the Judgement and Commitment

paper, listed as "98"CRS 23656 making the paper VOID. (See Judgement and Commitment paper EXHIBIT (B))

3). Petitioner contends that the Prosecutor having Petitioner Plead Guilty to 97CRS39581 "Second Degree Murder" was in fact an "ILLEGAL SENTENCE," Petitioner positively did **NOT** kill Anybody! And Petitioner can't be guilty of 97CRS 23656 Conspiracy First Degree Murder and guilty of Second Degree Murder at the same time, this is despite the fact that charge was DISMISSED upon Plea of Guilty anyway!

4). State and Attorneys TRICKED defendant into signing 8 Bills of Information WAIVERS on Jan. 28, 99 there by "WAIVING the Findings and Return of a Bill of Indictment on case 99CRS-23241-48," knowing for a fact there was **NO** evidence to present said cases to the Grand Jury for consideration of indictment, "Soley" on the word of Inmate William Wayne Stewart, when "FOUR" witnesses all testified the inmate in question bragged of robbing Petitioner, bragged of lying on Petitioner to get out of prison early, was in fact the one who solicited the Defendant, Robbed Petitioner's locker to steal information about his case, Stewart stole legal and personal information to make his PHONY story more believable, when he is in fact a known Habitual Lier, Thief, Homosexual, who claimed to be a "Hit-Man", the only thing he "Hit" was Petitioner's locker to steal his property, to fabricate a WILD STORY so he could be released from prison early, which the "PROSECUTOR" arranged by having a Judge order his release in violation of all State and Federal laws. The Prosecutor made positively sure that William Wayne Stewart was **NOT** in court to testify or face cross examination of his PHONY STORY. Yet his statement was entered in the record against Petitioner. Petitioner was CONNED into an ALFORD-Plea on all (8) counts with "**NO** Proof what so ever" and Petitioner recieved a total of 840 to 1,084 Months on those charges alone, which is 70 to 90.4 years, on the word of an inmate who FOUR witnesses testified to the fact it was all "**LIES**"! This should be considered as a BRADY violation, In view of facts.

5). Counsel not only FAIL to take a statement from Patrick Pardee, but also FAIL to take statement from several other witnesses. Mr. Pardee would have testified for the Defense,

but Counsel waited until the D.A. threaten Mr. Pardee with prosecution of several charges, And would fabricate charges if necessary, The D.A. threaten Mr. Pardee with severe prosecution if he didn't make a statement against Petitioner. The D.A. also threaten Robert Nicholes in the same manner. Jeff Roberts and James Ogburn were going to testify for the Defense, but the D.A. threaten them and ran them off! It's Prosecutor MISCONDUCT to threaten a Defendant or witnesses or anyone else with additional or fabricated charges, see U.S. v. ESTRADA, 849 F.2d 1304 (10th Cir 1998) Furthermore, Prosecutor Can't threaten witnesses in ANYWAY, see U.S. v. AGUILAR 90 F. SUPP. 2d 1152 (D. Col. 2000) Prosecutor's statement to Defense witness that government might void witness plea agreement and re-instate previously dismissed charges unless he invoked his Fifth Amendment privilege against self-incrimination, *Deprived defendant of his Right to Due Process and Compulsory Process. In case at bar, The Prosecutor threaten every witness in oneway or another, Destroying all Defense Witnesses, and Counsel went right along with it working hand and hand with the Prosecutor, as if Petitioner had no Counsel at all! Mr. Panosh (D.A.) knew he didn't have to follow any rules or disclose any facts to the Defense or Petitioner, due to the fact Mr. Zimmerman wanted to put his client away for the rest of his natural life, Counsel just let Mr Panosh do anything he wanted, legally or illegally. The main goal with everyone working together was to send Petitioner away for the rest of his life, and they all succeeded as the record shows. Even Appellate Counsel worked against Petitioner, as the brief she filed speaks for itself. Mr. Pardee told Melanie Oxendine 3 days before he signed a statement against Petitioner, that he had No idea of anything about the Kimble case, Then all of a sudden after the Prosecution threaten Pardee, he then signed a statement against Petitioner. This was clearly Vindicative. -Prosecution, Plus the fact that this is a violation of Due Process of Law. "Clearly Prosecutor Misconduct!"

6). Jeff Roberts and James Ogburn were BOTH interviewed several times by the

D.A., The Prosecutor **FAIL** to turn over a single statement to the Court and to Petitioner's Counsel. Jeff Roberts could have testified that Robert Nicholes had told him that he knew **NOTHING** about the Kimble case, and that Bob claims to be going down to the D.A.'s office for **COACHING LESSONS** on the Kimble case. James Ogburn could have testified how Ronnie Kimble was in front of him from "3:45 PM. until 4:30 PM, On Oct. 9, 95 the time and day that the Homicide took place. James Ogburn could have testified about the conversations he had with Robert Nicholes, See "Newly Discovered Evidence EXHIBIT(T)" see U.S. v. ESCHMAN 227 F3d 886 (7TH Cir 2000) Due Process **REQUIRES** that Defendant be sentenced on basis of **Accurate Information**. The Prosecutor never turned over those statements to the Court or the Defense, In fact for further information Please (see **"AFFIDAVIT OF THEODORE KIMBLE" EXHIBIT(S)**). This is all in violation of U.S. Const. AM 5, 6, 14; N.C. Const. Art I, Sec 18, 19, 23. The State **FAIL** to supply or provide the Court and Petitioner many various **FACTS and EVIDENCE**, and statements from Pardee, Roberts, Ogburn, and others as stated here in and above. The D.A. **TWISTED** witnesses' testimonys around and threaten them to change their story. And took a **FALSE** statement from William Stewart, And many other violations. This **ENTIRE** procedure was done in violation of N.C.G.S. 15A-1340.14 and Affirmed by STATE v. RICH, 130 N.C. APP. 113, 502, SE 2d 49 (1998). BOYLE v. MILLION, 201 F3d 711 (6TH Cir 2000) BERGER v. U.S. 295 U.S. 78, 88, 79, L. ed. 1314, 55 S. ct. 629 (1935).

While a Prosecutor is clearly authorized to strike hard blows in an earnest and vigorous prosecution, He or She is **NOT** at liberty to strike **"FOUL"** ones. U.S. v. NAPPI, 243 F3d 758 (3RD. 2001) U.S. v. ESCHMAN, 227 F3d. 886 (7TH Cir. 2000) Due Process **REQUIRES** that Defendant be sentenced on basis of **"ACCURATE INFORMATION"**! U.S. v. HERRERA-ROJAS, 243 F3d. 1139 (9TH Cir 2001) If the District Court fails to make the required findings during the Sentencing Hearing, The Sentence must be **VACATED** and the Defendant Re-Sentenced. U.S. v. CONTRERAS, 249 F3d. 595 (7TH Cir. 2001) Sentencing Determination must be based on **RELIABLE** evidence. Point, NO PSI. Report at Sentencing!

U.S. v. DOE, 860 F2d 488 (1st Cir. 1988) "Prosecutor does NOT represent an Entity whose interests include Winning at all cost; Prosecutors client is Society, which seeks Justice NOT Victory." Furthermore, Petitioner would be DENIED Due Process of Law if his Motion for Appropriate Relief is denied without a hearing. (See N.C.G.S. 15A-1420(c)(1) AND (4)). ALSO STATE v. HANTON, 140 N.C. App. 689, 540 S.E. 2d 382. was Remanded for Re-Sentencing because he didn't stipulate to the "NATURE" of his SUPPOSED prior Convictions. In this case at bar, Petitioner's Counsel stipulated to level II, Petitioner was never asked at all about his prior convictions, And never was it mentioned or explained to him. Petitioner contend that the prior convictions were never mentioned, because THEN it would be on record in the transcripts that Judge Zimmerman, now attorney Zimmerman for the defense, is the one who in fact sentenced Petitioner, This would clearly show "CAUSE" and "GROSS CONFLICT" of Interest and Ineffective Assistance of Counsel.

7). As Petitioner has demonstrated in his M.A.R. and is prepared to show in his Evidentiary Hearing if granted by this Honorable Court, MANY of the ALLIGATIONS represented as fact to him and the Court were in fact FALSE. As these were also matters of public record, The D.A. must be presumed to have actual knowledge of their FALSITY, Plus the fact he BROKE THE LAW, Twisted testimonies by "BLACKMAIL" of the witnesses. Counsel obviously went along with the D.A. and any information he gave them (LIES), Never verifying anything the D.A. said. Petitioner therefore received Ineffective Assistance of Counsel and an Unlawful Sentence. Furthermore, if Petitioner is Denied this Motion for Appropriate Relief and an Evidentiary Hearing, Petitioner would be denied his Right to introduce evidence to "Refute" the State's "false" Alligations.

c). DENIAL OF RIGHT TO APPEAL.

1). Petitioner's Counsel said he had no-right of Appeal at Sentencing. They FAIL and Neglected to advise Petitioner of his Rights of Appeal. Not only did Counsel

say I had No Right of Appeal, Counsel also didn't Request Bond or Speak on Petitioner's behalf, or say anything at all, See U.S. v. HAMMONDS, 425 F2d 599 (D.C. 7 Cir 1970) Trial Counsel's FAILURE to Request Bond after Conviction and speak on Defendants behalf after sentencing, Constituted Ineffective Assistance of Counsel. Also see LOZADA v. DEEDS, 488 U.S. 430, 112 L.ed. 2d. 956 111 S.Ct. 860 (1991) Defense Counsel's FAILURE to inform Petitioner of his Right to Appeal Constitutes Ineffective Assistance of Counsel. When Petitioner did Appeal, He instructed Appellate Counsel Danielle Carman repeatedly to file a M.A.R., And add all kinds of FACTS, Establishing the unlawfulness of his sentences to the record, She REFUSED to file a M.A.R., (OR) A Reply Brief!

Petitioner's Appeal was DENIED because many IMPORTANT FACTS establishing the unlawfulness of the sentences were NOT in the record, which should've been done by filing a M.A.R., And raising substantial issues of MATERIAL FACT. Like the fact Judge Zimmerman sentenced Petitioner to Prison to begin with, And then he got a second chance as Petitioner's Counsel, to send Petitioner away for the rest of his life, and that's exactly what Counselor Zimmerman did, Just as if he were sitting on the bench all over again, only this time he got paid \$50,000 for doing it, And he tried to get more money out of Petitioner's parents by promising that Petitioner wouldn't get any time. when he realized he wasn't getting anymore money, the story changed to a 20 year plea! Mr Zimmerman and Mr Panosh TRICKED Petitioner into signing those 8 waivers, on charges that were going to be dismissed, that alone insured 70 to 90+ years! By Appellate Counsel Carman NOT filing a M.A.R. in the Court of Appeals she was unable to bring out issues of Material Fact, For which the Court could Review, Had Counselor Carman filed a M.A.R. as Petitioner INSTRUCTED her to do, The MANY issues of material facts could have been raised, By Counselor Carman's refusal to file a M.A.R. as instructed, Petitioner was actually DEPRIVED of his Right

to Appeal and Effective Assistance of Counsel. See EVITTS v. LUCEY, 469 U.S. 387, 83 Fed. 2d 821, 105 Sct. 830 (1985) Due Process guarantees Defendant the Right to Effective Assistance of Counsel on First Direct Appeal. Also see WALKER v. McCAUGHTRY, 72 Supp 2d 1025 (E.D. WIS. 1999) Denial of Appellate Counsel resulted in Automatic Prejudice and Required Reinstatement of State Appeal.

2). Transcript of proceeding Page # 8 Lines 22-25 the sentencing **JUDGE** said Petitioner would have NO Right of Appeal. See EXHIBIT (V). See PARKUS v. DELE, 33 F3d 933 939-940 (8TH Cir 1994) (Petitioner ENTITLED TO EVIDENTIARY HEARING HAVING SHOWN CAUSE AND PREJUDICE) see TONY v. GAMMON, 79 F3d. 693, 697 (8TH Cir. 1996) (Petitioner entitled to Evidentiary Hearing where Counsel Failed to obtain requested blood test); see WILLIAMS v. TURPIN, 87 F3d. 1204, 1211 (11TH Cir 1996) (Petitioner Entitled to Evidentiary hearing if Petitioner succeeds in demonstrating Ineffective Assistance of Appellate Counsel, then the Evidentiary Hearing may be considered in Court, with the Underlying claim of Ineffective Assistance of Trial Counsel). Furthermore, by the Trial **JUDGE** denying Petitioner's Right to Appeal and forfeit all his Rights, State and Federal, Petitioner submits that advising a Defendant that he has No-Right of Appeal is a Professional Dereliction of the Judge's responsibility and structural ERROR, And should be considered a BRADY violation. See EXHIBIT (V)

D). Conviction Obtained by the VIOLATION of the Privilege Against Self-Incrimination.

1). On Jan. 28, 99 Both Prosecutor and Counsel coerced/Induced Petitioner into signing WAIVERS on (8) cases that never could possibly have brought back Indictments solely on the word of a Jail-house, Petty Thief, and Habitual Lier, There by Petitioner signing away his entire life, Given 70 to 90+ years alone on those charges. see U.S. v. SANDERSON, 595 F2d. 1021 (5TH Cir. 1979) (Trial Counsel's Misrepresenting of Material Facts, Withholding Information, and exerted pressure on Defendant to Induce a Guilty Plea, Constitutes Ineffective Assistance and Requires and Evidentiary Hearing to Resolve Claim.)

In relation to case at hand, Counsel and Prosecutor Misrepresented the facts, that the Grand Jury Refused To Indict on 8 Counts solely on the word of William Stewart; Withholding Information that all 8 Counts would be DISMISSED automatically if I did NOT sign the waivers. Both Counsel and Prosecutor exerted pressure by saying, "Sign and Plead Guilty, or Be Put To Death Infront of Your Parents." Counsel said to Plead Guilty and all Petitioner would get is 20 years under the Plea-Bargain, Counsel further stated the Prosecutor truly wanted to put Petitioner to Death. When the Plea was entered Counselor Zimmerman stood next to Petitioner WHISPERING the words, "JUST SAY IT - SAY YES ..." The whole time Counsel knew Petitioner didn't want to enter a Plea of Guilty, To something he did NOT do. Clearly Prosecutor misconduct and Ineffective Assistance of Counsel. Mr. Zimmerman being a former JUDGE who sentenced Petitioner to prison to begin with, knew by Petitioner saying "Yes", it would seal Petitioner's fate. Counselor Crumpler was acting as a "Puppet", after all what chance did he have to defend his client, with everyone else against Petitioner. Even Petitioner's private detective got mad and walked out after seeing Mr. Zimmerman speaking badly to Petitioner in an attempt to Coerce him. The Private Detective told Petitioner's Parents he couldn't believe Counsel was talking to Petitioner in such a manner. If Petitioner is given his Evidentiary Hearing by this Honorable Court, Petitioner would like to have the private Detective subpoenaed to Court to testify to this and other facts of misconduct by Mr. Zimmerman and Prosecutor Panosh. An Evidentiary Hearing would be required to bring out these vital issues of Material Fact. Petitioner ask what happen to the PRE-ARRANGED 20 year Plea Agreement Counsel promised to he and his parents? Petitioner got 70 to 90.4 years on (8) Fancy counts alone! Each were ran consecutively; On top of everything Petitioner was sentence in the "AGGRIVATED RANGE" on nearly every charge!

See MOORE v. U.S. 950 F.2d. 656 (10TH Cir. 1997) Coercion by Trial Counsel or Prosecutor to INDUCE a Guilty Plea Renders the Plea "INVOLUNTARY." Case at bar, The Private Detective would testify to the coercion he witnessed, and the misconduct of Mr. Zimmerman. All that is needed would be a Evidentiary Hearing to bring out these and many other issues of material fact!

2). Prosecutor's press Conference Portraying Petitioner as a villain or some kind of Monster, "Deprived" Petitioner of any kind of chance for a FAIR Trial, And Petitioner begged the Court to move the trial to Winston-Salem. Extreme Prejudice and Intimidation were pressed upon Petitioner in Greensboro N.C. The Day Petitioner entered his Plea, Jan 28, 1999 Petitioner was escorted to court surrounded by armed guards carrying machine guns and M-16's. Dressed in solid Black, they wore body armor with ski-mask over their faces. At one point Petitioner stumbled over his leg irons and nearly fell, Only to look up and see a "Machine Gun Pointed at His Head." Petitioner feared for his life. Inmates who saw Petitioner being escorted by such a show of force were intimidated. One inmate said, "I don't know what you did, but I'll pray for you." By trial Counsel's FAILURE to aid or speak for Petitioner, To express the need for the trial to be moved, Shows Conflict of Interest, To make Petitioner defend himself, (FAIL TO AID OR SPEAK FOR DEFENDANT). See GARDINER v. U.S. 679 F. SUPP 1143 (D. Me. 1988) Failure to speak in Defendant's behalf at sentencing, may constitute Ineffective Assistance of Counsel.

3). Prosecutor-Threatening the Defense's witnesses with severe prosecution if he didn't change his testimony of how he was with Petitioner on the Day of the murder till at least 5:30PM, And with Ramie Kimble (SR) till 4:30PM. By the Prosecutor destroying all of Petitioner's witnesses, And FAILURE of Counsel to "AID AND DEFEND," And by saying if Petitioner didn't Plead Guilty he would be put to "DEATH" no matter what, Petitioner had No choice but to Plead Guilty, Do to Prosecutor Misconduct, Threatening Defense witnesses with severe prosecution

if they didn't change their statement to say what he wanted. See U.S. v. AGUILAR, 90 F. Supp. 2d 1152 (D. Col. 2000) Prosecutor's statement to Defense witness that the Government might void witness plea agreement and reinstate previously dismissed charges unless he invoke his Fifth Amendment privilege against self-incrimination, **DEPRIVED** defendant of his Right to Due Process, By the Prosecutor threatening a **KEY WITNESS** of the Defense, so he would **NOT** testify to the **"TRUTH"**, Deprived Petitioner of any chance at a fair and just trial. Thereby obtaining a conviction by the violation of the privilege against self incrimination, same as **NOT** allowing Petitioner to move the trial to Winston-Salem, For a chance of a fair trial, and **"NO"** help from Counsel!

4). The Averment and Allegations of (A) Thru (G) of these Constitutional and N.C. violations are incorporated as if more fully set forth here in. Because Petitioner's attorneys **FAIL** to prepare the case for trial and Petitioner was advised that the Plea offer was reasonable, since they were **NOT** the one(s) who would have to spend the rest of their lives in prison for crimes Petitioner did **NOT** even commit. Petitioner was wrongfully coerced into entering a Plea which was clearly contrary to his best interest, And which he would **NOT** have considered but for the **DENIAL** of Effective Assistance of Counsel, And the Prosecutor's Attitude of **"WIN AT ALL COST,"** legally or Illegally does **NOT** matter to him.

E). CONVICTION OBTAINED BY USE OF COERCED CONFESSION.

1). The Trial Court denying Petitioner's Motion to Withdraw his Pleas and Justifying it by the Court's Findings of Fact and Conclusions of Law, and denying his Right to Withdraw his ALFORD Pleas, despite the **Fact** Petitioner met the requirements in N.C. v. HANDY 326 NC532 quoted by the Court to **TWIST** the requirements around when Petitioner **DID IN FACT ASSERT** his INNOCENCE. Petitioner **DID** send a letter to the Court on Jan 29, 99 and a copy to the Prosecutor, which **"VANISHED"**. This should surprise **NO-ONE**, And Petitioner had to send **ANOTHER** letter to withdraw on Feb. 24, 99. see U.S. v. ALVAREZ-TAUTIMEZ, (60 F3d. 573 (9TH Cir. 1998)) ALSO:

U.S. v. ELLISON, 798 F.2d 1102 (7th Cir. 1986) Ellison filed a Motion to Withdraw his Guilty Plea in the context of a letter form. Ellison claimed his Guilty Pleas were the result of psychological pressure of solitary confinement, the exclusion from family and friends; And on the erroneous advise of his Court appointed attorney, "That an immediate Guilty Plea would place him in better and more humane living conditions and renew contact with family and friends." In case at bar, Petitioner was placed in solitary confinement on Dec. 22, 98 and **DENIED** contact with family and friends, "Prison Records" will show. Court Records were off by 3 weeks, but still it shows Petitioner was on **solitary** confinement.

See EXHIBIT (E.F.) Note: Exhibit states one non-contact weekday visit per week, but Petitioner was **DENIED ALL VISIT!** Petitioner was under psychological pressure of solitary confinement, was "**COERCED**" into a confession for crimes he had **NOTHING** to do with, rather than get sentenced to "**DEATH!**" Counsel **REFUSED** to aid and defend Petitioner on Motion to Withdraw. Counsel was only concerned with getting the case over with! At the Withdraw Hearing Counsel said, "**WE WILL SIT THIS ONE OUT.**"

Counsel feared Petitioner might be successful in withdrawing his Pleas, because they had **NOT** prepared for trial. Counsel never read much of the information on the case, they couldn't have read but so much because they never took the time to go get it!

2). How could Counsel be considered competent having Petitioner sign waivers insuring their client 70 to 90+ years, on these charges alone, Petitioner's Pleas were in fact entered in haste and coerced by counsel telling him the trial would start right away, How could he let himself be put to "**DEATH**" and make his parents suffer for the rest of their lives, Petitioner was told he would get 20 years, His attorneys told him and his parents several times. Petitioner's attorney's asked how he could take a Death Sentence and put his Mother through such pain as to watch her son be put to death. Plus the fact that on this sameday of Jan 28, 99 Petitioner was **SUPPOSED** to be in Court solely for

a "CHANGE OF VENUE," And to make matters worse, his attorneys had him sign a BLANK Plea Bargain and later typed in what they wanted. Clearly Petitioner would have known he was NOT getting the 20 years sentence PROMISED, if the Plea Bargain had been properly filled in. For further information and proof, The only people that could HUMANLY fit into the tight holding-cell area where Petitioner signed the papers were himself, Detective, and attorneys, Yet Christina Dann signed in the box beside Petitioner's name, "SWORN AND SUBSCRIBED TO BEFORE ME," She was no-where around because there was no place for her to stand, "SHE Lied," Note the paper bore No notary stamp whatsoever. Also other names were then added later, like Mr Panosh, and Judge Peter M. McHugh. See EXHIBIT (B). In BORIA v. KEANE 83 F.48 (2ND Cir 1996) Defense Counsel's Failure to advise Defendant the Desirability of accepting offered plea bargain of 1 to 3 years and discuss the strength of the Government and chances of acquittal, Constituted Ineffective Assistance of Counsel. Thus, Prejudice was established where the Defendant received a 20 year sentence as opposed to 1 to 3 years plea bargain offer. The court ordered the Defendant's sentence to be reduced to time served and discharged from prison. In case at bar, Counsel said no-matter what, Petitioner would only get 20 years. Counsel said, "It's all ~~PRE-ARRANGED~~," Yet Petitioner received over 100 years! see TREJO v. U.S. 66 F.SUPP. 2d 1274 (S.D. FLA. 1999) "Counsel's Misrepresentation of plea agreement that (1) Cooperation of any en Defendant would insure to the benefit of all of them; (2) That this agreement need not be included in the plea-agreement because it had been "ARRANGED" with the Prosecutor; (3) That based on their cooperation, the Defendant would receive a sentence as low as five years of imprisonment, but in any case not more than ten years, required setting aside the Guilty Pleas based on Ineffective Assistance of Counsel." In case at bar, Counsel COERCED Petitioner into pleading Guilty! Saying he'd get 20 years total!

3). Petitioner was under the influence of medication which impaired his judgement on Jan 28, 99, Yet the Judge let a psychologist testify who clearly stated on the stand that he was **NOT QUALIFIED**, Yet Court Entered Judgement and Commitment in all cases regardless, on Mar. 5, 99 sentencing. The Grounds that trial Court's statements about the Mandatory minimum and possible maximum punishments were erroneous in Law and Violated N.C.G.S. 15A-1022, and that Petitioner's Pleas were **NOT** voluntary, but were **COERCED** and uninformed, all in Violation of N.C.G.S. 15A-1021 and 15A-1022, Also N.C. Common Law; Petitioner recieved Ineffective Assistance of Counsel at the Motion to Withdraw Hearing. (See TRANSCRIPT PG. #3 Line 17-21 EXHIBIT(X), Counsel remained "**NEUTRAL**", Didn't defend or help Petitioner with his asserted grounds to withdraw Pleas, Clearly a Conflict of Interest and Ineffective Assistance of Counsel.) Counsel remained **NEUTRAL** and did **NOT** aid or defend Petitioner at the Motion to Withdraw Hearing, because Counsel did **NOT** prepare for trial! After a plea was entered Petitioner discovered Counsel did **NOT** have **Most** of the information about the case. Counselor Zimmerman knew Petitioner was on medication the day a plea was entered, Counsel knew Petitioner was in a weaken mental state and took advantage of him. At one point Counsel even suggested Petitioner deny being on any medication if anyone asked, especially the Judge Peter McHugh. Petitioner was incoherent and did **NOT** understand what was going on around him. Counselor Zimmerman placed papers before Petitioner and demanded he sign them. Counsel stated if Petitioner wanted to live he had better sign said papers. Counsel assured Petitioner everything was **ARRANGED** as **PROMISED**, Petitioner must plead Guilty to what charges Judge McHugh said, to recieved the 20 year sentence. Petitioner tried to over come the pressure and stated his innocense to Counsel,

and clearly stated he wanted to go to trial, but Counsel would **NOT** listen. When Petitioner entered his plea Counselor Zimmer stood next to him WHISPERING all the answers to the questions Judge Peter McHugh asked. Counselor Zimmerman had told Petitioner prior to entering the Court-room that it would best to simply repeat what ever he said. see UNGER v. COHEN, 718 F.Supp.185(S.D.N.Y.1989)

"Unger characterized the criminal proceedings as "Assembly-line Justice" which certainly was correct. Unger was not allowed to contact the Counsel of his choice. After spending a night in jail, A legal aid attorney met him briefly at the Court house, who advise was to plea Guilty to whatever the Judge said. Counsel waived the reading of the charges, the reading of Unger's Rights; and the allocution on the Guilty Plea. The record did not indicate an admission of factual Guilt on Unger's part. Unger's Counsel merely informed the Court that her client intended to plead Guilty. The Court concluded that Counsel's advice was not within the range of competence demanded of attorneys in criminal cases." In case at bar, Petitioner was **coerced and threaten** with **DEATH** unless he pled Guilty to everything the judge stated, as in the above **UNGER** case. Petitioner received over a hundred years at the cost of \$50,000 to his family!... The Court's findings are **NOT** supported by the evidence, the conclusions are **NOT** support by the findings and are erroneous under N.C. Statutory and Common Law, and Violated Petitioner's State and Federal Constitutional Rights to the extent this **ERROR** is **NOT** preserved, Petitioner asserts plain error and his counsel did **NOT** defend, diligently and zealously within the bonds of Law.

F). Conviction Obtained by Violation of the Protection Against Double-Jeopardy.

1). Indictment case 97CRS 23656 Dated Nov. 3, 1997 incorrectly listed as **ARSON** of an **UNOCCUPIED DWELLING**, yet statement read in pertinent parts, "The **DWELLING**

HOUSE INHABITED BY PATRICIA KIMBLE," had to be DISMISSED by Law, because an INHABITED house can't be UNOCCUPIED at the same time?! Petitioner was CONNED by both Attorneys working AGAINST him. The Prosecutor (Richard Panosh) made a ERROR, but instead of making it known he broke the law in an attempt to cover-up his ERROR, and RE-INDICTED Petitioner a second time, 8 months later on July 6, 1998, changing the charge to "First Degree Arson," with the same exact wording. Thus charging Petitioner with the same alleged crime TWICE committing DOUBLE JEOPARDY! Yet Counsel had Petitioner plea Guilty to the charge, see JACKSON v. LEONARD 162 F3d. 81 (2nd Cir 1998) Appellate Counsel failure to raise Double-Jeopardy claim where it was apparent that Jackson's two charges of First Degree Robbery and Criminal use of a firearm in the First Degree raised on the same FACTUAL predicated constitutes Ineffective Assistance of Counsel. Case at bar, Applies to Counsel having Petitioner Plead Guilty, Inducing/coerced plea, And clearly Prosecutor MISCONDUCT! Appellate Counsel also FAIL to raise Double-Jeopardy claim, "Clearly Ineffective Assistance."

G). Denial Of Effective Assistance Of Counsel.

1). On Jan 29, 1999 Petitioner sent a letter to the Court and a copy to Prosecutor Richard Panosh, Requesting to withdraw his Pleas and go to trial. When Petitioner did NOT hear anything in the following few weeks, he filed a SECOND motion on Feb. 24, 1999. See EXHIBIT (U) Petitioner was represented by Counsel, and thus it was the Counsel's JOB to file a Motion to Withdraw the Guilty Plea. Petitioner told Counsel that he was innocent repeatedly, and that he wanted to go to trial, but Counsel would NOT listen. Counsel coerced Petitioner into entering a Plea. Movent told Counsel he did NOT want to enter a plea, but Counsel continued to attack Petitioner. When Petitioner tried to withdraw his Plea, Counsel REFUSED to aid.

Counselor Zimmerman instructed Petitioner he was UNPREPARED for Trial, should Petitioner win his Motion to Withdraw Petitioner would surely go to trial and lose, would receive the Death Sentence and be put to DEATH. see U.S. v. ALVAREZ-TAUTIMEZ 160 F3d 593 (9TH Cir. 1998)

2). On March 1, 99 Petitioner's Motion to Withdraw was heard before the Court. Petitioner was forced to represent himself as best he could because Counsel refused to aid him. Petitioner presented SEVERAL reason for his desire to Withdraw his Pleas as follows :

i. First, Withdraw of Pleas Hearing Page #3 Lines 17-21 ^{*EXHIBIT(X)} Conflict of Interest and Failure of Counsel to Defend and Represent their Client Diligently and Zealously within the Bonds of Law, Counsel remained "NEUTRAL" and forced Petitioner to defend and Express himself in all his Explanations, As if he had NO Counsel at all. Clearly Ineffective Assistance of Trial Counsel. See EXHIBIT(X) see GARDINER v. U.S 679 F.Supp. 1143 (D. Me. 1988) "Failure to speak in Defendant's behalf at sentencing may constitute Ineffective Ass. of Counsel." see U.S. v. HAMMONDS, 425 F.2d. 597 (D.C. Cir 1970) "Trial Counsel's Failure to request bond after conviction and to speak on Defendants behalf after sentencing, Constitutes Ineffective Assistance of Counsel." In case at bar, Counsel did NOTHING!

ii. Counsel FAILED to get a Sworn Affidavit from a "STAR" witness, James Ogburn could positively SWARE that Petitioner and Ronnie Kimble (brother) were at "Lyle's Building Material standing in front of him at the time of the crime. Thus, impossible for Ronnie to have committed the crime. see COSS v. LACKAWANNA County District ATTORNEY, 204 F3d. 453 (3rd Cir 2000) Defense Counsel's failure to subpoena certain witness and to interview those witness Constituted Ineffective Assistance of Counsel. Also see HART v. GOMEZ 174 F3d 1067 (9TH Cir 1999). Counsel let the Prosecutor pressure James Ogburn Not to testify for the Defense. Mr. Ogburn changed his story after the D.A. threaten

him. see EXHIBIT (A.A.) page #149 Transcript Lines 14-19. Three days before signing a statement against Petitioner, Patrick Pardee told Melanie Oxendine he knew **Nothing** about the Kimble case. Yet Counsel **FAILED** to get a sworn Affidavit before the D.A. (Panosh) had a chance to coach Pardee and threaten him with severe Prosecution on pending charges. Shows **GROSS** Ineffective Assistance of Counsel. See U.S. v. ESTRADA, 849 F2d 1304 (10TH Cir 1988) The Court held that (1) Defendant who alleged that Prosecutor threatened to file Unwarranted charges against him, that Defense Counsel Coerced him to Plead Guilty by threatening to withdraw, and that both Prosecutor and Defense Counsel Promised him light sentence, was entitled to Evidentiary Hearing to Determine Voluntariness of Plea.

iii. See EXHIBIT (A.A.) Transcript page #149 Lines 21-24. Melanie Oxendine testified of the **FACTS** in the statement Patrick Pardee made to her. (Mr. Zimmerman clearly showed the Conflict of Interest between himself and Petitioner, being the former JUDGE that first sent Petitioner to Prison, All he wanted was to help the Prosecutor)

IV. Petitioner's father even got on the stand on Mar. 5, 1999. See Transcripts page #129 Line 12 Thru Page #130 Line 8 EXHIBIT (Z). James Ogburn told him "**2 Weeks**" before Trial, how he was with both sons when the crime was committed, and how the D.A. **THREATEN** Him to change his story, with pressure of pending charges. The **FACT** Counsel had "**MONTHS**" to get a Sworn Affidavit from this "**STAR**" witness, But **REFUSED** to do so. A case of Grave Negligence and **FAILURE** to defend Petitioner, Counsel only cared about a "**Plea Bargain**", Clearly Ineffective Assistance of Counsel. see U.S. v. SCOTT, 625 F2d 633 (5TH Cir 1981) A conviction on a Guilty Plea that is entered solely as a result of faulty legal advice is a miscarriage of Justice. Also see HART v. GOMEZ, 174 F3d. 1067 (9TH Cir 1999). LORD v. WOOD, 184 F3d. 1083 (9TH Cir 1999)

Counsel's failure to investigate evidence, which demonstrated his clients factual innocence, undermines the confidence in the verdict and constitutes Ineffective Assistance of Counsel. See HOLLINES v. ESTELLE, 569 F.Supp.146 (W.D. Tex. 1983) Trial

Counsel's failure to conduct pretrial investigation and interview witnesses; Constitutes Ineffective Assistance of Counsel. See U.S. v. JOHNSON, 995 F.Supp.1259 (D. KAN. 1998) Trial

Counsel's Failure to investigate, and to call "Critical" witnesses required an Evidentiary Hearing to resolve Ineffective Assistance claim.

IV. On Jan 28, 99 Counsel acting (in consent) with Prosecutor "Panosh" all INDUCED / COERCED Petitioner into signing (8) waivers in cases 23241-48 which would SEAL Petitioner's FATE. Both Prosecutor and Counsel knew for a FACT those charges could NOT be presented to the Grand Jury for possible Indictment solely on the word of WILLIAM STEWART, Jailhouse petty thief and habitual liar, as "FOUR" witnesses testified in Court against his testimony, yet Counsel working Hand-in-Hand with the D.A. COERCED / INDUCED Petitioner to sign the (8) waivers, giving the Petitioner another 10 to 15 years onto his sentences to ensure he would positively NEVER get out of prison alive. Which was clearly Gross Ineffective Assistance of Counsel. Trial Counsel should have told his Client NOT TO SIGN waivers that clearly would be Dismissed, As NO Indictments could possibly be returned on such NONSENSE evidence, "Counsel FAIL to even explain what the waivers were." See U.S. v. TAYLOR, 139 F.3d. 924 (D.C. Cir. 1998) "Trial Counsel's failure to advise Defendant of "Advice of Counsel" Defense resulted from a conflict of interest amounting to Ineffective Assistance of Counsel and "Required" an Evidentiary Hearing." In case at Hand, Black's Law Dictionary defines "Advice of Counsel", as ① "The guidance given by lawyers to their clients, ② In a malicious Prosecution lawsuit, a Defendant's complete presentation of facts by the Defendant to his or her Attorney and honest compliance

with the Attorney's advice. ③ A Defence in which a party seeks to avoid liability by claiming that He or She acted reasonably and in good faith on the Attorney's advice." In case at bar, Having his client sign 8 waivers that were about to be dismissed "BY LAW", Can NOT possibly be the result of an attorney looking out for his clients best interest, Sending Him away "FOREVER!"

VI. See Transcript page #150 Lines 5-12 EXHIBIT (A.A.) One day James Ogburn and a fellow employee of Lyles Building Material took a work break. They walked across the street to get a soda at the gas station. While there Rob Nicholes Pulled-up. Rob told James and Mr. Cole Sr. he had talked it over with his wife, and decided NOT testify and lie against Ted (Petitioner) as the D.A. had been pressuring him to do. Rob stated He was on his way down-town for one of his coaching lessons from the D.A., but this time he plan to tell the D.A. he wasn't going through with it (SEE NEWLY DISCOVERED EVIDENCE STATEMENTS EXHIBIT (T) ISA-1415(C)) Counsel didn't care about using this "Vital" evidence against the D.A. to show "VINDICTIVE PROSECUTION", Clearly Ineffective Assistance of Counsel.

VII. As Petitioner pointed out in Transcript Page #165 Lines 3-15 EXHIBIT (B.B.) which is a matter of public record for "Proof," How Pardee and Nichols both signed statements against Petitioner. How they both had pending charges, And the Prosecutor "CUT-DEALS" (Take it or else!) in exchange for their statements ("SELECTIVE PROSECUTION") Against-Petitioner. Violated all laws and Rules, and Guidelines. Even let William Stewart out of prison early by Panosh filing a motion in Court for his EARLY-RELEASE, and Counsel did NOTHING about it. "Ineffective Assist."

VIII. See Transcript Page #176 Lines 15-19 EXHIBIT (C.C.) When questioned by the Prosecutor, Petitioner spoke of the Trailer he owned, how Robert (Rob) Nichols

broke into his business and stole it, took it to the beach and sold it!
The D.A. refused to do anything about it. The D.A. actually "COVERED-UP" the
crime by running a Defense Witness (Jeff Roberts) out of Town, who could have
testified to the "FACTS": see SWORN AFFIDAVIT OF T.M. KIMBLE EXHIBIT(S).

On Page 176 Line #19 (EXHIBIT C.C.) The Prosecutor just went on to the next Question
as if Petitioner never made that statement! A year later (or less) Petitioner's
Dad went and reported WHERE the stolen trailer was, After Petitioner saw
how it was FOR-SALE in the newspaper. Still the D.A. COVERED-UP once again.
The Appellate Counsel Carman REFUSED to have Prosecutor "REPORTED", for this
Gross Miscarriage of Justice, Ineffective Assistance of Counsel again and again!
see FREEMAN v. LANE, 962 F2d 1252 (7TH Cir 1992) Appellate Counsel's failure to raise issue
of Prosecutorial Misconduct on direct Appeal created a "Procedural Default" that limited
review of the ERROR and constituted "CAUSE" for failure to raise the claim under
WAINSWRIGHT v. SYKES. Also see GRAY v. GREER, 800 F2d 644 (7TH Cir 1987) Appellate
Counsel's Ineffectiveness can constitute "CAUSE" for failure to raise a significant and
obvious issue. Also see MEDINA v. BARNES, 71 F3d 363 (10TH Cir 1995) Trial Counsel's failure
to Investigate Prosecution's key witness where key witness lied about his Criminal
activity with victim at the time he called police constituted "CAUSE" for Procedure
Default and required an Evidentiary Hearing under the fundamental miscarriage of
Justice standard to resolve Ineffective Assistance of Counsel claims. Case at bar,
By Appellate Counsel NOT RAISING the issue that Counselor Zimmerman was
Petitioner's previous sentencing JUDGE, who put him into prison to begin with,
constitutes "CAUSE", And Violates Due Process!

IX. See Page #218 Transcripts And Page #219 EXHIBIT (D.D.) Shows how the
P.S.I. Report was NEVER given to the Court, And Petitioner was sentenced

without it, all in violation of **DUE PROCESS**, Despite the fact the lady was subpoenaed from "Step-one" 2 weeks in advance prior to sentencing, and "Prior" to her getting sick, when she was at home and could have given the report to anyone from Step-one **PSI** Organization to bring to Court. see BYDER v. MORRIS, 752 F.2d 327, 332-33 (8TH Cir 2000) Counsel's failure to object to inaccuracies in P.S.R. amounts to Ineffective Assistance and requires an Evidentiary hearing. In case at Hand, Counsel never even objected to the fact, "NO P.S.I. REPORT WAS EVER TURNED IN!" See SMITH v. U.S., 871 F. Supp. 251, 255 (E.D. VA. 1994) Defense Counsel's failure to lodge objections to clear an indisputable **ERROR** in Presentence Report is not within the wide range of Professional Performance, REMANDED BY THE SIXTH AMENDMENT! The prosecutor could have went and got the Report, but why would he go and get something **FAVORABLE** for the Defense, since he (D.A. Panosh) failed to hand over anything favorable to the Defense through the ENTIRE case! Counselor Zimmerman allowed Mr. Panosh to do anything he wanted, legal or illegal did not matter. Counsel should have at least Postponed sentencing, until the Judge McHugh could read the recommendations. However Counsel said NOTHING as always, why should they start to defend Petitioner's Rights at this point? They were paid \$50,000 to do Nothing! All they wanted was to get it over with, and find New Victims to take their money! What does "DEFEND DILIGENTLY AND ZEALOUSLY HAPPEN"? U.S. v. DAVENPORT, 151 F.3d 1325 (11TH Cir 1998) "Presentence report must be disclosed to both Defense Counsel and Defendant at least Ten (10) days prior to sentencing as mandated by statute."

X. Counsel was Ineffective by NOT objecting to Petitioner being sentenced in the **AGGRAVATING** Range on the **NON-STATUTORY** Aggravating sentence

Factor in case 97 CRS 39581 and Court imposed a Greater-Than-Presumptive sentence, and was supported by the same evidence used to prove an element of the offense violated N.C. statutory and common law and Petitioner's Federal Constitutional Rights. See EXHIBIT (E).

XI. Counsel NOT objecting to the Greater-Than-Presumptive sentence in case 97 CRS 39581 which was NOT supported by any competent record evidence either, which was a NON-STATUTORY Aggravating Sentence-factor also. EXHIBIT (E)

XII. Counsels NOT objecting to the Court's NON-AGGRAVATING sentence factor used in 98 CRS 23486 resulting in Petitioner being sentenced of a Greater-Than-Presumptive range, and the factor was NOT proven adequately in law, NOT supported by element of offense. see EXHIBIT (F).

XIII. Counsel NOT objecting to the Court's findings of both Aggravating sentencing factors 5(A) and 5(B) in case 99 CRS 23241, 23242, 23243, 23244, 23246, and 23247 receiving a Greater-Than-Presumptive sentences, when grounds were NOT adequately proven in law, NOT supported by any competent record evidence, supported by the same evidence used to prove an element of the offense, and used by the "SAME" evidence used to prove "EACH-OTHER" all in violation of N.C. statutory and common law and state/federal constitutional rights, and counsel did NOT object to any of these VIOLATIONS in X thru XIII, all Ineffective Assistance of Counsel. See EXHIBITS (G)(H)(I)(J)(K)(L).

XIV. See Transcript Page #6 Lines 1-4 EXHIBIT (Y). Petitioner HIMSELF had to beg the court to move the trial to Winston-Salem to get a fair trial and possibly a just D.A., when counsel remained "NEUTRAL" which was a FAILURE to defend and represent, counsel got paid, why should they have to do any work?! Ineffective Assistance of Counsel and Procedural Default. Clearly a Conflict of Interest by

Counselor Zimmerman being Petitioners previous sentencing JUDGE and then his lawyer. A casual perusal of the record at various stages will show nothing but "Vandictiveness" by Mr. Zimmerman, How he FAILED to defend or represent Petitioner. Mr Zimmerman made sure Petitioner got as much time as possible, which is proven by Petitioner receiving over 100 years in prison.

Movent is NOT a skilled Attorney and as such relied upon Trial Counsel to do a workman type Presentation in Court, of the facts of the case, By and through trial Counsel's MANY unprofessional acts and conflicts of Interest, and working AGAINST Petitioner. Movent is now being DENIED protection of the Constitution and his Liberty.

PRAYER FOR RELIEF

WHEREFORE Petitioner respectfully moves this Honorable Court for the following Relief Based on Submitted Motion for Appropriate Relief:

(A) Petitioner be Remanded to the Superior Court of Guilford County for a NEW Sentencing hearing G.S. 15A-1417(A)(4).

(B) To be Released from Prison upon the Posting of a Suitable BOND pending Appeal pursuant to N.C.G.S. 15A-536.

(C) Any other Appropriate Relief G.S. 15A-1417(A)(4).

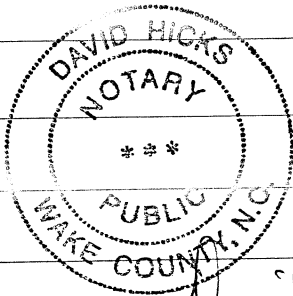
Petitioner further respectfully request this Honorable Court to Appoint Counsel to advise and represent Petitioner on this Motion. (See General Statutes 15A-1420(c)(4), 15A-1421, 7A-450-451); and Order an Evidentiary hearing on all Factual Issues, see G.S. 15A-1420(c)(1) and (4).

And any other Relief this Court Deems Just and Proper.

(Continued Page 34)

Respectfully Submitted This The 23 Day of
October 2003.

SEAL:



pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

WITNESS: David Hicks

DATE: 10-23-03

MY COMMISSION EXPIRE: My Commission Expires 5-18-2008.

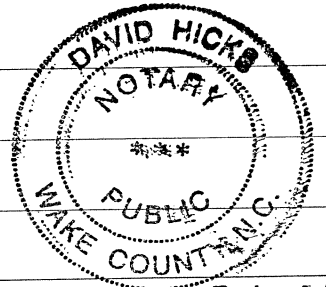
VERIFICATION

I, THEODORE MEAD KIMBLE, BEING FIRST DULY SWORN
DEPOSE AND SAY, I AM THE PETITIONER IN THE FOREGOING
MOTION FOR APPROPRIATE RELIEF,
I HAVE DRAFTED AND READ THE SAME, AND THE STATEMENTS
CONTAINED THEREIN ARE TRUE, AS FOR ANY STATEMENTS
MADE ON INFORMATION AND BELIEF, ARE MADE IN GOOD
FAITH, AND I BELIEVE TO BE TRUE. SIGNED UNDER
PENALTY OF PERJURY, THIS THE 23 DAY
OF OCTOBER 2003.

PRO-SE *Theodore Mead Kimble*

THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 23 DAY
OF OCTOBER 2003.



My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES _____

David Hicks

10-23-03

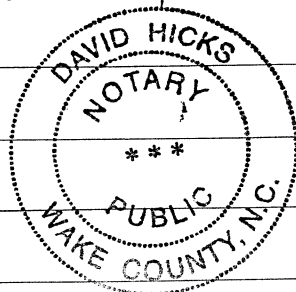
CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT THE FOREGOING WAS DULY SERVED BY PLACING SAME IN THE U.S. MAIL, POSTAGE PRE-PAID AND ADDRESSED AS FOLLOWS:

MR. ROY COOPER ATTORNEY GENERAL
P.O. BOX 629,
RALEIGH, N.C. 27602

DISTRICT ATTORNEY
18TH JUDICIAL DISTRICT
GUILFORD COUNTY SUPERIOR COURT
P.O. BOX 10769
GREENSBORO, N.C. 27402

SWORN TO AND BEFORE ME THIS THE 23 DAY
OF OCTOBER, 2003



PRO-SE Theodore Mead Kimble

THEODORE MEAD KIMBLE
1300 WESTERN BLVD.
RALEIGH, N.C. 27606

MY COMMISSION EXPIRES

My Commission Expires 5-18-2008.

David Hicks 10-23-03

LIST OF EXHIBITS IN SUPPORT OF FACTS

- (A) 97 CRS-39581 JUDGMENT AND COMMITMENT
- (B) 97 CRS-23656 JUDGMENT AND COMMITMENT
- (C) 98 CRS-23486 JUDGMENT AND COMMITMENT
- (D) 99 CRS-23241-48 JUDGMENT AND COMMITMENTS
- (E) 97 CRS-39581 AGGRAVATING/MITAGATING FACTORS
- (F) 98 CRS-23486 AGGRAVATING/MITAGATING FACTORS
- (G) 99 CRS-23241 AGGRAVATING/MITAGATING FACTORS
- (H) 99 CRS-23242 AGGRAVATING/MITAGATING FACTORS
- (I) 99 CRS-23243 AGGRAVATING/MITAGATING FACTORS
- (J) 99 CRS-23244 AGGRAVATING/MITAGATING FACTORS
- (K) 99 CRS-23246 AGGRAVATING/MITAGATING FACTORS
- (L) 99 CRS 23247 AGGRAVATING/MITAGATING FACTORS
- (M) N.C. SUPREME COURT ORDER
- (N) 97 CRS-23656 NOV. 3, 97 INDICTMENT (Y) TRANSCRIPT PAGE #6
- (O) 98 CRS-23486 JULY 6, 98 INDICTMENT (Z) TRANSCRIPT PAGES #129 & #130
- (P) DISMISSAL PERSUANT TO PLEA (A.A.) TRANSCRIPT PAGES #149 & #150
- (Q) STATEMENT LISTING OF PLEAS (B.B.) TRANSCRIPT PAGE #165
- (R) PLEA AGREEMENT PAPER (C.C.) TRANSCRIPT PAGE #176
- (S) AFFIDAVIT OF T.M. KIMBLE (D.D.) TRANSCRIPT PAGES #218 & #219
- (T) NEWLY DISCOVERED EVIDENCE (E.E.) 97 CRS 23655 JUDGMENT AND COMMITMENT
BY H.W. ZIMMERMAN JR. (JUDGE)
- (U) MOTION TO WITHDRAW PLEAS
- (V) TRANSCRIPT PAGE #8 (NOTE: (E.E.) IS ONE EXAMPLE / TOTAL SENTENCE WAS 50-60 MONTHS)
- (W) TRANSCRIPT PAGES #11 & #12 (F.F.) STATEMENT OF CONFINEMENT
- (X) TRANSCRIPT PAGE #3

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI.)

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

1999 MAR -5 11:12:44

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12/08/69

(STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Attorney For Defendant Zimmerman/Crumpler

The defendant [X] pled guilty to: [] was found guilty by a jury of: [] pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 97CRS 39581, Second degree murder, 10-09-95, 14-17, F, B.

The Court: [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: [X] II [] IV [] V [] VI

The Court: [] 1. makes no written findings because the prison term imposed is: [] (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). [] (b) for a Class A felony. [] (c) for enhanced firearm penalty (G.S. 15A-1340.16A). [] (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. [] (e) for drug trafficking offenses. [X] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 204 months for a maximum term of: 254 months in the custody of: [X] N.C. DOC. [] Sheriff pursuant to G.S. 15A-1352(b). [] Other

The defendant shall be given credit for 381 days spent in confinement prior to the date of this Judgment as a result of this charge(s). [X] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. [] The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

EXHIBIT (B)

STATE OF NORTH CAROLINA

Guilford

County Greensboro

Seat of Court

97CRS 23656

In The General Court Of Justice
Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DW)

STATE VERSUS

1997-11-2-5

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT
FELONY

Race

White

Sex

Male

DOB

12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

Richard Panosh

Def. Found
Not Indigent

Def. Waived
Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M	CL.
98CRS 23656		Conspiracy: First Degree Murder	10-09-95	C.L. & 14-2.4	F	B-

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
- 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
- 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
- 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
- 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
- 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.)
- 7. finds no Extraordinary Mitigation.
- 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.
- 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: <u>163</u> months	for a maximum term of: <u>205</u> months	in the custody of: <input checked="" type="checkbox"/> N.C. DOC. <input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b). <input type="checkbox"/> Other _____
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole <input type="checkbox"/> Death (see attached Death Warrant and Certificates)		
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole <input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
- The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

97CRS39581 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT 10

STATE OF NORTH CAROLINA

No. 98CRS23486

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

1999 MAR 5

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12/08/69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 98CRS 23486, First degree arson, 10-09-95, C.L. & 14-58, F, D

The Court: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 082 months for a maximum term of: 108 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

97CRS23656 Criminal Superior Division Guilford County Greensboro 03-05-99

STATE OF NORTH CAROLINA

Guilford

County

Greensboro

Seat of Court

a No.

99CRS 23241

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offenses, and (2) misdemeanor offenses, which are consolidated for judgment with any felony offenses). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

Race

White

Sex

Male

DOB

12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23241, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: XI IV VI
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.)
7. finds no Extraordinary Mitigation.
8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6.
9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC.
Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

98CRS 23486 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT (U) 2018

STATE OF NORTH CAROLINA

Guilford

County Greensboro

Seat of Court

Case No. 99CRS23242

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301, on DWI.)

1777-1111-5-1111:45

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race

White

Sex

Male

DOB

12-08-69

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M	CL.
99CRS 23242		Solicitation:First degree murder	11-04-98	C.L. & 14-2.6	F	C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
- 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
- 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
- 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
- 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
- 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
- 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.)
- 7. finds no Extraordinary Mitigation.
- 8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6.
- 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months	for a maximum term of: 139 months	in the custody of: <input checked="" type="checkbox"/> N.C. DOC. <input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b). <input type="checkbox"/> Other _____
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole <input type="checkbox"/> Death (see attached Death Warrant and Certificates)		
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole <input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
- The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

99CRS 23241 Criminal Superior Division Guilford County Greensboro 03-05-99

EXHIBIT(D) 3068

STATE OF NORTH CAROLINA

No. 99CRS 23243

Guilford County Greensboro Seat of Court

In The General Court Of Justice
Superior Court Division

NOTE: (This form is to be used for (1) felony offenses, and (2) misdemeanor offenses, which are consolidated for judgment with any felony offenses). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant
Theodore Mead Kimble

ACTIVE PUNISHMENT
FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State
Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant
Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No.(s)	Off	Offense Description	Offense Date	G.S. No.	F/M	CL.
99CRS 23243		Solicitation: First degree murder	11-04-98	C.L. & 14-2.6	F	C

The Court:

1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02 PRIOR RECORD LEVEL: I III V
 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.

2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.

4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).

5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.

6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.).

7. finds no Extraordinary Mitigation.

8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.

9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months	for a maximum term of: 139 months	in the custody of: <input checked="" type="checkbox"/> N.C. DOC. <input type="checkbox"/> Sheriff pursuant to G.S. 15A-1352(b). <input type="checkbox"/> Other
<input type="checkbox"/> Class A Felony: <input type="checkbox"/> Life Imprisonment Without Parole <input type="checkbox"/> Death (see attached Death Warrant and Certificates)		
<input type="checkbox"/> Class B1 Felony: Life Imprisonment Without Parole <input type="checkbox"/> Violent Habitual Felon: Life Imprisonment Without Parole		

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
 (NOTE: List the case number, date, county and court in which prior sentence imposed.)
 99CRS 23242 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford

County Greensboro

Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant

Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race

White

Sex

Male

DOB

12-08-69

Attorney For State

Richard Panosh

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23244, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court:

PRIOR

I III V

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.).
7. finds no Extraordinary Mitigation.
8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6.
9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC.
Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s).

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:

(NOTE: List the case number, date, county and court in which prior sentence imposed.)

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M CL. Row 1: 99CRS 23245, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR RECORD LEVEL: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c).

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 096 months for a maximum term of: 125 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23246, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR RECORD LEVEL: 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23245 Criminal Superior Division Guilford County Greensboro 03-05-99

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT FELONY

Race White Sex Male DOB 12-08-69

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State Richard Panosh Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23247, Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR I III V II IV VI 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: II IV VI 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses. 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race, etc.). 7. finds no Extraordinary Mitigation. 8. finds the above designated offenses(s) is a reportable conviction involving a minor. G.S. 14-208.6. 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 108 months for a maximum term of: 139 months in the custody of: N.C. DOC. Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates) Class B1 Felony: Life Imprisonment Without Parole Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

Guilford County Greensboro Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI

STATE VERSUS

JUDGMENT AND COMMITMENT

Name Of Defendant Theodore Mead Kimble

ACTIVE PUNISHMENT

FELONY

(STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Race White Sex Male DOB 12-08-69

Attorney For State Richard Panosh

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant Zimmerman/Crumpler Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 6 columns: File No.(s), Off, Offense Description, Offense Date, G.S. No., F/M, CL. Row 1: 99CRS 23248, [blank], Solicitation: First degree murder, 11-04-98, C.L. & 14-2.6, F, C

The Court: PRIOR [] I [] III [] V [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be 02. RECORD LEVEL: [X] II [] IV [] VI [] 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: [X] 1. makes no written findings because the prison term imposed is: [X] (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). [] (b) for a Class A felony. [] (c) for enhanced firearm penalty (G.S. 15A-1340.16A). [] (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. [] (e) for drug trafficking offenses. [] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. [] 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. [] 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). [] 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. [] 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony [] G.S. 90-95(e)(3) (drugs); [] G.S. 14-3(c) (race, etc.). [] 7. finds no Extraordinary Mitigation. [] 8. finds the above designated offense(s) is a reportable conviction involving a minor. G.S. 14-208.6. [] 9. finds the defendant is classified as a sexually violent predator. G.S. 14-208.20.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 96 months for a maximum term of: 125 months in the custody of: [X] N.C. DOC. [] Sheriff pursuant to G.S. 15A-1352(b). [] Other [] Class A Felony: [] Life Imprisonment Without Parole [] Death (see attached Death Warrant and Certificates) [] Class B1 Felony: Life Imprisonment Without Parole [] Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for -0- days spent in confinement prior to the date of this Judgment as a result of this charge(s). [] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. [X] The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.) 99CRS 23247 Criminal Superior Division Guilford County Greensboro 03-05-99

STATE OF NORTH CAROLINA

Case No. 97CRS39581

Guilford County

EXHIBIT (E) 1 of 2
FILED

In The General Court Of Justice
Superior Court Division

STATE VERSUS

1999 MAR 5 PM 12:44

Name Of Defendant

Theodore Mead Kimble

Offense

Second degree murder

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:
 - 1. The defendant acted with premeditation and deliberation in committing this offense.
 - 2. The defendant acted for pecuniary gain in committing the offense.

The Court makes no findings of any aggravating factors.

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

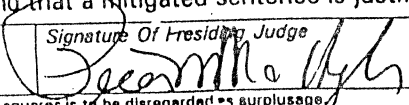
Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
03-05-99	PETER M. MCHUGH	

EXHIBIT (A) 10/2

Guilford County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

1999 MAR - 5

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Name Of Defendant

Theodore Mead Kimble

Offense

First degree arson

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
 - 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:
This offense was committed for the purpose of avoiding detection in the murder of Patricia Gail Kimble and for the purpose of covering up the murder.

The Court makes no findings of any aggravating factors.

EXHIBIT (F) 9012

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
- b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge
Peter M. McHugh

Guilford ...

County

EXHIBIT (P) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

100-107-3 10/2/85

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation: first degree murder

COO

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT (6) 2012

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge <i>Peter M. McHugh</i>
------------------	--	--

Guilford County

In The General Court Of Justice
Superior Court Division

EXHIBIT (H) 1 of 2

STATE VERSUS

1999-010-5 11/10/05

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

COJ

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

1. The defendant committed the offense under: *EXHIBIT(H) 2 of 2*
- a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant:
- a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
3. The defendant was suffering from a:
- a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's:
- a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made:
- a. substantial restitution to the victim.
 - b. full restitution to the victim.
6. The victim was more than 16 years of age and:
- a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
7. The defendant:
- a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
8. a. The defendant acted under strong provocation.
 b. The relationship between the defendant and the victim was otherwise extenuating.
9. The defendant:
- a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- a. at an early stage of the criminal process.
 - b. prior to arrest.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States Armed Services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis and a workable treatment plan is available.
21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

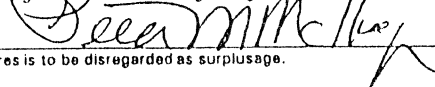
The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge



Guilford

County

EXHIBIT (F) 1 of 2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
 - 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT 2 of 2

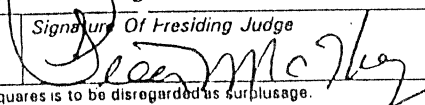
- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
03-05-99	PETER M. MCHUGH	

Guilford County

EXHIBIT (D) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

1999 MAR -5 PM 12:45

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

Offense

Solicitation first degree murder

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

1. The defendant committed the offense under: *EXHIBIT (J) 2012*
- a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant:
- a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
3. The defendant was suffering from a:
- a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's:
- a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made:
- a. substantial restitution to the victim.
 - b. full restitution to the victim.
6. The victim was more than 16 years of age and:
- a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
7. The defendant:
- a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
8. a. The defendant acted under strong provocation.
- b. The relationship between the defendant and the victim was otherwise extenuating.
9. The defendant:
- a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
- a. at an early stage of the criminal process.
 - b. prior to arrest.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States Armed Services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis and a workable treatment plan is available.
21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99	Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH	Signature Of Presiding Judge <i>Peter M. McHugh</i>
------------------	--	--

Guilford County

EXHIBIT (S) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Offense Solicitation first degree murder

COJ

FELONY JUDGMENT

FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

EXHIBIT (K) 2 of 2

- 1. The defendant committed the offense under:
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

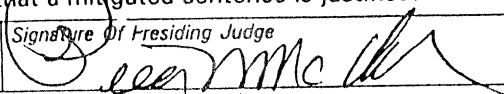
The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date
03-05-99

Name Of Presiding Judge (Type Or Print)
PETER M. MCHUGH

Signature Of Presiding Judge



Guilford

County

EXHIBIT (L) 10/2

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name Of Defendant

Theodore Mead Kimble

Offense

Solicitation first degree murder

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)

G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for each offense that is not consolidated.

AGGRAVATING FACTORS

- 1. The Defendant:
 - a. induced others to participate in the commission of the offense.
 - b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2.a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 3. The offense was committed for the purpose of:
 - a. avoiding or preventing a lawful arrest.
 - b. effecting an escape from custody.
- 4. The defendant was:
 - a. hired to commit the offense.
 - b. paid to commit the offense.
- 5. The offense was committed to:
 - a. disrupt the lawful exercise of a governmental function or the enforcement of laws.
 - b. hinder the lawful exercise of a governmental function or the enforcement of laws.
- 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 7. The offense was especially heinous, atrocious or cruel.
- 8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- 9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 10. The defendant:
 - a. was armed with a deadly weapon at the time of the crime.
 - b. used a deadly weapon at the time of the crime.
- 11. The victim was:
 - a. very young.
 - b. very old.
 - c. mentally infirm.
 - d. physically infirm.
 - e. handicapped.
- 12. The defendant committed the offense while on pretrial release on another charge.
- 13. The defendant involved a person under the age of 16 in the commission of the crime.
- 14. The offense involved:
 - a. an attempted taking of property of great monetary value.
 - b. the actual taking of property of great monetary value.
 - c. damage causing great monetary loss.
 - d. an unusually large quantity of contraband.
- 15. The defendant took advantage of a position of trust or confidence to commit the offense.
- 16. The offense involved the sale or delivery of a controlled substance to a minor.
- 17. The offense was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- 18. The defendant does not support the defendant's family.
- 18.a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B, C, D or E felony if committed by an adult.
- 19. The victim of this offense suffered serious injury that is permanent and debilitating.
- 20. Additional written findings of factors in aggravation:

The Court makes no findings of any aggravating factors.

MITIGATING FACTORS

- 1. The defendant committed the offense under: *Exhibit (L) 2082*
 - a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
 - d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- 2. The defendant:
 - a. was a passive participant in the commission of the offense.
 - b. played a minor role in the commission of the offense.
- 3. The defendant was suffering from a:
 - a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
 - b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- 4. The defendant's:
 - a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
 - b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
- 5. The defendant has made:
 - a. substantial restitution to the victim.
 - b. full restitution to the victim.
- 6. The victim was more than 16 years of age and:
 - a. was a voluntary participant in the defendant's conduct.
 - b. consented to the defendant's conduct.
- 7. The defendant:
 - a. aided in the apprehension of another felon.
 - b. testified truthfully on behalf of the state in another prosecution of a felony.
- 8. a. The defendant acted under strong provocation.
 - b. The relationship between the defendant and the victim was otherwise extenuating.
- 9. The defendant:
 - a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear.
 - b. exercised caution to avoid serious bodily harm or fear to other persons.
- 10. The defendant reasonably believed that the defendant's conduct was legal.
- 11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer:
 - a. at an early stage of the criminal process.
 - b. prior to arrest.
- 12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- 13. The defendant is a minor and has reliable supervision available.
- 14. The defendant has been honorably discharged from the United States Armed Services.
- 15. The defendant has accepted responsibility for the defendant's criminal conduct.
- 16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- 17. The defendant supports the defendant's family.
- 18. The defendant has a support system in the community.
- 19. The defendant has a positive employment history or is gainfully employed.
- 20. The defendant has a good treatment prognosis and a workable treatment plan is available.
- 21. Additional written findings of factors in mitigation:

The Court makes no findings of any mitigating factors.

DETERMINATION (NOTE: Check only one)

The Court, after considering the evidence and arguments presented at the trial and sentencing hearing, finds that the aggravating and mitigating factors marked, if any, were proven by a preponderance of the evidence and that the

- factors in aggravation outweigh the factors in mitigation and that an aggravated sentence is justified.
- factors in mitigation outweigh the factors in aggravation and that a mitigated sentence is justified.

Date 03-05-99

Name Of Presiding Judge (Type Or Print) PETER M. MCHUGH

Signature Of Presiding Judge

EXHIBIT (M)

SUPREME COURT OF NORTH CAROLINA

(State v Theodore Mead Kimble)

State of North Carolina
v
Theodore Mead Kimble

RECEIVED
APR 10 2001
CLERK OF SUPREME COURT

From NC Court of Appeals
(COA99-1518)
(97CRS23656)
(97 CRS 39581)
(98 CRS 23486)
(99CRS23241-48)

ORDER

Upon consideration of the petition filed by Defendant in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 5th day of April 2001.

s/ Butterfield, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 6th day of April 2001.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

Carol B. Templeton

Carol B. Templeton
Assistant Clerk



Copy to:
North Carolina Court of Appeals
Ms. Danielle M. Carman, Assistant Appellate Defender, For Kimble
Mr. Edwin W. Welch, Special Deputy Attorney General, For State
Mr. Horace M. Kimel, Jr., District Attorney
Mr. David Churchill, Clerk of Superior Court
Mr. Ralph A. White, Appellate Court Reporter
West Publishing Company
Lexis-Nexis

EXHIBIT (N)

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.

THEODORE MEADE KIMBLE

Ry

File No.

97CRS 23656

Film No.

**INDICTMENT
ARSON
CONSPIRACY TO MURDER**

Date of Offense
October 9, 1995

Offense in Violation of G.S.
14-58 and the Common Law

**COUNT I
ARSON OF AN UNOCCUPIED DWELLING**

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II
CONSPIRACY**

AND THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor

[Handwritten Signature]

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL

Date

NOV 03 1997

Signature of Grand Jury Foreman

Michael Smith

253

EXHIBIT (0)

20

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

FILED

File No. **98CRS 23486**

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

Film No. **INDICTMENT
FIRST DEGREE ARSON**

v.

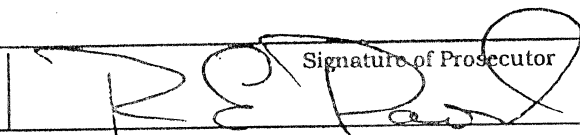
THEODORE MEAD KIMBLE GUILFORD COUNTY, N.C.

Date of Offense
October 9, 1995 BY 

Offense in Violation of G.S.
14-58 and the Common Law

FIRST DEGREE ARSON

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.


Signature of Prosecutor

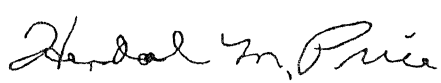
WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
 NOT A TRUE BILL

Date
JUL 06 1998

Signature of Grand Jury Foreman


File No.	Count No.(s)	Offense(s)
		<i>EXHIBIT (P)</i>
97CRS23656	1	Second Degree Arson
97CRS23663	1 & 2	Breaking and Entry and Larceny
97CRS23661	1 & 2	Breaking and Entry and Larceny
97CRS23657	1 & 2	Breaking and Entry and Larceny
97CRS23671	1	Breaking and Entry
97CRS23675	1 & 2	Breaking and Entry and Larceny

CERTIFICATION BY PROSECUTOR

The undersigned prosecutor enters a dismissal to the above charges pursuant to a plea arrangement shown on the Transcript Of Plea attached.

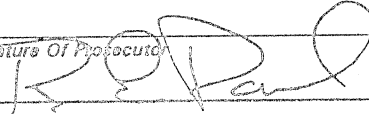
Date

1/28/99

Name Of Prosecutor (Type Or Print)

Richard E Panosh

Signature Of Prosecutor



Name Of Defendant

THEODORE MEADE KIMBLE

EXHIBIT (9)

PLEAS

Plea *	File Number	Count No.(s)	Offense(s)	Date Of Offense	G.S. No.	F/M	CL	Maximum Punishment
G	97CRS39581	1	SECOND DEGREE MURDER	10-09-1995	14-17	F	B-2	415
G	97CRS23656	2	CONSPIRACY: First Degree Murder	10-09-1995	C.L. & 14-2.4	F	B-2	415
G	98CRS23486	1	FIRST DEGREE ARSON	10-09-1995	C.L. & 14-58	F	D	199
G	99CRS 23241	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23242	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23243	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23244	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23245	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23246	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23247	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261
G	99CRS 23248	1	SOLICITATION : First Degree Murder	11-04-1998	CL. & 14-2.6	F	C	261

*G = Guilty
NC = No Contest

TOTAL MAXIMUM PUNISHMENT

3177 mos.

MANDATORY MINIMUM FINES & SENTENCES (if any)

B2: 130 mos., D: 53 mos., C: 80 mos.

14. (if applicable) The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea: (See attachment for additional plea arrangements, including voluntary dismissals.)

Answers

The State of North Carolina agrees to accept a plea to Second Degree Murder in 97CRS39581. Count 1 of 97CRS23656 shall be dismissed. In return, the Defendant agrees to enter guilty pleas to Second Degree Murder in 97CRS39581, Conspiracy to Commit First Degree Murder in 97CRS23656, First Degree Arson in 98CRS23486, and eight counts of Solicitation to Commit First Degree Murder in Bills of Information which are to be filed this date. The Defendant agrees and understands that he will receive consecutive sentences in each of these cases. Further, the Defendant agrees to return the ashes of Patricia Blakley Kimble to the Blakley family. The State agrees to dismiss any Breaking and Entry or Larceny indictments against Theodore Meade Kimble which are presently pending in Guilford County.

The parties stipulate that the Defendant is a level II offender, and that under the Structured Sentencing Act the maximum sentence he can receive for each B-2 felony is 254 months, for each Class C felony 159 months, and for the Class D felony 108 months.

- (a) Is this correct as being your full plea arrangement? (14a) yes
- (b) Do you now personally accept this arrangement? (14b) yes
- 15. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes? (15) no
- 16. Do you enter this plea of your own free will, fully understanding what you are doing? (16) yes
- 17. Do you have any questions about what has just been said to you or about anything else connected with your case? (17) no

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my plea in this case. The conditions of the plea as stated above, if any, are accurate.

SWORN AND SUBSCRIBED TO BEFORE ME		Date	1/28/99
Date	1/28/99	Signature	<i>Mustina Davis</i>
<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court		Signature Of Defendant	X <i>Theodore Meade Kimble</i>
		Name Of Defendant (Type Or Print)	Theodore Meade Kimble

CERTIFICATION BY LAWYER FOR DEFENDANT

As lawyer for the defendant named above, I hereby certify that the conditions stated above, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charge(s) to which the defendant is pleading.

Date	1/28/99	Name Of Lawyer For Defendant (Type Or Print)	<i>Fred W. Zimmerman, Jr.</i>	Signature Of Lawyer For Defendant	<i>Fred W. Zimmerman, Jr.</i>
------	---------	--	-------------------------------	-----------------------------------	-------------------------------

CERTIFICATION BY PROSECUTOR

As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated above, if any, are the terms agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charge(s) in this case.

Date	1/28/99	Name Of Prosecutor (Type Or Print)	<i>Richard E. Parosh</i>	Signature Of Prosecutor	<i>Richard E. Parosh</i>
------	---------	------------------------------------	--------------------------	-------------------------	--------------------------

PLEA ADJUDICATION

Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the District Attorney, the undersigned finds:

1. That there is a factual basis for the entry of the plea.
2. That the defendant is satisfied with his/her lawyer.
3. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly.

The defendant's plea is hereby accepted by the Court and is ordered recorded.

Date	1/28/99	Name Of Presiding Judge (Type Or Print)	<i>John M. McHugh</i>	Signature Of Presiding Judge	<i>John M. McHugh</i>
------	---------	---	-----------------------	------------------------------	-----------------------

I was at work, Lyle's Building Material Oct. 9, 1995. AT 3:25 P.M. I called Patricia Kimble, who was about to leave work early to go home and cut the grass. Little did I know my wife would be dead by the end of the day. After I hung-up the phone I walked out of the office as my younger brother, Ronnie Kimble^(Jr.) came driving up (3:45 P.M.). AS I spoke to Ronnie an employee named James Ogburn came walking up. James asked Ronnie about the for-sale sign in the window of his car. While they talked I had to go wait on a customer. After the customer left I went and got the tools Ronnie had asked for. Ronnie left Lyle's Building MTL. around 4:25 P.M. AT 4:45 P.M. Ronnie^(Jr.) was at his home working when his father-in-law, James STUMP came driving up to help him. The rest of the evening Ronnie spent with his in-laws and wife. Thus all of Ronnie's time was accounted for.

Other than myself James Ogburn was the key witness who could verify Ronnie's location from 3:45 P.M. to 4:25 P.M. Detectives spoke to James Ogburn at least (4) times. But the Prosecutor (Dick Panosh) never turned over a single statement made by James. Two of those interviews were made down-town in the D.A.'s office. The first time James Ogburn gave his statement was at Lyle's Building MTL. in-front of Edna Kimble. James was interviewed by whom is believed to be Detective Sergeant Debarry. Detectives Church and Debarry spoke to James at the company a few times.

Approximately a year after the death of Patricia Kimble, A young man named Robert Nicholes (Rob) came to work at Lyle's Building MTL. At the time no one knew that with Rob came a drug (cocaine) and alcohol problem. In Dec. (96) Rob started selling small amounts of lumber to the company (Lyle's Building MTL.) He claimed

a contractor was giving him the left-over lumber off job-sites. On Jan. 2, 1997, Rob asked for my help to go and pick-up some lumber as soon as the company closed, at 5:30 P.M. I agreed to go and help. Before the company closed a friend at the time named Patrick Pardee came driving up. when asked he also agreed to go and help. I closed up as always and the 3 of us headed across town. when we arrived at the site to get the lumber, we not only loaded what Rob claimed was promised to him, we loaded it all. Thus began a crime spree that lasted for the next 60 days.

By the end of the first week in March, Patrick and I had pretty much stopped stealing. Do to Rob's drug problem he continued stealing in an attempt to support his habit. During the second week of March I realized Rob was now stealing from the company, (which I own), but I didn't know what to do about it. During the same week Rob came - up and stated he and his friend (Jeff Roberts) had spotted a trailer loaded with ladders, and asked if I needed anymore? I said, "NO." "Let me ask you Rob, did you tell Jeff what we had done?" Rob said, "NO" and walked off. James Ogburn then walked up and I said, "we're busted because Rob told Jeff. You know how the two of them fight all the time. The next time they fall out, Jeff will call Crime-stoppers for the reward, so he can get more drugs."

On April 1, 1997 I was arrested. A few weeks later I was indicted on 47 felony Breaking/Entering and Larceny charges. When I got the case discovery information I read where Jeff Roberts had called Crime-stoppers just like I said he would. In my absence my father, Ronnie Kimble (Sr.) ran Lyles Building mtl. My younger brother, Ronnie Kimble (Jr.) was also arrested April 1 (97) and indicted for the death of Patricia Kimble. I would be indicted a few months later. While Ronnie (Jr.) sat in the Greensboro Jail of Guilford County, I sat in the High Point Jail.

While I sat in jail there was a break-in at Lyle's Building Mtl. Someone loaded shingles into the company's brand new trailer (\$5,500) and drove off with it. A few months passed and Jeff Roberts started coming into "Lyle's" for business. One day while Jeff spoke to Ronnie (Sr.) he broke-down and started telling Mr Kimble about things he and Rob had done. Jeff stated he and Rob had broke into "Lyle's" and stolen the trailer and shingles. Jeff also said he went to the beach with Rob Nicholes, Rob's wife and daughter. While at the beach Jeff helped Rob do a roofing job with the stolen shingles, then Rob went and sold the trailer. Mr. Kimble (Sr.) called and reported this information to the authorities. A detective came and interviewed Jeff Roberts and took a statement, but the District Attorney's office refused to issue a warrant and arrest Robert Nicholes. The actions or lack thereof by the D.A.'s office should've come as no surprise. Jeff also told Mr. Kimble (Sr.) that Rob stated he didn't know anything about Patricia Kimble's death, because I (T.K.) had never talked to him about it. And that the D.A. (Dick Panosh) was coaching him as what to say. Jeff said Rob would joke about having to go down-town for his coaching lessons.

One day James Ogburn and a co-employee of "Lyle's" ran into Rob. Rob asked that they let Mr. Kimble (Sr.) know, He had talked it over with his wife and decided not to go through with it (lie), and testify against Ted (T.K.). James and the co-employee gave signed statements, which copies are enclosed within the M.A.R. "But once again Rob lied."

Meanwhile Patrick Pardee showed up at Chilly's Restaurant one day for lunch, and spoke to a young woman named Melanie Eyendine. Patrick told Melanie he didn't know anything about Patricia Kimble's death, but the Prosecutor was pressing him to sign a statement against Ted (T.K.) anyway. Three days after this conversation Patrick Pardee signed a statement against me (T.K.).

Maybe a month or so after Jeff Roberts confessed to Mr Kimble (Sr.), Jeff

got arrested and thrown into jail. Jeff wasn't just placed anywhere, The D.A. (Dick Panosh) had Jeff placed at the HighPoint Jail, in the very cell "next to me." Jeff told me he was out attempting to steal some scrap aluminum when his truck got stuck in the mud. During the following week Jeff made several trips to the Greensboro D.A.'s office, where he was interrogated; interviewed, and threaten. Each time Jeff would return to his cell and tell me what was happening. Jeff first stated Dick Panosh (Asst. D.A.) and detective J.D. Church wanted him to try and talk to me about my case. On another visit they wanted Jeff to sign a statement against me, which stated I had confessed to him while he was in the cell next to me. If Jeff didn't sign the statement Mr. Panosh threaten to prosecute him to the max! This was the same way Mr. Panosh got Robert Nicholes and Patrick Pardee to sign statements, which said the same thing. After 3-4 visits to the D.A.'s office Jeff was scared to death, but he held-out. After the final visit Jeff told me that Mr. Panosh had stated he better keep his mouth shut and disappear. If Jeff did as told the pending charges against him would be dropped. Mr. Panosh told Jeff he had better NOT show up at trial to testify against Rob during the "Kimble trial." A day or two after this conversation with Jeff, he got out of jail and was never heard from again. Up until the time Mr. Panosh threaten Jeff, he was going to testify for the defense.

I complained to my lawyer about Jeff being in the cell next to me, and told of what Mr. Panosh was trying to do. But my lawyers did nothing.

I was still in jail awaiting trial when a patrol car arrived at Lyle's Building Material. The police officers arrested James Ogburn and claimed it was for back child-support payments. But when James got downtown he was taken to the D.A.'s office to discuss the "Kimble's case." James said the D.A. told him his life was

at a fork in the road, one path leads to prison for the rest of his life, the other path leads to probation, "Don't show up at the Kimble trial!"

For over two years James Ogburn had stated Ronnie Kimble was in front of him on Oct. 9, 1995 between 3:45-4:30 P.M. Two week before Ronnie Kimble's trial James was at the D.A.'s office again for another pep-talk. Once again the D.A. threaten James and made it clear he had better not testify for the defense.

You have to Remember, James was involved with the 47 plus felony Breaking/Entering and Larceny cases. The D.A. threaten to prosecute James on all of these charges if he didn't change his statement. After James' last visit to the D.A.'s office his statement changed, James said he couldn't remember the exact time anymore, and he refused to testify. In exchange the D.A. didn't prosecute James on a single charge.

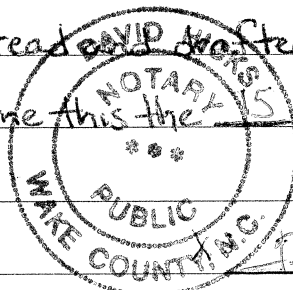
When it came time for (co-defendant) Ronnie Kimble Jr.'s trial, Jeff Roberts and James Ogburn were nowhere in sight. The D.A. had threaten them, and ran them off. Robert Nicholes and Patrick Pardee both marched into court and lied on the stand, saying I had confessed to them, and told them I had hired Ronnie (Jr) to Kill my wife. They lied just as Richard Panosh (D.A.) coached them to do. I NEVER said any such thing to either of them! Ronnie Kimble was standing in front of myself and James Ogburn at the time Patricia Kimble died. It would be impossible for Ronnie to be in two places at the same time! Both Rob and Patrick had plea-agreements with Richard Panosh on pending charges, and neither saw a day in prison. To my knowledge both had prior criminal records, yet both received probation and or the First Offender's Program. It's also my understanding Rob and Patrick were only charged with 2-3 crimes each, while I was charged with 47 felonies in which they were

also involved. If this isn't a case of selective prosecution I don't know what is. The D.A. even got a young lady named Joy Dyers, who was an x-girlfriend, to lie in court. Just as the others she had pending charges in which the D.A. used as leverage to coerce witnesses to lie. After Joy testified to the lies, her pending charges were dismissed.

In mid 99' while sitting in prison, waiting on my direct Appeal to be filed, I picked up the Raleigh newspaper (The News & Observer) and read the classifieds. Low and behold I saw an "Ad" for a "TRAILER" which sounded like the one Rob stole from me. I sent the Ad to my father Ronnie (Sr) who drove half-way across the state and found my trailer. It was a custom-built trailer (\$5,500) so there is NOT another one like it in the World. Finally, I had evidence which could be traced back to Robert Nicholes. Mr Kimble (Sr) reported this information to the authorities, but just as before the District Attorney's office refused to go and get the trailer, They refused to arrest Robert Nicholes. Clearly this was a miscarriage of justice, and Prosecutor Misconduct. Richard Panosh sees himself above the Law he's suppose to represent.

The above Affidavit is written in True Accounts of Events that took place, To the Best of my Knowledge all statements made are TRUE and CORRECT, As for any statement made on information and belief are made in good faith, And I Believe to be TRUE, I have read and drafted the same, I swear under perjury. Sworn to and before me this the 15 Day of October 2003.

WITNESS: *Ram/Chick* 10-15-03



Theodore M. Kimble

MY COMMISSION EXPIRES: My Commission Expires 5-18-2008.

THEODORE MEAD KIMBLE

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to Mr. Kimble.

Walter A. Cole Sr.
8/2/97

EXHIBIT (T) 2 of 3

Time 12:00

4-18-97

Robert informed me that the Police
was on him concerning Ted and the
murder ^{case}. Robert also says that, Ted
told him some things that he shouldn't have,
but nothing concerning the murder. Robert
says he was going to plea guilty to
all larceny charges.

James Ogden

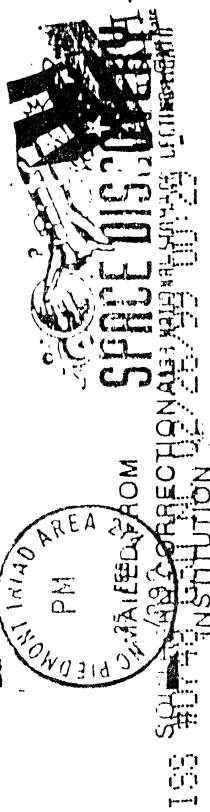
EXHIBIT (5) 3043 7-29-97

On July 22nd, I saw Robert Nicklaus in the parking^{lot} down from Syler Bld. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden

EXHIBIT (U) 1083

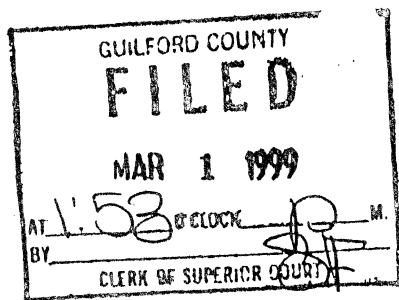


Therese Kimble
 P.O. Box 786
 Troy NC 27371

To: Guilford County Court House
 Superior Court Judge Peter McHugh
 Greensboro NC 27402

27400/9999

2043
EXHIBIT (u)



Superior Court Judge
Peter McHugh

I Theodore M. Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is Yes! Mr Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further

03/17

APR 1 1999

EXHIBIT (U) 3043

Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I won't allow someone to push me around again. My mind is made up.

Thank you,

Theodore W. Kimble

2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't slow at the Kimble trial."

3/1/99 cc: Parosh
Zimmerman/Crompler

1 GUILTY TO?

2 DEFENDANT:- YES, SIR.

3 THE COURT:- ARE YOU SATISFIED WITH YOUR ATTORNEYS'
4 LEGAL SERVICES ON YOUR BEHALF?

5 DEFENDANT:- YES, SIR.

6 THE COURT:- HAVE YOU DISCUSSED ANY POSSIBLE DEFENSES
7 THAT YOU MAY HAVE AVAILABLE TO ASSERT AGAINST THESE VARIOUS
8 CHARGES THAT HAVE BEEN FILED AGAINST YOU?

9 DEFENDANT:- YES, SIR.

10 THE COURT:- AND YOU ARE SATISFIED WITH YOUR
11 ATTORNEYS' SERVICES WITH REGARD TO THEIR CONSULTATION, IS THAT
12 CORRECT?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- ALL RIGHT. YOU UNDERSTAND YOU HAVE THE
15 RIGHT TO PLEAD NOT GUILTY TO THESE CHARGES AND TO BE TRIED BY A
16 JURY UPON A PLEA OF NOT GUILTY?

17 DEFENDANT:- YES, SIR.

18 THE COURT:- DO YOU UNDERSTAND THAT, AT SUCH TRIAL,
19 YOU WOULD HAVE THE RIGHT TO CONFRONT THE WITNESSES AGAINST YOU
20 AND TO CROSS EXAMINE THE WITNESSES AGAINST YOU?

21 DEFENDANT:- YES, SIR.

22 THE COURT:- AND DO YOU UNDERSTAND THAT, BY ENTRY OF
23 THIS PLEA, YOU ARE WAIVING, THAT IS, GIVING UP, THESE AND ALL
24 OF YOUR OTHER CONSTITUTIONAL RIGHTS RELATING TO BEING TRIED BY
25 A JURY?

1 GUILTY TO THOSE OFFENSES BECAUSE YOU CONSIDER IT TO BE IN YOUR
2 BEST INTEREST TO DO SO?

3 DEFENDANT:- YES, SIR.

4 THE COURT:- DO YOU UNDERSTAND THAT WHEN YOU PLEAD
5 GUILTY TO THOSE OFFENSES UPON THAT CONDITION THAT YOU WILL BE
6 ADJUDGED GUILTY AND SENTENCED FOR THOSE OFFENSES WHETHER OR NOT
7 YOU, IN FACT, ADMIT THAT YOU ARE GUILTY OF THEM?

8 DEFENDANT:- YES, SIR.

9 THE COURT:- HAVE YOU AGREED TO TENDER A PLEA OF
10 GUILTY TO THESE SEVERAL OFFENSES AS PART OF A PLEA ARRANGEMENT
11 THAT WAS NEGOTIATED ON YOUR BEHALF BY YOUR ATTORNEYS WITH THE
12 DISTRICT ATTORNEY?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- IS THIS A CORRECT STATEMENT OF WHAT YOU
15 UNDERSTAND YOUR FULL PLEA ARRANGEMENT TO BE: THE STATE OF
16 NORTH CAROLINA HAS AGREED, PURSUANT TO THE PLEA ARRANGEMENT, TO
17 ACCEPT A PLEA OF GUILTY TO SECOND DEGREE MURDER IN CASE
18 97-CRS-39581. COUNT ONE IN THAT -- IN CASE 97-CRS-23656 SHALL
19 BE DISMISSED BY THE STATE UPON YOUR PLEA OF GUILTY. IN RETURN,
20 THE DEFENDANT AGREES TO ENTER PLEAS OF GUILTY TO SECOND DEGREE
21 MURDER IN CASE 39581, CONSPIRACY TO COMMIT FIRST DEGREE MURDER
22 IN CASE 97-CRS-23656, AND FIRST DEGREE ARSON IN CASE
23 98-CRS-23486, AND EIGHT COUNTS OF SOLICITATION TO COMMIT FIRST
24 DEGREE MURDER PURSUANT TO THE BILLS OF INFORMATION WHICH HAVE
25 BEEN SUBMITTED TO THE COURT. THE DEFENDANT AGREES PURSUANT TO

1 THAT PLEA ARRANGEMENT AND UNDERSTANDS THAT HE WILL RECEIVE
2 CONSECUTIVE SENTENCES IN EACH OF THESE CASES. FURTHER, THE
3 DEFENDANT AGREES TO RETURN THE ASHES OF PATRICIA BLAKLEY KIMBLE
4 TO THE BLAKLEY FAMILY. THE STATE AGREES PURSUANT TO ITS
5 COMMITMENT AND THE PLEA ARRANGEMENT TO DISMISS ANY BREAKING AND
6 ENTERING OR LARCENY INDICTMENTS PENDING AGAINST THEODORE MEAD
7 KIMBLE WHICH ARE PRESENTLY PENDING IN GUILFORD COUNTY, NORTH
8 CAROLINA. THE PARTIES STIPULATE, PURSUANT TO THE PLEA
9 ARRANGEMENT, THAT THE DEFENDANT, THAT IS YOU, IS SUBJECT TO
10 SENTENCE AS A LEVEL TWO OFFENDER, AND THAT, PURSUANT TO THE
11 STRUCTURED SENTENCING ACT, THE MAXIMUM SENTENCE THAT THE
12 DEFENDANT MAY RECEIVE FOR EACH OF THE B2 FELONIES IS 254
13 MONTHS, FOR EACH CLASS C FELONY, IT'S 159 MONTHS, AND FOR THE
14 CLASS D FELONY, IT IS 108 MONTHS. IS WHAT I'VE JUST SAID TO
15 YOU A CORRECT STATEMENT OF WHAT YOU UNDERSTAND YOUR FULL PLEA
16 ARRANGEMENT TO BE, MR. KIMBLE?

17. DEFENDANT:- YES, SIR.

18 THE COURT:- AND DO YOU PERSONALLY ACCEPT THE PLEA
19 ARRANGEMENT AT THIS TIME?

20 DEFENDANT:- YES, SIR.

21 THE COURT:- OTHER THAN THE CONDITIONS OF THE PLEA
22 ARRANGEMENT I HAVE JUST RECITED TO YOU, HAS ANYONE THREATENED
23 YOU OR MADE ANY PROMISES TO YOU TO IN ANY WAY ATTEMPT TO CAUSE
24 YOU TO ENTER THIS PLEA OF GUILTY AGAINST YOUR WISHES?

25 DEFENDANT:- NO, SIR.

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the
4 Court on the matter of Theodore Mead Kimble, the
5 remaining case is 97 CRS 39581. I believe that the first
6 matter is a motion to withdraw filed pro se by the
7 defendant.

8 Your Honor, the State has filed an Answer to
9 the motion to withdraw, and I've served counsel with a
10 copy. I did note that on page 1 when I indicated date of
11 change of counsel, I have the wrong date there. It
12 should have been December 3rd, of '98 change of counsel.
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.
15 Zimmerman, are you appearing with the defendant at this
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing
18 by virtue of the nature of the motion. We have explained
19 to the defendant actually we will remain neutral because
20 we may be asked questions, and the defendant understands
21 that.

22 THE COURT: All right. Thank you. Mr.
23 Kimble, would you stand up, please?

24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

EXHIBIT (Y)

6

1 had manipulated the witnesses and myself. I ask my trial
2 be moved to Winston-Salem because of the publicity around
3 my case, mainly caused by the D.A. I'm tired of being
4 scared, used and run over by Guilford County. It's time
5 I stand up for myself and quit allowing these people to
6 abuse me. I want the truth known by all, and that's what
7 everyone is going to get when I take the stand. It's my
8 life, it should be my choice. Please, Your Honor, set
9 the plea aside and set a trial date. I don't want to
10 have to appeal the decision to get the trial I deserve.
11 This would further delay the inevitable and tie up the
12 court. I would have to get new court appointed lawyers
13 and start over. The lawyers I have were paid. Let them
14 finish what they've started. With all due respect, you
15 represent justice. I'm willing to die to prove my
16 innocence. I love my wife, and I want to tell the truth.
17 The D.A. has done nothing -- everything in his power to
18 ensure that I not receive a fair trial. Please set
19 things straight.

20 I might add, Your Honor, being intimidated,
21 last time I left I was somewhat abused. I was shackled
22 so tight it left bruises on my wrists and nearly broke
23 the skin on my ankles, and the driver was running 97 mph
24 down 220, blowing his horn, flashing his lights at people
25 to get out of his way. By the time I got back to my

1 A. We probably have 350 on the roll. And on Sunday
2 morning worship attendance we probably average 150 to 175
3 altogether.

4 Q. Mr. Kimble, you've heard the witnesses here in
5 court today. Have you heard your wife's testimony?

6 A. Yes, sir.

7 Q. Keeping in mind that His Honor is going to have to
8 pass judgment on your son, Ted, at the conclusion of the
9 hearing, will you relate to the Court things about your
10 son Ted that you would ask the Court to consider in his
11 behalf?

12 A. Yes, sir. Your Honor, I've sat through my other
13 son's trial. There was a question at the end of trial by
14 Mr. Panosh. I told him I would like to express to you I
15 believe with all my heart my sons did not do this. I
16 know I believe it because the time frame, I'd look at it
17 humanly and the time frame that my other son supposedly
18 committed the murder for this son, he could not have done
19 it because he was at the place of business at Lyles
20 Building Material with my son, and with another witness.
21 The witness was going to testify that he was at Lyles up
22 to about 4:30. He told me this on numerous occasions.
23 And about two weeks before the trial started, the D.A.
24 called him down here to his office, and they had
25 mentioned to him about bringing him in on the breaking,

1 entering, larcenies if he didn't cooperate with them. He
2 come back to the place of business and his story changed
3 that my son left -- well, last time he saw him was around
4 3:00. But he told me all the way up to that time that he
5 would be glad to come to court, be glad to testify that
6 my son was at that business till about 4:30. But then
7 when he went to the D.A.'s office, he come back, his
8 story changed. I know with all my heart that my sons are
9 not guilty of this. And I'll go to my grave knowing that
10 because it's just no way. I asked myself could they have
11 done it. I looked at it from every way possible. It's
12 no way they could have because they could not have been
13 there. And my other son, he was working two jobs. His
14 wife told him that if he would pay off the boat--- He
15 wanted to buy a motorcycle. That if he would pay off the
16 boat that he could buy a motorcycle. And then after her
17 death, he did go buy a motorcycle. But first of all, he
18 went out and bought the clothes that he needed, the
19 things that he needed. Then he took little bit of that
20 money, he went and borrowed money from the bank on a
21 charge card and he did buy a motorcycle, which I did not
22 approve of. I owned a couple of motorcycles and they're
23 dangerous. With all my heart I do not believe either one
24 of my sons had anything to do with this murder. I know
25 he took the plea bargain. I know that he did that. But

1 Lyles, did you know these two people, Mr. Pardee and Mr.
2 Nichols?

3 A. Very well, sir.

4 Q. And, uh, did you ever have any conversation with
5 Mr. Nichols or Mr. Pardee concerning anything about your
6 wife or manner in which she was killed or whatever?

7 A. Never. The only conversation, and it was limited,
8 was with Patrick Pardee, and it was about the crooked
9 dealings of the D.A.

10 Q. Did Mr. Nichols or Mr. Pardee ever give you any
11 indication that they would not testify to these facts
12 that you had told them, that you'd had your wife killed
13 or words to that effect?

14 A. I've never heard any of the comments they've made.
15 I do know that Patrick Pardee, three days before signing
16 a statement against me, told Melanie Oxendine that he had
17 no idea of any of the facts surrounding my case. That
18 the D.A. and detectives were pressuring him to lie
19 against me.

20 Q. All right.

21 A. Three days later he signs a statement against me
22 and supposedly knows everything there is about my case.
23 And this is under oath. Melanie Oxendine testified to
24 it.

25 Q. Now, tell me about what happened on the 9th day of

1 October, the date your wife died. Can you tell me what
2 time you -- how long you were at work?

3 A. I need to finish what I was saying.

4 Q. Excuse me. Go ahead.

5 A. Rob Nichols told James Ogburn and a fellow inmate
6 from Lyles Building Material, which I believe you have a
7 statement written by those two employees of Lyles. They
8 ran into each other at the gas station across the street,
9 and he verified to them that he had been being coached by
10 the D.A. That he was no longer going to testify against
11 me, quote unquote, "lie" against me, as the D.A. had been
12 pressuring him to do.

13 Q. All right. Anything else about either one of
14 them?

15 A. Uh, I would like to mention that Rob Nichols has a
16 very serious drug problem. Alcohol abuse problem.
17 Abuses his wife and his child. Uh, the B&E's, he would
18 take his little girl out on the job sites and have his
19 little girl stick her arm through the key hole to reach
20 up and unlock the dead bolt. I mean this is the witness
21 with the halo around his head the D.A. portrays him as.

22 Q. Now, along those lines about the breaking and
23 enterings and the thievery or taking of property, were
24 you engaged in some of that also with them?

25 A. Yes, sir. I'm ashamed to admit it. Under the

1 is a biased opinion. She has never liked me, and told me
2 to my face.

3 Q. And it's your contention that Mr. Pardee and Mr.
4 Nichols, who are under indictment for something; is that
5 correct?

6 A. Yes, sir. They face charges on the B&E's. And
7 they have both signed plea agreements with the D.A. Per
8 se cut deals for their testimony to lie against me.

9 Q. All right. So, you're saying, telling us that
10 there is some sentence consideration on the part of the
11 State in return for their testimony?

12 A. Shoot yeah. That's the only reason he could get
13 them to testify against me, was to give them a plea
14 agreement. Just like the William Stewart guy got out of
15 prison early.

16 Q. All right. Now that's where I'm headed right now.
17 Let me ask you this. As to this William Stewart, how
18 long did you know William Stewart at Southern
19 Correctional?

20 A. Possibly a month. A month or so.

21 Q. During this month period, did Mr. -- did you
22 approach Mr. Stewart about having anybody killed?

23 A. No, sir. I did not. He approached me.

24 Q. And what was his -- can you tell us how he brought
25 it up to or broached the subject to you about killing

1 people off bringing the stuff, selling it to me, and gets
2 me to helping him, you know---

3 Q. Got you to help him?

4 A. He got me to help him.

5 Q. In fact, you're the one that purchased the two-way
6 radios, didn't you?

7 A. The walkie talkies?

8 Q. Yes.

9 A. Yes.

10 Q. And the scanner to listen for the police?

11 A. I had a scanner prior to that. My dad's got one
12 too. Does that make him a criminal?

13 Q. And went out and rented a U-Haul, I mean a lift
14 and a trailer to go to---

15 A. I own the trailer, sir. I owned the trailer
16 before Rob Nichols broke in my lot and stole it and took
17 it to the beach and sold it, and you refused to do
18 anything about it.

19 Q. You rented a lift, didn't you, to go to---

20 A. Yes, I did. To go to Home Depot to load up
21 lumber.

22 Q. Lumber by the lift full?

23 A. Exactly. Rob Nichols used to work there and rip
24 them off all the time. And he instigated it. He knew
25 the managers. He knew their schedule. He knew

1 right up to the time of her execution. That just shows
2 you not a mitigating factor, that shows that he's a cold
3 blooded murderer. He planned this and he had the ability
4 to hug and kiss his wife knowing that he was about to
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world
7 of bombs and silencers and sniper rifles. He just feels
8 that anybody who gets in his way, he should be able to
9 eliminate. We ask you to sentence him remembering that.
10 Thank you.

11 THE COURT: All right, thank you. Mr.
12 Zimmerman, are you prepared to tender your sentencing
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this
15 point in time, if Your Honor please. If Your Honor would
16 be kind enough to consider a short recess, I'll check one
17 more time and see what the problem is. This witness has
18 been subpoenaed since two weeks ago. And she was just
19 deathly ill yesterday. I apologize for having the phone
20 ringing in the courtroom. That was her calling me
21 yesterday. She couldn't get out of the bed. It's this
22 flu going around, and I can understand it because I had
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

1 MR. ZIMMERMAN: Absolutely satisfactory with
2 the defendant.

3 (Counsel approach the bench.)

4 THE COURT: Counsel, the Court will provide
5 you with a recess to attempt to provide that element of
6 evidence.

7 Court will be in temporary recess, Sheriff.

8 (A recess was taken.)

9 (All parties present.)

10 MR. ZIMMERMAN: If Your Honor pleases, the
11 defense appreciates Your Honor's thoughtful and serious
12 consideration of the presentence study, and apologizes
13 for the delay.

14 THE COURT: That's no need to apologize,
15 Counsel. In this matter I'm anxious to have all the
16 evidence that any party wishes to produce.

17 Is there any further evidence at this time
18 for the State or for the defendant?

19 MR. PANOSH: No, thank you, Your Honor.

20 MR. CRUMPLER: No, Your Honor.

21 THE COURT: Is there any further matters
22 before the Court enters judgment?

23 MR. PANOSH: No, Your Honor.

24 THE COURT: Judgment of this Court shall be
25 entered first in case 97 CRS 39581, wherein the defendant

STATE OF NORTH CAROLINA

File No. 97CR 2

EXHIBIT (EE) 10F3

GUILFORD County GREENSBORO Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: [This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).]

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant

THEODORE MEAD KIMBLE

ACTIVE PUNISHMENT FELONY

Race

Sex

DOB

White

M

12-08-1969

1145 109 A CLERK OF SUPERIOR COURT (STRUCTURED SENTENCING)

G.S. 15A-1301, 15A-1340.13

Attorney For State

RICHARD PANOSH

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant

ROBERT L. MCCLELLAN

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

Table with 5 columns: File No(s) And Offense(s), Date Of Offense, G.S. No., F./M., CL. Row 1: 97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION, 04-01-1997, 14-288.8, F, F

The Court:

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0- RECORD LEVEL: 1. III 2. VI

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c) (b) for a Class A felony (c) for enhanced firearm penalty (d) for an adjudication as a violent habitual felon (e) for drug trafficking offenses.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

Form for sentencing details: minimum term of 015 months, maximum term of 018 months, in the custody of the: N.C. DOC.

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.

12/16/97 BKKP

(check all that apply)

1. The defendant shall pay the costs. 2. The defendant shall pay a fine of \$ _____.

The Court recommends:

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h). 4. Psychiatric and/or psychological counseling.
 5. Work Release
 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

The Court further recommends:

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release. 2. Work release.

AWARD OF FEE TO COUNSEL FOR DEFENDANT

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APPEAL ENTRIES

It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
 The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date 12-08-1997	Name Of Presiding Judge (Type Or Print) H. W. ZIMMERMAN, JR.	Signature Of Presiding Judge 
--------------------	---	---

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
-----------------------	---------------------------------	----------------------------------

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
------	--------------------	--

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
 Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff 12-16-97	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

STATE OF NORTH CAROLINA

FILED

File-No.

See Transcript

Guilford County

DEC 8 1997

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

AT 4:00 O'CLOCK P M

BY NA CLERK OF SUPERIOR COURT

WORKSHEET

PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

Name And Address Of Defendant

Theodore M. Kimble

Social Security No.

SID No.

NC 0725218A

Race

W

Sex

M

DOB

12/8/69

G.S. 15A-1340.14, 15A-1340.21

NOTE: This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING

Table with 4 columns: NUMBER, TYPE, FACTORS, POINTS. Rows include Prior Felony Class A Conviction (X10), Prior Felony Class B1 Conviction (X 9), Prior Felony Class B2 or C or D Conviction (X 6), Prior Felony Class E or F or G Conviction (X 4), Prior Felony Class H or I Conviction (X 2), Prior Class A1 or 1 Misdemeanor Conviction (see note) (X 1), SUBTOTAL (0), If all the elements of the present offense are included in the prior offense (+ 1), If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape (+ 1), TOTAL (0).

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

FELONY

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.

Table with 2 columns: No. Of Prior Convictions, Level. Rows: 0 (I), 1-4 (II), 5+ (III).

PRIOR CONVICTION LEVEL []

Table with 2 columns: Points, Level. Rows: 0 (I), 1 - 4 (II), 5 - 8 (III), 9 - 14 (IV), 15 - 18 (V), 19+ (VI).

PRIOR RECORD LEVEL [I]

The Court has determined the number of prior convictions to be _____ and the level to be as show above.

The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

Date 12/12/97

Name Of Presiding Judge (Type Or Print) H.W. Zimmerman, Jr.

Signature Of Presiding Judge [Signature]

EXHIBIT (F.F)

STATEMENT CONCERNING DEFENDANT'S CONFINEMENT

Prior to entry of his guilty pleas in the instant cases, defendant was in the custody of the Department of Corrections at Southern Correctional Institution in Troy, North Carolina for unrelated larceny and breaking and entering convictions. On January 12, 1999, defendant was placed on disciplinary segregation. Defendant entered his guilty pleas in the instant cases on January 28, 1999. On February 1, 1999, defendant's control status was changed to administrative segregation. On February 5, 1999, defendant was placed on maximum control and remained there until he was transferred to Caledonia Correctional Institution on February 26, 1999. Pursuant to state-wide policy, all three levels of control require 23-hour-per-day lock-up, with one hour per day for showering and individual recreation. In addition, inmates held at all three control levels are not allowed phone calls and are permitted only one non-contact week-day visit per week.

- whether the defendant is entering the plea of his or her own free will; and
- whether anyone has promised or threatened the defendant to cause him or her to enter the plea.

G.S. 15A-1022(b); *see also State v. Smith*, 352 N.C. 531, 532 S.E.2d 773 (2000) (above questions meet statutory and constitutional requirements to ensure plea is voluntary).

Requirement that full agreement be disclosed on record. Both parties to a plea agreement have an ethical obligation to disclose all material elements of the plea bargain to the court. N.C. State Bar Ethics Opinion, RPC 152 (1993) (prosecutor may not knowingly conceal fact that he withdrew charge as part of plea agreement).

C. Factual Basis for Plea

Generally. Once the court has determined that a plea is a voluntary and knowing decision by the defendant, the court must find that there is a sufficient factual basis for the plea of guilty. The following information may be relied upon in finding a factual basis:

- statement of the prosecutor;
- written statement of the defendant;
- presentence report;
- sworn testimony, including reliable hearsay;
- statement by defense counsel.

G.S. 15A-1022(c). The court may rely on any of the above sources. *See State v. Atkins*, 349 N.C. 62, 505 S.E.2d 97 (1998) (not all of above sources required in every case).

The standard for finding a factual basis for a guilty plea is fairly lenient. *E.g., State v. Atkins*, 349 N.C. 62, 505 S.E.2d 97 (1998) (factual basis for plea to first-degree murder sufficient where infant victim died of fractured skull, defendant had admitted to hitting victim on head, and witness had seen defendant abusing victim on past occasions). However, the record must positively show the factual basis. *State v. Weathers*, 339 N.C. 441, 451 S.E.2d 266 (1994) (factual basis for failure to appear charge not present when only witness at plea colloquy testified that defendant was present when case was called). Moreover, the defendant's admission of guilt standing alone is not sufficient. *State v. Sinclair*, 301 N.C. 193, 270 S.E.2d 418 (1980). In preparing to negotiate a plea bargain with the prosecutor, it will be helpful to develop a factual basis for lesser included offenses. In a murder case, for instance, you may have to convince the prosecutor and the court that there is a legitimate factual basis for a manslaughter plea.

CAUTION: Be careful about permitting your clients to plead guilty to multiple counts of the same offense, such as multiple larcenies or multiple conspiracies—the evidence may support only one such offense. *E.g.*, *State v. Jaynes*, 342 N.C. 249, 464 S.E.2d 448 (1995) (larceny or robbery of different objects from same person constitutes one larceny or robbery). In *State v. Kimble*, 141 N.C. App. 144, 539 S.E.2d 342 (2000), the defendant pled guilty to eight counts of soliciting a murder, but the state's factual showing proved one solicitation only. The appellate court upheld Kimble's convictions because the defense lawyer did not move to withdraw the defendant's plea on the grounds of the inadequacy of the factual basis. *Id.* Note that a defendant usually waives any double jeopardy claim, including an objection to multiple punishment, by pleading guilty. *State v. Hughes*, 136 N.C. App. 92, 524 S.E.2d 63 (1999) (defendant who pled guilty to offenses of accessing computers and obtaining property by false pretense waived multiple punishment defense and had no right to arrest of judgment on one offense). *See also* Volume I, § 13.4B (discussing double jeopardy principles).

D. Judge's Sentencing Discretion

Rejection of sentencing recommendation. A plea agreement involving a sentencing recommendation by the state must first have judicial approval before it can become effective. G.S. 15A-1023(b); *State v. Wallace*, 345 N.C. 462, 480 S.E.2d 673 (1997) (trial court permitted to reject plea agreement to second-degree murder that included specific sentencing recommendation); *State v. Hudson*, 331 N.C. 122, 415 S.E.2d 732 (1992). If the judge rejects a plea arrangement, he or she must give the defendant an opportunity to withdraw the plea of guilty. G.S. 15A-1024. If the trial judge rejects the plea offer, the defendant is entitled as a matter of right to a continuance. *State v. Tyndall*, 55 N.C. App. 57, 284 S.E.2d 575 (1981); *see also State v. Martin*, 77 N.C. App. 61, 334 S.E.2d 459 (1985) (defendant must affirmatively ask for continuance).

Limits on judge's discretion to reject plea. A judge may not reject a plea agreement that does not involve a sentencing recommendation unless there is no factual basis for the plea or the judge believes the plea is not a voluntary and informed decision by the defendant. G.S. 15A-1023(c); *State v. Melton*, 307 N.C. 370, 298 S.E.2d 673 (1983) (judge required to accept plea to second-degree murder where there was a factual basis for plea and plea was voluntary—judge retained sentencing discretion); *State v. Lineberger*, 342 N.C. 599, 467 S.E.2d 24 (1996) (trial judge erred in rejecting plea to second-degree murder in potentially capital case because trial judge believed plea rendered death penalty scheme arbitrary—defendant entitled to reinstatement of plea offer). Note that the court still may reject the plea if it determines that the defendant is not entering the plea voluntarily. If the judge seems unhappy with a plea arrangement, advise your client to be careful not to say anything that would give the judge reason to reject the plea as involuntary.

AFFIDAVIT BY JANET SMITH

The following affidavit is yet another witness D.A. Panosh threaten, in an attempt to encourage her to lie against Ronnie Kimble.

Ronnie,

Please guard this with your life and use it wisely. I'm tired of having to relive this after 400 years. It took a while for me to write because it brought back the most painful chapter in my life. You, more than anyone, know that I lost everything that meant anything to me.

8 August 1999

This is my, Janet Lynne Smith, account of my relationship with Ronnie Lee Kimble

I'm not sure in which month I met Ronnie. It was either August or October of 1997. I believe it to be in October because I was on medical leave during the month of September and upon returning to my job was assigned almost exclusively to his floor.

Prior to meeting Ronnie in October of 1997, I had been working mostly on "A" floor which housed female inmates and female pre-trial detainees.

Beginning in early March of 1997, I began to have an affair with my platoon Sergeant, Sergeant Mark Faucette. Because he was married and because his wife was pregnant, I was uncomfortable with this relationship from the start. Early on I had asked Sgt. Faucette that, if our relationship ended, would he allow me to seek transfer to another platoon. He told me that he would hate to lose me as an officer but that he was impressed that I would do that for the sake of work relations and he would not stop my request should it arise. Unfortunately, it wasn't long before Sgt. Faucette's attitude at work changed. I believed that it was a way to distance his professional and private life so, at the time, thought nothing of it.

During my first few months of working with the Guilford County Sheriff's Department, I learned many facets of the position. Lt. Jeff Rollins gave me an opportunity to work various positions on the ground floor as well as giving me further training on "A" floor. At one point, I was assigned to "B" floor, which housed approximately 112 males, because the department had a new female trainee on "A" floor. Since I had been in the job about two months, I was unsure of my job abilities and asked for a male guard to work with me. My request was denied and various radio transmissions for assistance went unanswered. Eventually, I stayed in the officers office on "B" floor and did not work the blocks at all because the male inmates were refusing to listen to a female officer. When Lt. Rollins and Sgt. Faucette did come to the floor, they would go into the blocks and crack jokes with the male inmates about a female working in a man's job. Later in the shift, I told them that I felt that comments of that sort were unnecessary and that comments such as that to the inmates undermined my job authority with the male prisoners. They laughed and said that I should not take life so seriously and should have thought about the job requirements before I accepted the position.

After approximately six months in my position, I received my first job performance evaluation. I thought it was pretty good although it did name areas in which I needed improvement but, being new, I expected that. I was pleased to read in the written comments that Lt. Rollins had committed himself to working with me in those areas so that I could improve.

It was also around the time of my review that I decided to formally end my relationship with Sgt. Faucette although we hadn't seen each other in months. Unknown to me, my job was essentially over at that point.

Although our platoon had a Corporal, we were instructed to seek out the Sgt. if we needed any type of assistance. This was particularly difficult for me because Sgt. Faucette would not answer my radio calls or my inner office telephone calls. If a detailed report was necessary due to an incident on the floor, I would include that I had tried unsuccessfully to reach the Sgt but that the Lt or Cpl. had answered. These reports always seemed to get lost.

By the time that I met Ronnie Kimble, the stress and ostracism created by my entire platoon was beginning to take a toll. I believe that I met Ronnie in October because my doctor's put me on a four week medical leave in September due to complications from stress. Stupidly, I thought that after a four week absence the problems at work would have vanished. To my surprise, they had only intensified.

Prior to my medical leave, I had asked for a platoon transfer on several occasions. These were always denied for various reasons. Part of the agreement for my medical leave was that I would visit the department psychologist to determine if I was fit for duty and, upon my return, I was to have a meeting with Sgt. Faucette and Major Nesbit to "work out my differences with Sgt. Faucette". However, regardless of the problem, a transfer would not be granted because Sgt. Faucette refused to agree to it and it was up to me to solve the "personality differences".

Close to the end of my medical leave, I visited Dr. Michael Cutler , the staff psychologist, as my agreement stipulated. When I initially sat down with him, I asked him how much of what we discussed in our interview would be reported back to the department. He told me that none of the talk would due to doctor-patient confidentiality but that he was required to report if I was capable of performing my job without putting myself or others in danger. Immediately, I told him that I would waste little of his time and would give him the bottom line and what was causing the problem. I explained in full detail of my affair with Mark Faucette and of the turmoil, duress, and pressure that he was putting me under since I had ended the relationship. Dr Cutler was very frank and stated that I had gotten myself very deep into a situation that was probably going to be impossible to get out of. His advice was that, upon my return, I be forthright with the Major and with Mr. Barnes and tell them what had been happening, why I was continually asking for a transfer, and why Sgt. Faucette kept me under constant harrassment. Although I thought over this line of defense, I quickly discarded it because I was still reluctant to cause any problems either at home or at work for Mark. At the time, it was my belief that the problem could either be worked out or that a transfer could still be generated. Dr. Cutler expressed his doubts over that chosen course but told me that the decision had to be made by me and that I was the one who had to live with the consequences of my actions. He also advised that at some point the relationship would probably be made public because he felt that, since I continued to cover Mark's back in the whole situation, Mark would continue to harrass me on the job and, over time, the harrassment would get worse. It was my sincere belief that Mark was human enough to let the reallionship go and, upon my return, our professional relationship would resume as if nothing had happened.

On my first day back in early October, it was immediately evident that the department was working towards forcing me out. I valued my job and my title so greatly

that I felt that if I stood my ground and appeared as if they were not bothering me, they would eventually give up.

During my absence, there was an employee departmental meeting in which another officer asked about my health. That officer was told by Lt. Rollins that my name was not to be spoken because I was an instigator, a troublemaker, and the county would be better off without the likes of me.

When I returned to the job, after entering the secured facility, I and my belongings were immediately searched for contraband. Rather than objecting, I let the incident pass because I felt that it was a test. About 1000 I was summoned, along with Sgt. Faucette, to Major Nesbit's office. Still living on unrealistic expectations, I had envisioned a formal, civil personnel meeting. Obviously being unprepared, I was completely blindsided by Sgt. Faucette. Since he was a platoon leader, Mjr. Nesbit gave him first chance to speak. Sgt. Faucette immediately began by saying that he had refused me a transfer to another platoon because he wouldn't wish that on another Sgt. or Lt. He further stated that I was a bitch, a troublemaker, and that no one on the squad liked me because I constantly tried to instigate confrontations between employees. My eyes welled up with tears and I asked the Mjr. if he was going to allow the Sgt. to speak to me in that manner. The Mjr. said that the Sgt. was speaking his mind and that he had the right to air his dissatisfaction. The Mjr. also wanted to know why I felt the Sgt. might intentionally lie to cause me trouble. At that point, I was very tempted to tell the entire department of the affair but I still held my tongue. Once again, I expressed my desire for a change of squads. Again, it was denied but now the Mjr. stated that I would be placed on probation for another three months and that Sgt. Faucette would be required to do an employee evaluation every month. I expressed my concern that this was unfair because my problem was with Faucette. I would not object,

however, to a monthly review by Lt. Rollins. The Mjr stated that I had to take the agreement as written or I was out of a job.

Once more, I decided to swallow my anger and let the department have its way. It was now "policy" that every time I entered or exited the building, went to a floor, returned to the main floor from an inmate floor, or when the supervisors felt it necessary, I and my belongings were to be searched. There were several times that I would be on the catwalk making required security checks, return to the "guard shack" and find that someone had searched my belongings in my absence. I wrote a letter of dissatisfaction to the acting jail ^{CAP 15} Lt. Brenda Pace, that I felt it was an invasion of my privacy and I had never given anyone any reason to suspect me of any wrong or illegal activity. Ms. Pace stated that because I was on a secured property, the department had the authority to search who they wanted, when they wanted, and in any way they felt it necessary. Because of the nature of the business, it was not required that I be present or be notified that my bags, including purse, be searched. Taking note of my surroundings, it was evident that no one else was searched regardless of what they brought in.

It was sometime in the first two weeks of October that I met Ronnie Kimble. I had gone to "D" floor to relieve an officer for either a dinner break or a quick ten minute break. It was a job requirement that all inmates on suicide watch be monitored every 15 minutes. At this time, Ronnie was on suicide watch. I had never heard of the Kimbles or of their case and was not particularly interested in learning anything about either. When I went by Ronnie's cell, something caught my eye, although 2 years later I have no clue as to what it was. I stopped and asked if he was okay and he assured me that he was, that he was only thinking or writing, I don't remember which. I continued to make my rounds.

I had only been back at work for a short time but the harrasment and alienation was already taking its toll. Although I was routinely called to "D" floor to relieve officers or to "A" floor to assist the officer assigned there, my breaks, including meal breaks, were routinely "forgotten". There was always the excuse

that they (the Lt. or Sgt.) "thought" someone had come to the floor but, since they didn't, it was now too late for any type of break. One evening, I relieved the officer on "A" floor for two and half hours while she and Lt. Rollins played computer golf in Captain Montgomery's office. When the officer finally came back to the floor, I was advised that there was no time left for me to have a dinner break. Another evening, I relieved an officer on "B" floor so that he, Sgt. Faucette, and Lt. Rollins, could hook up HBO in the booking office for porno movies. I was on that floor for over an hour and then was refused any break time for myself. Incident's such as these caused me to begin bringing meals with me and that instigated more searches.

It was during this time that I happened to have a lengthy discussion with Ronnie Kimble one evening. "D" floor was unusually quite and the floor officer had been on break for about an hour. During a regular round, I noticed that Ronnie looked upset and I asked if he was okay. He stated that he was but that he really missed his family and his wife who was pregnant with their second child. Ronnie was particularly concerned about his wife who had already miscarried on baby. I asked him if he would like for me to request a visit from the Chaplain or if he wanted to put in a request to visit the mental health doctor. He said no. I told him that any officer would be glad to talk to him if he had feelings of despair and that he needed to trust in God to help him through his current ordeal. His answer was that other officers had told him that, if he wasn't guilty, he wouldn't be where he was. I told him that that was not my belief that I did not pass judgement on any person in my custody but neither did I want to know any facts of his case. He came back with a smart answer of "Once a cop, always a cop and I've been screwed by too many." I told him whatever but that if he needed someone to talk to he could request that I come to the floor or put in a request for either the Chaplain or the mental health staff.

At some point soon after that, he did request that I come to the floor. He was excited about his family standing outside the jail with a banner and balloons expressing

their love and concern for him but he was also depressed because he couldn't be with them. We talked for a few minutes and I returned to my floor. There were several incidents such as this but I placed no value on them because I used to talk with my female inmates in the same manner. It also did not occur to me that this was wrong because my Corporal (Ralph Robinson) would spend several hours each evening on the female floor, in the blocks, talking to a girl he went to high school with. This girl was also charged with first degree murder but the Corp. always said that he knew her family and felt that he had to "look out for her."

After several times of Ronnie asking for me to come to the floor, the other officers on my platoon, including my Lt. and Sgt., began referring to him as my "boyfriend". I asked them to stop calling him that because it looked bad on me. I pointed out that he was only an inmate, he was married, and that I did no more for him than I did any other charge. I felt that it was part of my job to assist a person who felt the need for help, especially if they would not seek professional assistance, because I would not be too happy to find that one of my charges had committed suicide because I could not take five minutes of my time to offer a kind word. When I expressed views similar to this in my job interview, I was labeled "compassionate"; after my termination, I was told that this view was "not judgemental enough". I did realize that there were lines that could not be crossed but I had no intention of crossing those lines at any time.

Sometime within the next few days, I was doing a head count in the block during my shift when Ronnie passed me a note under his door. The door was closed and secured. The note was suggestive but I don't remember the exact contents because Ronnie asked that I give it back to him once I had finished reading it. I replied to that letter on the bottom of his letter and returned the paper to him. It was then that we started corresponding by notes. All the notes were sexual in nature and suggested ways that we could have a sexual relationship without getting caught. In one letter I told Ronnie that it would look strange for me to have him out on the floor and suggested that he ask for his cell to be

moved to a back block where cameras did not monitor activities. It was in this letter that I told Ronnie how far the camera eye would reach and how we could stay out of its range. This is also the letter that resulted in my being charged with aiding and abetting an escape. The idea that I would try to help anyone, regardless of who it is, escape from the county jail is preposterous. It is virtually impossible to escape from that facility without being caught. Not only would I have to get Ronnie through a secured elevator, I would also have to get him through several remote operated doors - all of which are operated and monitored by another officer in master control.

After corresponding with Ronnie for several weeks, Sunday, 16 November, 1997, I was working "D" floor with Officer Joe Bishop. When I went to give the inmates their hour out, I realized that Ronnie was due his hour. As he came out of his room, he told me that he needed soap before he could shower. I knew that I had to take the soap into the day room where Ronnie would be in various stages of undress. After getting the soap from the office, I asked Mr. Bishop to walk back to the block with me so that no one could say that I was alone with Ronnie Kimble. Mr. Bishop and I entered the day room through the main entrance to that particular area and found Ronnie on the phone. He walked toward me and I to him while Mr. Bishop stood in the doorway. As Ronnie took the soap from me, he said "I think I've figured this out. When my hour is up, you come to put me up." I was surprised, excited, scared, and curious but I did as he asked. When I opened the electronic door that goes into the main block of cells, Ronnie did not come through the day room door. I called his name three times and he did not respond. Thinking he was still in the shower, I walked 3/4 of the way down the hall and called his name again. When he did not answer, I stepped into the day room to tell him his time was up and that others were due their time.

Ronnie came around the corner of the shower stall and was clothed only in a towel. We exchanged a kiss but he did not touch me in any other way nor did I touch him. He told me that we should not linger because of the risk of getting caught so I went back to the front of the block, with him following me, and locked him in his cell. At no time did I feel threatened or at harm because all other inmates were secured. I believe that we exchanged notes later that day but, as it was Sunday, I was off the next two days.

When I returned to work on 19 November 1999, I arrived at the jail early and went to Ronnie's room to take him something (I don't remember what). The female officer working that floor, Denise McLean, saw me and told me that I was not allowed on that floor unless I was working it. I advised her that (1) she was not on my platoon, (2) she was not my supervisor, and (3) it was none of her business. She said that she would see. Ms. McLean had previously been on my platoon and was caught having an affair with Lt. Rollins and had believed that I was the one who initiated her transfer, his transfer to High Point, and had also told Lt. Rollin's wife. I was not the one since I was in a similar situation. When she got off at 0700, she immediately went to my Lt., Lt. Gail Bennett who had replaced Lt. Rollins.

Not long after, I was called to Lt. Bennett's office and asked if I had been on "D" floor prior to my shift. I told her yes. She told me to be careful that it did not look good and that it was also unnecessary. I told her that I would refrain from unauthorized visits in the future. Lt. Bennett advised me that I was a good officer and I knew that lines could not be crossed. I expressed my concern over the obvious vendetta that Sgt. Faucette had taken against me. She said that she would not discuss anything about him or personnel issues surrounding him without him being in the room. I told her that I understood but that I was concerned about job safety.

Not long after, Sgt. Faucette came to my floor (A), which he had not done in months, stood in the office door and laughed. I asked if he had a problem. He told me that he was "waiting for the showdown". Figuring that he was just being stupid, I went back to the report that I had been writing.

Within minutes, Lt. Bennett and Lt Williamson, came into the office and asked me to get my belongings and report to the conference room. I followed them to the conference room where Lt. Ben Scarborough was waiting for me. In his hands, he had the letters to Ronnie. He asked if I had written them and I said yes. He wanted to know why I wasn't denying it and I told him that it was hard to deny something in your own writing. Lt. Scarborough then pulled out a paperback book and wanted to know when I had given it to Ronnie. I told him that I had never seen that book. He then produced Disney stickers and wanted to know why I had given him those. I told him that I didn't recognize those either. His comment was that "You won't deny something in your writing but you'll deny everything else, huh?" I told him that I refused to admit to something that I didn't do. Inside the book, he had pictures of me that were found in Ronnie's room. He asked how Ronnie got those. I told Lt. Scarborough that they must have planted. He wanted to know who would try to frame me. I gave them Mark Faucette's name. Lt Scarborough just laughed and said that "Mark isn't that kind of officer." I said "Let me tell you the kind of officer he is then." I gave him full detail of our affair, of all the harrasment by Faucette, and everything else that had been happening in the facility. Lt Scarborough said that he didn't believe me. My answer was "I don't give a shit what you believe." He then tried to scare me by telling me that they would give Faucette a lie detector test. I told them to do what they had to do. Scarborough wanted to know how often Ronnie and I had had sex and I told him never. He said that the truth would eventually come out and I said "That is the truth." He walked out.

I was left in the conference room alone for about 45 minutes. Eventually Sgt. David DeBerry came in to talk to me. He said that he and his Lt., Grady Bryant, had been going over the letters from me to Ronnie and felt that there was no evidence to prove that we actually had had a relationship. Sgt. DeBerry asked

if I still had the letters from Ronnie. I told him that I did but that they were at my house. He left. When he came back in a few minutes, he had Lt. Bryant with him. Lt. Bryant told me that we were all riding to my house to get the letters. When we arrived at my house, Lt. Bryant and Sgt. DeBerry waited in the car while I went in and got the letters. There were six and Sgt. DeBerry gave me a receipt for these. Once this was done, we went back to the jail.

Once back at the jail, I was again left in the conference room for about an hour. Then DeBerry came back in and said that Mr. Barnes wanted to speak with me but that he felt that there was no need for any further criminal investigation. I would be terminated but the matter was over. When B.J. Barnes came in he had an advisory staff. I don't remember who was there, except for Scarborough, because I was so upset. Mr. Barnes told me that I had violated the security of the department and had made a mockery of the job in every way. He then informed me that I was fired. Mr. Barnes felt that he needed to protect the staff on duty so he had Capt. Montgomery, Lt. Williamson, and some no name Sgt. escort me to the car.

Since October 1995 I had been dating a Sgt. in the personnel division. Sgt. Tim Mabe whom I had met in Jail Officer's Training School. When I was terminated, the department informed him first so that he would not be shocked at any rumors he heard and to give him a chance to decide if he still wanted to date me. After my termination, Sgt. Mabe and I continued to date through April 1998 although our relationship became more strained with time.

Through things that Sgt. Mabe would tell me, I knew that he was having a hard time at the department due to rumors, gossip, and general joking concerning me, Ronnie, and Faucette. In early February, Sgt. Mabe called me at work and wanted me to come to his house for dinner. According to him, he had something that he wanted to show me. The dinner invitation was not unusual so I readily accepted and told him that I would be there around 1730. After dinner, Sgt. Mabe and I went to the den to watch television while his daughter cleaned the kitchen. I asked him what the big surprise was and he said that he had a video that he wanted me to watch. As the tape started to roll, I could tell that it was a home video and asked him what it was. He told me to watch closely and pay special attention to everything I saw.

Sgt. Mabe was involved in producing a show for Guilford County called "Sheriff's Beat". I thought that what I was watching was footage for the upcoming segment. Sgt. Mabe said, "No. You need to see what your angel really did." I asked him what he was talking about. He said that the video that we were watching was crime scene video from Patricia Kimble's house and that I needed to see it to see what kind of person Ronnie Kimble truly was and that he also wasn't smart enough to make it look like a real robbery. At one frame, Sgt. Mabe stopped the tape and asked if I knew what I was looking at and I said no. He advised me that I was looking at the remains of Patricia's body. I asked Sgt. Mabe how he got a copy of that tape and he told me that he was in charge of video production and that he could get tape footage of anything he wanted. Following the crime scene video was an interview with Ted Kimble from channel 2 news. Sgt. Mabe told me to watch Ted's body language and the phrasing of his words and that would be all I needed to prove his guilt. I told Sgt. Mabe that Ronnie Kimble was not my "angel" but that I did like him and would not pass judgement on him or anyone else. Mabe's reply was that the Kimble's had sealed their own fate and got what they deserved.

Sgt. Mabe and I broke up for the final time in April of 1998. The reason that he gave for terminating the relationship was that he couldn't handle the rumors and that something big was in the works. About 3 weeks later a formal indictment was handed down for my arrest.

I was indicted in May of 1998 and voluntarily surrendered. I met with detective Jim Church to be fingerprinted and have my mug shots taken. Through my first attorney, Richard Panosh stated that I would not be prosecuted if I would testify that Ronnie Kimble had confessed to me. I told Dick Panosh that I would not testify to something that had not happened. My attorney and Panosh told me that Ronnie would do it to save himself if the shoe was on the other foot. My reply was that I doubted it but that I still couldn't, in good conscious, lie. Not long after, Panosh informed me that he was seeking a conviction of 7 years in a state facility.

Soon thereafter, I changed from an employment attorney to a criminal defense attorney

Since my termination in November 1997, I had written Ronnie once. I mailed him a note the day after I was terminated to let him know the reason for my termination and to tell him to be careful of retaliation by other deputies. This letter was confiscated and, though eventually given to him, Ronnie did not respond. When Ronnie was convicted in 1998, I wrote him again and told him of my concern for him and his family and to tell him that I was sorry because he had his hopes set on an acquittal. The second time I wrote Ronnie was in November 1998 to tell him of my sentencing. He did not respond to either letter and I did not hear anything from him until January 1999.

Since my arrest, trial by media and society, and conviction, I have been judged by society and blackballed by the sheriff's department. When I was terminated by the department, Lt. Scarborough told me that I would not work in NC again. I assumed that he meant law enforcement and, therefore, was not surprised when part of my sentencing included having to permanently suspend my license in the state of NC. However, I have been able to get jobs only through temporary placement agencies. If a company asks me to fill out an application for a permanent position, the offer is quickly rescinded when they find out that I worked for the department, was fired, and why. Because of my indictment, I was terminated from two temporary jobs because the companies feared the media publicity. I am a virtual prisoner in my own home because I fear going out, being recognized, and having to face the ridicule that has haunted me for two years. In my current position I was lucky enough to have a supervisor that liked me well enough to tempt the criminal record. However, when she found out who I was, she could quote the case almost verbatim. And when the reference had to come from the department, Human Resources was given information that was really "more than legally necessary."

I have been emotionally scarred from this ordeal. Although I did write letters to Ronnie Kimble that were sexual in nature, I am not and never have been guilty of any of the other charges that are associated with my name. The BS that I earned in Law and Policy Studies at Guilford College is basically worth nothing. My salary has been cut by over 14k dollars. I lost a career that I truly loved and strived for. As I was advised, if it had been any inmate but Ronnie, I would never have been prosecuted. My life is completely ruined and the only way to undo that is to leave NC. This case is almost two years old and it hurts as if it were yesterday. I am constantly looking over my shoulder and looking for hidden meanings in conversations with people. There is no one I trust and no one that I will spend any time with for fear that any interaction will be used against me at some point in time. The people that did consider me a friend, or visa versa, will no longer speak to me. If it weren't for the fact that I have to work to support myself, I would never leave the house. Sheriff Barnes has always said that he has a video tape of Ronnie Kimble and I having sexual intercourse but has yet to produce such a tape. With the knowledge of video production that Sgt. Mabe has, it would not surprise me to find that a tape had been edited to look like Ronnie and myself.

Janet Smith
14 Aug 1999

Det. James Bowman : Proof of Perjury

D.A. Richard Panosh : Proof of Perjury

: Early Release of William W. Stewart

(Summary)

Detective James Bowman testified inmate William Stewart was serving a prison sentence of 10 to 12 months for an auto larceny conviction. Det Bowman said Stewart had less than a month left of his sentence to serve (TTP 10.18-25). Det. Bowman acknowledged William Stewart's sentence was amended, and that he was released early from prison. Det Bowman said, "Probably five days prior to his predicted release date." (TTP 11.1-9) Stewart didn't receive any money, but was released early (TTP 11.23-25).

D.A. Richard Panosh spoke up and stated, the state would stipulate it was involved in the early release of William Stewart. D.A. Panosh also said, he had presented a motion to Judge Freeman to reduce Stewart's sentence by a short period of time. D.A. Panosh claim this action was taken so Stewart wouldn't be in prison at the time the warrant was served (TTP 12.1-10).

In closing arguments D.A. Panosh said Stewart was released about two weeks early for the sole purpose of allowing law enforcement to execute the search warrant, that no promises were made to Stewart (TTP 217.5-15).

(FACTS)

First, Det James Bowman lied about why Stewart was in prison, and the length of his sentence. Then both Det. Bowman and D.A. Panosh lied about how much time was cut from Stewart's prison sentence.

Second, William Stewart lied when he wrote the Guilford County District Attorney's Office making the claim that Theodore (Ted) Kimble had solicited him as a hit-man. Stewart claimed he was offered \$100,000 dollars, yet Ted couldn't afford his own Defense Counsel. "Stewart made these claims so he could get out of prison early."

The follow Exhibit is a copy of William W. Stewart's N.C. Dept. of Corrections Criminal Record. Page 4 of 9, clearly shows Stewart was in prison for larceny (over \$200), serving 8 months minimum to 10 months maximum sentence. This document also shows Stewart's sentence began on 7/22/1998, was AMENDED, and Stewart was released on 12/17/1998. Now, Twelve minus seven equals five. That means Stewart served only five months on an eight month minimum sentence. This evidence proves Stewart had at least 3 MONTHS left to serve, and that D.A. Panosh and Det Bowman lied to the Court.

The actions taken by the State were illegal and against policy. The policy is that William Stewart was to be placed on "Protective Custody" control status, and moved to another institution, for his protection. NOT to be released from prison 3 months early! During the Sentence Hearing Det Bowman testified that he didn't even know where Stewart was at.

Michael Hollman, Jamie Gayles, Gary Durham, and Rodney Mclean were inmates also housed at Southern Correctional. They testified that Stewart was a habitual liar, and had bragged about robbing Ted's locker of stamps, and a radio, and legal papers.

Detective James Bowman

Transcript Testimony / Handwriting of William Stewart

TTP.64. 16Q. Show you now TK-3. what is that, please?

17A. TK-3 is a document that was also provided by
18 Stewart. It was a document that Stewart stated was in
19 his handwriting where he made some notes during a
20 conversation with Kimble. And that was where he made the
21 notes where he referred to the potential ways of doing
22 the murders, electrical wiring, robbery motive, rape,
23 double suicide, murder/suicide, kidnapping, ransom gone
24 bad, and Satanic cult victims. And he also made two
25 notations of amounts of money. One was \$100,000 and one

TTP.65. 1 was \$50,000, which he stated was amounts of money that
2 was discussed in his conversations with Kimble.

(FACTS)

Defense Counsel never showed the Defendant any case discovery on these charges. Of all the exhibits, this was the only piece of evidence which spoke of any physical harm or violence, yet Det Bowman testified that William Stewart admitted he had written it himself.

Note Stewart's claim of payment was to be \$50,000 or \$100,000 dollars, but Kimble couldn't afford his own Defense Counsel.

Detective James Bowman Transcript Testimony Pages 56-74
District Attorney Richard Panosh Transcript

Tip. 70. 18-Q. What was Stewart incarcerated for, and how much
19 time was he to be there?

20-A. Stewart was incarcerated on an auto larceny
21 conviction, and he was serving a 10 to 12 month sentence.

22-Q. How much time did he have left to serve at the
23 particular time he reported this?

24-A. As I recall, less than a month.

25-Q. Did he -- was he released from prison at the time

Tip. 71. 1 of his release date, or before or after?

2-A. He was released before his release date.

3-Q. Why was he released early?

4-A. There was an amended order from his sentence, and
5 he was released a few days early. Probably five days
6 prior to his predicted release date.

7-Q. Do you have a copy of that order, and what was the
8 basis of amending an order releasing him early?

9-A. No, I don't.

(Cont.)

23-A. He didn't receive any money.

24-Q. But he did get out of prison early?

25-A. Yes, sir.

TTP. 72. 1-Q. Do you know whether or not the SBI was in any way
2 involved in him being released early?

3 Mr. Panosh: We'll stipulate it was. We'll
4 stipulate that I presented a motion to Judge Freeman.
5 Judge Freeman reduced his sentence by a short period of
6 time so the search warrant could be served on December
7 22nd, and Mr. Stewart would not be in prison at the time
8 the warrant was served.

9 The Court: Let the record show the State
10 stipulates to the facts enunciated by the prosecutor.

D.A. Richard Panosh closing statements pages 214-218

TTP. 217.5. Your Honor, Mr. Stewart did get early
6 release. He was released, all the evidence shows he was
7 released about two weeks early for the sole purpose of
8 allowing us to go down there and execute that search
9 warrant and getting him out of that prison facility.
10 There's not one shred of evidence to show that before he
11 made this statement he had any promises. And he
12 certainly had no promise of early release. And Your
13 Honor knows that the law requires that if there was a
14 promise, we would have had to disclose it to counsel. We
15 haven't done so because there was no promise.




North Carolina Department of Correction Public Access Information System

W3C WAI-A
WCAG 1.0

Instructions: Here is the information you have requested for this offender.
(Note: Click here to view an Explanation of Terms and Data Elements used in the summary boxes.)

Data current as of 2:00 AM EST on: 11/02/2004

General Summary Information			
DOC Number: 0390846		Inmate Status: ACTIVE INACTIVE	
Name(s): STEWART, WILLIAM W.		P&P Status:	
Demographics			
Gender:	MALE	Race:	BLACK
Age:	31	Birth Date:	11/23/1972
			

Most Recent Incarceration Summary	
Conviction Date: 09/17/2001	Total Term: 17 YEARS 7 MONTHS
Projected Release Date: 07/11/2017	
Primary Offense: HABITUAL FELON (PRINCIPAL)	
Admission Date: 09/26/2001	Admitting Location: CENTRAL PRISON
Special Characteristics: REGULAR	
Custody Classification: MEDIUM	Next Custody Review Date: 11/30/2004

Control Status: REGULAR POPULATION	Next Control Review: UNKNOWN
Number of Infractions: 8	Last Infraction On: 06/02/2004
Current Location: NASH CI	
Previous Location: HYDE CC	
Last Movement: RECEIVED FROM HYDE CC	On: 10/21/2004
Prior Incarcerations? Y Detainers? Y Escapes? N	

Most Recent Probation and Parole Summary	
Status:	CLOSED
Office of Supervision:	DISTRICT 21 UNIT F
Crime:	POSSESSING STOLEN GOODS (PRINCIPAL)
Crime Type:	MISD.
Punishment Type:	INTERMEDIATE SS

**The sentence history for the offender follows.
Incarceration records are light blue; Supervision records are light green**

Incarceration Record for Sentence Number: BE-001					
Commitment Type:	INMATE				
Conviction Date:	09/17/2001	County of Conviction:	FORSYTH		
Service Status:	ACTIVE	Sentence Status:	ACTIVE		
Projected Release Date:	07/11/2017	Sentence Begin Date:	09/17/2001		
Actual Release Date:					
Punishment Type:	ACTIVE SS				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Sentence Type 2:	HABITUAL FELON				
Minimum Term:	14 YEARS	Maximum Term:	17 YEARS 7 MONTHS		
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	00040347	HABITUAL FELON (PRINCIPAL)	07/15/2000	FELON	CLASS C

Incarceration Record for Sentence Number: BE-002					
Commitment Type:	INMATE		County of Conviction:	FORSYTH	
Conviction Date:	09/17/2001		Sentence Status:	ACTIVE	
Service Status:	ACTIVE		Sentence Begin Date:	09/17/2001	
Projected Release Date:	07/11/2017		Actual Release Date:		
Punishment Type:	ACTIVE SS				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Sentence Type 2:	HABITUAL FELON				
Minimum Term:	14 YEARS		Maximum Term:	17 YEARS 7 MONTHS	
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BE-001	00056714	HABITUAL FELON (PRINCIPAL)	07/15/2000	FELON	CLASS C

Incarceration Record for Sentence Number: BE-003					
Commitment Type:	INMATE		County of Conviction:	FORSYTH	
Conviction Date:	09/17/2001		Sentence Status:	ACTIVE	
Service Status:	ACTIVE		Sentence Begin Date:	09/17/2001	
Projected Release Date:	07/11/2017		Actual Release Date:		
Punishment Type:	ACTIVE SS				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Sentence Type 2:	HABITUAL FELON				
Minimum Term:	14 YEARS		Maximum Term:	17 YEARS 7 MONTHS	
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code

CONCURRENT TO SENTENCE NUMBER BE-001	01015634	HABITUAL FELON (ATTEMPTED)	07/15/2000	FELON	CLASS C
---	----------	-------------------------------	------------	-------	---------

Supervision Record for Sentence Number: 02-001					
Commitment Type: PROBATION/PAROLE					
Conviction Date: 09/16/1999			County of Conviction: DAVIE		
Punishment Type: INTERMEDIATE SS					
Sentence Type 1: PROBATION					
Sentence Type 2: SUSPENDED SENTENCE					
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	99003435	POSSESSING STOLEN GOODS (PRINCIPAL)	04/21/1999	MISD.	CLASS 1 MISDEMEANOR SS

Incarceration Record for Sentence Number: BD-001					
Commitment Type: INMATE					
Conviction Date: 07/22/1998			County of Conviction: SURRY		
Service Status: EXPIRED			Sentence Status: AMENDED		
Projected Release Date: 12/17/1998			Sentence Begin Date: 07/22/1998		
Actual Release Date: 12/17/1998					
Punishment Type: ACTIVE SS					
Sentence Type 1: DEPT OF CORR DIV OF PRISONS					
Minimum Term: 8 MONTHS			Maximum Term: 10 MONTHS		
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	98000523	LARCENY (OVER \$200) (PRINCIPAL)	01/17/1998	FELON	CLASS H

Incarceration Record for Sentence Number: BA-001					
--	--	--	--	--	--

Commitment Type: INMATE
Conviction Date: 09/17/1990 **County of Conviction:** FORSYTH
Service Status: EXPIRED
Projected Release Date: 09/11/1995 **Sentence Begin Date:** 09/17/1990
Actual Release Date: 09/11/1995
Punishment Type: FAIR FELONS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Sentence Type 3: REGULAR PAROLE
Sentence Type 4: COMMITTED YOUTHFUL OFFENDER
Minimum Term: **Maximum Term:** 10 YEARS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	90017248	RECEIVING STOLEN GOODS (PRINCIPAL)	04/29/1990	FELON	CLASS H

Incarceration Record for Sentence Number: BA-002

Commitment Type: INMATE
Conviction Date: 09/17/1990 **County of Conviction:** FORSYTH
Service Status: EXPIRED
Projected Release Date: 09/11/1995 **Sentence Begin Date:** 09/17/1990
Actual Release Date: 09/11/1995
Punishment Type: FAIR FELONS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Minimum Term: **Maximum Term:** 10 YEARS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BA-001	90016270	AUTO LARCENY (PRINCIPAL)	04/23/1990	FELON	CLASS H

Incarceration Record for Sentence Number: BA-003

Commitment Type: INMATE
Conviction Date: 01/18/1990 **County of Conviction:** FORSYTH

Conviction:

Service Status: EXPIRED
Projected Release Date: 03/29/1991
Actual Release Date: 03/29/1991
Punishment Type: FAIR FELONS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Sentence Type 2: PROBATION REVOCATION
Sentence Type 3: REGULAR PAROLE
Sentence Type 4: COMMITTED YOUTHFUL OFFENDER
Minimum Term:

Sentence Begin Date: 07/12/1990

Maximum Term: 2 YEARS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BA-001	89038115	POSSESS SCHEDULE II (PRINCIPAL)	10/21/1989	FELON	CLASS I

Incarceration Record for Sentence Number: BA-004

Commitment Type: INMATE
Conviction Date: 10/30/1992
Service Status: EXPIRED
Projected Release Date: 09/19/1993
Actual Release Date: 09/19/1993
Punishment Type: FAIR MISDEMEAN
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Minimum Term: 2 YEARS
County of Conviction: DAVIDSON
Sentence Begin Date: 10/30/1992
Maximum Term: 2 YEARS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BA-001	92015181	LARCENY (OVER \$200) (PRINCIPAL)	10/06/1992	MISD.	MISD.(PRE-STRUCTURE)

Incarceration Record for Sentence Number: BA-005

Commitment Type: INMATE

Conviction Date: 10/30/1992 **County of Conviction:** DAVIDSON
Service Status: EXPIRED
Projected Release Date: 12/08/1994 **Sentence Begin Date:** 09/19/1993
Actual Release Date: 12/08/1994
Punishment Type: FAIR MISDEMEAN
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Minimum Term: 2 YEARS **Maximum Term:** 2 YEARS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONSECUTIV TO SENTENCE NUMBER BA-004	92015180	RECEIVING STOLEN GOODS (PRINCIPAL)	10/06/1992	MISD.	MISD.(PRE-STRUCTURE)

Incarceration Record for Sentence Number: BA-006

Commitment Type: INMATE
Conviction Date: 05/19/1993 **County of Conviction:** DAVIDSON
Service Status: EXPIRED
Projected Release Date: 10/11/1997 **Sentence Begin Date:** 12/08/1994
Actual Release Date: 10/11/1997
Punishment Type: FAIR FELONS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Sentence Type 2: COMMITTED YOUTHFUL OFFENDER
Minimum Term: **Maximum Term:** 5 YEARS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONSECUTIV TO SENTENCE NUMBER BA-005	92016246	LARCENY (OVER \$200) (PRINCIPAL)	10/02/1992	FELON	CLASS H

Incarceration Record for Sentence Number: BA-007

Commitment Type: INMATE

Split Sentence Active 6 MONTHS
Term:

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	89013801	UNAUTHORIZED USE OF CONVEYANCE (PRINCIPAL)		MISD.	MISD.(PRE-STRUCTURE)

[Back](#)

Disclaimer

Every effort has been made to report accurate and complete information. Any questions concerning the accuracy of this information should be submitted, in writing, to the North Carolina Department of Correction, c/o Public Information Office, MSC 4202, Raleigh, NC 27699-4202. Any misuse of this information is strictly prohibited and violators are subject to prosecution.

This page has been accessed 15,348,474 times since 05/06/2003.

[[NC DOC Home Page](#) [Main Menu](#)]

©2002 North Carolina Department of Correction.
 All rights reserved.

Revision: 1.19
 Send comments to webmaster@doc.state.nc.us

TO: THE GRIEVANCE COMMITTEE
THE NORTH CAROLINA STATE BAR
POST OFFICE BOX 25908
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 828-4620

OFFICE USE ONLY
FILE NUMBER

I, the undersigned hereby COMPLAIN against MR RICHARD E. PANOSH, Assistant District Attorney, GUILFORD COUNTY SUPERIOR COURT, Post Office Box 3008; Greensboro, N.C. 27402-3008. A practicing Attorney of GUILFORD County. I agree to cooperate by furnishing to the representatives of the North Carolina State Bar all pertinent information and records in my possession concerning the alleged Misconduct of said Attorney. I further agree that if a Hearing or Inquiry is Ordered concerning the alleged Misconduct of said Attorney, then I will furnish Evidence concerning the "FACTS" by submitting a deposition of personal attendance at the Hearing or Inquiry. I hereby indicate that this information is provided and transmitted by me to the North Carolina State Bar for the purpose of investigating the alleged Misconduct of the above-named Attorney. I understand that I may also need to reveal this information to a privately-retained Attorney to pursue private remedies on my behalf. I further understand that the immunity granted by North Carolina General Statute 84-28.2 Applies only to those statements made without malice and intended for transmittal only to the North Carolina State Bar.

I also understand that the North Carolina State Bar may reveal this information to the accused Attorney for his response to a formal inquiry and to others pursuant only to the Rules and Regulations of the North Carolina State Bar.

Name of Complainant

MR. THEODORE MEAD KIMBLE

1300 WESTERN BLVD.

RALEIGH, N.C. 27606

Theodore Mead Kimble

Signature of Complainant

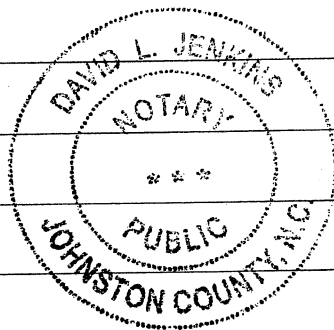
Sworn and Subscribed before

Me this the 3rd Day of
February 2004.

David L. Jenkins

(NOTARY PUBLIC)

My Commission Expires 12-10-2008



DESCRIPTION OF COMPLAINT

Complainant contends that the enclosed ~~Attachments~~ and EXHIBITS will clearly show several ways in which Assistant District Attorney Richard E. Panosh **BROKE THE LAW**.

Mr. Panosh had no regard for the Rules of Conduct, Or Complainant's State and Federal Constitutional Rights. Complainant wishes this State Bar will examine the enclosed Exhibits in support of Proof to the FACTS. To better grasp the basis of this "Complaint", One should consider review of the Affidavit given by Theodore M. Kimble, (Complainant) See EXHIBIT "A". Complainant intends to show a pattern of Misconduct, by showing the FACTS to this Bar as follows:

1.) Conviction Obtained by the Unconstitutional Failure of the State to Disclose to the Defendant Evidence Favorable to the Defendant.
U.S. Const. AM. 5, 6, 14; N.C. Const ART. I, Sec. 18, 19, 23.

Complainant contends that the Prosecutor Richard Panosh withheld VITAL information from the Defense. Mr Panosh threaten and bullied Defense witnesses, Even Coerced witnesses to lie against the Complainant. I have managed to recover Transcript Records from my Co-defendant's trial. (Co-defendant Ronnie Kimble, Trial Date Aug 4, 98 - Sept 4, 98, Guilford County.)

This information was never given to the Defense of Theodore Kimble by Prosecutor Panosh. See EXHIBIT "B". This exhibit shows the sworn Testimony of Jeff Clark, who testified how Prosecutor Richard Panosh directly tried to **COERCE** him to lie in exchange

for a lighter sentence on pending charges in his case, Jeff Clark was simply another Jail-house inmate the Prosecutor wanted to lie and say Ronnie (Co-defendant) confessed to him. The Prosecutor's plan back-fired when this witness testified for the Defense.

Patrick Pardee was another witness coached to lie by Prosecutor Richard Panosh. Three days prior to signing a statement against me, "saying I confessed to him," Patrick told a Melanie Oxendine he didn't know anything about my case. Ms Oxendine testified to these facts at my Co-defendant's trial. EXHIBIT C, shows Ms Oxendine's sworn Testimony. Mr. Pardee was threaten and coerced to lie by Prosecutor Panosh. I have known Mr Pardee for a number of years. Since the Prosecutor no longer has pending charges against Mr. Pardee, I truly believe if this Bar would simply go and talk to this man, he would now tell the "TRUTH." The Prosecutor threaten nearly every Defense witness. See U.S. v. ESTRADA, 849 F2d 1304 (10th Cir. 1998) Also see U.S. v. AGUILAR, 90 F SUPP. 2d 1152 (D. Col. 2000) "Prosecutors statement to Defense witnesses that Government might void witness plea agreement and re-instate previously dismissed charges unless he invoked his fifth Amendment privilege against self-incrimination, Deprive defendant his Right to Due Process and Compulsory Process." The Rights of the Complainant were violated when Prosecutor Panosh withheld the statements of Jeff Clark and Melanie Oxendine.

Nowhere is the "obstruction of Justice" more obvious than in the case of Robert Nichols. This was yet another STAR witness coached, threaten, and Coerced to lie by Prosecutor Richard Panosh.

For most of the facts surrounding this witness see the Affidavit by Theodore Kimble (see EXHIBIT "A".) As pointed out, while Complainant was sitting in jail awaiting trial, Robert Nichols broke into Complainant's business and stole a trailer and roofing shingles. To support these claims I look to Greensboro (N.C.) Police Detective David Sizemore, who traced the theft of my trailer and shingles back to Robert Nichols. But Prosecutor (Panosh) for the second time refused to give Mr. Sizemore an Arrest warrant. This is despite the FACT Jeff Roberts confessed months earlier, that he was with Robert Nichols the night the trailer was stolen, and that he in fact helped Mr Nichols steal the trailer and shingles. Police Detective Sizemore has decline to give a signed Affidavit because he works with the D.A's office. "But Mr Sizemore did say if a subpoena was issued, one would gain access to his personal notes, which are none-public records." These documents would show Robert Nichols did in FACT steal my Trailer. Mr. Sizemore also stated this information was turned over to Prosecutor Richard Panosh. Complainant contends Mr. Panosh never turned over this vital information to the Defense. As to the claims about the stolen trailer, Complainant has only been able to recover a few Exhibits. (see EXHIBITS D 6 Pages)

- ① Shows the Newspaper Ad of Complainant's stolen trailer
- ② Detectives names who worked on the case, and case number,
- ③ Actual Police Report,
- ④ Auction Company bought the trailer
- ⑤ Invoice
- ⑥ Check Number.

Prosecutor Richard Panosh sat on this information in an attempt to "Cover-up" this crime.

x 5 x

Complainant states that the Prosecutor FAIL to turn over statements by "KEY" witnesses. Jeff Roberts and James Ogburn were both interviewed by Prosecutor Panosh several times. Yet Mr Panosh NEVER turned over a single statement to the Court or the Defense. Both Mr Roberts and Mr Ogburn gave statements to Detectives in front of witnesses. See EXHIBIT "E", Affidavit by (Sr.) Ronnie Kimble; Also see EXHIBIT "F", Affidavit by Edna Kimble.

While a Prosecutor is clearly authorized to strike hard blows in an earnest and vigorous prosecution, He or She is NOT at liberty to strike "FOUL" ones. U.S. v. NAPPI, 243 F3d 758 (3rd. 2001); US v. ESCHMAN, 227 F3d. 886 (7th Cir 2000.) "Due Process requires that Defendant be sentenced on basis of "ACCURATE INFORMATION." Complainant ask, "How can I receive a fair trial, or fair sentence, if the Prosecutor with-holds vital information?"

As Complainant has stated, Mr Robert Nichols was threaten and coerced to lie by Mr Panosh. Mr. Nichols also signed a statement saying, "I confessed to him." But just as Mr Pardee, Mr. Nichols went around telling people he didn't know anything about my case, and that the Prosecutor was threatening him. Mr Nichols kept sending messages to (Sr.) Rev. Ronnie Kimble, saying he wasn't going to lie against the Complainant and Co-defendant as Prosecutor Panosh wanted, And that he would stand-up and be accountable for his own actions. See EXHIBITS "G" "H". These signed statements by Walter Cole and James Ogburn verify this claim. Walter Cole is a Youth Minister and in good standing with the community. As for Robert Nichols, the Prosecutor got the best of him. Mr Nichols went on to lie at my Co-defendant's trial.

x 6 x

The N.C. State Bar Rules Say: "Prosecutors shall make "TIMELY DISCLOSURE" to the Defense of all evidence or information that tend to negate the guilt of the accused, Mitigate the degree of the offence or reduce the punishment, in connection with sentencing, the Prosecutor is to give the Defense and the Court all unprivileged Mitigating information unless relieved by Court-order.

A Prosecutor's duty is to seek Justice, Not merely to Convict. This carries specific obligation to see that the Defendant gets Procedural Justice and that guilt is decided on the basis of sufficient evidence. How far the Prosecutor must go is a matter of debate and varies in different Jurisdictions. (Note: see U.S. v. DOE, 860 F.2d. 488 (1st Cir 1988.)

The Prosecutor should use restraint in the discretionary exercise of Government Powers, Such as choosing cases to prosecute, During trial the Prosecutor may make decisions normally made by a Client, and those affecting the public interest should be fair to all. The accused is to be given benefit of all reasonable doubt.

In the 1963 case, BRADY v. MARYLAND; The U.S. Supreme Court held that "The Suppression by the Prosecution of Evidence Favorable to an Accused upon request violates Due Process where the evidence is Material either to guilt or to punishment, irrespective of the Good Faith or Bad Faith of the Prosecution.

"The principle is not punishment of society for misdeeds of a Prosecutor but avoidance of an unfair Trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are FAIR." Our system of the Administration of Justice suffers when

any accused is treated unfairly. An inscripting on the walls of the Department of Justice states the proposition candidly for the Federal Domain: "The United States wins it's point whenever Justice is done it's citizens in the Courts." The Court awarded BRADY, who had been sentenced to Death, A Newtrial because Prosecutors withheld a statement by Brady's Co-defendant confessing to the actual murder.

Case 99 CRS 23241-48, "Solicitation To Commit First Degree Murder," was based on the word of a D.O.C. Prison Inmate named William Stewart. Mr Stewart was more than happy to say anything the Prosecutor wanted. Mr Stewart was only (1) of many who were reading about my case in the newspapers, then writing the District Attorney to try and get a time-cut on their Prison-Sentence. Ofcourse Mr Panosh FAIL to turn-over this information to the Defense. Mr Stewart went around bragging to other inmates he was getting out of prison early to lie on the "white-Cracker" as he put it. FOUR inmates gave Sworn Testimony to these FACTS at the Sentencing of the Complainant. The Transcript Testimony of these 4 witnesses will be made available upon request.

Prosecutor Panosh had a Judge to sign an order for the early release of Mr Stewart from prison, All in exchange for Mr Stewart's False statement. Mr Panosh wanted to prosecute the Complainant so badly on this single case, Although the Grand Jury refused to indict on the word of INMATE William Stewart, Mr. Panosh had the Complainant sign "Bills of Information Waivers" so he could prosecute. This clearly shows a "VINDICTIVE PROSECUTION." (see EXHIBITS "I".) Upon review of these Waivers you will NOTE

x 8 x

each one has the same Date of November 4, 1998. Complainant contends this was a single case of "Solicitation to Commit First Degree Murder, yet Prosecutor Richard Panosh "DECEIVED" the Court in the way he presented this single case as though it were 8 separate cases, This was in order to lengthen the Prison-sentence of the Complainant. Prosecutor Panosh withheld VITAL evidence from the Court and thus the Complainant received 70-90.4 years on this single case. If you will look at the Plea Agreement (EXHIBIT "J") it states the Defendant was to receive consecutive sentences on all CASES. Previous to that it list each case and Solicitation to Commit First Degree Murder as 8 COUNTS. It was 8 Counts to a Single Case. Because the Prosecutor withheld this information, the Complainant received "8" Consecutive sentences on a single case. Prosecutor Panosh violated his own Plea Agreement! see U.S. v. CONTRERAS, 249 F3d 595 (7th Cir 2001.) "Sentencing Determination must be based on reliable evidence." Mr Panosh also withheld the fact that the Grand Jury had refused to indict on the word of Inmate William Stewart, And that if the Complainant refused to sign the waivers, the case would have to be dismissed, see U.S. v. SANDERSON, 595 F2d 1021 (5th Cir 1979). In this case Complainant makes only the claim that the Prosecutor misrepresented the material facts, and withheld information.

Prosecutor Richard Panosh withheld the Pre-Sentence Investigative Report (P.S.I. Report) Complainant's Sentencing Transcripts, pages ^{*}218-219 (EXHIBIT K.) will show the Complainant was sentenced without this vital information. No P.S.I. Report was presented into the Record

as evidence. See U.S. v. DAVENPORT, 151 F.3d 1325 (11th Cir 1998.) "Pre-Sentence Report must be disclosed to both defense Counsel and Defendant at least ten (10) days prior to sentencing as mandated by statute." Pursuant to "N.C.G.S. 15A-1333." Mandated by LAW, pursuant to "N.C. G.S. § 7A-770," And cited as the "Sentencing Services Act." No P.S.I Report was provide to the Complainant. Also see U.S. v. GORDON, 172 F.3d. (10th Cir 1999.) and see U.S. v. BARTHOLDMEW, 974 F.2d. (5th Cir 1992.)

2.) Conviction obtained by a violation of the protection against Double-jeopardy.

Clearly a violation of Complainant's Federal and State Constitutional Rights. On November 3, 1997, Mr Panosh indicted the Complainant on case #97 CRS 23656; Count One, "Arson of an Unoccupied Dwelling." Count two, "Conspiracy." (See EXHIBIT L.) The problem with Count One of this indictment is that while it states, "Arson of an Unoccupied Dwelling," Just below that title it states, "... dwelling house inhabited by Patricia Kimble." A dwelling can't be Unoccupied and occupied at the same time. Mr. Panosh realized his mistake and RE-INDICTED the Complainant on July 6, 1998, as case #98 CRS 23486, Titled "First Degree Arson." (See EXHIBIT M.) Mr Panosh even used the same wording as on the previous indictment.

Not only did Mr. Panosh commit Double-jeopardy, he "intentionally" withheld this information. As proof look at the Plea Agreement (EXHIBIT J.) you will note Mr Panosh only refers to case 97CRS23656 Count One, to be dismissed, yet all others he list as to what

x 10 x

each case is. Mr. Panosh didn't list the title to that case because he did not want to draw attention to what he had done. Complainant's Counsel was deceived and fail to notice the serious rights violation. Mr. Panosh even deceived the Court, and made it look as if this case were being dismissed as part of a Plea Agreement, when in fact he was covering up. The transcript record even shows the Judge Peter McHugh dismissed that case (97 CRS 23656-count one) without stating what it was, because he did not know. (See EXHIBIT N.) Mr. Panosh withheld this information from the Court.

If you will now look at EXHIBIT O. You will notice on the last page a list of District Attorneys who have been caught "withholding evidence". Steven Bishop from Guilford County is listed at the top of the page. This is the same Guilford County and office in which D.A. Richard Panosh worked, and he obviously worked with Steven Bishop. It's only reasonable to say Steven Bishop was not the only D.A. in the office who broke the law.

Within the next few weeks I plan to file a lawsuit against Robert Nicholes for stealing my trailer. I plan to recover Detective David Sizemore's notes and reports, which he claims to have provided the same to D.A. Richard Panosh. I'm going to prove D.A. Richard Panosh broke the law, and withheld vital information from my defense.

Robert Nicholes, Patrick Pardee, and Jay Dyer were coerced and threaten to lie against me by D.A. Richard Panosh. While James Ogburn and Jeff Roberts were threaten to keep silent.

I pray the N.C. State Bar will talk to these people.
I pray this Bar will thoroughly investigate the Gross
Miscarriage of Justice and Misconduct of Prosecutor Richard
E. Panosh, and visit me so I can explain in more detail.
There is no telling how many times Mr. Panosh has committed
these same crimes against other victims.

Respectfully submitted this the 13 day
of February 2004.

~~Theodore Mead Kimble~~
THEODORE M. KIMBLE
1300 Western Blvd.
Raleigh N.C. 27606

Witness: *David L. Jenkins*

Date: 2-13-04

My Commission Expires: _____

My Commission Expires 12-10-2008.

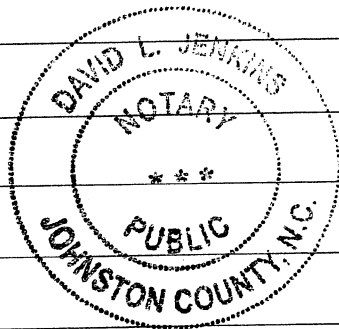


TABLE OF EXHIBITS

- (A.) AFFIDAVIT OF THEODORE M. KIMBLE
- (B.) CO-DEFENDANT'S TRANSCRIPT/TESTIMONY OF JEFF CLARK
- (C.) CO-DEFENDANT'S TRANSCRIPT/TESTIMONY OF MELANIE OXENDINE
- (D.) INFORMATION ON STOLEN TRAILER
- (E.) AFFIDAVIT OF RONNIE KIMBLE (SR.)
- (F.) AFFIDAVIT OF EDNA KIMBLE
- (G.) STATEMENT BY WALTER COLE
- (H.) STATEMENT BY JAMES OGBURN
- (I.) BILLS OF INFORMATION WAIVERS
- (J.) PLEA AGREEMENT
- (K.) SENTENCING TRANSCRIPT PAGES #218, #219
- (L.) INDICTMENT 97 CRS 23656 ARSON OF AN UNOCCUPIED DWELLING
- (M.) INDICTMENT 98 CRS 23486 FIRST DEGREE ARSON
- (N.) PLEA TRANSCRIPT PAGE #11
- (O.) RALEIGH NEWS + OBSERVER - NEWSPAPER ARTICLE
- (P.) NOTICE OF PENDING LEGAL ACTION : TO ROBERT & CANDICE NICHOLS

I was at work, Lyle's Building Material Oct. 9, 1995. AT 3:25 P.M. I called Patricia Kimble, who was about to leave work early to go home and cut the grass. Little did I know my wife would be dead by the end of the day. After I hung-up the phone I walked out of the office as my younger brother, Ronnie Kimble^(Jr.) came driving up (3:45 P.M.). AS I spoke to Ronnie an employee named James Ogburn came walking up. James asked Ronnie about the for-sale sign in the window of his car. While they talked I had to go wait on a customer. After the customer left I went and got the tools Ronnie had asked for. Ronnie left Lyle's Building MTL. around 4:25 P.M. AT 4:45 PM Ronnie (Jr.) was at his home working when his father-in-law, James STUMP came driving up to help him. The rest of the evening Ronnie spent with his in-laws and wife. Thus all of Ronnie's time was accounted for.

Other than myself James Ogburn was the key witness who could verify Ronnie's location from 3:45 P.M. to 4:25 P.M. Detectives spoke to James Ogburn at least (4) times. But the Prosecutor (Dick Panosh) never turned over a single statement made by James. Two of those interviews were made downtown in the D.A.'s office. The first time James Ogburn gave his statement was at Lyle's Building MTL. in-front of Edna Kimble. James was interviewed by whom is believed to be Detective Sergeant DeBarry. Detectives Church and DeBarry spoke to James at the company a few times.

Approximately a year after the death of Patricia Kimble, A young man named Robert Nicholes (Rob) came to work at Lyle's Building MTL. At the time no-one knew that with Rob came a drug (cocaine) and alcohol problem. In Dec. (96) Rob started selling small amounts of lumber to the company (Lyle's Building MTL.) He claimed

a contractor was giving him the left-over lumber off job-sites. On Jan. 2, 1997, Rob asked for my help to go and pick-up some lumber as soon as the company closed. at 5:30 P.M. I agreed to go and help. Before the company closed a friend at the time named Patrick Pardee came driving up. when asked he also agreed to go and help. I closed up as always and the 3 of us headed across town. when we arrived at the site to get the lumber, we not only loaded what Rob claimed was promised to him, we loaded it all. Thus began a crime spree that lasted for the next 60 days.

By the end of the first week in March, Patrick and I had pretty much stopped stealing. Do to Rob's drug problem he continued stealing in an attempt to support his habit. During the second week of March I realized Rob was now stealing from the company (which I own), but I didn't know what to do about it. During the same week Rob came-up and stated he and his friend (Jeff Roberts) had spotted a trailer loaded with ladders, and asked if I needed anymore? I said, "NO." "Let me ask you Rob, did you tell Jeff what we had done?" Rob said, "NO" and walked off. James Ogburn then walked up and I said, "we're busted because Rob told Jeff. You know how the two of them fight all the time. The next time they fall-out, Jeff will call Crime-stoppers for the reward, so he can get more drugs."

On April 1, 1997 I was arrested. A few weeks later I was indicted on 47 felony Breaking/Entering and Larceny charges. When I got the case discovery information I read where Jeff Roberts had called Crime-stoppers just like I said he would. In my absence my father, Ronnie Kimble (Sr.) ran Lyle's Building Mtl. My younger brother, Ronnie Kimble (Jr.) was also arrested April 1 (97) and indicted for the death of Patricia Kimble. I would be indicted a few months later. While Ronnie (Jr.) sat in the Greensboro Jail of Guilford County, I sat in the High Point Jail.

While I sat in jail there was a break-in at Lyle's Building MTL. Someone loaded shingles into the company's brand new trailer (\$5,500) and drove off with it. A few months passed and Jeff Roberts started coming into "Lyle's" for business. One day while Jeff spoke to Ronnie (Sr.) he broke-down and started telling Mr. Kimble about things he and Rob had done. Jeff stated he and Rob had broke into "Lyle's" and stolen the trailer and shingles. Jeff also said he went to the beach with Rob Nicholas, Rob's wife and daughter. While at the beach Jeff helped Rob do a roofing job with the stolen shingles, then Rob went and sold the trailer. Mr. Kimble (Sr.) called and reported this information to the authorities. A detective came and interviewed Jeff Roberts and took a statement, but the District Attorney's office refused to issue a warrant and arrest Robert Nicholas. The actions or lack thereof by the D.A.'s office should've come as no surprise. Jeff also told Mr. Kimble (Sr.) that Rob stated he didn't know anything about Patricia Kimble's death, because I (T.K.) had never talked to him about it. And that the D.A. (Dick Panosh) was coaching him as what to say. Jeff said Rob would joke about having to go down-town for his coaching lessons.

One day James Ayburn and a co-employee of "Lyle's" ran into Rob. Rob asked that they let Mr. Kimble (Sr.) know, he had talked it over with his wife and decided not to go through with it (lie), and testify against Ted (T.K.). James and the co-employee gave signed statements, which copies are enclosed within the M.A.R. "But once again Rob lied."

Meanwhile Patrick Pardee showed up at Chilly's Restaurant one day for lunch, and spoke to a young woman named Melanie Oxendine. Patrick told Melanie he didn't know anything about Patricia Kimble's death, but the Prosecutor was pressing him to sign a statement against Ted (T.K.) anyway. Three days after this conversation Patrick Pardee signed a statement against me (T.K.).

Maybe a month or so after Jeff Roberts confessed to Mr. Kimble (Sr.), Jeff

got arrested and thrown into jail. Jeff wasn't just placed anywhere, The D.A. (Dick Panosh) had Jeff placed at the HighPoint Jail, in the very cell "next to me." Jeff told me he was out attempting to steal some scrap aluminum when his truck got stuck in the mud. During the following week Jeff made several trips to the Greensboro D.A.'s office, where he was interrogated, interviewed, and threaten. Each time Jeff would return to his cell and tell me what was happening. Jeff first stated Dick Panosh (Asst. D.A.) and detective J.D. Church wanted him to try and talk to me about my case. On another visit they wanted Jeff to sign a statement against me, which stated I had confessed to him while he was in the cell next to me. If Jeff didn't sign the statement Mr. Panosh threaten to prosecute him to the max! This was the same way Mr Panosh got Robert Nicholes and Patrick Pardee to sign statements, which said the same thing. After 3-4 visits to the D.A.'s office Jeff was scared to death, but he held-out. After the final visit Jeff told me that Mr Panosh had stated he better keep his mouth shut and disappear. If Jeff did as told the pending charges against him would be dropped. Mr Panosh told Jeff he had better NOT show up at trial to testify against Rob during the "Kimble trial." A day or two after this conversation with Jeff, he got of jail and was never heard from again. Up until the time Mr Panosh threaten Jeff, he was going to testify for the defense.

I complained to my lawyer about Jeff being in the cell next to me, and told of what Mr Panosh was trying to do. But my lawyers did nothing.

I was still in jail awaiting trial when a patrol car arrived at Lyle's Building Material. The police officers arrested James Ogburn and claimed it was for back child-support payments. But when James got downtown he was taken to the D.A.'s office to discuss the "Kimble's case." James said the D.A. told him his life was

at a fork in the road, one path leads to prison for the rest of his life, the other path leads to probation. "Don't show-up at the Kimble trial!"

For over two years James Ogburn had stated Ronnie Kimble was in front of him on Oct. 9, 1995 between 3:45-4:30 P.M. Two week before Ronnie Kimble's trial James was at the D.A.'s office again for another pep-talk. Once again the D.A. threaten James and made it clear he had better not testify for the defense.

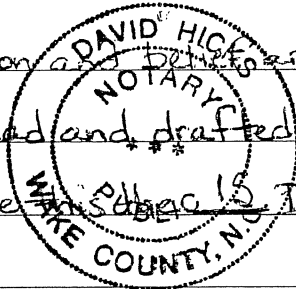
You have to Remember, James was involved with the 47 plus felony Breaking/Entering and Larceny cases. The D.A. threatens to prosecute James on all of these charges if he didn't change his statement. After James' last visit to the D.A.'s office his statement changed. James said he couldn't remember the exact time anymore, and he refused to testify. In exchange the D.A. didn't prosecute James on a single charge.

When it came time for (co-defendant) Ronnie Kimble Jr.'s trial, Jeff Roberts and James Ogburn were no-where in sight. The D.A. had threaten them, and ran them off. Robert Nicholes and Patrick Pardee both marched into court and lied on the stand, saying "I had confessed to them, and told them I had hired Ronnie (Jr) to Kill my wife. They lied just as Richard Panosh (D.A.) coached them to do. I NEVER said any such thing to either of them! Ronnie Kimble was standing in front of myself and James Ogburn at the time Patricia Kimble died. It would be impossible for Ronnie to be in two places at the same time! Both Rob and Patrick had plea-agreements with Richard Panosh on pending charges, and neither saw a day in prison. To my knowledge both had prior criminal records, yet both received probation and or the First Offender's Program. It's also my understanding Rob and Patrick were only charged with 2-3 crimes each, while I was charged with 47 felonies in which they were

also involved. If this isn't a case of selective prosecution I don't know what is. The D.A. even got a young lady named Joy Dyers, who was an X-girlfriend, to lie in court. Just as the others she had pending charges in which the D.A. used as leverage to coerce witnesses to lie. After Joy testified to the lies, her pending charges were dismissed.

In mid 99' while sitting in prison, waiting on my direct Appeal to be filed, I picked up the Raleigh newspaper (The News & Observer) and read the classifieds. Low and behold I saw an "Ad" for a "TRAILER" which sounded like the one Rob stole from me. I sent the Ad to my father Ronnie (Sr.) who drove half-way across the state and found my trailer. It was a custom-built trailer (\$5,500) so there is NOT another one like it in the World. Finally, had evidence which could be traced back to Robert Nicholes. Mr Kimble (Sr.) reported this information to the authorities, but just as before the District Attorney's office refused to go and get the trailer, They refused to arrest Robert Nicholes. Clearly this was a miscarriage of Justice, and Prosecutor Misconduct. Richard Parosh sees himself above the Law he's suppose to represent.

The above Affidavit is written in True Accounts of Events that took place, To the Best of my knowledge all statements made are TRUE and CORRECT, As for any statement made on information and beliefs are made in good faith, And I Believe to be TRUE, I have read and drafted the same, I swear under perjury. Sworn to and before me this 15th Day of October 2003.



WITNESS: David H. Kimble -10-15-03

X: Woodrow W. Kimble

MY COMMISSION EXPIRES: My Commission Expires 5-18-2008.

THE FINE MEAT KITCHEN

1 (Court reconvened at 11:17 a.m. The defendant was present.
2 The jury was not present.)

3 (The jury entered the courtroom at 11:17 a.m.)

4 THE COURT: You may call the next witness for the
5 defense, please.

6 MR. HATFIELD: Jeffrey Clark.

7 JEFFREY CONLUIS CLARK, being first duly sworn, testified as
8 follows during DIRECT EXAMINATION by MR. HATFIELD:

9 Q Will you state your name, please, sir.

10 A Jeffrey Conluis Clark.

11 Q Okay. You have to speak up. This room has very poor
12 acoustics, Mr. Clark.

13 A Jeffrey Conluis Clark.

14 Q Mr. Clark, are you currently serving a prison sentence
15 in the North Carolina Department of Corrections?

16 A Yes, I am.

17 Q In recent months, have you been incarcerated in both
18 the Greensboro and High Point Jail?

19 A Yes, sir.

20 Q Do you know Ronnie Lee Kimble, who's sitting beside me?

21 A Yes, I do.

22 Q At some point in time, were you confined in the same
23 jail facility as he was?

24 A Yes, I was.

25 Q Do you also know Ted Kimble?

1 A Yes, I do.

2 Q And were you confined with him for a period of time --

3 A Yes, sir.

4 Q -- in the same facility? And was that High Point?

5 A Correct.

6 Q Did a time arrive when an incident took place, perhaps
7 in July of 1997, between you and Ronnie Kimble?

8 A Yes, sir.

9 Q Can you briefly describe that incident.

10 A Well, one day I was -- well, Ronnie used to serve and
11 clean up the trays in the jail. And one particular morning,
12 the officer allowed me to go out and clean up. And before
13 that, there was some words exchanged, and Ronnie thought
14 that I was just making a racial thing, but he got the wrong
15 -- he wasn't right about it. It wasn't me, it was another
16 inmate. So I couldn't get Ronnie's tray from up under his
17 door, so, you know, when the officer opened the door, Ronnie
18 like pushed his tray, Kimble took his foot and pushed his
19 tray towards me at the door. And I thought that, you know,
20 he was trying to attack me or something. So it was like a
21 little confrontation. But other than that, that was it.

22 Q And did the --

23 A Like it blew over.

24 Q Did the guard who was present resolve that controversy
25 right away?

1 A Yeah. Officer Stevenson.

2 Q All right. Now, did something happen later in the day?

3 A Yeah.

4 Q What happened?

5 A Detective Church called me down to his office.

6 Q In the Detective Division of the sheriff's office?

7 A I guess that's what it is. I know --

8 Q Is that in the same --

9 A -- it was outside -- I know it was out--

10 Q Is that in the same building where the jail is?

11 A Yeah. Where B.J. Barnes' office is.

12 Q What did Detective Church say to you?

13 A He stated his name, told me who he was, and heard that

14 -- he had got word that me and Ronnie Kimble had got into a

15 little confrontation. And he said he's the first to know

16 about anything that has any dealings with Ronnie Kimble.

17 Q He told you he -- whenever anything happened with

18 Ronnie Kimble, he was the first to know?

19 A Yeah.

20 Q And did he ask you the details of what had happened

21 with Ronnie Kimble?

22 A Yeah.

23 Q Did you tell him?

24 A Yeah.

25 Q And then what did Mr. Church say to you?

1 A He asked me, he said, "Well, back up --" "When you go
2 back up there, find out --" you know, "see what you can --"
3 said, "Have Ronnie said anything to you concerning why he
4 was in the jail? Or have you heard him talking about his
5 case?" And at the time --

6 Q Did Detective Church tell you anything about Ronnie's
7 case?

8 A Not at that present time, but on another occasion, he
9 did.

10 Q So this time, he told you to go back up and see if
11 Ronnie would say anything about his case?

12 A Yeah, he did, he did say that.

13 Q Did he tell you how it was that Ronnie's sister-in-law
14 had met her death?

15 A Yeah.

16 Q What did he tell you?

17 A He said that she was shot in the head with a large
18 caliber pistol, and she was chained and soaked with gasoline
19 and burned.

20 Q Chained to a chair?

21 A Yes, sir.

22 Q And soaked with gasoline?

23 A Yes, sir.

24 Q And burned?

25 A Yes, sir.

1 Q Did he tell you that he thought Ronnie did that?

2 A He said that -- yeah, he has good -- he said he has a
3 good idea, and he's pretty for sure that Ted and Ronnie had
4 something to do with it.

5 Q Now, did Detective Church write up a -- was he writing
6 while he was talking to you?

7 A Yeah. Every occasion he was writing.

8 Q And did he show you what he wrote?

9 A No.

10 Q Now, subsequently, did you have another occasion to
11 meet with Detective Church?

12 A Yes, in --

13 Q Where was --

14 A -- High Point.

15 Q In High Point?

16 A Yes.

17 Q Do you know when that was?

18 A I'm not for certain on the dates.

19 Q All right. And tell the jury what happened then.

20 A Well, on that occasion, he came to me and asked me, had
21 I talked to Ted at the time. And I told him, yeah, we
22 talked. And -- I'm not really for sure right off what he
23 said to me at that time or what that really -- that
24 conversation was about. But I remember the last
25 conversation.

1 Q Did he ask you if Ted had given you anything?

2 A Yeah.

3 Q What did you respond?

4 A I said yeah. He gave me a little pamphlet, it's like a
5 religious pamphlet. And he asked me, could he see it. I
6 showed it to him. He was writing some stuff down. And he
7 said, "Well, are you sure I will get Ted Kimble's
8 fingerprints off of this?" I said, "Yes, sir." And he took
9 it.

10 Q Did it have any drawings in it of anything unusual?

11 A Yeah. It had some drawings, like little cartoon
12 things. And I'm not really for sure. It's been so long.

13 Q On that occasion, did Detective Church say anything to
14 you about the prison time you were facing?

15 A Yeah. He said he would -- don't worry about -- don't
16 worry about anything, he would help me. Whatever time that
17 I get, I wouldn't get it.

18 Q And what did you think he meant by that?

19 A I mean, I wasn't going to prison.

20 Q He was going to excuse you from going to prison, if
21 you'd cooperate with him?

22 A Yes, sir.

23 Q Is that what he made you believe?

24 A Yes, sir.

25 Q Now, was there a subsequent visit after that with Mr.

1 Church?

2 A Yes, sir.

3 Q And what happened then? Was anybody with him?

4 A Yeah. It was SBI agent -- I don't see him in here.

5 Q Was it Mr. Pendergrass?

6 A Pendergrass. Pendergrass.

7 Q All right. And what happened on that occasion?

8 A Well, that occasion, he came and talked to me, and he
9 told me he was going to visit an inmate by the name of
10 Dominic Harris at the high-rise. And we had talked. And
11 SBI Agent Pendergrass, he walked out of the room, and
12 Detective Church showed me three pictures.

13 Q What were those pictures of?

14 A It was of a -- well, one of them I know was a female.
15 It was a small wallet-size picture of a female, looked like
16 maybe a Glamour Shot picture, a very pretty girl. And the
17 second one was of an open-face garage, with a gas can
18 outside of it. And he said that "I'm for sure this is the
19 gas can that was used in the burning." And the second one
20 was -- it could have been a body, you know. I couldn't
21 really tell. All I know, it was like ashes. It was a
22 burned house. I mean --

23 Q That was the third one?

24 A Yeah. If you showed me the picture, maybe I could
25 maybe identify it.

1 Q I show you what's been marked State's Exhibit 1. Does
2 that look like the picture of the girl he showed you, except
3 bigger?

4 A No, that's not the picture, but it's a much smaller
5 picture, but it looks like the girl.

6 Q The girl depicted in Exhibit 1 looks like the girl in
7 the picture that he showed you?

8 A Uh-huh. It's a much smaller picture, though.

9 Q All right. And showing you what's been marked Exhibit
10 5, does that look like the garage that he showed you a
11 picture of?

12 A That's the garage, but it was a gas can outside of it.

13 Q There was a gas can in there?

14 A Yeah.

15 Q And showing you Exhibit 46, a body that's severely
16 burned.

17 A Yeah.

18 Q Does that look like the picture he showed you?

19 A Somewhat of it.

20 Q Now, what -- after he showed you these pictures, what
21 did he say to you?

22 A Well, after he showed them to me, we was sitting there
23 just -- I think we was talking about the weather or
24 something, and he noticed that Mr. Pendergrass was coming
25 back in, so he slid them in the file and he said, "Look, you

1 didn't see this from me or hear it from me, these pictures."

2 Q And what did -- did you draw the conclusion he didn't
3 want Mr. Pendergrass to know he'd showed you that stuff?

4 A Correct.

5 Q And what was his purpose in showing you that stuff?

6 MR. PANOSH: Objection.

7 THE COURT: Sustained.

8 Q Was he asking you to implicate the Kimble brothers in
9 murder?

10 A Yeah.

11 Q Now --

12 A I mean, from the whole time I got with talking to Mr.
13 Church, it was like, what I got from it, it was trying to
14 put this on the Kimble brothers.

15 Q Now, did -- at any time prior to very recently, did
16 anyone show you any of these writings that Mr. Church wrote
17 down?

18 A Well, I think about maybe two to three weeks ago, I
19 came back here and --

20 Q Back here?

21 A Well, I came to the DA's Office.

22 Q Yeah.

23 A And the DA, he went downstairs and got a stack -- a
24 book with a stack of papers in it. And he just briefly read
25 over some things. It was like maybe --

1 Q Was that Mr. Panosh?

2 A Right. But he said at the time that he really didn't
3 have time to talk, because Mr. Church wasn't in, he had to
4 go to Winston-Salem for something.

5 Q Did Mr. Panosh read to you any of the things from the
6 statements that Mr. Church had turned in on you?

7 A He didn't read over them. He just opened them up and
8 started briefly reading to his self.

9 Q Did he mention anything to you that you felt you hadn't
10 heard before?

11 A I think he read the first statement when I went to see
12 Mr. Church. That's about me and Ronnie being into the
13 confrontation.

14 Q And did you tell Church on that occasion that Ronnie
15 pushes religion at everybody?

16 A I think I made the statement, Ronnie talks the religion
17 talk to everyone in the jail.

18 Q And was it your -- did you try to put it in terms of
19 pushing religion on people?

20 A I'm not going to say, because it's been so long.

21 Q Did you tell Detective Church that Ronnie was always
22 trying to start trouble among the inmates?

23 A No.

24 Q You didn't tell him that?

25 A No, I don't think so.

1 Q Did you tell Detective Church that Ronnie had his wife
2 call the jail and find out what you were charged with, and
3 then told other inmates?

4 A No.

5 Q You didn't tell him that?

6 A No.

7 Q Did you tell him Ronnie gives the young guys that come
8 into the cell block snacks, to try to win their friendship
9 over?

10 A No.

11 Q You didn't say that?

12 A No.

13 Q Did you tell him that Ronnie said that his brother had
14 been selling stolen property from his business?

15 A No.

16 Q Did you tell him that Ronnie said his brother had taken
17 an insurance policy out on his wife, the woman who was
18 murdered?

19 A (The witness shook his head from side to side.)

20 Q Did you ever hear Ronnie discuss any of those things?

21 A No. But I heard Mr. Church, he discussed it some
22 briefly to that about it.

23 Q So, while Detective Church was writing this statement,
24 he was telling you those things?

25 A I remember one occasion in High Point, yeah.

1 Q Did you tell Detective Church that you overheard Ronnie
2 Kimble on the telephone talking to someone, and he stated
3 that "They," meaning law enforcement, "think my rifle was
4 used, but they don't know for sure if it was a rifle or a
5 pistol"? Did you ever make that statement?

6 A No, sir.

7 Q Did Detective Church say something like that to you?

8 A I don't remember that statement.

9 Q Did Ronnie Kimble say to you and did you tell Detective
10 Church that Ronnie thinks his truck was seen in the area,
11 but the person who seen the truck cannot positively identify
12 him? Did you ever say that to Church?

13 A No, I didn't. But I do remember Mr. -- the DA reading
14 that to me.

15 Q And did you tell Mr. DA when he read it to you that you
16 had never said it?

17 A Say again.

18 Q Did you tell him you never said it?

19 A I don't recall. I mean, at the time that I saw the DA,
20 it was like real brief.

21 Q After you saw Mr. Panosh, did you realize that there
22 were things in Church's reports that you had never said?

23 A Yes, sir.

24 Q And are you telling this jury now that Mr. Church told

25 --

1 MR. PANOSH: Objection to leading, please.

2 THE COURT: Don't lead him.

3 MR. HATFIELD: No further questions.

4 Thank you.

5 THE COURT: Mr. Panosh?

6 MR. PANOSH: Yes.

7 (Mr. Panosh showed exhibits to Mr. Lloyd and Mr. Hatfield.)

8 MR. PANOSH: May I approach the witness?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION by MR. PANOSH:

11 Q Mr. Clark, I'm going to show you three exhibits. The
12 first one is numbered 150. Do you recognize your signature
13 on 150?

14 A Yes, sir.

15 Q And I believe it says here it's Page 1 of 4; is that
16 right?

17 A I recognize my signature.

18 Q Okay. But the page number is identified as Page 1 of
19 4, right?

20 A Okay. Right.

21 Q Okay. And your signature's on Page 1. Is your
22 signature on Page 2?

23 A Correct.

24 Q Is your signature on Page 3?

25 A Correct.

1 Q Is your signature on Page 4?

2 A Correct.

3 Q Okay. Showing you then 151, it says Page -- it's a
4 two-page document. Is your signature on Page 1?

5 A Correct.

6 Q Is your signature on Page 2?

7 A Correct.

8 Q Okay.

9 MR. HATFIELD: We object to the second document.

10 THE COURT: Overruled at this point.

11 Q Showing you then State's 152, this is a, says five
12 pages; is that right, sir?

13 A Correct.

14 Q Is that your signature on Page 1?

15 A Yes, sir.

16 Q How about Page 2, sir?

17 A That's my name. It don't look like my handwriting,
18 though.

19 Q Okay. So you don't know if that's your signature?

20 A No.

21 Q Okay. How about Page 3?

22 A No.

23 Q Page 4?

24 A No, that one isn't.

25 Q Page 5?

1 A (The witness shook his head from side to side.)

2 Q So on State's Exhibit 152, you're saying that's yours
3 on the first page, but the other ones look different?

4 A Yeah, they look different.

5 Q Okay.

6 A They don't look like my writing.

7 Q But you're sure on the first page that's your
8 signature?

9 A Yeah.

10 Q Okay. Going back to State's Number 150, and on the
11 second page, there are cross-outs and there are initials
12 there. Do you recognize those initials?

13 A Correct.

14 Q Are those your initials?

15 A Yeah.

16 Q Page -- there were no more on that one. Excuse me.
17 151 -- I'm sorry, 152, Page 2, there's a cross-out. Do you
18 recognize your initials?

19 A Yeah.

20 Q The second cross-out, do you recognize your initials?

21 A Right.

22 Q Page 3 of Number 152, there's a cross-out there. Do
23 you recognize your initials?

24 A Yes, sir.

25 Q Okay. And then on Page 5, there's a cross-out. Do you

1 recognize your initials?

2 A Yes, sir.

3 Q So you recognize your signature on each of these,
4 except for the Pages 2 through 5 of 152; is that right?

5 A Correct.

6 Q And you recognize the initials on 152 as being your
7 initials?

8 A J.C.

9 Q Okay. Isn't it a fact, sir, that these are the
10 interviews you gave Detective Church, and he read them over
11 and let you make corrections?

12 A No, sir.

13 Q He didn't make --

14 A He didn't -- I signed them. He never read them over to
15 me.

16 Q Okay. You signed them, without reading them?

17 A Correct.

18 Q And when he crossed things out, those initials, J.C.,
19 did you put those there?

20 A Yes, I did.

21 Q So you initialed things, without reading them?

22 A Correct.

23 Q But you did sign each page?

24 A Yes, I did.

25 MR. HATFIELD: Objection. He said there were

1 pages he said he didn't sign.

2 THE COURT: Sustained.

3 Q Of the pages you indicated you signed, do you recognize
4 your signature?

5 A Yeah.

6 Q And all of the cross-outs, you recognize as your
7 initials?

8 A Correct.

9 Q Now, drawing your attention to 150. It indicates your
10 name; is that correct?

11 A Correct.

12 Q Your date of birth, March 17th of '66; is that correct?

13 A Correct.

14 Q It says that you're 31, or you were then?

15 A (The witness nodded his head up and down.)

16 Q That you're six foot three and 205 pounds. Is that
17 information correct?

18 A Correct.

19 Q It says, "I was arrested on July 22nd of '97 and moved
20 to D floor of the jail on July 23, 1997. After this date, I
21 became familiar with Ronnie Kimble, by Ronnie's trying to
22 push religion and the Bible at me." Is that correct?

23 A No.

24 Q You didn't say that?

25 A No.

1 Q Sir, under the line that says "push religion and the
2 Bible at me" is your signature, and you've already
3 identified that as your signature; isn't that right, sir?

4 A Correct.

5 Q So you're saying that you signed that piece of paper
6 with that --

7 A What I'm saying is that --

8 Q -- statement on it, without reading it?

9 A What I'm saying is that I signed this paper without Mr.
10 Church reading it to me or me reading it. That's what I'm
11 saying.

12 Q Well, why would you do that, sir?

13 A I mean, if a man promised you, if you're facing a lot
14 of time, if a man promised you that he would get the time up
15 off of you, if you cooperate with him and help him out in
16 the case, would you go along with him?

17 Q If it's all right --

18 A That's my reason for that, okay.

19 Q Isn't it a fact that he read to you this entire
20 statement and asked you to sign it page by page?

21 A No, it's not true.

22 Q And isn't it a fact that he went on to say that you --
23 "that Ronnie was trying to push religion and the Bible at
24 me, while he was in the hallway of the cell block and would
25 be cleaning the same. Ronnie pushes religion at everyone.

1 I also been the cleanup person in our cell block"? Is that
2 true?

3 A Yeah, that's true.

4 Q "Yesterday, I was doing the cleaning and picking up
5 food trays. When I got to Ronnie Kimble's cell, I couldn't
6 get his tray from under the door, so the officer opened the
7 door, and I saw Ronnie Kimble's foot on the tray." Is that
8 true?

9 A Correct.

10 Q "Ronnie was upset, because I got the job of cleaning
11 up. He accused me of being a racist. But I don't know why,
12 other than it's his excuse to keep the cleanup job on that
13 hallway." Is that true?

14 A Correct.

15 Q "Ronnie put his finger in my face and took his foot and
16 kicked the food tray at me." Is that true?

17 A Not the finger part.

18 Q Okay.

19 A But he did push the tray at me.

20 Q "I pushed him away, and that's when Officer Stevenson
21 came between us." Is that correct?

22 A I never put my hands on him.

23 Q Okay. "Ronnie is always trying to get things started,
24 and causes trouble among the inmates." Did you say that?

25 A No.

1 Q "Ronnie somehow found out what I was charged with. I
2 heard the inmate in Cell G and Ronnie talking, and Ronnie
3 stated that he had his wife call the jail and find out what
4 I was charged with. And Ronnie told the guy in Cell G that
5 I was charged with rape." Is that true?

6 A No, sir.

7 Q Were you charged with rape?

8 A Yes, sir.

9 Q Now, in that sentence, there are two cross-outs, and
10 you initialed them. Are you saying that you changed -- made
11 those changes, without reading it?

12 A I initialed it and I signed it. I never did read it,
13 and neither did Mr. Church ever read it to me.

14 Q So you're saying Mr. Church made those changes for some
15 reason, and you just initialed them?

16 A Mr. Church did all the writing. The only thing I did
17 was sign.

18 Q And initial?

19 A And initial it.

20 Q Okay. So he changed -- here it says, "Ronnie somehow
21 found out what," and he changed that, and you initialed it;
22 is that right?

23 A I initialed and signed. Mr. Church did all the
24 writing.

25 Q Right. And you're saying that you had no input into

1 what changes he was making?

2 A No, I didn't.

3 Q And then you -- it goes on to say, "what I was charged
4 with. I heard the inmate in Cell G," and the change is the
5 word "heard." And you had no input in there?

6 A I signed J.C. I signed my name Jeffrey Clark. I never
7 changed anything, and Mr. Church did all the writing.

8 Q I understand he did the writing. Did you tell him what
9 to write there, sir?

10 A No, I did not.

11 Q Okay. "The guy in Cell G called me a rapist." Was
12 that true?

13 A No, sir.

14 Q "I know for a fact that the inmates on the floor don't
15 like Ronnie Kimble. They told me so." Was that true?

16 A No, sir.

17 Q "Ronnie gives the young guys that come in our cell
18 block snacks, to try to get them --" "to win them over."
19 Was that true?

20 A No, sir.

21 Q "I heard Ronnie talking to an inmate named or called
22 Dominic on one occasion. Ronnie told him that his brother
23 was selling stolen property from his business, and that's
24 how he was linked to the murder." Was that true?

25 A I never said that Ronnie told Dominic anything about

1 his brother. I told Detective Church that Ronnie had a
2 friend, Dominic Harris, that he always talked to.

3 Q Okay. You didn't say Ronnie told him that his brother
4 was selling stolen property from his business, and that's
5 how he was linked to the murder that he is charged with?

6 A No, I did not.

7 Q But in the middle of that sentence, there's a
8 correction with your initials?

9 A It's a whole lot of it with my initials in there.

10 Q Okay. So you're saying that was corrected and you
11 didn't have any input in that correction?

12 A I put J.C. on it. I never corrected anything.

13 Q "He also said that he was home on leave that weekend
14 from the Marine Corps." Did you say that?

15 A No.

16 Q "He further told Dominic that they, meaning law
17 enforcement, think that is why she was killed, for the
18 insurance money." Did you say that?

19 A No, I did not.

20 Q You do know who Dominic is, don't you?

21 A Yeah.

22 Q You didn't mention Dominic Harris?

23 A Yes, I did.

24 Q In fact, that's the reason they went to see Dominic
25 Harris, is because you gave them their (sic) name?

1 A I'm not for sure, other than, I told Detective Church,
2 he asked me, he said, "Who does Ronnie associate up there in
3 the block?" And I said, "Dominic Harris."

4 Q So that part of the statement is true?

5 A Read it again.

6 Q "He further told Dominic that they, meaning law
7 enforcement, think that's why she was killed, for the
8 insurance."

9 A No, it's not true. I never heard Ronnie tell Dominic
10 any such thing concerning his case.

11 Q Okay. "I also heard him on the telephone talking to
12 someone, and he stated that they, meaning law enforcement,
13 think my rifle was used, but they don't know for sure if it
14 was a rifle or a pistol." Is that true?

15 A No, it's not.

16 Q "He also said that they, meaning law enforcement, think
17 his truck was seen in the area, but the person who seen the
18 truck cannot positively identify him." Is that true?

19 A No, it's not.

20 Q "I also heard him say that he would be released if
21 they, meaning law enforcement, did not release information
22 to his attorneys within 45 days."

23 A I did hear that.

24 Q And that part is true?

25 A That part is true.

1 Q That part is true. So there are some parts in here
2 that are true, but most is false?

3 A Correct.

4 Q But you signed every page?

5 A Correct.

6 Q 151.

7 MR. HATFIELD: Object.

8 THE COURT: Overruled.

9 Q "On the night --"

10 MR. HATFIELD: Your Honor, this is a means of
11 bringing evidence in that's completely extraneous.

12 THE COURT: Overruled.

13 MR. HATFIELD: We don't need -- this is cross-
14 examination. I didn't bring these other statements up on
15 direct. We've heard enough.

16 THE COURT: He's testified. Overruled.

17 Q "On the night before I was moved to High Point Jail,
18 there was a young kid in a cell beside me that was finding
19 out about some other inmates' cases. On that night, this
20 kid had found out about Ronnie Kimble was in jail for."

21 MR. HATFIELD: Your Honor, these statements were
22 not disclosed, to the best of my knowledge, only --

23 THE COURT: The witness has identified the
24 statements as being his.

25 MR. HATFIELD: They were not disclosed in

1 pretrial, as far as I know. The only thing I have --

2 THE COURT: Overruled. Sit down, sir.

3 Move along.

4 Q "Everybody was locked up, and this kid kept talking on
5 and on about Kimble being charged with murder. This kid
6 kept saying, 'You murderer. You murderer. You burned her.
7 You burned her. You call yourself a man. You ain't no man.
8 Why don't you try to shoot me, if you think and call
9 yourself a man.' This kid --"

10 MR. LLOYD: Objection, Your Honor.

11 Q "-- just kept on and on saying --"

12 THE COURT: Overruled.

13 Q "-- this, and at one point, Kimble started yelling,
14 'How do you know I'm a killer?' and broke down and started
15 crying." Did you say that?

16 A I have no knowledge.

17 Q You have no knowledge?

18 A Not of that right there statement.

19 Q Sir, didn't you just say that you signed this two-page
20 statement?

21 A I said that I signed and initialed all the ones that I
22 recognize as my handwriting.

23 Q There's not a lot of writing there, sir, is there?

24 A No, it's not.

25 Q And you're saying that you signed these documents

1 without reading them?

2 A That's what I said.

3 Q Without having anybody read them?

4 A Correct.

5 Q Did you know these were important, sir?

6 A Yes, I did.

7 Q The statement goes on, "Everybody could hear it." Was
8 that true?

9 A I have no knowledge.

10 Q Were you present on the cell block?

11 A Yes, I was -- I may was.

12 Q Did you hear that?

13 A I have no knowledge.

14 Q Sir, could you say yes, you heard it or no, you don't
15 -- didn't hear it?

16 THE WITNESS: I have no knowledge, Your Honor.

17 THE COURT: He's answered.

18 MR. PANOSH: Yes, sir.

19 Q "An officer came and took the kid out in the hallway
20 and talked to him for a while." Do you remember that?

21 THE WITNESS: Your Honor, them officers --

22 THE COURT: Answer the question, sir.

23 A I have no knowledge.

24 Q "The officer came back in the cell block and told the
25 kid to keep his mouth shut or closed, or he'd have to chain

1 him down in a chair." Do you remember that?

2 A I have no knowledge.

3 Q "Kimble was put back in his cell, and no one said
4 anything the rest of that night. The next day, I was moved
5 to High Point." Did you say that?

6 A No, I didn't.

7 Q Were you in fact moved to High Point?

8 A Yes, I was.

9 Q 152. "Since I've been in the High Point Jail, I have
10 met Ted Kimble. I never knew Ted Kimble was (sic) before
11 coming to the High Point Jail."

12 MR. LLOYD: Object again, Your Honor.

13 THE COURT: Objection sustained at this point.

14 MR. PANOSH: I believe he's identified this, Your
15 Honor.

16 THE COURT: Page 1.

17 MR. PANOSH: That's what I'm reading from.

18 THE COURT: All right.

19 Again, members of the jury, this testimony of what
20 Ted Kimble may have said is not to be used against this
21 defendant, unless you first find that there was an agreement
22 to commit an unlawful act and that this defendant and Ted
23 Kimble participated in that agreement or intended to
24 participate in that agreement.

25 Q Were you in fact moved to the High Point Jail?

1 A Yes, I was.

2 Q Did you meet Ted Kimble?

3 A Yes, I did.

4 Q Was that first sentence true, "Since I have been in the
5 High Point Jail, I have met Ted Kimble"?

6 A Yes.

7 Q "I never knew Ted Kimble before coming to the High
8 Point Jail." Is that true?

9 A Correct.

10 Q "I did or do know his brother Ronnie Kimble from the
11 time I spent with him in the Greensboro Jail." Is that
12 true?

13 A Correct.

14 Q "The only thing I know about their case is that they
15 are charged with murder, and I don't know what Ted has told
16 me." Excuse me. "The only thing that I know about their
17 case is that they are charged with murder, and I know what
18 Ted has told me." Is that correct?

19 A That first line is.

20 Q What part isn't correct, sir?

21 A What Ted has told me. Ted never told me anything.

22 Q "Approximately two weeks ago, Ted Kimble and I were out
23 on the floor at the same time. Ted asked me my name and
24 told me that he had observed that I stayed in my cell and
25 "kept to myself a lot." Did you say that?

1 A I don't recall.

2 Q It's got your initials there at that correction, sir.

3 A It's a lot of things has my initials in there I didn't
4 say.

5 Q "Ted said he noticed that I didn't beat on the door and
6 yell through the vents like the other inmates do." Do you
7 remember saying that?

8 A I don't recall.

9 Q "After that, Ted and I --"

10 A Yes, I do. Yes, I do.

11 Q You said that part?

12 A Yes, I did.

13 Q Okay. "After that, Ted and I didn't talk until this
14 past Tuesday, November the 4th of '97." Did you say that?

15 A I don't recall.

16 Q It's got -- the date is crossed out and Tuesday's
17 written in and there's your initials. Didn't you make that
18 correction, sir?

19 A No, I did not make the correction. I put J.C. beside
20 it. I never did do any of the writing.

21 Q So you don't know what was being done when that
22 correction was made?

23 A No, I don't, because I never -- didn't read the
24 statement.

25 Q You didn't watch him cross it out, put in Tuesday and

1 put your initials there?

2 A No, I did not.

3 Q "On this day, Officer Roberts was talking to an inmate
4 Simmons about the Bible. I didn't pay any attention to
5 exactly what they were saying, but I know it was about
6 religion." Was that true?

7 A Yes. Correct.

8 Q "I was cleaning on the top tier at the time Officer
9 Roberts was talking to inmate Simmons in front of Ted
10 Kimble's cell door." Was that part true?

11 A Correct.

12 Q "Ted spoke to me through the slot in the door and asked
13 me if I had heard what Officer Roberts had said." Was that
14 part true?

15 A Correct.

16 Q "I told Ted that I heard them talking, but I hadn't
17 paid any attention to what they said. Ted asked me if I was
18 saved, and I told him that I believed in God." Was that
19 part true?

20 A Correct.

21 Q "Ted said, 'Did you hear what Officer Roberts said,
22 that there's only one belief?'" Was that part true?

23 A Correct.

24 Q "I told him I didn't hear Officer Roberts say this.
25 Ted told me what he heard Officer Roberts say was that there

1 was only one belief and that was God." Is that true?

2 A Correct.

3 Q "Ted indicated Officer Roberts meant that one belief
4 was God, and not Baptist, Holiness or any other
5 denomination." Is that true?

6 A Yes.

7 Q "I took this to mean that Ted did not agree with
8 Officer Roberts." True?

9 A Correct.

10 Q "Ted then handed me a pamphlet and told me to read it,
11 and told me that he had --" "that if I had a radio, to put
12 it on 95 point something." Is that true?

13 A Correct.

14 Q "I didn't listen to the station, like he asked me to."
15 Was that true?

16 A Correct.

17 Q "Ted told me he would talk to me when he came back for
18 his hour." Is that true?

19 A Correct.

20 Q Talking about an hour of exercise?

21 A Correct.

22 Q "I did read the part of the pamphlet he gave me. It
23 was a truck driver, one believed in God, and two didn't.
24 And also, something about burning a house and a murder." Is
25 that true?

1 A No, it's not.

2 Q Ted didn't give you a pamphlet that said that?

3 A Yes, he gave me a pamphlet, but as far as him saying a
4 murder and all that, he never said that.

5 Q Well, actually it says it in the pamphlet; isn't that
6 correct?

7 A I'm not for sure. I think I -- I didn't get through
8 the whole pamphlet.

9 Q You gave it to Detective Church; is that right?

10 A Correct.

11 Q "Like I said, I didn't read the whole pamphlet,"
12 correct?

13 A Correct.

14 Q "Ted and I didn't talk again until yesterday. It was
15 after lunch when Ted got his hour out of his cell. Ted came
16 up to my cell and asked me if I had read the pamphlet, and I
17 told him yes." Is that correct?

18 A No, I didn't.

19 Q You didn't say that?

20 A No.

21 Q "Ted said, 'You know, every time I read that pamphlet,
22 I get upset and cry.'" Did he tell you that?

23 A No. He told me that -- he said it upsets him. He did
24 say that, correct.

25 Q Left out the --

1 A Crying.

2 Q The crying part wasn't true?

3 A He didn't say nothing about crying.

4 Q Even though you signed that?

5 A Correct.

6 Q "Ted asked me if I was from North Carolina. I told him
7 no, that I'd been in North Carolina a couple of years on and
8 off." Is that correct?

9 A Correct.

10 Q "Ted then said, 'I really can't go into it, but I can't
11 believe I saw that burning house and hurt the one I loved.'"
12 Did you say that?

13 A No, sir.

14 Q That's not correct?

15 A No, sir.

16 Q "I asked him what he meant, and Ted said, 'I wanted
17 more.'" Did he say that?

18 A No, sir.

19 Q "I asked him 'More what?' and he said, 'More money.'"
20 Did he say that?

21 A No, sir.

22 Q Although you signed it?

23 A Correct.

24 Q "At that time, the canteen man came into my cell and
25 Ted walked away, and that was the end of the conversation."

1 Did you say that?

2 A I don't -- I don't recall that.

3 Q Uh-huh. Did you go on and tell Detective Church, "The
4 reason I have come forward to give this information is not
5 because I like to tell on anyone, or not because I dislike
6 Ted or Ronnie Kimble, but it's the right thing to do. And
7 if my wife, mother or sister had been murdered, I would only
8 hope if anyone had information, that they would do the
9 same." Did you say that?

10 A No, I did not.

11 Q Even though you signed it?

12 A Correct.

13 Q "Detective Church and Agent Pendergrass --"

14 THE COURT: Well, Mr. Panosh, is that Page 1, or
15 is that 2, 3, 4 or 5?

16 MR. PANOSH: He just identified Page 5 as signing
17 it, sir.

18 THE COURT: All right, sir.

19 Q "Detective Church and Agent Pendergrass have made it
20 very clear to me that no promise, no deal or anything
21 related to my charges could be made by either of them."
22 Did you say that?

23 A No, I did not.

24 Q Even though you signed it?

25 A Correct.

1 Q "This statement that I have given is absolutely the
2 truth, and I'm willing to take any test to prove my
3 truthfulness." Did you say that?

4 A No, sir.

5 Q Even though you signed it?

6 A Correct.

7 Q "Detective Church or Agent Pendergrass has not asked me
8 to contact, talk to, or do anything in their behalf related
9 to Ted or Ronnie Kimble, prior to this statement or the
10 other statements." Did you say that?

11 A No, sir.

12 Q But you signed it?

13 A Correct.

14 Q And that's the last thing that's on that page?

15 A Correct.

16 Q And you're saying you didn't read the last thing right
17 before your signature?

18 A I never read anything on any of those papers.

19 Q But you have identified Page 1 as your signature and
20 Page 5 as your signature, correct?

21 A That's not my signature. (Indicated.)

22 MR. LLOYD: Let the record reflect, Your Honor,
23 that he said Page 5 was not his signature.

24 THE COURT: Let the record so reflect.

25 Q Do you remember talking to me on August the 6th, this

1 year?

2 A Yes, I do.

3 Q About lunchtime?

4 A Correct.

5 Q In the DA's Office conference room?

6 A Correct.

7 Q Do you remember -- did I make any promises?

8 A No, you didn't.

9 Q Did I in fact tell you that nothing could be done to
10 alter your sentence?

11 A I don't recall. I know you didn't make me any
12 promises.

13 Q Do you remember telling me that Ronnie is all God one
14 minute, and then he's totally different the next?

15 A We never did really have a conversation, DA.

16 Q So if I wrote that down, that's incorrect?

17 A Correct.

18 MR. HATFIELD: Objection.

19 THE COURT: Sustained.

20 MR. HATFIELD: If he wants to testify --

21 THE COURT: Sustained.

22 Q Do you remember telling me that "Ronnie never admitted
23 it, he started to say it, but he just wouldn't come out and
24 say it"?

25 A No, I do not.

1 Q That's not correct?

2 A No. We wasn't there long enough to really have a
3 conversation, because you went downstairs to get a book,
4 supposedly with these papers right here in it, and you
5 wanted Detective Church to be there, but you said he wasn't
6 there, he had to go to Winston. And you said, "Well, I got
7 to get back to court." So that was the end of that
8 conversation. We was there maybe 10 to 15 minutes.

9 Q But I did go downstairs and get those papers?

10 A You went downstairs and got a book with those papers in
11 it.

12 Q Yes. And we went over those papers, didn't we?

13 A No, we did not go over all those papers.

14 Q And what have you been tried and convicted of in the
15 last 10 years that carries a punishment in excess of 60
16 days?

17 A I don't know. Less than 60 days?

18 Q Greater than, sir.

19 A Kidnapping, armed robbery -- I mean, yeah, robbery and
20 rape.

21 Q What's your present sentence, sir?

22 A 240 months to 273.

23 MR. PANOSH: No further questions.

24 REDIRECT EXAMINATION by MR. HATFIELD:

25 Q Did you ask Detective Church to put these promises to

1 you in writing?

2 A Yes, I did.

3 Q What did he say in response to that?

4 A Told me that he couldn't, because it was an ongoing
5 investigation, but he would take care of it.

6 Q Did he mention that he would assist you with avoiding a
7 prison sentence each and every time he talked to you?

8 A Yes, sir.

9 Q Is the reason that you signed some of these documents,
10 in order to satisfy him, so that he would help you avoid a
11 prison sentence?

12 A Yes, sir.

13 Q Is that what your understanding was?

14 A Yes, sir.

15 Q Now, when I asked you about the photographs that you
16 were shown by Detective Church, you said that Mr.
17 Pendergrass was not in the room. Do you see Mr. Pendergrass
18 in the room now?

19 A Yes, sir. This gentleman right here. (Indicated.)

20 Q This gentleman seated next to the family? (Indicated.)

21 A Correct.

22 Q And Mr. Pendergrass was not present when these
23 photographs were shown to you, was he?

24 A No, he wasn't.

25 Q And did Mr. Church tell you not to let Mr. Pendergrass

1 know he showed you these pictures?

2 A He said not to let anyone know.

3 Q Now, do you remember talking to Investigator Mike
4 Ingold on July 11, 1998?

5 A Yes, I do.

6 Q Where was that?

7 A High Point Detention Center.

8 Q And did you tell Mr. Ingold the entire story of how you
9 were dealt with by Mr. Church?

10 A Yes.

11 Q Are the things that you told Mr. Ingold the truth?

12 A Correct.

13 Q And have you told the truth today in this courtroom?

14 A Correct.

15 Q Does it make any difference to you whether you serve
16 240 months or a life sentence?

17 MR. PANOSH: We object to leading this witness.

18 A It is a life sentence.

19 THE COURT: Sustained.

20 Q It is a life sentence?

21 A Yes, it is.

22 THE COURT: Don't answer that.

23 Q Sir, would you misrepresent the truth --

24 MR. PANOSH: We object to --

25 Q -- in this courtroom?

1 MR. PANOSH: -- leading, please.

2 THE COURT: Your witness. Don't --

3 A No, sir.

4 THE COURT: Sustained.

5 Q Now, you were shown State's Exhibit 151 a few minutes
6 ago, weren't you?

7 (Mr. Hatfield approached the witness and indicated.)

8 A Correct.

9 Q The printing on that -- on the text of this statement,
10 whose handwriting is that?

11 A Are you talking about these here? (Indicated.)

12 Q Yeah. The words.

13 A Detective Church.

14 Q Did you write any of those words?

15 A No, sir.

16 Q Now, in this statement -- Is the date of this
17 statement October 28, 1997? Can you see that?

18 A Correct.

19 Q Who wrote that date?

20 A I wrote that date.

21 Q You did?

22 A Yes, I did.

23 Q Were you told to write it?

24 A Yes.

25 Q Now --

1 A He told me to sign it, put the date and time on it.

2 Q Now, this is a very short statement. Are you saying
3 that you did not read the words in the statement?

4 MR. PANOSH: Object to leading his own witness,
5 please.

6 A I never read any of it.

7 THE COURT: Sustained.

8 Q You never read any of this statement?

9 A No.

10 MR. PANOSH: We object to leading his witness,
11 please.

12 THE COURT: Overruled.

13 MR. HATFIELD: First of all, he's not my witness.

14 THE COURT: Well, proceed.

15 MR. HATFIELD: He's Mr. Church's witness, if Your
16 Honor please.

17 THE COURT: Well --

18 MR. HATFIELD: I submit I ought to be entitled --

19 THE COURT: -- counsel --

20 MR. HATFIELD: Yes, sir.

21 Q Who was the person -- do you recall an inmate screaming
22 at Ronnie Kimble, "You murderer. You murderer," etc.?

23 A No.

24 Q You don't recall that event?

25 A No.

1 Q Do you recall Kimble responding to some inmate who was
2 screaming taunts at him?

3 A No, I don't.

4 Q Did you ever say to Detective Church or anyone else
5 that you heard Ronnie Kimble discuss being a killer?

6 A No.

7 MR. PANOSH: Object, please.

8 A No.

9 THE COURT: Overruled.

10 Q Then when it's written here, "The kid just kept on and
11 on saying this, and at one point, Kimble started yelling
12 out, 'How do you know I'm a killer?'" Did you ever hear
13 Kimble say that?

14 A I never heard Kimble say anything concerning being a
15 killer.

16 Q Do you know of anyone else that ever heard this
17 incident?

18 A No.

19 Q Did you ever see Ronnie Kimble break down and cry?

20 A No.

21 Q And did you ever hear Ronnie say, "Even if I am a
22 killer, you don't know. You weren't there"?

23 A No, I didn't.

24 Q It says, "Everybody could hear it, the whole cell
25 block." Is there any truth to that?

1 A I didn't hear it.

2 Q Now, I believe that this statement was taken in High
3 Point. Is that your understanding?

4 A 10/28. That's October?

5 Q Yes.

6 A Correct.

7 Q Now, is this the time that Mr. Pendergrass was present
8 with Mr. Church, or was this one of the occasions when Mr.
9 Church was by himself?

10 A I'm not for sure, because I had Mr. Church interview me
11 two times in High Point. Only on one occasion was Mr.
12 Pendergraph (sic) there.

13 Q Do you know whether -- you were on D floor before
14 October of 19-- late October of 1997, in Greensboro? Were
15 you on D floor in Greensboro?

16 A No. I was on D floor in Greensboro from July through
17 September the 28th of '97.

18 Q So, September 28th?

19 A Right.

20 Q So where were you during the 30 days prior to the time
21 you were transferred to High Point, so that you could give
22 that statement?

23 A I was in High Point -- Okay. In Greensboro. Like I
24 say, I got in Greensboro the 22nd. I was placed on D floor
25 the 23rd. From the 23rd of July of '97, through October --

1 I mean September 28, '97, I was on D floor.

2 Q So, for the last month that you were in Greensboro, you
3 were not on D floor; is that right?

4 A Yes, I was.

5 Q You were on D floor?

6 A Right.

7 Q I thought you said that you were on D floor until
8 September 28th?

9 A I was. From the 23rd of October -- I mean, from the
10 23rd of July, up through the 28th, and from then, I was in
11 High Point after that.

12 (Mr. Hatfield approached the witness and picked up an
13 exhibit.)

14 Q Now, this statement was made in High Point, wasn't it?

15 A What month was that, October?

16 Q Yes, sir.

17 A Correct.

18 Q October 28th. (Indicated.)

19 A Correct.

20 Q So this statement would have been one month after you
21 had left D floor in Greensboro; is that right?

22 A Correct.

23 Q So this statement would have been referring back to
24 conduct that would have taken place in the latter days of
25 September, if it happened on D floor?

1 MR. PANOSH: Object to leading his own witness,
2 please.

3 A Correct.

4 THE COURT: Sustained.

5 Don't lead him.

6 Q So, does the statement say, "On the night before I was
7 moved to the High Point Jail, there was a young kid in a
8 cell beside me that had been finding out about other
9 inmates' cases"? Is that what the statement says?

10 A That's what the statement says.

11 Q All right. Now, do you remember such a person finding
12 out about other people's cases?

13 A You have so many guys come up there. They assume about
14 other inmates' cases.

15 Q It says, "On the night before I was moved to the High
16 Point Jail." What would the date of "the night before I was
17 moved to the High Point Jail" have been?

18 A The 27th.

19 Q September 27th, wouldn't it?

20 A Correct.

21 Q And this statement is dated October 28th?

22 A 28th, correct.

23 Q Do you remember which section of D floor you were in on
24 September 27th?

25 A Yes. I was in D, Block 1, Cell 2.

1 Q Do you remember where Ronnie Kimble was?

2 A One, two -- maybe three cells down.

3 Q Do you remember whether or not you communicated with
4 Ronnie at all during those latter days?

5 A Yeah.

6 Q Do you remember anything that Ronnie said to you during
7 that period?

8 A No, I don't. I mean, after that incident that we had,
9 it wasn't nothing negative going on between us.

10 Q Would you classify yourselves as friends?

11 A Yeah.

12 Q Did you have respect for each other?

13 MR. PANOSH: We object, please.

14 A Yeah.

15 THE COURT: Sustained.

16 A I mean, other than that incident that we had --

17 MR. PANOSH: We object, please.

18 A -- you know --

19 THE COURT: Overruled. He may answer that.

20 A -- after that, it's no problem.

21 Q Other than the incident that was written up --

22 A Correct.

23 Q -- by Officer Stevenson, there was never any problem;
24 is that right?

25 A No.

1 MR. HATFIELD: I don't have any further questions.

2 MR. PANOSH: No further.

3 THE COURT: You may step down, sir.

4 (The witness left the witness stand.)

5 MR. HATFIELD: Your Honor, may I ask the Court to
6 release this witness. He's got trouble with his surgery and
7 he's had surgery.

8 THE COURT: Release him to what, sir?

9 MR. HATFIELD: Just have him released from this
10 trial, so that they can ship him back to where he can be
11 treated for his injury.

12 THE COURT: Yes, he may be transported back for
13 medical attention.

14 Stand and stretch, if you'd like.

15 Next witness, please.

16 MR. HATFIELD: Mr. Dziadaszek, please. He's
17 already been sworn earlier.

18 JAMES ALLEN DZIADASZEK, II, having been previously duly
19 sworn, testified as follows during DIRECT EXAMINATION by MR.
20 HATFIELD:

21 Q State your name again, please.

22 A James Allen Dziadaszek, II.

23 Q Mr. Dziadaszek, are you now officially out of the
24 Marine Corps?

25 -A Yes, I am.

1 THE COURT: Any rebuttal evidence for the
2 defendant?

3 MR. HATFIELD: Yes, sir. One witness.
4 Melanie Oxendine, please.

5 THE COURT: Come around, please, ma'am.

6 MELANIE WILLIAMS OXENDINE, being first duly sworn, testified
7 as follows during DIRECT EXAMINATION by MR. HATFIELD:

8 Q Will you state your name, please.

9 A Melanie Williams Oxendine.

10 Q Where do you live, ma'am?

11 A 6401 Nazarene Church Road, Pleasant Garden.

12 Q Now, I see you have some papers up here. You didn't
13 bring those with you to testify, did you?

14 A No.

15 Q Would you just close those --

16 A Yeah.

17 Q -- and put them aside. Ms. Oxendine, where do you
18 work?

19 A Chili's restaurant.

20 Q How long have you worked there?

21 A Five years.

22 Q Do you know Ted Kimble?

23 A Yes, I do.

24 Q Do you know Patrick Pardee?

25 A Yes, I do.

1 Q Would you briefly tell the jury how it is that you know
2 Ted Kimble.

3 A I've known Ted Kimble for 14 years.

4 Q And in the early days of your acquaintanceship with
5 him, tell the jury what happened.

6 A When I was younger, do you mean?

7 Q Yes, ma'am.

8 MR. PANOSH: We'd object. It's not surrebuttal.

9 MR. HATFIELD: Just want to show the connection.
10 I'm getting right to Patrick Pardee. It's --

11 THE COURT: Overruled.

12 A We dated from, I was 12 to 15.

13 Q Nothing serious?

14 A No.

15 Q Just a childhood friendship?

16 A Yes.

17 Q What church are you a member of?

18 A Monnett Road Baptist Church.

19 Q Now, throughout the subsequent years, did you remain an
20 acquaintance of Ted Kimble's?

21 A Acquaintance, yes.

22 Q That's all?

23 A That's all.

24 Q Now, did there come a time that you became aware that
25 Ted Kimble had married a woman named Patricia? Did you know

1 anything about that marriage?

2 A I know they got married, yeah.

3 Q Did you know her?

4 A No.

5 Q Did you hear about the death of Ted's wife?

6 A Yeah.

7 Q And at any time after her death and prior to his arrest
8 in April of 1997, did Ted Kimble discuss anything with you
9 about his wife's death?

10 A No.

11 Q Shortly before he was arrested in April of 1997, did
12 you have some encounters with Ted Kimble?

13 A Yes.

14 Q Will you briefly tell the jury what that was.

15 A Him and Patrick Pardee come and saw me on December 24,
16 1996. They were out Christmas shopping. They wanted to buy
17 some gift certificates. That's when I met Patrick Pardee.

18 Q Now, you remember it was the 24th, because you sold
19 them gift certificates --

20 A It was Christmas Eve.

21 Q -- to give to their friends? And these were gift
22 certificates for your place of employment?

23 A Correct.

24 Q And that is Chili's?

25 A Correct.

1 Q Now, after that, did you get to know Patrick Pardee?

2 A Yes. He come in several times with business
3 acquaintances, and he come in with Ted Kimble a lot to eat.

4 Q Did you go out with Ted on a casual basis shortly
5 before he was arrested?

6 A Twice.

7 Q Okay. Tell the jury about that, please.

8 A Once we went with Patrick Pardee to the lake for the
9 day. We come back. And one time he took me to dinner with
10 my daughter.

11 Q Was there any romantic involvement?

12 A No, not -- no.

13 Q Now, after Ted was arrested in April of 1997, did you
14 speak to Patrick Pardee?

15 A Yes.

16 Q Tell the jury the circumstances of that, please.

17 A It was two days after Ted got arrested, he come into
18 Chili's. He was pale. He come up to the bar, and I said,
19 "How are you?" He said, "I'm not doing too good." He said,
20 "I feel like I've lost 10 pounds within a week." I said,
21 "Well, what's wrong?" And he said, "Well, I was in
22 Charlotte, and two investigators come and woke me up 3:00 or
23 3:30 in the middle of the night, to take me back to
24 Greensboro, because they wanted to investigate and ask me
25 questions." And he said, "They wanted to know everything I

1 knew about Ted and this homicide. I told them that I didn't
2 know anything, that if I knew anything, I would have not
3 have hung around him, I wouldn't have went to Gatlinburg
4 with him, I wouldn't have been his friend for the last year
5 and a half."

6 Q So in essence, Patrick Pardee told you that he knew
7 nothing of any involvement that Ted may have had in the
8 death of Patricia; is that right?

9 A Exactly.

10 Q Did he say anything more about that?

11 A He said that he had a career to get into, and that this
12 kind of stuff upset that, that he needed to go on. He said
13 -- what else did he say? That's about it.

14 Q Did he tell you anything about what he was being
15 investigated for?

16 A He was being investigated for the breaking and
17 entering.

18 Q Now, prior to his telling you that, had you had any
19 idea that he was involved in activity like that?

20 A No.

21 Q And what did you say to him about that?

22 A I said, "How could you do something so stupid like
23 that?"

24 Q Did he give you any explanation?

25 A He said -- he raised his hand and said, "I'm not saying

1 anything to incriminate myself."

2 MR. HATFIELD: Thank you.

3 No further questions.

4 CROSS-EXAMINATION by MR. PANOSH:

5 Q Now, in addition to dating Theodore Kimble those last
6 few weeks before he was arrested, did you have any further
7 contact?

8 A Now, do you mean?

9 Q Yes.

10 A I see him every week. I go with his parents to see him
11 every week.

12 Q So, since April of 1997, you've been visiting him on a
13 weekly basis; is that correct?

14 A Prior -- except for the two weeks after he was
15 arrested, yes.

16 Q And that's strictly friendship?

17 A Friendship only.

18 Q At the time that Patrick made these statements that
19 you've testified to, he was aware that you were seeing Ted?

20 A I wasn't seeing him. We went out twice. I wasn't
21 dating him.

22 Q Was the two times that you went out with him just prior
23 to your conversation with Patrick?

24 A Yes.

25 Q And when was the first time you reported this

1 information to law-enforcement officers?

2 A When was the first time -- say that again.

3 Q When was the first time you reported this information
4 to law-enforcement officers?

5 A To law enforcement? All I talked to was lawyers.

6 Q Did there come a time when you determined that it was
7 important enough to tell the police department or the
8 sheriff's department about the information you had?

9 A I felt that he gave me the information I wanted to
10 know. He said he knew nothing about it.

11 Q And did you report that to the officers?

12 A No. I didn't know he had anything to do with this
13 case, until he showed up.

14 Q You were unaware that Patrick Pardee was involved in
15 this case until this trial; is that what you indicated?

16 A Exactly.

17 MR. PANOSH: No further.

18 REDIRECT EXAMINATION by MR. HATFIELD:

19 Q Now, since your conversations with Patrick Pardee in
20 April of 1997, have you continued to see him from time to
21 time?

22 A Patrick Pardee?

23 Q Yes.

24 A No. He will not come in the restaurant anymore.

25 Q So he knows where -- you have been working there

1 continuously since long before any of these events took
2 place?

3 A Correct.

4 Q And he met you in connection with your employment in
5 the restaurant?

6 A Correct.

7 Q And since you had this one conversation with him, where
8 he told you he knew nothing about Patricia's death, he just
9 has steered clear of your restaurant?

10 MR. PANOSH: Objection. Leading his own witness.

11 THE COURT: Sustained.

12 Q Is it your testimony that you have not seen him again,
13 after all --

14 A I have not seen him again or talked to him.

15 Q Now, you knew that Ted Kimble was charged with murder,
16 didn't you?

17 A Yes, I did.

18 Q Did you have any idea that Patrick Pardee was a
19 material witness for --

20 MR. PANOSH: Objection to --

21 Q -- the State --

22 MR. PANOSH: -- leading his own witness.

23 THE COURT: Sustained.

24 Q Did you know that Patrick Pardee was a potential
25 witness?

1 A No.

2 Q Did Mr.'s Church and Pendergrass ever come to see you?

3 A No.

4 Q Did you have any idea before this trial proceeded that
5 you had any evidence that might have a bearing on this case?

6 A No.

7 Q Well, now, you understand that Ted Kimble's not on
8 trial?

9 MR. PANOSH: We object to leading, please.

10 THE COURT: Sustained.

11 Q Who's on trial here?

12 A Ronnie Kimble.

13 MR. PANOSH: Objection.

14 Q Is Ted Kimble on trial?

15 A No.

16 MR. HATFIELD: No further questions.

17 MR. PANOSH: No further.

18 THE COURT: You may step down.

19 MR. HATFIELD: That's all we have. Thank you very
20 much.

21 THE COURT: Any evidence for the State?

22 MR. PANOSH: No, Your Honor.

23 (The witness left the witness stand.)

24 THE COURT: Members of the jury, this completes
25 the evidence, and on Monday, it'll be your duty to decide

EXHIBIT (D) 1 of 6



Newspaper Ad from the
Raleigh News and Observer
N.C.

Field Reference Card
CARRBORO POLICE DEPARTMENT

POLICE
EMERGENCY
911

INFORMATION
ONLY
968-7709

CASE REFERENCE NUMBER: 99-10390

OFFICER: P. Turner

PLEASE MAKE REFERENCE TO ANY QUESTIONS
CONCERNING YOUR CASE BY USING THE ABOVE NUMBER.

EXHIBIT (D) 2 of 6

Greensboro Police Detective

David Sizemore (336) 433-7277

P.O. Box 3136

Greensboro NC. 27406

EXHIBIT (D) 3 of 6

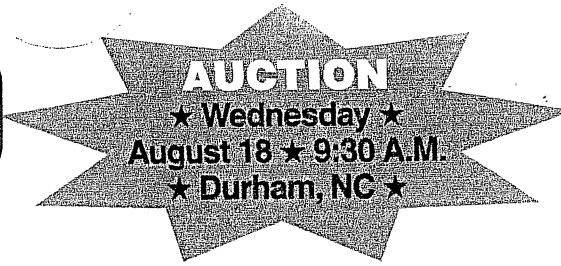
CASE NO: 19970127779	GREENSBORO POLICE DEPARTMENT	PAGE: 1
UN TIME: 1616	INVESTIGATIVE REPORT - PUBLIC COPY	DATE: 11/18/2003
Case No.: 19970127779	DIV/SQUAD: CID/AUT	Earliest Occ: 04/25/1997 2100
Off/Class: AUTOTH	AUTO THEFT - OTHER MV	Latest Occ: 04/26/1997 0800
Location: 1700 W LEE ST		Reported: 04/29/1997 0953
Location:		
Premises: BUSINESS LOT		
ATTACKED		
Prop Value: 6,000	Damage Value:	
Extent:	Type Inj:	
Method: BY TAKING AND CARRYING AWAY.		
PROPERTY DESCRIPTION		
.996 3 AXLE 18FT 18,000 TON TRAILER		
SOLVABILITY		
Evidence Spe:	NONE CALLED	
Inv Officer:	1144 D L HOLLIMAN	
Case Status:	Ins Rpt: Y	Warrant Adv: N Warrant Iss: N
Victim Pros?: Y	Evidence: N	Arrest: N Suspect ID: N Initial Stat: INA
N A M E S E C T I O N		
Role: VIC	Victim Code:	
Name:		
Race:	Sex:	Age: DOB:
----- HOME ADDRESS -----		
Street Addr:		
City/St/Zip:		
----- BUSINESS ADDRESS -----		
Bus. Name:	LYLES BUILDING MATERIAL	
Street Addr:	1700 W LEE ST	
City/St/Zip:	GREENSBORO NC 27403	
E N D O F R E P O R T		

NOTE: There is a second police report which Detective David Sizemore (336)433-7277 (Gboro N.C.) can provide a case number. In the second police report (not shown) A Jeff Roberts confessed to Mr Sizemore, he and Robert Nicholes stole the trailer, yet Prosecutor Panish still refused to issue a warrant and arrest these people.



MARTIN & MARTIN
 AUCTIONEERS, INC.
 1618 Easley Hwy., Pelzer, SC 29669
 (864) 947-7888 • George W. Martin SCAL 148, NCAL 2610

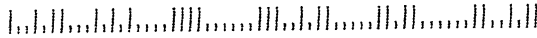
Address Service Requested



AUCTION
 ★ Wednesday ★
 August 18 ★ 9:30 A.M.
 ★ Durham, NC ★

Presorted
 First Class Mail
 U.S. Postage
 PAID
 Eugene, Oregon
 Permit No. 305

EXHIBIT (D) 4 of 6



#BWNFBRZ# **AUTO*****3-DIGIT 275
 #NOR001339# C--- EXPRESS NUMBER
 NORINA ELEC. MECH COMPANY
 201 N GREENSBORO ST
 CARRBORO NC 27510-1803

FOR FASTER REGISTRATION, BRING THIS BROCHURE WITH YOU!!!

AUCTION SITE PHONE

(919) 477-6107

AUCTION SITE FAX

(919) 471-2617

AUCTION LOCATION

5013 Denfield Street, Durham, North Carolina
 Nello L. Teer (Durham Quarry)

INSPECTION

Tuesday, August 17, 9:00 A.M. to 5:00 P.M.

PAYMENT PROCEDURES

Payment in full on auction day by cash, cashier's check or certified funds. If payment is made by personal or company check, you MUST have a current letter to Martin & Martin Auctioneers, Inc., guaranteeing payment of check.
 Sample letter of guarantee: "Mr. _____ is a customer in good standing of our bank. We will guarantee payment of checks written on his account number ____ up to (specify amount) dollars for purchases at your auction on August 18, 1999." All titles will be mailed ten banking days after the Auction.

All sales subject to North Carolina tax laws.

DIRECTIONS TO AUCTION

FROM CHARLOTTE, NC: Take I-85 North to Exit 176B (Duke Street). Follow it north to the sixth light, turn right onto Horton Road. Go under the next light. You are now on Denfield Street. Follow to the end of Denfield Street through the gate to Auction Site.

FROM RICHMOND, VA: Take I-85 South to Exit 176B (Duke Street). Go north to the fifth light, turn right onto Horton Road. Go under the next light. You are now on Denfield Street. Go to the end of the road through the gate to the Auction Site.



EXHIBIT (D) 5 of 6

Copy for you

MARTIN & MARTIN AUCTIONEERS INC
 1618 EASLEY HIGHWAY
 PELLETIER SC 29669
 (84) 947-7888 OR FAX (864) 947-7846

Page :
 Date : 06/07/1998

Buyer Number: 531
 MARINA
 201 N GREENSBORO
 CARRBORO, NC 27510
 Phone ()

Invoice # 100135
 Tax Status 1 Resale
 Tax Status 2 Resale
 Tax Status 3 Resale
 Resale # 605-1-068-08888
 Driver's Lic#
 Fax Phone

Purchased at Auction of: MYRTLE BEACH, SC

Lot	Description	Tax	Quantity	Unit Price	Extension Exp
			1	12.50	12.50
47	+ 3 TON JACK STAND	1	1	1,400.00	1,400.00
52	+1986 BUTLER 2 AXLE TAG TRAILER SN:1BUD1420581005031	1	1	3,700.00	3,700.00
106	+1993 GROVE 31/46 LIFT, SN#:28397	1	1	2,700.00	2,700.00
125	+STRATO LIFT KRX-20 ELECTRIC SCISSOR LIFT SN:2902	1	1	1,500.00	1,500.00
129	+MITE-E-LIFT SCISSOR LIFT, GAS POWER, SN:	3	1	30,750.00	30,750.00
180	1995 CATERPILLAR 933 CRAWLER LOADER, DROPS, GP BUCKET, GOOD UNDERCARRIAGE LOW HOUR	2	1	13,750.00	13,750.00
389	+1989 INTERNATIONAL S1954, SINGLE AXLE, TIRE SERVICE TRUCK WITH IMT KNUCKLE BOOM CRANE, DT466 ENGINE, 5-SPEED TRANSMISSION, SN#:1HTLDTVN4JH612926	2	1	3,750.00	3,750.00
481	+1995 MITSUBISHI MIGHTY MAX REFRIGERATOR TRUCK, 5-SPEED, 81681MI, SN#:JA7LS21G1SP008016	2	1	3,750.00	3,750.00
482	+1995 MITSUBISHI MIGHTY MAX REFRIGERATOR TRUCK, 5-SPEED, 75362MI, SN#:JA7LS21G8SP007963	2	1	1,050.00	1,050.00
522	+3 AXLE EQUIPMENT TRAILER, DOVE TAIL AND RAMPS (15' x 8')	1	1		

Call and talk to Debbie

2527

* 843-700 0000

Hand CK # 1515

EXHIBIT(D) 6 of 6

EXHIBIT (E)

AFFIDAVIT OF RONNIE LEE KIMBLE SR.

I Ronnie Kimble Sr. make the following statement freely and voluntarily. This is my affidavit of true events that transpired from January 1997 until December 1999. Although there are many things I know which happened prior, during, and after this time, the purpose of this Affidavit is to discuss the misconduct of Assistant District Attorney Richard E. Panosh.

I Ronnie L. Kimble Sr. am a retired Pastor of 20 some years. On April 1, 1997 Theodore (Ted) Kimble was arrested. At the time Ted owned and operated Lyles' Building Materials (L.B.M.) at 1700 West Lee Street, Greensboro, North Carolina. Due to the circumstances I took over operating the company of L.B.M., and managed it's two employees, Robert (Rob) Nichols and James Ogburn.

Just prior to my assuming control of L.B.M., Ted Kimble, Rob Nichols, and a Patrick Pardee had a theft ring going, dealing with stolen construction materials. This would lead to some 40 charges brought against them.

Shortly after April 1, 1997, Rob Nichols came into the office of L.B.M. and said due to the charges being brought against himself and Patrick Pardee, D.A. Richard Panosh had offered to make a plea bargain with them. Rob stated Mr. Panosh wanted him to lie against Ted Kimble. Rob was to say Ted had told him of hiring his brother (Ronnie Kimble Jr.) to kill his wife (Patricia Kimble). Rob said he was assured if he agreed to lie against Ted, he would not have to serve any prison time for the B&E's. And if Rob fell to agree with the terms, Mr. Panosh would make sure that he spent the next 40 years in prison. Rob went on to say that he and his wife had talked it over, and he would never tell such a lie on Ted, he would serve the time first. I asked point blank, "Did Ted ever say anything to you about his wife's death?" Rob said, "No, Ted only said how much he loved his wife."

James Ogburn, another employee of L.B.M. came to me on April 18, 1997. James said Rob had just told him that the police were onto him concerning Ted and the murder case. James gave me a signed statement to verify this conversation, and I have turned over this Statement to Theodore Kimble.

On April 29, 1997, I arrived at work (L.B.M.) and found the lock on the gate had been cut, and a custom built trailer had been stolen. I called the police and they came out and made a report. Rob Nichols only worked a few days after the theft of the trailer. Being left with only James Ogburn I was short-handed, so I hired a man named Walter Cole.

At the end of July in 1997, James and Walter came and told me that they had spoken with Rob Nichols down the street. Rob had asked them to let me know that he was not going to testify against Ted. I asked both James and Walter to write statements for me of all they could remember. I have turned over these statements to Theodore Kimble.

A few weeks later a young man named Jeff Roberts came in at Lyles' Building Materials. Jeff told me who he was and stated he knew who had stolen the trailer off the lot. Jeff told me that Rob Nichols had loaded the trailer with shingles, and that the two of them drove to the Coast and did a roofing job. Rob then took the trailer and sold it. Jeff also said Rob's wife and child were with them. I called the police and a Detective came to take Jeff's statement. James Ogburn then step forward and stated Rob previously told him that he had stolen the trailer, because he felt Ted owed him that much for all of his legal fees. I asked the Detective if Rob Could be arrested for stealing the trailer even if the trailer had not been found? The Detective said he didn't see why not. It was not until later that I found out no warrant would be issued for Rob's arrest, because Rob took the plea bargain from Richard Panosh to lie on Ted. Mr. Panosh had bought his second testimony, right behind Patrick Pardee. (97')

In mid 1999, while Ted was at Central Prison in Raleigh North Carolina he found an ad in the newspaper which described his stolen trailer. Ted sent me the newspaper ad and asked that I check into it. So my wife (Edna Kimble) and I drove to Carrboro North Carolina, Late one night to check out the trailer. I recognized the stolen trailer right away. I called the police there in Carrboro, and they made a report. The Carrboro police told us that we were to go back to Greensboro North Carolina and file a report. In Greensboro we spoke to Detective David Sizemore, and he went to work on the case. Detective Sizemore later told me that he had traced the trailer back to where it was sold by Rob Nichols to a person at the coast. When Detective Sizemore finished his report, he claims to have given it to the District Attorney's office. But Richard Panosh would not give Mr. Sizemore an arrest warrant on Rob Nichols. D.A. Panosh refused to proceed with the case. I could not believe what I was hearing. If ever there was a case of "Obstruction of Justice," this is it!!!

Back to Jeff Roberts. Sometime later after the report was given to the police by Jeff, he came back to Lyles's Building Materials. Jeff told my wife (Edna Kimble) and I that do to some trouble he had gotten himself into for stealing, Richard Panosh told him that if he did not back-off Rob Nichols he would be spending a long time in prison. Jeff further said he would not be able to come around us anymore because they (Panosh and the Sheriff's department) were threatening him. Jeff Roberts was the second witness who came to me and stated that he was being threaten by D.A. Richard Panosh.

After Ted and Ronnie Kimble Jr. were arrested and placed in jail, Detectives from the Sheriff's department came to Lyles' Building Materials several times to talk with James Ogburn. During one of these visits I personally witness Detectives question James about where Ronnie Jr. was on October 9, 1995 at 4:30 pm; the day of Patricia Kimble's death. James said,

“Ronnie (Jr.) was here on this lot, because I remember looking at the clock to see how much longer I had to work that day. I did not have but one hour to go till 5:30 (p.m.).” James had told me the same statement.

No matter how many times James Ogburn answered the Detective’s questions, they kept coming. I could see the Detectives were harassing James, but felt helpless to do anything about it. One afternoon some Sheriff’s cars showed up at L.B.M. to arrest James for non-child support. The police carried James downtown, and sometime later that day he came back to work. James said that the Detectives (J.D. Church, Sgt. DeBarry...) and the D.A. (Richard Panosh) used that child support scheme just to get him down town, and tried to persuade him to change his story of where Ronnie Kimble’s (Jr.) was at 4:30 (p.m.) on the day of the murder. James went on to say, “I know where Ronnie Kimble (Jr.) was that afternoon and I am not going to change the truth and lie!” James Ogburn stood by his statement for nearly (3) years.

A couple of weeks before the trial of Ronnie (Jr.) in 1998, James Ogburn told me that he had to go down town to the D.A.’s office. The D.A. and Detectives wanted to talk with him. James seemed upset and I could see the pressure placed on him to go.

When James returned to work he told me that he had met with the D.A., and that Mr. Panosh brought up the charges against Rob, Patrick, and Ted for the B&E’s. Mr. Panosh told James these same charges could be brought against him because of his involvement.

After James Ogburn was threaten by Mr. Panosh, James statement changed from Ronnie (Jr.) leaving Lyles’ Building Materials at 4:30 (p.m.) to Ronnie (Jr.) leaving at 3:00 (p.m.). This was not true because Ronnie (Jr.) was at his home on the phone talking to his wife at that time. This is nothing but blackmail, no matter what you call it!!!! This is “Obstruction of Justice”. This made the third witness to tell me they were being threaten by Mr. Panosh.

The notes of the meetings between James and the Detectives could have cleared Ronnie and Ted, but this evidence was withheld.

During the time Ronnie (Jr.) was in the Greensboro jail awaiting trial, a female Deputy named Janet Smith became infatuated with him. Ms. Smith actually attempted to have an affair with Ronnie, but her actions were reported to superior officers. To subvert prisoners seem to be common practice at the Greensboro jail, for a lack of supervision. Not only was Ms. Smith fired for such behavior, but two of her co-workers were also fired.

What surprised me about Janet Smith is her statement, which she disclosed to myself and others. Richard Panosh told Janet Smith if she would (lie) say Ronnie confess to her, she could keep her job. If Janet refused, Mr. Panosh promised she would never work for North Carolina again. Ms. Smith refused to lie and lost her job. In keeping count, Ms. Janet Smith made the fourth person to directly tell me, "Richard Panosh had threaten them."

I Ronnie Lee Kimble Sr., Being First Duly Sworn depose and say, I am the Author of the forgoing Affidavit, I have drafted and read the same, as for any statements made on information and belief, are made in good faith, and I believe to be true. Signed under penalty of perjury this the 10th day of Feb 2004.

Ronnie Lee Kimble Sr.
Ronnie Lee Kimble Sr.

Sworn to and before me this the 10th day of February 2004.

Witness: Camela P. Beane
My Commission Expires: 10-12-2005

EXHIBIT (F)

AFFIDAVIT OF EDNA M. KIMBLE

I Edna M. Kimble make the following statement freely and voluntarily. This is my affidavit of true events that transpired following the death of my daughter-n-law Patricia Kimble, who died October 9, 1995. Although I know of many things that have happened, the purpose of this Affidavit is to discuss the misconduct of Assistant District Attorney Richard E. Panosh. The following events I either witnessed for myself or was told directly from a victim of Mr. Panosh.

I Edna M. Kimble am the wife of Rev. Ronnie Lee Kimble Sr. I have been married almost 35 years. I currently work at UnitedHealthcare, and have done so for over 15 years.

Following the death of Patricia Kimble I watched as Detectives J.D. Church, Debarry, and Pendergrass, with District Attorney Richard Panosh threaten and harassed anyone who stood between them and a conviction of Ronnie Jr. and Theodore (Ted) Kimble.

The key eye witness of the time and location of Ronnie Jr. and Ted Kimble was a man named James Ogburn. James and Robert (Rob) Nichols were employees of Lyles' Building Materials, which Ted owned and operated until he and Ronnie Jr. were arrested on April 1, 1997. My husband Ronnie L. Kimble Sr. took over the company after Ted's arrest. I should point out just prior to this, Ted Kimble, Rob Nichols, and Patrick Pardee were involved in stealing lumber from construction sites.

Detectives had spoken to James Ogburn many times. During one such interview I set in the company's office and listened. As to the day Patricia Kimble died, James Ogburn told Detective Ted was at work all day and that his brother Ronnie (Jr.) was there from 3:45 until 4:30 (p.m.). James said he remembered because he looked at the time clock and thought to himself, "I have one more hour to work." James continued to stand on this statement and repeated this

numerous times to me and my husband.

On a later visit to Lyles Building Materials, I was present when about 4 sheriff cars came flying onto the lot with their blue lights flashing. Police were there to arrest James Ogburn for late child support, they cuffed him and took him down town. The scene was one of excessive force and intimidation. Later when James returned he said that it had nothing to do with child support, and he knew that because he had already worked that out. James said after they got him down town he was taken to see the District Attorney (Mr. Panosh) and the Detectives working on Ted's case. They told James he could be charged with the same B&E charges brought against Ted, Rob and Patrick for the stolen lumber, because he knew the lumber was stolen, and had cut the ends off of it so that it could not be identified. James said they wanted him to change his statement and say Ronnie left the business at 3:00 (p.m.). When James refused to lie they told him that if he testified they would remember these charges. They said that they knew he was part of the theft ring, but chose not to charge him. James stood his ground for a time. A couple of weeks before Ronnie Jr.'s trial, James Ogburn was called on to go down-town. This time James's wife Renee went to the D.A.'s office with him. When James came back things were never the same. James did not want to talk to me anymore about the case and began to avoid me. Renee Ogburn who "was" always nice and friendly, would not even get out of the car when she came to see James. Now when Ronnie's lawyers talked to James he would not cooperate, and the lawyers told us it would be better not to use James as a witness. Ronnie's best witness was now being blackmailed by D.A. Richard Panosh.

After Ronnie's trial I went back to Lyles's Building Materials and faced James. I asked him to please come forward and tell what happen, but James got angry and began to curse (James had never before cursed in front of me). I began to cry and said, "All I want you to do is

tell the truth, the same thing you have been telling us for the last two years, that Ronnie was here at 4:30. James began to curse again and walked off. Nancy Boyer, the office clerk told me that James was upset the rest of the day, walking around cursing, talking to himself and showing anger.

The next person I would like to discuss is Jeff Roberts. There was another employee of Lyles's Building Materials named Robert Nichols (Rob), and shortly before Rob quit a trailer valued at over \$6,000 dollars was stolen. My husband called the police and a report was filed. Jeff Roberts, whom we did not know came on the lot and introduced himself. Jeff told my husband that he knew who stole the trailer. Jeff first told my husband his story and later repeated it to me. Jeff told me that Rob had called him and said that he had a roofing job for them. So they met at Lyles' Building Materials after hours. There Rob cut the lock off the gate and went in, hooked up the trailer to his truck using a ball hitch that he brought with him, because this trailer did not use a standard ball. They loaded the trailer with shingles and took it to the coast, completed the job, and Rob then put the trailer up for sale. My husband called the police again, and a Detective came and took Jeff Roberts' statement. Then James Ogburn stated that Rob had also told him that he stole the trailer, but he did not say anything because at the time Rob was still working there. Although we had two witnesses stating Rob stole the trailer, the District Attorney Richard Panosh would not give the Detective a warrant to arrest Rob.

While Ronnie Kimble Jr. was in the Greensboro jail there was a female deputy, Janet Smith who started flirting with him. At the time Ronnie was married. Still Janet pursued Ronnie and tried to tempt him to have sex with her by writing him dirty letters. Although Ronnie Jr. wrote her back a few times, Janet stated Ronnie loved his wife to much and would

not have sex with her. I don't believe Ronnie would have gotten involved with writing Janet back if he were not so depressed about his wife just losing their baby. Just before she got fired Janet was in the visitation room where Kim (Ronnie's wife) and I were waiting to see Ronnie, Janet told us that she needed to speak to Ronnie's lawyers because the D.A.'s office was trying to set Ronnie up. Janet stated she could not talk to us there because she was being watched, so she gave us her number and told us to have the lawyers call. Shortly there after Janet was charged. Janet, her supervisor and one other guard were fired. Janet told me she had a meeting with D.A. Richard Panosh, who told her if she would say Ronnie had confessed to her, saying he had killed his sister-in-law, she could keep her job, but if she didn't she would never work in North Carolina again. Janet refused and lost her job. Janet also said that she learned that the sheriff and D.A.'s office knew about her and Ronnie for a long time and was hoping to catch them in some sex act that never happen. There was no sexual act, Ronnie would not do it. Janet said one of the guys who was fired from the jail was a homosexual having sex with some of the inmates. When all of this came out it upset me that Janet and Ronnie were the ones who were plastered all over the newspapers and television, and not a word about the homosexual. When Sheriff Barns was interviewed by one of the television stations he lied, in his words they were having a sex orgy yet there was no proof. Mr. Barns was trying to discredit Ronnie in the public's eye, since they still did not have any proof that Ronnie was at the murder scene, after holding him for over a year in jail.

During Ronnie's trial I watched as several people took the stand to testify. When many of these people were given a copy of their own past statements for review, each one would argue about things they never said being in the report. It was as if Detective Church would go out and interview these people, then go write false police reports to read as to what D.A. Panosh

wanted to hear. I know of four such people. A prime example of this was when an inmate named Jeff Clark took the stand to testify. Mr. Clark stated he had been promised help on his case to lie against Ronnie Kimble Jr. Mr. Clark said he never read his own signed statement. Detective Church wrote what they wanted the statement to say and had Mr. Clark sign it. Mr. Clark even pointed out that someone else had signed his name on some of the false statements. Mr. Panosh did nothing about Mr. Clark's claims, and actually tried to discredit this man. The only reason Mr. Clark did not lie for Mr. Panosh and instead testified for Ronnie's defense, was because Mr. Panosh did not help Mr. Clark on his pending charges as promised. Although Jeff Clark did not get the help he was promised, others did. One such case was a young woman named Joy Dyer. Ronnie dated Joy when he was a teenager, I watched Joy Dyer testify to some unbelievable lies. When Joy testified I could not understand why she would make-up such stories. As Joy was leaving the courtroom she made a statement loud and clear in front of Kim (Ronnie's wife), Kim's mother Judy Stump, and myself. Her exact words, "What the hell did he want me to say." I wondered at this statement and while discussing it with Ronnie Jr., he said I should check her criminal record. After Ronnie was convicted according to Joy Dyer's criminal record, charges that were pending against her were dismissed by D.A. Richard Panosh. Mr. Panosh blackmailed Joy Dyer to lie against Ronnie and Ted Kimble.

Now back to Rob Nichols. Ted Kimble was at Raleigh's Central Prison in 1999, reading a newspaper and came across an ad that described a three wheel trailer with a dove tail. This ad sounded like Ted's stolen trailer, so he clipped the ad and mailed it to us. The ad was from Carrboro about an hour away. It was late and my husband and I were tired, but we decided to ride down there and see. Sure enough it was Ted's custom built trailer. We went down the street and called the police, In turn the police called the owner of the business where

we found the trailer, and he came up. The man gave details of purchasing the trailer, and could not produce a title. The officer told us we should go back to Greensboro and report this to police there. The Police officer then gave us a card and said that he would do anything to help. In Greensboro a Detective David Sizemore took the new information and looked up the old information on the computer. Mr. Sizemore kept us updated and traced the trailer back to a parking lot where Rob Nichols, his wife and little girl met a man there and sold the trailer to him. Detective Sizemore said he was ready to get his warrant. Later he came back and said that the D.A. Richard Panosh would not issue the warrant, and without the warrant he could do nothing. Once again Mr. Panosh violated the law. It's now 2004 and the stolen trailer still has not been recovered. We have since spoke to Mr. Sizemore and he said he still has his notes about the case.

I, Edna M. Kimble, Being First Duly Sworn depose and say, I am the Author of the foregoing Affidavit, I have drafted and read the same, as for any statements made on information and belief, are made in good faith, and I believe to be true.

Signed under penalty of perjury this the 10 day of February 2004.

Edna M. Kimble
EDNA M. KIMBLE

Sworn to and before me this the 10th day of February 2004.

Witness: Camela P. Beane
My Commission Expires: 10-12-2005

EXHIBIT (G)

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit" because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to Mr. Kimble.

Walter A. Cole Sr.
8/2/97

EXHIBIT(H) 1 of 2 Time 12:00
4-18-97

Robert informed me that the Police
was on him concerning Ted and the
murder ^{case}. Robert also says that Ted
told him some things that he shouldn't have,
but nothing concerning the murder. Robert
says he was going to plea guilty to
all larceny charges.

James Ogden

7-29-97

On July 22nd, I saw Robert Nicklaus in the parking lot down from Sykes Bld. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)
1 of 8

File No. 99CRS 23241

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 3:50 P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)
2 of 8

File No. 99CRS 23242

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.
FILED
JAN 28 1999
AT 350
BY [Signature]
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)

3 of 8

File No.

99CRS 23243

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.

THEODORE MEAD KIMBLE

Film No.

GUILFORD COUNTY

FILED

JAN 28 1999

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

AT 350 U.S. P. M.
BY [Signature]
CLERK OF SUPERIOR COURT

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)
4 of 8

File No. 99CRS 23244

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.
FILED
JAN 23 1999
AT 3:50 P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
[Signature]
Signature of Attorneys for the Defendant
[Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)

File No.

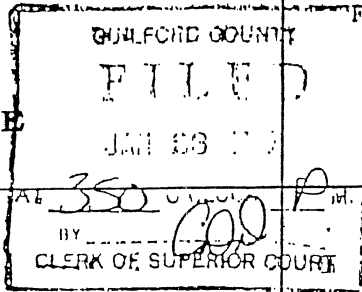
99CRS 23245

5 of 8

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.

THEODORE MEAD KIMBLE



Film No.

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

R. E. P. O.

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

Frederic B. Campbell
AW [Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)

File No.

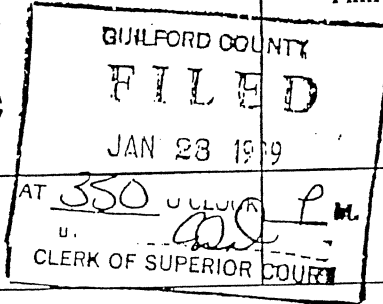
99CRS 23246

6 of 8

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE



BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

Signature of Attorneys for the Defendant

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)

File No.

99CRS

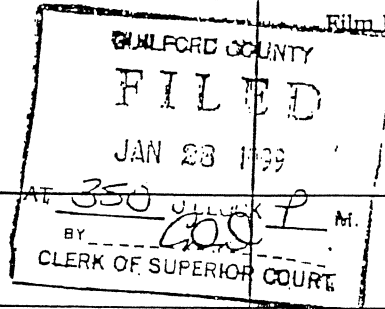
23247

1 of 8

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE



BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

Signature of Attorneys for the Defendant

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (I)

File No.

99CRS 23248

8 of 8

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 25
BY [Signature]
CLERK OF SUPERIOR COURT

Film No.

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
X Theodore Kimble
Signature of Attorneys for the Defendant
[Signature]
[Signature]

EXHIBIT(J)

Answers

14. (If applicable) The prosecutor and your lawyer have informed the Court that these are all the terms and conditions of your plea: (See attachment for additional plea arrangements, including voluntary dismissals.) The State of North Carolina agrees to accept a plea to Second Degree Murder in 97CRS39581. Count 1 of 97CRS23656 shall be dismissed. In return, the Defendant agrees to enter guilty pleas to Second Degree Murder in 97CRS39581, Conspiracy to Commit First Degree Murder in 97CRS23656, First Degree Arson in 98CRS23486, and eight counts of Solicitation to Commit First Degree Murder in Bills of Information which are to be filed this date. The Defendant agrees and understands that he will receive consecutive sentences in each of these cases. Further, the Defendant agrees to return the ashes of Patricia Blakley Kimble to the Blakley family. The State agrees to dismiss any Breaking and Entry or Larceny indictments against Theodore Meade Kimble which are presently pending in Guilford County.

The parties stipulate that the Defendant is a level II offender, and that under the Structured Sentencing Act the maximum sentence he can receive for each B-2 felony is 254 months, for each Class C felony 159 months, and for the Class D felony 108 months.

- (a) Is this correct as being your full plea arrangement? (14a) yes
- (b) Do you now personally accept this arrangement? (14b) yes
- 15. (Other than the plea arrangement between you and the prosecutor) has anyone made any promises or threatened you in any way to cause you to enter this plea against your wishes? (15) no
- 16. Do you enter this plea of your own free will, fully understanding what you are doing? (16) yes
- 17. Do you have any questions about what has just been said to you or about anything else connected with your case? (17) no

I have read or have heard all of these questions and understand them. The answers shown are the ones I gave in open court and they are true and accurate. Neither my lawyer nor anyone else has told me to give false answers in order to have the Court accept my plea in this case. The conditions of the plea as stated above, if any, are accurate.

SWORN AND SUBSCRIBED TO BEFORE ME		Date 1/28/99
Date 1/28/99	Signature <i>Christina Davis</i>	Signature Of Defendant X <i>Theodore Meade Kimble</i>
<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
		Name Of Defendant (Type Or Print) Theodore Meade Kimble

CERTIFICATION BY LAWYER FOR DEFENDANT		
As lawyer for the defendant named above, I hereby certify that the conditions stated above, if any, upon which the defendant's plea was entered are correct and they are agreed to by the defendant and myself. I further certify that I have fully explained to the defendant the nature and elements of the charge(s) to which the defendant is pleading.		
Date 1/28/99	Name Of Lawyer For Defendant (Type Or Print) Fred W. Zimmerman Jr	Signature Of Lawyer For Defendant <i>Fred W. Zimmerman Jr</i>

CERTIFICATION BY PROSECUTOR		
As prosecutor for this Prosecutorial District, I hereby certify that the conditions stated above, if any, are the terms agreed to by the defendant and his/her lawyer and myself for the entry of the plea by the defendant to the charge(s) in this case.		
Date 1/28/99	Name Of Prosecutor (Type Or Print) Richard E. Parosh	Signature Of Prosecutor <i>Richard E. Parosh</i>

PLEA ADJUDICATION		
Upon consideration of the record proper, evidence presented, answers of defendant, and statements of the lawyer for the defendant and the District Attorney, the undersigned finds:		
<ol style="list-style-type: none"> That there is a factual basis for the entry of the plea. The the defendant is satisfied with his/her lawyer. That the defendant is competent to stand trial and that the plea is the informed choice of the defendant and is made freely, voluntarily and understandingly. 		
The defendant's plea is hereby accepted by the Court and is ordered recorded.		
Date 1/28/99	Name Of Presiding Judge (Type Or Print) Peter M. McHugh	Signature Of Presiding Judge <i>Peter M. McHugh</i>

1 right up to the time of her execution. That just shows
2 you not a mitigating factor, that shows that he's a cold
3 blooded murderer. He planned this and he had the ability
4 to hug and kiss his wife knowing that he was about to
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world
7 of bombs and silencers and sniper rifles. He just feels
8 that anybody who gets in his way, he should be able to
9 eliminate. We ask you to sentence him remembering that.
10 Thank you.

11 THE COURT: All right, thank you. Mr.
12 Zimmerman, are you prepared to tender your sentencing
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this
15 point in time, if Your Honor please. If Your Honor would
16 be kind enough to consider a short recess, I'll check one
17 more time and see what the problem is. This witness has
18 been subpoenaed since two weeks ago. And she was just
19 deathly ill yesterday. I apologize for having the phone
20 ringing in the courtroom. That was her calling me
21 yesterday. She couldn't get out of the bed. It's this
22 flu going around, and I can understand it because I had
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

1 MR. ZIMMERMAN: Absolutely satisfactory with
2 the defendant.

3 (Counsel approach the bench.)

4 THE COURT: Counsel, the Court will provide
5 you with a recess to attempt to provide that element of
6 evidence.

7 Court will be in temporary recess, Sheriff.

8 (A recess was taken.)

9 (All parties present.)

10 MR. ZIMMERMAN: If Your Honor pleases, the
11 defense appreciates Your Honor's thoughtful and serious
12 consideration of the presentence study, and apologizes
13 for the delay.

14 THE COURT: That's no need to apologize,
15 Counsel. In this matter I'm anxious to have all the
16 evidence that any party wishes to produce.

17 Is there any further evidence at this time
18 for the State or for the defendant?

19 MR. PANOSH: No, thank you, Your Honor.

20 MR. CRUMPLER: No, Your Honor.

21 THE COURT: Is there any further matters
22 before the Court enters judgment?

23 MR. PANOSH: No, Your Honor.

24 THE COURT: Judgment of this Court shall be
25 entered first in case 97 CRS 39581, wherein the defendant

EXHIBIT (L)

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

GUILFORD COUNTY

STATE OF NORTH CAROLINA

v.

THEODORE MEADE KIMBLE

File No.

97CRS 23656

Film No.

INDICTMENT
ARSON
CONSPIRACY TO MURDER

Date of Offense
October 9, 1995

Offense in Violation of G.S.
14-58 and the Common Law

COUNT I
ARSON OF AN UNOCCUPIED DWELLING

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

COUNT II
CONSPIRACY

AND THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL

Date

NOV 03 1997

Signature of Grand Jury Foreman

253

EXHIBIT (M)

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

FILED

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

v.

THEODORE MEAD KIMBLE GUILFORD COUNTY, N.C.

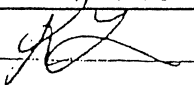
File No.

98CRS 23486

Film No.

**INDICTMENT
FIRST DEGREE ARSON**

Date of Offense
October 9, 1995

BY 

Offense in Violation of G.S.
14-58 and the Common Law

FIRST DEGREE ARSON

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.

Signature of Prosecutor

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL

Date

JUL 06 1998

Signature of Grand Jury Foreman

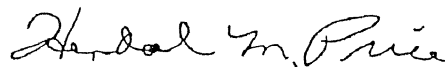


EXHIBIT (N)

1 GUILTY TO THOSE OFFENSES BECAUSE YOU CONSIDER IT TO BE IN YOUR
2 BEST INTEREST TO DO SO?

3 DEFENDANT:- YES, SIR.

4 THE COURT:- DO YOU UNDERSTAND THAT WHEN YOU PLEAD
5 GUILTY TO THOSE OFFENSES UPON THAT CONDITION THAT YOU WILL BE
6 ADJUDGED GUILTY AND SENTENCED FOR THOSE OFFENSES WHETHER OR NOT
7 YOU, IN FACT, ADMIT THAT YOU ARE GUILTY OF THEM?

8 DEFENDANT:- YES, SIR.

9 THE COURT:- HAVE YOU AGREED TO TENDER A PLEA OF
10 GUILTY TO THESE SEVERAL OFFENSES AS PART OF A PLEA ARRANGEMENT
11 THAT WAS NEGOTIATED ON YOUR BEHALF BY YOUR ATTORNEYS WITH THE
12 DISTRICT ATTORNEY?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- IS THIS A CORRECT STATEMENT OF WHAT YOU
15 UNDERSTAND YOUR FULL PLEA ARRANGEMENT TO BE: THE STATE OF
16 NORTH CAROLINA HAS AGREED, PURSUANT TO THE PLEA ARRANGEMENT, TO
17 ACCEPT A PLEA OF GUILTY TO SECOND DEGREE MURDER IN CASE
18 97-CRS-39581. COUNT ONE IN THAT -- IN CASE 97-CRS-23656 SHALL
19 BE DISMISSED BY THE STATE UPON YOUR PLEA OF GUILTY. IN RETURN,
20 THE DEFENDANT AGREES TO ENTER PLEAS OF GUILTY TO SECOND DEGREE
21 MURDER IN CASE 39581, CONSPIRACY TO COMMIT FIRST DEGREE MURDER
22 IN CASE 97-CRS-23656, AND FIRST DEGREE ARSON IN CASE
23 98-CRS-23486, AND EIGHT COUNTS OF SOLICITATION TO COMMIT FIRST
24 DEGREE MURDER PURSUANT TO THE BILLS OF INFORMATION WHICH HAVE
25 BEEN SUBMITTED TO THE COURT. THE DEFENDANT AGREES PURSUANT TO



Thriller: Victor Stephens celebrates after his touchdown seals the Wolfpack's win. **PAGE 1CC**

THE SUNDAY NEWS OBSERVER

**JUSTICE
WITHHELD**

The adversarial system has gotten to the point where winning is more important than justice.

TOM ROSS OF GREENSBORO, FORMER SUPERIOR COURT JUDGE

Cheating prosecutors ruin lives, go unpunished

Nathan Hoffman is on death row because of testimony from a cousin with whom prosecutors made a deal. Hoffman's lawyers have presented evidence that prosecutors, in violation of the law, did not disclose the deal; Hoffman, convicted of murder in 1995, is appealing.

STAFF PHOTO BY SCOTT LEWIS

LAW OPENS FILES FOR THOSE ON DEATH ROW, BUT OTHER INMATES ARE IN THE DARK WHEN THE STATE KEEPS VITAL EVIDENCE SECRET

By **JOSEPH NEFF**
STAFF WRITER

After Alan Gell got off death row last year because state prosecutors withheld evidence of his innocence, Attorney General Roy Cooper said the actions were unintentional. The misconduct was described as unusual, perhaps unique.

Yet prosecutorial misconduct has unalone at least four other North Carolina death row sentences in recent years, and several similar cases are grinding their way through the appeals process.

In these cases where judges ordered new trials, prosecutors broke the law by withholding evidence helpful to defendants, such as witness statements or deals cut with jailhouse informants. The prosecutors have received no significant punishment.

Death row inmates now have com-

plete access to the files of prosecutors and police because of a little-noticed 1996 change in state law that has thrown light into a dark corner of the criminal justice system.

By seeing the entire law enforcement files, convicts and their lawyers can determine whether prosecutors, at trial, turned over all evidence helpful to the defendants, as the U.S. Supreme Court has required since 1963.

In several cases, they did not. Inmates affected by the allegations of misconduct include:

■ Gell, who was sentenced to death in 1998 for the murder of a retired truck driver in Bertie County. Late last year, a Superior Court judge ruled that David Hoke and Debra Graves of the state Attorney General's Office withheld witness statements indicating that the murder occurred while Gell was in jail. They also

failed to reveal a tape recording of the state's star witness saying she had "to make up a story" to tell police.

■ Jerry Lee Hamilton, who was sentenced to death in 1997 for the murder of a Richmond County woman raped and stabbed to death. He won a new trial in April because prosecutors and police withheld a document undermining the credibility of the state's sole witness, Hamilton's nephew, who had initially confessed to committing the murder alone.

■ Jonathan Hoffman, whose lawyers have filed an appeal that shows that prosecutors in Union County hid deals with their star witness. The witness's testimony cut his prison time by at least 15 years and put several thousand dollars into his pocket.

INSIDE

CAUGHT: A web of deceit entangles a prosecutor. **▶ 4A**

ONLINE

A state prosecutor's advice: Ignore information damaging to a witness. news-observer.com.

MONDAY

THE TOLL: A family unravels after a woman is wrongly imprisoned.

SEE JUSTICE, PAGE 4A

Charles Munsey of Wilkesboro, who won a new trial in 1999. In that case, Wilkes County District Attorney Randy Lyon withheld evidence that the state's star witness, a jailhouse informant, was never in the prison where Munsey supposedly confessed to him.

Former Superior Court Judge Tom Ross of Greensboro, who tossed out Munsey's conviction, said the case changed his view of the justice system.

"From my perspective as a lawyer and judge, the adversarial system has gotten to the point where winning is more important than justice," said Ross, who also worked as the court system's top administrator and now runs the Z. Smith Reynolds Foundation.

"There is an extra responsibility on the state to see that justice is done," he said. "You aren't representing victims of the crime but the people of the state, and the people are seeking justice."

Most prosecutors do follow the law and hand over evidence that might be helpful to the defense before trial. Many, such as Wake's Colon Willoughby, practice "open file discovery" and let the defense see all information, not just the evidence helpful to the defense.

But open file discovery is optional at the trial stage. State law and the U.S. Supreme Court place the burden on prosecutors to turn over what is required. Defendants have no way of knowing whether they're getting all evidence that might benefit them.

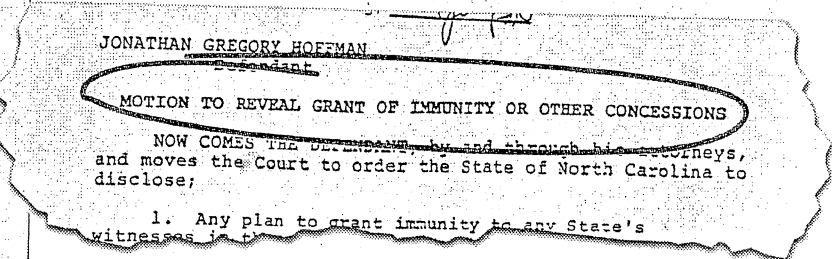
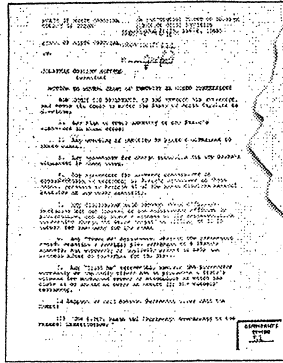
Only after convictions in death-penalty cases does state law require that defendants get the full files. Since the law was changed in 1996, judges have thrown out at least five death penalty convictions in which helpful evidence was withheld; in North Carolina, 198 people are on death row.

Death row inmates make up less than 1 percent of the prison population, meaning that the vast majority of inmates do not have automatic review of law enforcement files. Would inmates such as Gell or Hamilton have found the helpful evidence if a jury had sentenced them to life in prison instead of death?

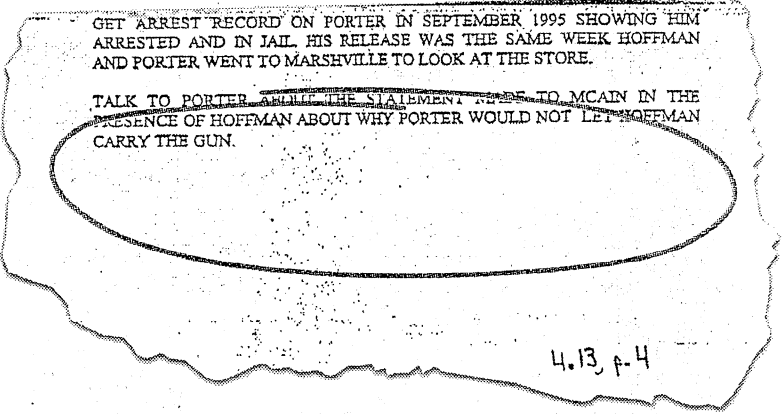
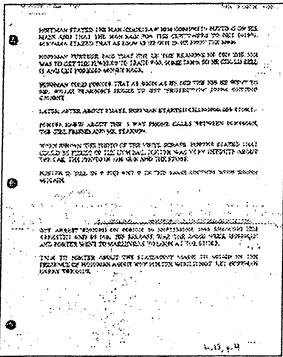
"No," said state Sen. Wib Gulley, a Durham Democrat, a skeptic about the death penalty and author of the 1996 change. "We've avoided some serious miscarriages of justice in capital cases, but it raises the question: Why we don't have this approach in noncapital cases as well."

The murder case against Jonathan Hoffman rested on the testimony of a jailhouse informant. Hoffman's trial lawyers demanded but did not get information on key deals made with him.

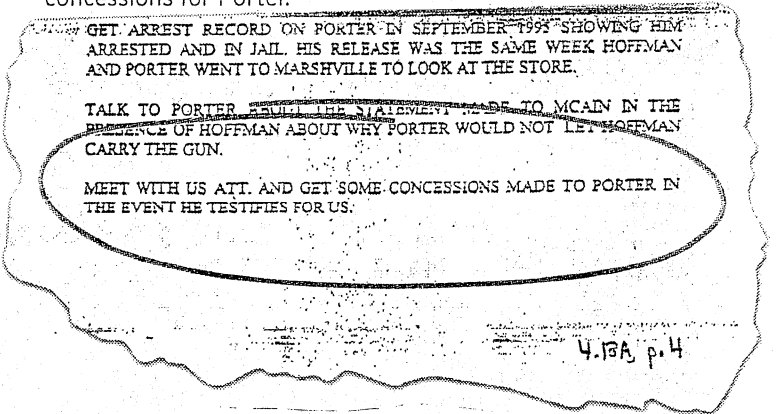
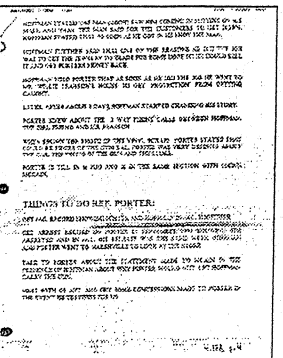
1 Oct. 8, 1996: Hoffman's lawyers ask for all helpful evidence, including any deals made with witnesses for the state.



2 Oct. 31, 1996: Prosecutors give Superior Court Judge William Helms notes of an Oct. 5 interview with Johnell Porter, the jailhouse informant. No mention of concessions or deals. Judge puts notes under seal in manila envelope.



3 October 2003: Hoffman's attorneys file an appeal and attach original copy of interview notes, which they had found in District Attorney Kenneth Honeycutt's file. Prosecutors had removed from the document given to Judge Helms their plans to seek concessions for Porter.



Legal standard set

The U.S. Supreme Court established the defendants' right of "exculpatory evidence" in 1963; prosecutors must hand over evidence that would help defendants prove their innocence, lessen their punishment, or undercut the credibility of state witnesses.

North Carolina's 1996 law went beyond that standard by opening all law enforcement files to death row inmates. The law was passed during a push to streamline the death-penalty process.

Defense lawyers argued that prosecutors and police were causing delays of executions because getting files or evidence from them could take years. Giving

death row inmates the law enforcement files at the start of the appeals process, they contended, would eliminate some delays.

Gulley inserted that change into the bill. The General Assembly agreed, despite the vigorous objection of Mike Easley, then the attorney general and now governor. Easley's office continued to fight the law even after it was passed.

Soon after, Special Deputy Attorney General Barry McNeill — the state's leading death-penalty lawyer — discussed the new law at a meeting of prosecutors in Asheville. Defendants had not been having problems obtaining evidence helpful to them, McNeill contended. There was no need to open all law enforcement files, and his office would help prosecutors ward off attempts to do so, he said.

whose "roots" or "spells" were said to protect clients from arrest and other misfortunes.

"Porter made a forceful and compelling witness," Honeycutt wrote in a November 1996 letter to federal prosecutors. "A conviction in this case would probably not have been possible but for Johnell Porter's testimony."

Porter benefited from his testimony. Under a deal arranged by Honeycutt, Porter's prison sentences were reduced by at least 15 years, he was not prosecuted for at least a dozen serious crimes, and he pocketed several thousand dollars in rewards, according to recently filed court papers.

And, the court papers show, Honeycutt hid the deal from Hoffman's lawyers, the jury and the trial judge.

Under the Supreme Court standard, prosecutors must disclose any concessions or immunity they give to their witnesses. That information allows a jury to assess truthfulness: Is the witness trading testimony for favors?

In July 1996, Porter pleaded guilty in federal court to an October 1995 bank robbery in Huntersville, near Charlotte. He expected a sentence of six to eight years. But a federal probation officer discovered that Porter had avoided serving a seven- to 20-year sentence in South Carolina. Instead of looking at six to eight years, Porter, 45, was looking at 22 to 40 years behind bars.

A flurry of meetings ensued involving Porter; his lawyer, Aaron Michel; Honeycutt and his assistant, Scott Brewer; Assistant U.S. Attorney Brian Whisler; and various investigators. The culmination was a meeting Oct. 17, 1996, at the Mecklenburg County jail with Porter, Honeycutt, Brewer, Whisler and investigators, Michel said in a sworn affidavit.

"The meeting lasted one to one and one half-hours and Mr. Honeycutt did the vast majority of the talking. Mr. Honeycutt said, in so many words, that Mr. Porter could rely on them to reward him for his cooperation."

The reward had five parts, according to Michel: a reduced federal sentence, help for Porter to reduce his South Carolina sentence, reward money, immunity from other state charges, and immunity from other federal charges. Porter would not be prosecuted in federal or state court for any past crimes.

One week before this meeting, on Oct. 10, there was a pretrial hearing where Hoffman's lawyers had asked for any concessions or deals struck with state witnesses. Hon-

eycutt said there was none yet.

"If there is one, disclose it to them so they will have that information," Superior Court Judge William Helms told Honeycutt at the hearing.

At trial, Honeycutt disclosed only one of five parts of the deal as outlined by Michel's affidavit: the letter Honeycutt promised to write asking that Porter's federal sentence be reduced.

On the day that Porter testified, Judge Helms ordered Honeycutt to hand over any statements Porter had made.

Honeycutt produced several documents, which Helms read during lunch. Satisfied there was no exculpatory or helpful evidence, he put the documents under seal in the case file.

What Helms did not know was that some of the documents had been altered. The records of an Oct. 5 jailhouse meeting, for example, contained a copy of Honeycutt's notes rather than the original, and several items were missing. The original notes, later discovered in Honeycutt's files by Hoffman's lawyers, said "Meet with US Att. and get some concessions made to Porter in the event he testifies for us."

A deal that cut

Porter took the stand and told the jury how Hoffman had confessed to him in the Mecklenburg County jail. He said he and Hoffman had teamed up on some robberies in the past. And he admitted acting alone in crimes that could have put him in prison for several decades: armed robberies, attempted robberies, possession of a firearm by a felon, sale of crack cocaine, credit card theft and credit card fraud.

During closing arguments, the prosecutors argued that Porter should be believed because he had spilled all his crimes at risk to himself. Porter "told you things he hasn't been charged with," Brewer told the jury. "That which he had no deals on, no deals of any sort. Why would he do that and not tell you the truth about what Mr. Hoffman did? There is no reason, no reason."

Honeycutt re-emphasized the point: In exchange for testifying against Hoffman and confessing to uncharged crimes, all Porter could gain was a letter from Honeycutt urging a lesser federal sentence.

Honeycutt did not disclose the nonprosecution deal in federal court or Mecklenburg County. He did not disclose that he said he would write a letter urging a reward for Porter.

Hoffman was sentenced to death.

Several weeks later, a federal judge reduced Porter's federal sentence from the 15- to 20-year range to less than eight years. The judge scheduled that sentence concurrently with a seven- to 20-year sentence in South Carolina.

Porter was not prosecuted for the crimes he admitted to at trial. And after Honeycutt wrote a letter to the reward fund, Porter received several thousand dollars. Brewer, the assistant prosecutor, declined to discuss the case, referring questions to Honeycutt.

Hoffman received a fair trial, Honeycutt said. He said ethical guidelines prevented him from

SEE WITHHELD, PAGE 5A

WITHHELD

CONTINUED FROM PAGE 4A

discussing the case and said he's not surprised by the accusations of wrongdoing.

"They always accuse us of lying, cheating and stealing," Honeycutt said. "There are pictures of Abraham Lincoln and naked women in the library. They're just not together. That's the sort of thing we're dealing with here."

The evidence of Porter's treatment by Honeycutt was unearthed by Hoffman's lawyers, Rob Hale of Raleigh and Mike Howell of Durham. Hoffman has always maintained his innocence, Hale said.

"My personal belief, based on a review of all the files and trial testimony, is that he's innocent," Hale said. "There is absolutely no evidence that connects him to the crime."

Hoffman is on death row at Central Prison while his lawyers pursue his appeals.

The price and the pain

For the wrongfully convicted, prosecutorial misconduct means years in prison. For the victims' families and the public, there is the pain and cost of a second trial. For the prosecutors, there are rarely any consequences.

An example: David Hoke, who prosecuted Alan Gell, is now the No. 2 administrator in the state court system. Debra Graves, his co-counsel, is a federal public defender. Both declined to talk about the case.

The law has a remedy when helpful evidence is withheld; the defendant can win a new trial. However, the law doesn't levy any punishment for withholding such evidence.

"In view of the problems created by [the new law], my office has taken an aggressive stance against such discovery requests and motions by" death row inmates, McNeill said.

The N.C. Supreme Court overruled that stance in 1998. The court said prosecutors and police must hand over their "complete files."

North Carolina may be the only state to open all law enforcement files during a death-penalty appeal, years after the trial. But before trial, experts say, North Carolina is among the most restrictive states for sharing evidence.

Some other states order prosecutors to provide witness statements before trial. In Florida, defendants have access to law enforcement files before trial, and defense lawyers can even question prosecution witnesses under oath before trial.

A kick from his kin

Under any state's standard, Jonathan Hoffman should have known more during his trial about the favors prosecutors were giving their star witness.

On Nov. 27, 1995, a masked man with a sawed-off shotgun entered Cook's Discount Jewelry in Marshville, about 30 miles southeast of Charlotte. The robber exchanged fire with the owner, Danny Cook, who was shot in the chest and killed. The robber took Cook's gun and jewelry.

Hoffman is on death row for the murder, put there by the testimony of his cousin.

The cousin, Johnell Porter, was essential to the conviction, and Union County District Attorney Kenneth Honeycutt was the first to admit it.

Letters written after the trial, Honeycutt wrote that the case was circumstantial. The witness identifications of the robber were weak. Before Hoffman's cousin took the stand, the case hung on the testimony of a 90-year-old man

EVIDENCE WITHHELD

Since a law passed in 1996 gave death row inmates access to all files about their cases, five have won new trials. One died in jail, two pleaded guilty to second-degree murder, and two are awaiting trial. Several similar appeals are pending.

SAME OFFICE AS PANOSH

WILKES COUNTY

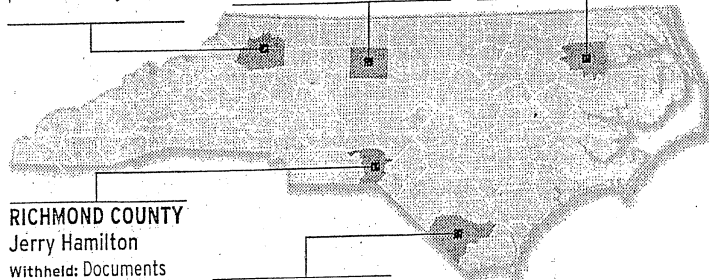
Charles Munsey
Withheld: Documents showing state's key witness, a jailhouse informant, was never in the same prison with Munsey.
Status: Munsey died in prison awaiting a retrial.

GUILFORD COUNTY

Steven Bishop
Withheld: Witness statement from a Kmart cashier who said Bishop was in the store and miles away from the scene about the time of the murder.
Status: Pleaded guilty to second-degree murder and other charges, serving life term.

BERTIE COUNTY

Alan Gell
Withheld: Witness statements showing murder occurred when Gell was in jail, and tape recording of the state's key witness saying she had "to make up a story" to tell police.
Status: Awaiting retrial in February.



RICHMOND COUNTY

Jerry Hamilton
Withheld: Documents undercutting credibility of the state's key witness, who had confessed to the murder.
Status: Awaiting retrial

COLUMBUS COUNTY

Curtis Ray Womble
Withheld: Statements from five witnesses who saw the victim alive one day after Womble was supposed to have beaten him to death.
Status: Pleaded guilty to second-degree murder, serving life term.

Source: Case files

The News & Observer

Punishment would come from the N.C. State Bar, the agency that oversees and disciplines lawyers. But that has happened only twice in the history of the State Bar.

When it comes to misconduct in court, many lawyers see a double standard. Most believe that prosecutors are not disciplined as strictly as defense attorneys, according to Rick Gammon, a Raleigh lawyer who is chairman of the State Bar's Disciplinary Hearing Committee.

"If I, a defense attorney, lie to the court, they will take my license," Gammon said. "History has shown that they are less likely to do that with prosecutors."

The State Bar has suspended or revoked the licenses of hundreds of lawyers over the years, for offenses that include stealing a client's money and failing to do the work promised. In 2002, the bar disciplined 37 lawyers.

The only two times the organization took action against prosecutors for withholding evidence, it put the discipline on hold, saying there would be no penalty if there were no further violations.

In March 2001, the State Bar sanctioned former Guilford County prosecutor Gary B. Goodman for his misbehavior in three murder cases. The bar found that Goodman had withheld exculpatory evidence in two murder cases. In one, a capital case, a judge overturned the conviction of Steven Bishop and ordered a new trial. In a third case, Goodman refused to comply with two court orders to hand over material from his files.



Goodman, a former prosecutor, is a defense lawyer now.

The other lawyer disciplined for withholding evidence is Kingsley C. Dozier, an assistant district attorney in Randolph County.

Shirley Faye Andrews was charged with helping her. Dozier told the acquaintances he would dismiss their charges if they testified against Andrews. Dozier did not commit the deal to writing.

Dozier did not disclose the deals when asked. After Andrews was convicted of second-degree murder, Dozier dropped the charges against the two acquaintances, as promised.

Andrews' lawyer read about the deals in the newspaper and challenged the convictions. Superior Court Judge Catherine Eagles tossed out Andrews' conviction, saying the jury needed to know that the state had given leniency to its star witnesses in return for their testimony.

The State Bar suspended Goodman's and Dozier's licenses for two years but immediately put the suspensions on hold. They could continue to practice law during this warning period as long as they had no further problems.



"There is an extra responsibility on the state to see that justice is done. You aren't representing victims of the crime but the people of the state, and the people are seeking justice."

TOM ROSS, FORMER SUPERIOR COURT JUDGE



"We've avoided some serious miscarriages of justice in capital cases, but it raises the question: Why we don't have this approach in noncapital cases as well."

WIB GULLEY, STATE SENATOR



"If I, a defense attorney, lie to the court they will take my license. History has shown that they are less likely to do that with prosecutors."

RICK GAMMON, LAWYER



Union County District Attorney Kenneth Honeycutt didn't reveal a deal with a key witness. He insists the trial was fair.

STAFF PHOTO BY SCOTT LEWIS

Goodman, who now works as a defense lawyer, declined to discuss his cases.

Dozier, still an assistant district attorney, said he was unsure whether he had to disclose oral plea deals the same as written deals. "Clearly I made a mistake, and I own up to it," Dozier said. "I hate I was the test case."

So far, the State Bar has not suspended or revoked a prosecutor's law license, the most severe punishment it can exact. Shame has been the only punishment.

"They don't have to suffer anything except the embarrassment of publicity," Gammon said.

Staff writer Joseph Neff can be reached at 829-4516 or jneff@newsobserver.com.

NOTICE OF PENDING LEGAL ACTION EXHIBIT(P) 1 of 4

Atten: Robert Nicholes

3311 Darden Road

Greensboro, N.C. 27407

On or about April 25-26, 1997 Robert Nicholes (Rob) called a Jeff Roberts and informed him of a roofing job he had arranged at the coast. The two then met at Lyles Building Materials after hours. At this time Lyles Building Materials was owned by Theodore M. Kimble (Ted). Rob Nicholes proceeded to cut the lock off the Company's gate and drove into the business. Rob then attached a Brand New 18Ft. Triple Axle Trailer to his truck. This trailer was the "Personal-Property" of Ted Kimble. Rob and Jeff then loaded the trailer with shingles which they also stole. Robert, his wife Candice, their daughter, and Jeff Roberts then went to the coast, where Robert and Jeff did a roofing job with the stolen shingles. Rob, Candice, and their daughter then took the stolen trailer to an undisclosed parking lot, where they met a man and sold him the trailer.

Police Detectives have interview witnesses and taken statements, which will be presented as evidence to the Court. The trailer was found, but not recovered. Do to this "Newly Discovered Evidence," I have found the foregoing parties responsible for the theft of my personal property.

(Page 1 of 2)

I hereby make the request of payment, in the amount of \$8,000.00 dollars to be paid in full. This letter serves to notify said parties I fully intend to persue Civil Legal Action against all parties involved, within the next few weeks "if" I do not hear a response to this notice. I am willing to negotiate and settle out of Court for considerably less, "If" an agreement can be reached, before I acquire any legal expenses.

I strongly suggest you address this issue immediately. I may be reached by correspondence at the following address.

Sincerely,

Theodore M. Kimble

THEODORE M. KIMBLE

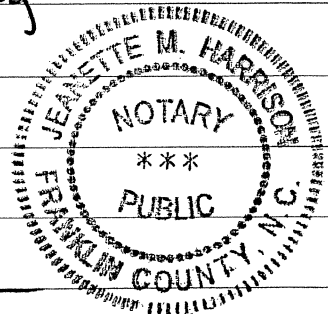
1300 WESTERN BLVD.

RALEIGH, N.C. 27606

Sworn to and before me this the 06 day
of February 2004.

Witness: *Jeanette M. Harrison*

My Commission Expires 4-4-2008



NOTICE OF PENDING LEGAL ACTION EXHIBIT (P) 3 of 4

Atten: Candice Nicholes

3311 Darden Road

Greensboro, N.C. 27407

On or about April 25-26, 1997 Robert Nicholes (Rob) called a Jeff Roberts and informed him of a roofing job he had arranged at the coast. The two then met at Lyle's Building Materials after hours. At this time Lyles Building Materials was owned by Theodore M. Kimble (Ted). Rob Nicholes proceeded to cut the lock off the Company's gate and drove into the business. Rob then attached a Brand New 18FT. Triple Axle Trailer to his truck. This trailer was the "Personal-Property" of Ted Kimble. Rob and Jeff then loaded the trailer with shingles which they also stole. Rob, his wife Candice, their daughter, and Jeff Roberts then went to the coast, where Rob and Jeff did a roofing job with the stolen shingles. Rob, Candice, and their daughter then took the stolen trailer to an undisclosed parking lot, where they met a man and sold him the trailer.

Police Detectives have interview witnesses and taken statement, which will be presented as evidence to the Court. The trailer was found, but not recovered. Do to this "Newly Discovered Evidence," I have found the foregoing parties responsible for the theft of my personal property.

(Page 1 OF 2)

I hereby make the request of payment, in the amount of \$8,000 dollars to be paid in full. This letter serves to notify said parties I fully intend to persue Civil legal Action against all parties involved, within the next few weeks "if" I do not hear a response to this notice. I am willing to negotiate and settle out of Court for considerably less, "If" an agreement can be reached, before I acquire any legal expenses.

I strongly suggest you address this issue immediately. I may be reached by correspondence at the following address.

Sincerely,

Theodore M. Kimble

THEODORE M. KIMBLE

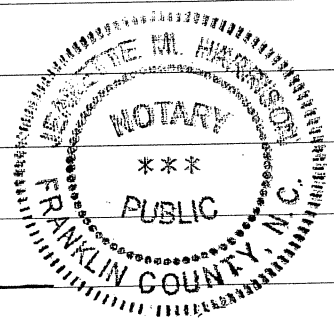
1300 WESTERN BLVD

RALEIGH, North Carolina 27606

Sworn to and before me this the 06 day
of February 2004.

witness: Jeanette M. Harrison

My Commission Expires: My Commission Expires 4-4-2008.



No. COA99-1518

EIGHTEENTH DISTRICT

7

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Guilford</u>
)	
THEODORE MEAD KIMBLE)	

DEFENDANT-APPELLANT'S BRIEF

INDEX

TABLE OF AUTHORITIES iii

QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 3

 A. The Prosecutor's Factual Narrative at
 the Plea Hearing for the 1995 and 1998
 Offenses. 3

 B. The State's Evidence at Defendant's
 Sentencing Hearing. 4

 C. Defendant's Evidence at the Sentencing
 Hearing. 7

ARGUMENT 12

 I. DEFENDANT'S EIGHT ALFORD PLEAS IN THE
 SOLICITATION CASES SHOULD BE VACATED BECAUSE
 THERE WAS AN INSUFFICIENT FACTUAL BASIS TO
 SUPPORT THE PLEAS. 12

 II. SEVEN OF DEFENDANT'S EIGHT SOLICITATION
 CONVICTIONS SHOULD BE VACATED BECAUSE THE
 PROSECUTOR'S NARRATIVE SHOWED ONLY ONE
 SOLICITATION AS A MATTER OF LAW. 15

 III. DEFENDANT IS ENTITLED TO NEW SENTENCING HEARINGS
 IN THE MURDER AND ARSON CASES BECAUSE THE TRIAL
 COURT ERRONEOUSLY FOUND NON-STATUTORY AGGRAVATING
 FACTORS THAT WERE NOT SUPPORTED BY ANY COMPETENT
 RECORD EVIDENCE. 20

 IV. DEFENDANT IS ENTITLED TO NEW SENTENCING HEARINGS
 IN SIX OF THE SOLICITATION CASES BECAUSE THE
 TRIAL COURT ERRONEOUSLY FOUND STATUTORY
 AGGRAVATING FACTORS THAT WERE NOT SUPPORTED BY
 ANY COMPETENT RECORD EVIDENCE AND ERRONEOUSLY
 USED THE SAME ITEM OF EVIDENCE TO PROVE TWO
 AGGRAVATING FACTORS. 24

 A. The Trial Court Erroneously Found Two
 Aggravating Factors That Were Not
 Supported by any Competent Record
 Evidence. 25

B. The Trial Court Erroneously Used the Same Item of Evidence to Prove Two Aggravating Factors.	28
CONCLUSION	31
CERTIFICATE OF FILING AND SERVICE	32

TABLE OF AUTHORITIESCASES

<i>Braverman v. United States,</i> 317 U.S. 49, 87 L.Ed 23 (1942)	17
<i>California v. Morocco,</i> 191 Cal. App. 3d 1449 (1987)	18
<i>Meyer v. Maryland,</i> 425 A.2d 664 (Md. App. 1980)	19
<i>North Carolina v. Alford,</i> 400 U.S. 25, 27 L.Ed.2d 162 (1970)	15
<i>State v. Ahearn,</i> 307 N.C. 584, 300 S.E.2d 689 (1983)	22
<i>State v. Barts,</i> 321 N.C. 170, 362 S.E.2d 235 (1987)	26
<i>State v. Bond,</i> 345 N.C. 1, 478 S.E.2d 163 (1996)	25
<i>State v. Brooks,</i> 105 N.C. App. 413, 413 S.E.2d 312 (1992)	13, 16
<i>State v. Buchanan,</i> 108 N.C. App. 338, 423 S.E.2d 819 (1992)	22
<i>State v. Canady,</i> 330 N.C. 398, 410 S.E.2d 875 (1991)	22
<i>State v. Canipe,</i> 64 N.C. App. 102, 306 S.E.2d 548 (1983)	30
<i>State v. Dalton,</i> 122 N.C. App. 666, 471 S.E.2d 657 (1996)	16
<i>State v. Dickens,</i> 299 N.C. 76, 261 S.E.2d 183 (1980)	13
<i>State v. Fink,</i> 92 N.C. App. 523, 375 S.E.2d 303 (1989)	16
<i>State v. Frazier,</i> 80 N.C. App. 547, 342 S.E.2d 534 (1986)	22

<i>State v. Furr,</i> 292 N.C. 711, 235 S.E.2d 193 (1977)	13, 16
<i>State v. Gordon,</i> 104 N.C. App. 455, 410 S.E.2d 4 (1991)	23
<i>State v. Higson,</i> 310 N.C. 418, 312 S.E.2d 437 (1984)	29
<i>State v. Isom,</i> 73 N.C. App. 306, 326 S.E.2d 94 (1985)	29
<i>State v. Jones,</i> 309 N.C. 214, 306 S.E.2d 451 (1983)	21
<i>State v. Mack,</i> 87 N.C. App. 24, 359 S.E.2d 485 (1987)	22
<i>State v. Mann,</i> 317 N.C. 164, 345 S.E.2d 365 (1986)	14
<i>State v. Massey,</i> 62 N.C. App. 66, 302 S.E.2d 262, <i>aff'd</i> , 309 N.C. 625, 308 S.E.2d 332 (1983)	29
<i>State v. McKinney,</i> 88 N.C. App. 659, 364 S.E.2d 743 (1988)	30
<i>State v. Morston,</i> 336 N.C. 381, 445 S.E.2d 1 (1994)	29
<i>State v. Mullican,</i> 329 N.C. 683, 406 S.E.2d 854 (1991)	22
<i>State v. Oliver,</i> 309 N.C. 326, 307 S.E.2d 304 (1983)	27
<i>State v. Perry,</i> 265 N.C. 517, 144 S.E.2d 591 (1965)	28
<i>State v. Petty,</i> 100 N.C. App. 465, 397 S.E.2d 337 (1990)	15
<i>State v. Pope,</i> 257 N.C. 326, 126 S.E.2d 126 (1962)	25
<i>State v. Sinclair,</i> 301 N.C. 193, 270 S.E.2d 418 (1980)	13

State v. Stephens,
 347 N.C. 352, 493 S.E.2d 435 (1997),
 cert. denied, ___ U.S. ___, 142 L.Ed.2d 66 (1998) 25

State v. Strickland,
 346 N.C. 443, 488 S.E.2d 194 (1997),
 cert. denied, ___ U.S. ___, 139 L.Ed.2d 757 (1998) 25

State v. Swimm,
 316 N.C. 24, 340 S.E.2d 65 (1986) 22

State v. Thompson,
 314 N.C. 618, 336 S.E.2d 78 (1985) 23

State v. Williams,
 295 N.C. 655, 249 S.E.2d 709 (1978) 26

STATUTES

N.C. Gen. Stat. § 15A-1022(c) 12

N.C. Gen. Stat. § 15A-1340.16(a) 21, 25

N.C. Gen. Stat. § 15A-1340.16(d) 28, 30

N.C. Gen. Stat. § 15A-1446(d) (18) 23

OTHER AUTHORITIES

2 LAFAVE & SCOTT, SUBSTANTIVE CRIMINAL LAW
 (1986 & Supp. 1999) 17

MODEL PENAL CODE AND COMMENTARIES § 5.02 (Am. Law Inst. 1985) 16

WEBSTER'S NEW WORLD DICTIONARY (2d college ed. 1986) 29

CONSTITUTIONAL PROVISIONS

U.S. Cont. amend. XIV 12

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	
)	
v.)	<u>From Guilford</u>
)	
THEODORE MEAD KIMBLE)	

DEFENDANT-APPELLANT'S BRIEF

QUESTIONS PRESENTED

- I. WHETHER DEFENDANT'S EIGHT ALFORD PLEAS IN THE SOLICITATION CASES SHOULD BE VACATED BECAUSE THERE WAS AN INSUFFICIENT FACTUAL BASIS TO SUPPORT THE PLEAS?
- II. WHETHER SEVEN OF DEFENDANT'S EIGHT SOLICITATION CONVICTIONS SHOULD BE VACATED BECAUSE THE PROSECUTOR'S NARRATIVE SHOWED ONLY ONE SOLICITATION AS A MATTER OF LAW?
- III. WHETHER DEFENDANT IS ENTITLED TO NEW SENTENCING HEARINGS IN THE MURDER AND ARSON CASES BECAUSE THE TRIAL COURT ERRONEOUSLY FOUND NON-STATUTORY AGGRAVATING FACTORS THAT WERE NOT SUPPORTED BY ANY COMPETENT RECORD EVIDENCE?
- IV. WHETHER DEFENDANT IS ENTITLED TO NEW SENTENCING HEARINGS IN SIX OF THE SOLICITATION CASES BECAUSE THE TRIAL COURT ERRONEOUSLY FOUND STATUTORY AGGRAVATING FACTORS THAT WERE NOT SUPPORTED BY ANY COMPETENT RECORD EVIDENCE AND ERRONEOUSLY USED THE SAME ITEM OF EVIDENCE TO PROVE TWO AGGRAVATING FACTORS?

STATEMENT OF THE CASE

On April 7, 1997, the Guilford County Grand Jury indicted defendant-appellant Theodore Kimble for the 1995 first-degree murder of his wife Patricia Kimble (97 CrS 39581). (Rp. 4) On

November 3, 1997 and July 6, 1998, the same Grand Jury further indicted defendant for conspiracy to commit first-degree murder (97 CrS 23656) and first-degree arson (98 CrS 23486). (Rpp. 5-6) On January 28, 1999, the Guilford County prosecutor issued eight Bills of Information charging defendant with eight counts of solicitation to commit first-degree murder in 1998 (99 CrS 23241-48). (Rpp. 8-15) On January 28, 1999, defendant entered guilty pleas to second-degree murder, conspiracy to commit first-degree murder, and first-degree arson; and entered *Alford* pleas to eight counts of solicitation to commit first-degree murder. (Rpp. 17-20) In February, 1999, defendant filed a *pro se* motion to withdraw his guilty and *Alford* pleas. (Rpp. 23-26) This motion came on for a hearing at the March 1, 1999 Criminal Session of Guilford County Superior Court before Superior Court Judge Peter M. McHugh. (Rp. 1) On March 4, 1999, Judge McHugh denied defendant's motion and held a sentencing hearing in all cases. (Rp. 1)

On March 5, 1999, Judge McHugh entered Judgment and Commitment in all cases; found defendant to have a prior record level of II; found no aggravating or mitigating factors in the conspiracy and two solicitation cases; and found aggravating and mitigating factors and that the aggravating factors outweighed the mitigating factors in the murder, arson, and six solicitation cases. (Rpp. 37-75) Accordingly, Judge McHugh sentenced defendant to presumptive minimum terms of 163 months imprisonment in the conspiracy case, and 96 months in each of two of the

solicitation cases; sentenced defendant to aggravated minimum terms of 204 months imprisonment in the murder case, 82 months in the arson case, and 108 months in each of six of the solicitation cases; and ordered that all sentences run consecutively for a total minimum term of 1,289 months (107.4 years imprisonment). (Rpp. 54-75) Defendant appealed to this Court. (Rpp. 78-81, 84-85)

STATEMENT OF THE FACTS

A. The Prosecutor's Factual Narrative at the Plea Hearing for the 1995 and 1998 Offenses.

At the plea hearing, the prosecutor stated as a factual basis for defendant's guilty pleas to murder, conspiracy, and arson in 1995 that defendant and his brother Ronnie Kimble agreed to kill defendant's wife Patricia for insurance money; and that at about 4:00 p.m. on October 9, 1995, Ronnie entered defendant's house, shot Patricia in the head, and set the house on fire. (Plea Tpp. 14-15)¹

With respect to the 1998 solicitation charges to which defendant entered *Alford* pleas, the prosecutor continued his narrative as follows (Plea Tpp. 15-16):

Since [mid-1997], the defendant has pled guilty [to breaking and entering] and he was

¹ "Tp. ___" references are to the volume of proceedings numbered 1 through 228 and dated March 4-5, 1999. "Plea Tp. ___" references are to the volume of plea proceedings numbered 1 through 20 and dated January 28, 1999. (Rp. 16)

incarcerated in the State Department of Corrections. . . . [On] about November 4, 1998, he communicated to one William Stewart his desire . . . to have witnesses killed. Believing that Mr. Stewart was about to get out of prison, he delivered to him a handwritten list of eight witnesses and spouses of witnesses that he wanted killed, and instructions that were somewhat in code but . . . very easy to determine. Mr. Stewart, upon receiving these documents, notified the D.A.'s office. We interviewed him. He turned them over to us. Subsequently, the defendant's fingerprints were found on those documents, along with the S.B.I. opinion that shows that it was his handwriting. The list of witnesses was on a diagram of . . . this courtroom and the courtroom below it, and also, the holding cells, and it also listed the . . . witnesses that he wanted to kill, and directions to their homes. Your Honor, that would be the basis of the eight counts of solicitation to commit murder.

B. The State's Evidence at Defendant's Sentencing Hearing.

1. The 1995 Murder, Conspiracy, and Arson Offenses.

At the beginning of the sentencing hearing, the prosecutor stated "I'd like to summarize the evidence" and immediately began reciting the evidence from co-defendant Ronnie Kimble's earlier trial; defendant said nothing. (Tp. 40) Thus, the State's evidence about the 1995 offenses to which defendant pled guilty was comprised solely of the prosecutor's following unsworn statements: that defendant and Patricia Kimble had a private marriage ceremony in December 1993 and a public ceremony in May 1994; that defendant named himself as the beneficiary of Patricia's \$50,000 life insurance policy on June 28, 1994,

increased the coverage on that policy to \$100,000 on November 5, 1994, and signed Patricia's signature on a \$200,000 policy application on September 14, 1995; that Patricia found out about the forged application and a blood test scheduled for October 5, became "very upset," and told several friends she was "concerned about her marriage" and "afraid for her life;" and that defendant and Patricia subsequently resolved the matter, decided not to take out the policy, and cancelled the blood-drawing appointment. (Tpp. 40-43)

The prosecutor's unsworn summary of the evidence continued as follows: that Patricia arrived home at 3:45 p.m. on October 9, 1995 to cut the lawn and went inside; that co-defendant Ronnie Kimble was inside the house and shot Patricia once in the head with defendant's .45-caliber pistol; that someone ransacked the back bedrooms of the house "to make it look like a burglar had killed her," poured gasoline around her body, and ignited it at about 4:00 p.m.; that defendant was at work at Lyles Building Supply all day on October 9, left at 5:30 p.m., met with his mother, and arrived at his second job at Precision Fabrics at 6:00 p.m.; that defendant called Patricia's brother (Rubin) at 7:00 p.m. and asked him to check on Patricia; that Rubin drove to defendant's home and found it on fire; and that Patricia's body was later recovered from inside the house. (Tpp. 43-51)

The prosecutor further stated that defendant's home-owner insurance policy ultimately paid him \$52,606 for lost personal

property and paid \$53,417 to Patricia's estate to be held in escrow; that defendant unsuccessfully attempted to collect on the pending \$200,000 insurance policy; that defendant subsequently admitted to Rob Nichols he was responsible for Patricia's death and told Patrick Pardee his brother Ronnie killed Patricia with his gun for the insurance money; and that in January 1997, Ronnie confessed his involvement in Patricia's murder to Reverend Mitchell Whidden. (Tpp. 51-55)

2. *The 1998 Solicitation Offenses.*

In late 1998, defendant was incarcerated at Southern Correctional Institution for unrelated larceny, and breaking and entering charges. (Rp. 22) SBI Agent James Bowman testified that he interviewed Department of Correction's inmate William Stewart on November 23 and December 17, 1998 and Stewart told him the following: that he was serving 10-12 months for auto larceny, was incarcerated with defendant at both Piedmont and Southern Correctional Institutions, and told defendant he would be released soon; that defendant spoke about plans to escape from both Southern Correctional and Guilford County Courthouse, and offered him \$100,000 to "eliminat[e] [8] witnesses in [defendant's] pending murder trial" in 5 different "missions;" and that defendant suggested different methods for the killings. (Tpp. 55-59, 62, 70) Agent Bowman testified that Stewart said he did not intend to help defendant, initially went along with these conversations because defendant gave him small sums of money totaling about \$200, and reported this information to the

superintendent when he realized defendant was "serious;" and that Stewart was released from prison several days early because of his information. (Tpp. 59, 69)

Agent Bowman testified that Stewart gave him a letter from defendant containing the name, address, and phone number of defendant's girlfriend, and a hand-drawn map of Guilford County Courthouse; and that one latent print on the letter matched defendant's known prints and the letter and map were in defendant's hand-writing. (Tpp. 57-66, 70-73) Bowman testified that he subsequently seized a list of the eight witnesses, hand-drawn directions "to the location of one of the intended targets" in Greensboro, and notes Stewart handwrote during a conversation with defendant, including amounts of money and suggested means of killings. (Tpp. 63-65)

C. Defendant's Evidence at the Sentencing Hearing.

1. The 1995 Murder, Conspiracy, and Arson Offenses.

Twenty-nine year old defendant testified that he met Patricia at a housewarming party and later "grew together" with her through church; that they became friends, dated, fell in love, and got married; and that they had a "wonderful relationship," he "loved [his] wife," and is "not guilty of this." (Tpp. 140-42) Defendant further testified that he applied for the \$200,000 life insurance policy but understood that no policy would be issued until Patricia underwent a medical

examination; that he forgot to have Patricia sign the application, signed Patricia's name for her, and "never denied" having signed the application; that he had no intention of hiding the policy from Patricia and knew the insurance company had to verify medical matters with her before issuing the policy, but failed to talk it over with her before the agent called; that Patricia initially overreacted and was scared, but understood and agreed when they discussed their financial situation; that they made an appointment to have Patricia's blood drawn for the week before her death, but he cancelled it due to his work schedule; and that he never made a claim on the policy after Patricia's death, but only asked for reimbursement of the premium he paid. (Tpp. 142-47) Defendant testified that he never made any inculpatory statements or confessed anything to Nichols and Pardee; and that Nichols and Pardee both admitted making up their incriminating statements because of pressure from the prosecutor. (Tpp. 149-50, 165, 170-71)

Defendant testified that he went to work at 8:00 a.m. on October 9 and stayed all day; that Patricia brought him lunch at 1:00 p.m. and said she was going home to cut the grass; that he "feared for her safety" and "told her to be careful" because their lawn was steep and their lawnmower flipped easily; that he called Patricia at work at 3:30 and she was getting ready to go home; that co-defendant Ronnie Kimble came to his work at 3:45 and stayed until 4:30; that he left work at about 5:30, stopped to see his mom, and arrived at his second job at 6:00; that

Patricia was supposed to page him when she was finished cutting the grass and he became worried when she did not do so; that he unsuccessfully tried to call and page her; and that he left work when he was notified that his house was on fire. (Tpp. 152-59) Defendant testified that he arrived home and was told there was a body in the house; that he was "shaking, hysterical, upset, crying," and "scared . . . to death" thinking about Patricia; that it was "horrible . . . like a nightmare;" and that he subsequently learned the body in the house was Patricia's. (Tpp. 159-60) Defendant further testified that they had been robbed twice and he kept the .45 pistol that was used to kill Patricia in the house for protection. (Tpp. 163-64)

2. *The 1998 Solicitation Offenses.*

Defendant testified that he worked at Lyles Building Supply since ninth grade and had a "[f]ather and son type relationship" with Gary Lyles (one of the victims of the alleged solicitation), "greatly admired" him, and is "deeply offended at the accusations that [he] would ever harm" him. (Tpp. 138-40, 148) Defendant further testified that the inmates at Southern Correctional think he has money; that Stewart approached him "trying to get money out of [him]," suggested escaping from Southern or the courthouse, asked for money, and offered to kill people for money; that he drew maps of the courthouse because Stewart convinced him he could escape from Guilford County Courthouse if he was sentenced to death; that he never asked Stewart to kill any witnesses, goes to church with the witnesses, believes they

are nice people, and would never ask anyone to do them harm; that he prepared the list of witnesses for his private detective to interview them; that Stewart stole the witness list from his locker; and that Stewart subsequently called his girlfriend and upset her. (Tpp. 165-70, 178-81, 188-89)

Inmate Michael Hollman testified that he was incarcerated in Southern Correctional with defendant and Stewart; and that Stewart repeatedly told him he was "trying to play [defendant] out of some money." (Tpp. 76-79) Inmate Jamie Gayles testified that he met Stewart in 1993 at Polk Youth Center and "knewed him through . . . coming up in prison;" that Stewart's "thing was stealing, breaking in people stuff, . . . going in people's lockers;" and that Stewart said he "wanted to break into [defendant's] locker" to get defendant's radio and stamps. (Tpp. 89-91) Gayles further testified that Stewart told him the following in October: he was "trying to get [defendant] into thinking . . . he was . . . a expert killer" so he could "get [defendant's] money;" the "only way he can get money out of [defendant] is to convince him that he needs somebody killed;" he was "trying to get [defendant] to give him some people's names to . . . kill" or hurt; defendant was "making him mad because he . . . saying that he don't want nobody killed;" and when defendant did not give him names, he "broke in [defendant's] locker and he got a whole lot of stuff that belonged to [defendant]" including a list of names. (Tpp. 91-95)

Inmate Gary Durham testified that he knows both defendant and Stewart from Southern Correctional; that defendant "comes from a christian background" and attends church regularly in prison; that Stewart is an "habitual liar," "doesn't tell the truth," and "approach[es] young white guys and . . . tr[ies] to use them for money . . . and brag[s] about it to other people;" that Stewart said he was "try[ing] to get [defendant] to pay him to kill somebody" so he had money when he was released, and if defendant "doesn't . . . he was going to write the D.A. . . . in [defendant's] case because he knew [defendant] was facing a murder trial in Guilford County;" that defendant "never asked [Stewart] to do anything . . . [and] certainly never asked him to kill anyone;" and that Stewart broke into defendant's locker.

(Tpp. 108-13) Inmate Rodney McLean testified that defendant told him he was "afraid for his girlfriend's safety" because Stewart had called her "asking for money;" and that defendant never said anything about any plans to escape or have witnesses killed.

(Tpp. 124-26)

3. *Defendant's Character Evidence.*

Defendant called four character witnesses who testified that defendant was a "great kid," a "straight up . . . honest kind of kid," a "fine boy," "always very well behaved, very well spoken, very polite," and a "perfect gentleman;" that defendant is an "upright" and "outstanding young man," and a "hard worker;" that defendant and Patricia were a "lov[ing] and caring couple" and always "seemed to be fine" at church functions; that this matter

seems "totally out of character" for defendant; and that defendant has a "positive" reputation in the community. (Tpp. 81-89, 99-108, 116-18) In addition, defendant's parents Reverend Ronnie Kimble and Edna Kimble testified that they know their sons are innocent; that they spent a lot of time with defendant and Patricia and saw them as a close and loving couple; and that defendant was raised a Christian and often taught Sunday school to children. (Tpp. 120-24, 128-31, 134-35)

Based on this undisputed evidence, the Trial Court found the following statutory mitigating factors in all cases in which it made sentencing findings: that "defendant has been a person of good character or has had a good reputation in the community in which [he] lives" (G.S. 15A-1340.16(e)(12)); that "defendant has a support system in the community" (G.S. 15A-1340.16(e)(18)); and that "defendant has a positive employment history or is gainfully employed" (G.S. 15A-1340.16(e)(19)). (Rpp. 38-53)

ARGUMENT

I. **DEFENDANT'S EIGHT ALFORD PLEAS IN THE SOLICITATION CASES SHOULD BE VACATED BECAUSE THERE WAS AN INSUFFICIENT FACTUAL BASIS TO SUPPORT THE PLEAS.**

Assignment of Error Nos. 3 & 6; Rpp. 88-89

Defendant's eight *Alford* pleas in the solicitation to commit first-degree murder cases should be vacated because there was an insufficient factual basis to support the pleas in violation of G.S. 15A-1022(c) and the Fourteenth Amendment to the United States Constitution. Defendant entered his eight *Alford* pleas on

January 29, 1999. At the hearing, the Trial Court asked (emphasis added): "Does the defendant stipulate that a factual basis exists *for the entry of the pleas of guilty?*;" and "[d]o you stipulate that, if necessary, the State may summarize the factual basis?" (Plea Tp. 13) Defendant responded yes. (Plea Tp. 13) The prosecutor then gave a narrative as shown in the Statement of the Facts. (Br. pp. 3-4)

G.S. 15A-1022(c) provides that a trial "judge may not accept a plea of guilty or no contest without first determining that there is a factual basis for the plea." While a defendant's "bare" plea of no contest in the plea transcript does not provide a sufficient factual basis, *State v. Sinclair*, 301 N.C. 193, 199, 270 S.E.2d 418, 421 (1980), the factual basis may be grounded on "[a] statement of the facts by the prosecutor," G.S. 15A-1022(c); accord *State v. Dickens*, 299 N.C. 76, 79, 261 S.E.2d 183, 185 (1980). "If the evidence contained in the record does not support defendant's . . . plea, then the judgment based thereon must be vacated." *State v. Brooks*, 105 N.C. App. 413, 417, 413 S.E.2d 312, 314 (1992).

Solicitation to commit murder is a common law crime and "[t]he gravamen of the offense . . . lies in counseling, enticing or inducing another to commit a crime." *State v. Furr*, 292 N.C. 711, 720, 235 S.E.2d 193, 199 (1977). "Solicitation involves the asking, enticing, inducing, or counselling of another to commit a crime. . . . The solicitor . . . furthers [the crime's]

commission via another person by suggesting to, inducing, or manipulating that person . . . [T]he solicitor plans, schemes, suggests, encourages, and incites the solicitation." *State v. Mann*, 317 N.C. 164, 171-72, 345 S.E.2d 365, 369-70 (1986) (citations omitted).

In the instant case, the Trial Court erred in accepting defendant's *Alford* pleas because there was an insufficient factual basis to support them. First, the prosecutor's narrative -- the sole evidence at the hearing in support of the solicitation pleas -- was insufficient. Thus, as shown in the Statement of the Facts (Br. pp. 3-4), it alleged only: 1) that defendant "communicated to one William Stewart his desire" to have certain individuals killed; and 2) that defendant "delivered to [Stewart] a handwritten list" of the individuals, directions to their homes, a diagram of the courthouse, and some unspecified "instructions." However, communicating a "desire," and delivering a list of people and some unspecified "instructions" -- the only actions alleged here as a factual basis -- surely do not amount to asking, counseling, manipulating, enticing, and inducing. Thus, the narrative never alleged the type of conduct that is an essential element of the offense of solicitation. Second, defendant's bare entry of *Alford* pleas does not constitute a sufficient factual basis; rather, it is a mere "statement by the defendant that he will not resist the imposition of . . . sentence[s] in the case in which the plea[s] are] entered." *State v. Petty*, 100 N.C. App. 465, 467, 397

S.E.2d 337, 339 (1990); see *North Carolina v. Alford*, 400 U.S. 25, 37, 27 L.Ed.2d 162, 171 (1970) (treating an *Alford* plea as a plea of *nolo contendere*). Third, defendant did not stipulate that there was a factual basis; as shown above, defendant stipulated only to the existence of a factual basis for his *guilty* pleas, not his *Alford* pleas. Accordingly, defendant's eight *Alford* pleas in the solicitation cases should be vacated. See *Sinclair*, 301 N.C. at 199, 270 S.E.2d at 421-22.

**II. SEVEN OF DEFENDANT'S EIGHT SOLICITATION
CONVICTIONS SHOULD BE VACATED BECAUSE THE
PROSECUTOR'S NARRATIVE SHOWED ONLY ONE
SOLICITATION AS A MATTER OF LAW.**

Assignment of Error Nos. 3 & 6; Rpp. 88-89

Even assuming there was a sufficient factual basis to support defendant's *Alford* pleas (see Argument I), seven of defendant's eight solicitation pleas and convictions should be vacated because the prosecutor's factual narrative showed that there was only one solicitation as a matter of law. As shown in the Statement of the Facts (Br. pp. 3-4), the prosecutor's summary showed only one conversation between defendant and Stewart, during which defendant allegedly communicated a desire to have Stewart kill eight individuals. The issue in the instant case -- whether defendant's actions constituted one or multiple solicitations -- is one of first impression in this State.² This

² Defendant's appellate counsel has located only one North Carolina case mentioning, but not deciding, the issue here. See *State v. Furr*, 292 N.C. 711, 235 S.E.2d 193 (1977).

Court should extend settled conspiracy law to the offense of solicitation; and hold that one criminal incitement constitutes only one solicitation, despite the fact that there were multiple intended victims.

It is well settled that the gravamen of the offense of solicitation lies in the act of incitement to commit a crime, see *State v. Furr*, 292 N.C. 711, 720, 235 S.E.2d 193, 199 (1977); and that the gravamen of the crime of conspiracy is the agreement, see *State v. Brooks*, 105 N.C. App. 413, 417, 413 S.E.2d 312, 314 (1992). "Solicitation may, indeed, be thought of as an attempt to conspire." MODEL PENAL CODE AND COMMENTARIES § 5.02, at 365-66 (Am. Law Inst. 1985). Under settled conspiracy law, "[o]ne conspiracy 'may, and often does, consist of a series of different [substantive] offenses.'" *State v. Fink*, 92 N.C. App. 523, 532, 375 S.E.2d 303, 308 (1989) (citation omitted). Moreover, "a single agreement to commit multiple offenses is only a single conspiracy;" and " 'a defendant cannot be prosecuted on multiple conspiracy indictments consistent with the constitutional prohibition against double jeopardy.'" *Brooks*, 105 N.C. App. at 418, 413 S.E.2d at 314-15 (citations omitted). The number of conspiracies is based on several factors, including the objective, participants, number of meetings, and time interval. See *State v. Dalton*, 122 N.C. App. 666, 673, 471 S.E.2d 657, 662 (1996). By analogy to the law of conspiracy, defendant contends "that a solicitation on one occasion concerning several criminal objectives . . . involves but a single instance of the requisite

act for the crime of solicitation, and consequently but one solicitation offense." 2 LAFAYE & SCOTT, SUBSTANTIVE CRIMINAL LAW § 6.1, at 16 (1986 & Supp. 1999).

In the instant case, seven of defendant's eight solicitation pleas and convictions should be vacated because there was insufficient evidence of eight separate and distinct solicitations; instead, the prosecutor's narrative plainly showed only one criminal incitement. Thus, applying settled conspiracy law here, the prosecutor's factual summary revealed only one act of criminal incitement. The prosecutor's narrative showed that, on November 4, 1998, in one informal encounter involving only two participants, defendant expressed a desire to have certain individuals killed and delivered to Stewart a list of names and unspecified "instructions." See *Dalton*, 122 N.C. App. at 673, 471 S.E.2d at 662. Moreover, the narrative showed that defendant had only one common motive or objective in wanting all eight individuals killed -- to eliminate the witnesses against him in his pending murder trial. See *Brooks*, 105 N.C. App. at 418, 413 S.E.2d at 315 (single conspiracy where conspirators "pursued the same goal throughout -- to commit robberies"); see also *Braverman v. United States*, 317 U.S. 49, 87 L.Ed 23 (1942) (only one conspiracy where there is a single agreement to commit several offenses). Thus, although there were eight intended victims, the record shows there was only one single solicitation. Accordingly, the prosecutor's factual narrative showed only one incitement and, thus, supported only one solicitation conviction.

See *Brooks*, 105 N.C. App. at 417-18, 413 S.E.2d at 314-15 (prosecutor's narrative provided factual basis for guilty pleas to conspiracy, but "only point[ed] to the existence of a single agreement" to commit two crimes).

As a matter of sound public policy and legislative intent, this Court should apply settled conspiracy law to the offense of solicitation; and hold that, as in conspiracy cases, whether there has been one or multiple solicitations is a question of fact to be resolved on a case-by-case basis.

The conceptual underpinnings of [conspiracy and solicitation] are quite similar in that both serve as vehicles to punish planned crimes before they reach the stage of an attempted crime. . . . [T]he difference between solicitation and conspiracy lies in the response [of] the solicitee. If he agrees to cooperate in committing the crime, a conspiracy is formed If he reports the planned crime to authorities, . . . the crime is "merely" a solicitation.

California v. Morocco, 191 Cal. App. 3d 1449 (1987). While "the fortuity that the person solicited does not agree to commit . . . the incited crime plainly should not relieve the solicitor of liability," MODEL PENAL CODE AND COMMENTARIES § 5.02, at 365-66, that same fortuity also should not expose the solicitor to *greater* liability. Here, as shown above, if Stewart had agreed to commit the offenses and kill the eight intended victims, defendant would have been liable for only one conspiracy under settled law in this State. Regardless of Stewart's response to defendant's alleged request, defendant's *mens rea* was exactly the same.

Accordingly, allowing conviction and punishment for multiple counts of solicitation here contravenes sound public policy.

Moreover, our Legislature has determined that solicitation is a less culpable crime than conspiracy; solicitation to commit murder is a Class C felony, see G.S. 14-2.6(a), while conspiracy to commit murder is a Class B2 felony, see G.S. 14-2.4(a). Thus, had Stewart agreed to commit the offenses, defendant could have been convicted of only one count of the more serious crime of conspiracy and sentenced to, at most, a minimum term of 237 months (less than 20 years) imprisonment. However, because Stewart did not agree and instead went to the authorities, defendant entered *Alford* pleas to and was convicted of eight counts of the less serious crime of solicitation and sentenced to 840 months (70 years) imprisonment. Accordingly, allowing conviction and punishment for multiple counts of solicitation here defeats our Legislature's intent to treat solicitation as a less serious offense.

Other jurisdictions have approached this issue on a case-by-case basis. In *Meyer v. Maryland*, 425 A.2d 664 (Md. App. 1980), the defendant was convicted of four counts of solicitation based on two conversations and four intended victims. On appeal, the Maryland court stated (emphasis added):

We see no reason why . . . in a single conversation, . . . a person cannot make successive and distinct incitements . . . and we therefore reject the notion that merely because there is but one solicitor, one

solicitee, and one conversation, only one solicitation can arise. *We similarly reject, however, as being equally simplistic, the "per capita" theory that there are necessarily as many solicitations as there are victims.*

Id. at 669-70. Thus, the *Meyer* court held that whether there is one solicitation or several is a factual question that depends on the number of *incitements*, rather than the number of *victims*. See *id.*; see also *Morocco*, 191 Cal. App. 3d at 1452 (the question is whether the multiple crimes requested were part of a "larger, all-inclusive" plan and the relevant factors include "whether the requested crimes involved different motives and were to occur at different times by different means"). As shown above, applying such a case-by-case approach to the prosecutor's narrative here reveals the existence of but one criminal incitement. Accordingly, the Trial Court's acceptance of defendant's *Alford* pleas and entry of judgment in all eight solicitation cases was erroneous as a matter of law, and violated his constitutional rights against double jeopardy and to due process of law; and defendant's pleas, convictions and sentences in seven of the solicitation cases should be vacated.

III. DEFENDANT IS ENTITLED TO NEW SENTENCING HEARINGS IN THE MURDER AND ARSON CASES BECAUSE THE TRIAL COURT ERRONEOUSLY FOUND NON-STATUTORY AGGRAVATING FACTORS THAT WERE NOT SUPPORTED BY ANY COMPETENT RECORD EVIDENCE.

Assignment of Error Nos. 8, 9, 10; Rpp. 89-90

Defendant is entitled to new sentencing hearings in the second-degree murder and first-degree arson cases because the

Trial Court erroneously found non-statutory aggravating factors that were not supported by any competent record evidence. As shown in the Statement of Facts, at the beginning of the sentencing hearing, the prosecutor stated "I'd like to summarize the evidence" and then immediately began reciting the evidence from co-defendant Ronnie Kimble's earlier trial. The Trial Court subsequently found the following two non-statutory aggravating sentencing factors in the murder case: that "defendant acted with premeditation and deliberation in committing this offense" and that "defendant acted for pecuniary gain in committing the offense." (Rp. 38) The Trial Court also found the following non-statutory aggravating factor in the arson case: that "the offense was committed for the purpose of avoiding detection in the murder . . . and for the purpose of covering up the murder." (Rp. 40) The Trial Court then sentenced defendant to greater-than-presumptive terms in both cases. As shown below, the State's presentation at the sentencing hearing was insufficient as a matter of law to support the two aggravating factors in the murder case and the one aggravating factor in the arson case.

It is well established that "[t]he State bears the burden of proving by a preponderance of the evidence that an aggravating factor exists" if it seeks a greater-than-presumptive sentence, G.S. 15A-1340.16(a); accord *State v. Jones*, 309 N.C. 214, 219, 306 S.E.2d 451, 455 (1983); and that "a trial court may not find an aggravating factor where the only evidence to support it is the prosecutor's mere assertion that the factor exists," *State v.*

Swimm, 316 N.C. 24, 32, 340 S.E.2d 65, 70-71 (1986); accord *State v. Mullican*, 329 N.C. 683, 685, 406 S.E.2d 854, 855 (1991).

Moreover, our Supreme Court has held that a defendant's silence in the face of such mere prosecutorial assertions does not constitute an admission or stipulation. See *State v. Canady*, 330 N.C. 398, 400, 410 S.E.2d 875, 877 (1991). Finally, it is well settled that if a trial judge's findings of sentencing factors are not supported by sufficient evidence, "the case *must* be remanded for a new sentencing hearing." *State v. Ahearn*, 307 N.C. 584, 602, 300 S.E.2d 689, 701 (1983) (emphasis added).

In the instant case, the Trial Court's findings of aggravating sentencing factors in the murder and arson case were not supported by any competent record evidence. First, the non-statutory aggravating factors in the murder case were not supported by competent evidence. The only conceivable "evidence" to support the factors is the prosecutor's unsworn statements at the sentencing hearing. The State did not call any witnesses or introduce any testimony to support the factors. Further, the prosecutor was never placed under oath or otherwise sworn in as a witness at the sentencing hearing. The prosecutor's unsworn comments to the Trial Court were *not* competent record evidence and did *not* constitute "evidence" sufficient to support the Trial Court's findings in aggravation. See *State v. Buchanan*, 108 N.C. App. 338, 341, 423 S.E.2d 819, 821 (1992); *State v. Mack*, 87 N.C. App. 24, 34-35, 359 S.E.2d 485, 491-92 (1987); *State v. Frazier*, 80 N.C. App. 547, 548-49, 342 S.E.2d 534, 535 (1986). Thus, the

State presented no competent evidence in support of the aggravating sentencing factors and "utterly failed to meet" its burden of proving factors in aggravation by a preponderance of the evidence. *State v. Thompson*, 314 N.C. 618, 622-23, 336 S.E.2d 78, 80-81 (1985).

Second, the non-statutory aggravating factor in the arson case was not supported by competent evidence. As above, the State did not call any witnesses at the sentencing hearing, the prosecutor was never placed under oath or sworn in as a witness, and the prosecutor's unsworn comments to the Trial Court were not competent record evidence and did not constitute "evidence" sufficient to support the Trial Court's finding in aggravation. Thus, the State again presented no competent evidence in support of the aggravating sentencing factor and failed to meet its burden of proving factors in aggravation by a preponderance of the evidence. Accordingly, the prosecutor's unsworn assertions, standing alone, are insufficient to support the Trial Court's findings in aggravation in the murder and arson cases.

The Trial Court's errors here are fully preserved for appellate review. Our Supreme Court has held that a defendant is not required to object to a trial judge's erroneous findings at sentencing in order to preserve that issue for appeal. See *Canady*, 330 N.C. at 401-02, 410 S.E.2d at 877; accord *State v. Gordon*, 104 N.C. App. 455, 459-61, 410 S.E.2d 4, 8 (1991); see also G.S. 15A-1446(d)(18) (no objection requirement when the

sentence imposed was unauthorized or otherwise invalid as a matter of law). Here, defendant presented evidence and argument in support of mitigating factors and urged the Trial Court to "closely scrutinize the evidence" of actual guilt (Tpp. 208-11); thus, as in *Canady*, "defendant did not want the court to find the aggravating factor[s] and the court knew or should have known it." 330 N.C. at 402, 410 S.E.2d at 877. Accordingly, these errors are fully preserved for appellate review; if this Court disagrees, defendant asserts plain error. Thus, defendant is entitled to new sentencing hearings in the second-degree murder and first-degree arsons cases.

IV. DEFENDANT IS ENTITLED TO NEW SENTENCING HEARINGS IN SIX OF THE SOLICITATION CASES BECAUSE THE TRIAL COURT ERRONEOUSLY FOUND STATUTORY AGGRAVATING FACTORS THAT WERE NOT SUPPORTED BY ANY COMPETENT RECORD EVIDENCE AND ERRONEOUSLY USED THE SAME ITEM OF EVIDENCE TO PROVE TWO AGGRAVATING FACTORS.

Assignment of Error No. 11; Rp. 90

Defendant is entitled to new sentencing hearings in six of the eight solicitation to commit first-degree murder cases (99 CrS 23241-44 and 23246-47) because the Trial Court erroneously found aggravating sentencing factors that were not supported by any competent record evidence and erroneously used the same item of evidence to prove more than one aggravating factor in each case. In six of the solicitation cases, the Trial Court found the following two statutory aggravating factors: "5(a). The offense was committed to disrupt the lawful exercise of a governmental function or the enforcement of the laws;" and "5(b).

The offense was committed to hinder the lawful exercise of a governmental function or the enforcement of the laws." (Rpp. 42-53) The Trial Court then sentenced defendant to greater-than-presumptive terms in all six cases. (Rpp. 60-67, 70-73)

A. The Trial Court Erroneously Found Two Aggravating Factors That Were Not Supported by any Competent Record Evidence.

G.S. 15A-1340.16(a) provides that "[t]he State bears the burden of proving by a preponderance of the evidence that an aggravating factor exists" if it seeks a greater-than-presumptive sentence. Although "the rules of evidence may be relaxed during the sentencing phase," our courts have "never stated that the rules of evidence should be totally abandoned." *State v. Stephens*, 347 N.C. 352, 364, 493 S.E.2d 435, 442 (1997), *cert. denied*, ___ U.S. ___, 142 L.Ed.2d 66 (1998). Thus, "for a hearsay statement to be permitted in a sentencing proceeding, it must . . . bear indicia of reliability" and trustworthiness. *Id.* at 363-64, 493 S.E.2d at 442 (emphasis added); *accord State v. Strickland*, 346 N.C. 443, 461, 488 S.E.2d 194, 204 (1997), *cert. denied*, ___ U.S. ___, 139 L.Ed.2d 757 (1998); *see also State v. Bond*, 345 N.C. 1, 31, 478 S.E.2d 163, 179 (1996) (rules of evidence "may be helpful as a guide to reliability" at sentencing). Moreover, it is well settled that "[u]nsolicited whispered representations and rank hearsay are to be disregarded" in sentencing. *State v. Pope*, 257 N.C. 326, 334-35, 126 S.E.2d 126, 133 (1962). Finally, the constitutional requirements of due

process and fundamental fairness apply at sentencing proceedings. See *State v. Barts*, 321 N.C. 170, 180, 362 S.E.2d 235, 240-41 (1987); *State v. Williams*, 295 N.C. 655, 670-72, 249 S.E.2d 709, 719-21 (1978).

In the instant case, the Trial Court's findings of aggravating sentencing factors in the six solicitation cases were based on nothing more than unreliable rank hearsay incapable of lawfully supporting aggravating factors. First, the only "evidence" supporting the aggravating factors -- SBI Agent Bowman's testimony that prison inmate William Stewart told him defendant offered Stewart \$100,000 to kill eight witnesses scheduled to testify at defendant's murder trial -- was clearly hearsay. Second, no part of the evidence was admissible under any hearsay-rule exception.

Third, the evidence was not reliable. The declarant (Stewart) was a convicted felon who was serving time for theft, and who was released from prison early because of the information he supplied to authorities. In addition, undisputed evidence showed that Stewart continued to steal while in prison, is an habitual liar, and has a reputation for theft and dishonesty even among other prisoners. Moreover, Stewart admitted to a number of inmates that he was trying to convince defendant to pay him to kill someone, defendant was not cooperating and did not want anyone killed, he planned to write the prosecutor if defendant did not cooperate, and he ultimately stole the witness list he

turned over to Bowman from defendant's locker. Significantly, the State did not call Stewart himself or any other person with personal knowledge of the alleged solicitation to testify at the hearing. While formal rules of evidence are relaxed at sentencing, they are surely not relaxed to the point here -- where a law enforcement officer testifies to the hearsay statements of a patently unreliable and untrustworthy prisoner. Thus, Bowman's evidence of Stewart's hearsay statements was unreliable and incompetent, and does not provide any evidentiary support for the Trial Court's findings of aggravating factors. See *State v. Oliver*, 309 N.C. 326, 350-51, 364, 307 S.E.2d 304, 321, 328 (1983) (error to submit capital aggravating factor where only evidence to support it was inadmissible hearsay).

Fourth, the Trial Court's use of Bowman's unreliable hearsay evidence to find aggravating sentencing factors violated defendant's constitutional rights to confrontation, due process, and a fundamentally fair sentencing hearing. As shown above, the hearsay statements here had no guarantees of trustworthiness and the declarant could not have been *less* worthy of belief. Moreover, the procedure employed here gave defendant no opportunity whatsoever to confront and cross-examine the chief witness against him -- inmate Stewart. Accordingly, the imposition of aggravated sentences based on this unreliable hearsay evidence violated defendant's rights to confrontation, due process, and a fundamentally fair sentencing hearing. See *Barts*, 321 N.C. at 180-82, 362 S.E.2d at 240-41.

Fifth, our Supreme Court's decision in *State v. Perry*, 265 N.C. 517, 144 S.E.2d 591 (1965), shows that the Trial Court erred here. The defendant in *Perry* pled guilty; at sentencing, the trial judge received hearsay testimony from police officers in support of an aggravated sentence. On appeal, our Supreme Court expressly disapproved of the same procedure that was utilized here, stating "the procedure . . . of the court's hearing testimony of officers as to what witnesses said instead of having the witnesses present in court to testify is *not approved*." *Id.* at 520-21, 144 S.E.2d at 594 (emphasis added). While the *Perry* court ultimately held that "under the facts of th[at] case" the hearing of such testimony was not prejudicial or manifestly unjust, *id.*, the hearsay evidence received and used to find aggravating factors here was patently unreliable and untrustworthy. Accordingly, this Court should find that under the facts of *this* case, the sentencing hearing was manifestly unjust; and should hold that the Trial Court erred in finding aggravating sentencing factors based solely on Bowman's unreliable hearsay evidence. See *Oliver*, 309 N.C. at 350-51, 364, 307 S.E.2d at 321, 328.

B. The Trial Court Erroneously Used the Same Item of Evidence to Prove Two Aggravating Factors.

G.S. 15A-1340.16(d) provides that, in sentencing, "the same item of evidence shall not be used to prove more than one factor in aggravation." This provision bars the finding of two or more sentencing factors in one case that are "duplicitous,"

"cumulative," and "essentially restatements of each other." *State v. Higson*, 310 N.C. 418, 423, 312 S.E.2d 437, 441 (1984); *State v. Isom*, 73 N.C. App. 306, 307, 326 S.E.2d 94, 95 (1985); *State v. Massey*, 62 N.C. App. 66, 69, 302 S.E.2d 262, 264, *aff'd*, 309 N.C. 625, 308 S.E.2d 332 (1983). Moreover, our Supreme Court has specifically held that it is error for a trial judge to find both aggravating factors 5(a) and 5(b) where the same evidence supports each. See *State v. Morston*, 336 N.C. 381, 409-10, 445 S.E.2d 1, 16-17 (1994).

In the instant case, the Trial Court erroneously used the same item of evidence -- defendant's alleged commission of the offenses to retard law enforcement -- to prove both aggravating factors. Indeed, our Supreme Court has specifically and expressly held that the very findings here are error. See *Morston*, 336 N.C. at 409-10, 445 S.E.2d at 16-17. Moreover, aggravating factors 5(a) and 5(b) are identical except for the use of the words "disrupt" and "hinder" and these two words have very similar meanings: disrupt means to "break apart" and "disturb or interrupt the orderly course of," and hinder means to "get in the way of" and "make more difficult for," "thwart," or "impede." WEBSTER'S NEW WORLD DICTIONARY 407, 663 (2d college ed. 1986). In this case, any and all evidence that proved that defendant committed the offense to "disrupt" law enforcement also proved that he committed the offense to "hinder" law enforcement, and vice versa. Accordingly, the Trial Court erred in using the same item of evidence to prove more than one aggravating

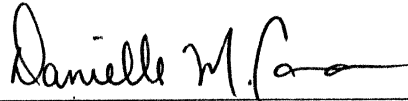
sentencing factor in six of the solicitation cases. See *State v. McKinney*, 88 N.C. App. 659, 665, 364 S.E.2d 743, 747 (1988); see also *State v. Canipe*, 64 N.C. App. 102, 104-05, 306 S.E.2d 548, 550 (1983) (improper to "derive two separate items of evidence from what is essentially one fact").

There can be no doubt that, in finding both factors 5(a) and 5(b) here, the Trial Court was finding two separate aggravating factors. Indeed, the Trial Court clearly indicated that it found both factors in G.S. 15A-1340.16(d)(5) by specifically checking both boxes 5(a) and 5(b) on the sentencing forms. There is no reason to speculate that the Trial Court did not give separate weight to each aggravating factor it found as it imposed sentence. The Trial Court's errors here are fully preserved for appellate review for the same reasons stated in Argument III; if this Court disagrees, defendant asserts plain error. Accordingly, defendant is entitled to new sentencing hearings in the six solicitation cases because the Trial Court erroneously used the same item of evidence to prove more than one aggravating factor.

CONCLUSION

For all the foregoing reasons, defendant respectfully contends that all eight of his *Alford* pleas and convictions must be vacated. Alternatively, defendant contends that seven of his solicitation convictions should be vacated. Defendant also contends that he is entitled to new sentencing hearings in the murder, arson, and six solicitation cases.

Respectfully submitted this the 24th day of March, 2000.



Danielle M. Carman
Assistant Appellate Defender

Malcolm Ray Hunter, Jr.
Appellate Defender
Office of the Appellate Defender
123 West Main Street, Suite 600
Durham, North Carolina 27701
(919) 560-3334

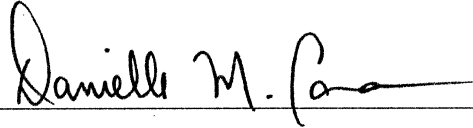
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF FILING AND SERVICE

I hereby certify that the original Defendant-Appellant's Brief has been filed by mail pursuant to Rule 26 by sending it first-class mail, postage prepaid to the Clerk of the North Carolina Court of Appeals, Post Office Box 2779, Raleigh, North Carolina 27602, by placing it in a depository for that purpose.

I further hereby certify that a copy of the above and foregoing Defendant-Appellant's Brief has been duly served upon Edwin W. Welch, Special Deputy Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602, by first-class mail, postage prepaid.

This the 24th day of March, 2000.

A handwritten signature in cursive script, reading "Danielle M. Carman", written over a horizontal line.

Danielle M. Carman
Assistant Appellate Defender

EXHIBIT

G

No.

EIGHTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

x x x x x x x x x x x x

STATE OF NORTH CAROLINA)

FROM: GUILFORD COUNTY

v.

FILE No.s 97CRS 23656,

97CRS 39581; 98CRS 23486

99CRS 23241-48

THEODORE MEAD KIMBLE)

PETITIONER.

x x x x x x x x x x x x x x

PETITION FOR WRIT OF CERTIORARI

x x x x x x x x x x x x x x

TABLE OF CONTENTS

ARTICLES AND STATUTES

i

TABLE OF AUTHORITIES

ii

FACTS

1.

REASON WHY WRIT SHOULD ISSUE

5.

TABLE OF EXHIBITS

22

PRAY FOR RELIEF, INCLUDING ISSUES TO BE BRIEFED

23

VERIFICATION

24

CERTIFICATION OF SERVICE

25

ARTICLES AND STATUTES

U.S. CONST. AM. 5, 6; 14.	3
U.S. CONST. AM. V, XIV	7
N.C. CONST. ART. I, 18, 19, 21, 23	7
N.C. CONST. ART. I, sec. 18, 19, 23	3
N.C.G.S. 7A-450	23
N.C.G.S. 7A-451	23
N.C.G.S. 7A-770	18
N.C.G.S. 7A-773 (1)	18
N.C.G.S. 7A-774	17
N.C.G.S. 15A-536	23
N.C.G.S. 15A-1001	8
N.C.G.S. 15A-1002 (b)	8
N.C.G.S. 15A-1333	16
N.C.G.S. 15A-1340.16	21
N.C.G.S. 15A-1419	23
N.C.G.S. 15A-1419 (A)	10
N.C.G.S. 15A-1419 (B)	10
N.C.G.S. 15A-1419 (C)	10
N.C.G.S. 15A-1420	23
N.C.G.S. 15A-1420 (c) (4)	23
N.C.G.S. 15A-1421	23

CASES AND AUTHORITIES

ARMSTRONG V. MONZO, 380 U.S. 545, 552, 14 L. Ed. 2d. 62, 85, S. Ct. 1187 (1965)	8
CITY OF WEST COVINA V. PERKINS, — U.S. —, L. Ed. 2d. —, 119 S. Ct. 678 (1999)	10
DICKERSON V. VACAGHN, 90 F. 3d. 87 (3rd Cir. 1996)	4
JACKSON V. LEONARD, 162 F. 3d. 81 (2nd Cir. 1998)	4
MATTHEWS V. ELDRIDGE, 424 U.S. 319, 333, 47 L. Ed. 2d. 18, 96, S. Ct. 892 (1976)	8
MOORE V. U.S. 950 F. 2d. 656 (10th Cir. 1991)	5
NAT. COUNSEL OF RESISTANCE TO IRAN V. DEPT. OF STATE, 251 F. 3d. 192 (D.C. Cir. 2001)	8
STATE V. WILKINS, 131 N.C. APP. 220 (1998)	12
STRICKLAND V. GREENE, — U.S. —, — L. Ed. 2d. — 119 S. Ct. 1936 (1999)	10
TREJO V. U.S., 66 F. SUPP. 2d, 1274 (S.D. FLA. 1999)	13
U.S. V. CONTRERAS, 249 F. 3d. 595 (7TH Cir. 2001)	10
U.S. V. DAVENPORT, 151 F. 3d. 1325 (11TH Cir. 1998)	16
U.S. V. ELLISON, 798 F. 2d. 1102 (7TH Cir. 1998)	6
U.S. V. ESCHMAN, 227 F. 3d. 886 (7TH Cir. 2001)	10
U.S. V. NAPPI, 243 F. 3d. 758 (3rd Cir. 2001)	10
U.S. V. SANDERSON, 595 F. 2d. 1021 (5TH Cir. 1999)	6
U.S. V. UNGER, 665 F. 2d. 251 (8TH Cir. 1981)	6

No.

GUILFORD COUNTY

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)	“
)	“ FROM: GUILFORD COUNTY
v.)	“ File No.s 97 CRS -23656,
THEODORE MEAD KIMBLE)	“ 97 CRS-39581; 98 CRS-23486;
)	“
<u>PETITIONER</u>)	“ <u>99 CRS-23241-48</u>

PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE COURT OF APPEALS OF
NORTH CAROLINA

Petitioner Theodore Mead Kimble, Pro-se, Respectfully Petitions this Court to issue it's Writ of Certiorari pursuant to rule 21 of the North Carolina Rules of Appellate Procedure to review the order of the Honorable W. Douglas Albright, Presiding Judge Guilford County, Superior Court, N.C. dated November 20, 2003, Denying Petitioner's MOTION FOR APPROPRIATE RELIEF filed Oct. 23, 2003, And in support of this Petition shows the following:

FACTS

Petitioner Theodore Mead Kimble, is a layman in the LAW and ask for the patience of this Honorable Court as he attempts to represent himself, and the FACTS of his case to the best of his ability.

Pursuant to Judge Albright's M.A.R. summary there is a few "INACCURACIES" the Petitioner would like to point out. (see EXHIBIT A page 1 of 4) Quote: "In the motion, the defendant alleges ineffective assistance of counsel, in that his trial lawyer promised the conspiracy charge would be dismissed pursuant to plea agreement..." (NO-WHERE in the M.A.R. is this allegation made) "... that his lawyer told him the reason the dismissal wasn't in the plea agreement was because the deal was secret, ..." The word is "secretly", and was used one-time in the M.A.R. (see EXHIBIT C M.A.R. page 3 Bottom-line.) The word "secretly" was used in reference to the "supposed" Pre-Arranged 20 year-sentence Counselor Zimmerman spoke of, And NOT the Conspiracy charge. The Prosecutor and Counsel lead Petitioner to believe the Conspiracy charge would be dismissed by only referring to the case number, when in fact there was actually two counts on that charge. (see EXHIBIT C page 10-Bottom, page 11-Top) Mr. Albright FAIL to mention the claim of DOUBLE-JEOPARDY, and the many other claims of Ineffective Assistance of Counsel in the summary.

"A review of the file..." (see EXHIBIT "A" page "2" of 4)

1. "On 7 April 1997, Defendant was indicted ... for first degree murder..."
"... On 3 November 1997, Defendant was indicted for arson and conspiracy to commit first-degree murder..." (see EXHIBIT C M.A.R. / EXHIBIT N Indictment case #97 CRS 23656.) This indictment was "DEFECTIVE"; Titled "Arson of An Unoccupied Dwelling," because the dwelling was occupied and stated so below the charge.
"... and on 6 July 1998, Defendant was indicted for first-degree arson..." (see EXHIBIT C M.A.R. / EXHIBIT O Indictment case #98 CRS 23486.) The Prosecutor indicted TWICE for the SAME crime, and used the same exact words. The subject of Double-Jeopardy is well covered throughout the M.A.R. (see EXHIBIT C MAR pages -

1. Bottom, pg. 8-Top, Page 9 Assignment #2. Cont. pages 10-11; Also ESPECIALLY See. page 24- Assignment E (cont. pg. 25.) Ineffective Assistance of Counsel is proven under the JACKSON v. LEONARD, both Trial Counsel and Appellate Counsel "FAIL" to raise Double-Jeopardy claim. The act of Double-Jeopardy is clearly a miscarriage of Justice and violates Due Process of Law (See U.S. Const. AM, V, VI, and XIV, N.C. Const. Art I sec. 18, 19, 23.) also see DICKERSON v. VAUGHN 90 F. 3d. 87 (3rd Cir 1996)

"Misrepresentation of Law applicable to Double-Jeopardy issue rendered Guilty Plea INVALID, and required State to grant Petitioner's the Right to file Conditional Appeals NUNG PRO TUNG on Double-Jeopardy issue due to Ineffectiveness of Counsel."

"..., on 28 January 1999, the State filed bills of information charging Defendant with eight counts of solicitation to commit first-degree murder... "Petitioner contends these 8 counts were to 1 case. The Prosecutor misled the Court in the way he submitted each count as a separate case. The Plea Arrangement stated Counts NOT Cases.

2. "On 25 January 1999, Defendant pled guilty..." It was NOT Jan. 25, It was as the record shows, 28 January 1999. "... Defendant also pled guilty to eight counts of Solicitation to commit first-degree murder..." Petitioner did NOT plead Guilty, He entered an "ALFORD PLEA". (See EXHIBIT "H" Transcript page #4.)

Petitioner ask the Court to NOTE: EACH Judgment and Commitment in counts 99 CRS 23241-48 are MARKED "XXI PLED GUILTY TO," in EACH box. (EXHIBIT C.M.A.R /EXHIBIT D-1 thru 8.) And see Plea Arrangement (EXHIBIT C.M.A.R /EXHIBIT R.)

Also see. Statement Listing Pleas (M.A.R /EXHIBIT Q.) All of these documents show a "Guilty Plea" on the 8 Counts of "Solicitation..." yet an ALFORD Plea is an ALFORD Plea, NOT an entry of a Guilty Plea. Petitioner has just shown the FACT he "entered" an "ALFORD PLEA" according to the Court Transcript.

(EXHIBIT H.) This makes all papers incorrect, NULL and VOID. To "CORRECT" this "ERROR of the Court," would require an Evidentiary Hearing, "Which I DO ASK FOR." These "ERRORS" are also shown in the Sentencing Transcripts (EXHIBIT J-1 (HUR 6.) Judge Peter McHugh entered judgment under the plea of "GUILTY" in cases (counts!) 99 CRS 23241-48. As Exhibit H shows Petitioner pled ALFORD, NOT Guilty. Counsel's failure to object shows Ineffective Assistance. Counsel did NOT object once!

3. "On 26 February 1999, Defendant filed a pro-se motion to withdraw his guilty pleas..." Petitioner contends Feb. 26, 99 was the second time he tried to file said motion. Petitioner mailed his first motion to withdraw his pleas on January 29, 1999, which "VANISHED!" "... on the grounds he was "pressured into (his) earlier plea." (See EXHIBIT L Lines 11-13.) Petitioner was "THREATEN" by Counsel and coerced to enter a plea. Counsel did not object when Petitioner stated this FACT into the RECORD. "The trial Court subsequently held a hearing on the motion." At this so-called hearing the Petitioner was "DENIED" representation. Counselor Zimmerman and Crumpler told the Defendant "they would sit this one out." Counsel told the Court they would remain "NEUTRAL". (See EXHIBIT C MAR/EXHIBIT X) clearly violated Petitioner's State and Federal Constitutional Rights to Counsel and Due Process violation.

— Continuation under: "A review of the file..." (See EXHIBIT A page 2 of 4)

4. "On 4 March 1999 through 5 March 1999, the trial court held Defendant's sentencing hearing." "... The defendant was sentenced consistently with his plea agreement." Petitioner contends the later statement to be "FALSE" as this Motion will Prove. Counsel had told the Petitioner a 20 year sentence had been Pre-Arranged. The Petitioner was deceived, and lied to.

5. "Defendant thereafter filed a Notice of Appeal. The Court entered appellate entries and appointed the Appellate Defender to represent the defendant." The Ineffectiveness of Appellate Counsel is addressed throughout the Motion For Appropriate Relief. (See EXHIBIT C M.A.R. page 3 assignment #2, cont. pgs. 4-5, 10, 16...) Appellate Counsel Carman "ABANDON" important FACTS and ERRORS, and FAIL to file a M.A.R. and represent Petitioner diligently and zealously within the bounds of Law, And Petitioner's Appeal was naturally Denied. Because Counselor Carman FAIL to develop the record.

REASONS WHY WRIT SHOULD ISSUE

In the Court's Order dated Nov. 20, 2003, "Based on the record, the Court concludes..." (see EXHIBIT A-2 of 4)

1. "See State v. Reynolds, ... he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty." The Petitioner would like to point out his Motion to withdraw his plea on the 4th of March, was after and NOT prior to his plea of Guilty. Counsel ABANDON the Defendant. Petitioner was NOT made aware of any Rights. He was DENIED representation. STATE v. Reynolds is NOT applied when "INEFFECTIVE ASSISTANCE OF COUNSEL" is proven. Besides, several of the violations listed took place AFTER the Plea entry. Counsel threaten and coerced the Petitioner to enter a Plea.

"Conviction obtained by Plea of Guilty which was unlawfully induced or NOT made voluntary with understanding of the nature of the charge and the consequences of the plea violates U.S. Const. AM. 5, 6, 14; N.C. Const. ART. I, sec. 19, 23. As Petition pointed out in EXHIBIT C M.A.R. pages #6, 7, how Moore v. U.S. 950 F 2d, 656 (10TH Cir 1991) Coercion by Trial Counsel or the

Prosecutor to induce a Guilty Plea render the Plea involuntary. Also see U.S. v. ELLISON, 798 F2d. 1102 (7TH Cir 1998) and U.S. v. UNGER, 665 F2d. 251 (8TH Cir 1981) clearly (Mirrors) Case at Bar. Also contrary to the Courts Order stating, "The Defendant was aware of all the facts he now claims show prosecutorial misconduct at the time he Pled Guilty based on the documents he provided with his Motion." Apparently the Court didn't read the motion, As it clearly states at the bottom of page #6 (M.A.R.) "It was "LATER" ascertained "JUST RECENTLY," (EMPHASIS SUPPLIED) Upon movent having time to study N.C. Law and Procedures, and study the Court transcripts..." The fact Mr. Zimmerman "WAS" a JUDGE, leaves No-EXCUSE for such a Gross Miscarriage of Justice, Making the Petitioner sign 8 waivers on charges that would be dismissed, if Petitioner did NOT sign! see U.S. v. SANDERSON 595 F2d. 1021 (5TH Cir 1979) also (see M.A.R. pages 17, 18)

Petitioner is always entitled to effective assistance of counsel and a lawful sentence through all stages of any proceedings, before, during, and after entry of any pleas under the Federal Constitution. Petitioner is entitled to protection under the Federal Constitution against misconduct.

Furthermore, "Double-Jeopardy" committed by Prosecutor Panosh is not, "Concerning the alleged defect in the indictment and concerning the Prosecutor's conduct," we are talking about a GRAVE "MISCARRAGE OF JUSTICE." Even a layman can clearly see that indictment #97CRS 23656 "Arson of an Unoccupied Dwelling", with "Someone inside the dwelling" had to be dismissed. The Prosecutor broke the LAW and committed Double-Jeopardy by RE Submitting the charge to the Grand Jury on July 6, 1998 as case #98CRS 23486, "First Degree Arson." which is "A Conviction obtained by a violation of the

protection against Double-Jeopardy." Not a simple "Defect" in the indictment!

See Jackson v. LEONARD 162 F.3d 81 (2nd Cir 1998). (See EXHIBIT C M.A.R. pages 24, 25)

The Prosecutor tried to cover-up the crime of Double-Jeopardy by only referring to the case number in the Plea Arrangement, and FAIL to disclose the information, which constitutes "conviction obtained by the unconstitutional failure of the Prosecution to disclose to the Defendant evidence favorable to the Defendant." Violates U.S. Const. AM. 5, 6, 14; N.C. Const ART I sec 18, 19, 23. Petitioner pointed out in "SEVERAL" ways in EXHIBIT C M.A.R. pages #8 thru #15, Numbers 1-6.

2. "Ridings v. Ridings," cited in court order is NOT controlling. That case did not deal with facts clearly appearing in public records, Abstracts of which were presented to the courts. Additionally Judge McHugh is NOT qualified as a medical professional or qualified in the medical field to make an examination of the defendant, or make a diagnosis that the defendant is competent or NOT! As stated Mr McHugh is a Judge in the field of law. Furthermore Judge McHugh had doubts in his own judgment as to the competence of the Petitioner. At the withdrawal hearing Judge McHugh pressed a psychologist Dr. William M. Tyson to answer a question he was NOT qualified to answer. (See EXHIBIT K) On lines 13-14 of exhibit "k" the Dr. Tyson stated, "... with the caution that I am NOT a medical Doctor..." Dr. William Tyson did a psychology exam of the Defendant near the end of February, which was nearly a month after the Plea entry. By this time the Petitioner had built up a tolerance to the medication and was able to function. Petitioner even stated on record that the "guards" were dispensing medication to him on the Jan. 28. The Petitioner was nearly

drunk on the medication. Counselor Zimmerman knew the condition of his client and even ask the Petitioner to lie. Counsel tried to convince the Petitioner to deny being on medication when asked by the Judge McHugh. Counselor Zimmerman took advantage of the situation. He stood next to the Petitioner at the Plea Hearing and had the Petitioner repeat after him as he whispered the answers to the questions, as the Judge ask them. (See EXHIBIT C M.A.R. page #18.) As for Judge Albright's quote of N.C.G.S. 15A-1001, The psychologist stated on the stand that he was NOT a medical doctor, At that point Petitioner contends the Judge McHugh should have applied N.C.G.S. 15A-1002 (b) and ordered the defendant examined or committed temporarily to determine his mental evaluation on the competent issue, but the court FAIL to do this.

(EMPHASIS SUPPLIED.)

3. As for the Courts order, statemen #3 on page #3 (See EXHIBIT A page 3 of 4) The Courts position that the defendant was satisfied with his attorneys when he pled guilty and that he stated under oath that he was satisfied with his attorneys services is explained as follows:

Petitioner at the time was not in a position to contest the irricionous application of law. Furthermore, this does not justify violating Petitioner's Due Process Rights guaranteed by the U.S. Constitution Amendments V, XIV, and North Carolina Constitution, Article I, sections 18, 19, 21, and 23. See NAT. Counsel of resistance to Iran v. Dept. of State, 251 F3d 192 (D.C. Cir. 2001) MATTHEWS v. ELDRIDGE, 424, U.S. 319, 333, 47 L.Ed. 2d. 18, 96 S. Ct. 892 (1976) ARMSTRONG v. MONZO, 380. U.S. 545, 552, 14 L.Ed. 2d. 62, 85 S. Ct. 1187 (1965)

Due Process requires as General Matter opportunity to be heard at

a meaningful time and in a meaningful manner. Citizens must be afforded Due Process before deprivation of life, liberty, or property. No reasonable jurist could conclude that Petitioner is bound by his statement that he was satisfied with his attorneys and their services. That statement was made BEFORE the Petitioner had an opportunity to review court documents and study his case, or study the N.C. law and procedures and evaluate the record. There is ~~nothing~~ in the record to suggest the Petitioner was aware of or should have known his attorneys were in fact "RAILROADING" him. The court order (page #3, statement #3.) seems to insinuate that a defendant is required to know in advance that his attorneys assistance will be ineffective. Now see, "... the defendant has already had the opportunity for a hearing on this issue..." As for this supposed hearing and opportunity, the Defendant was DENIED effective assistance, rather DENIED ANY ASSISTANCE OF COUNSEL! At that Hearing the Defendant's Counsel decided to remain "NEUTRAL" and left Petitioner to defend for himself! Counsel told the Petitioner he was embarrassing them and it was best if... (Quote:) "We'll sit this one out." Petitioner is NOT an attorney and had NO idea of how to raise his issues at that hearing, as a licenced, skilled attorney does. The Petitioner paid \$50,000 to Counselor Zimmerman and Crumpler, yet they REFUSED to represent him at this hearing, which is a DENIAL of Effective Assistance of Counsel. See the M.A.R page 26, where Counsel remained "NEUTRAL"! Now moving forward see, "Any error in that decision should have been raised on appeal. The defendant's motion does not raise a question of fact and even if it did, it is procedurally barred." Petitioner contends this statement to be "FALSE"!

See CITY OF WEST COVINA v. PERKINS, ___ U.S. ___, L.Ed. 2d. ___, 119 S.Ct. 678 (1999), A primary purpose of the notice required by the Due Process clause is to ensure that the opportunity for a hearing is meaningful in "ALL" cases, The HIGHER Court has the authority to overrule the lower Court's orders, Not the lower Court overrule a higher Court's orders, U.S. v. NAPPI, 243 F3d. 758 (3rd Cir 2001) U.S. v. ESCHMAN 227 F3d. 886 (7th Cir 2001) Due Process requires that Defendant be sentenced on basis of "Accurate Information." U.S. v. CONTRERAS 249 F3d. 595 (7th Cir 2001) Sentencing determination must be based on "Accurate Information." See STRICKLAND v. GREENE, ___ U.S. ___, ___ L.Ed.2d ___ 119 S.Ct. 1936 (1999) Under BRADY an inadvertent nondisclosure has the same impact on the fairness of the proceeding as DELIBERATE CONCEALMENT. N.C.G.S. 15A-1419(B) Requires the Court to deny the motion under any of the circumstances specified in N.C.G.S. 15A-1419(A) "UNLESS" Defendant can demonstrate good cause and actual prejudice, (or) that failure to consider defendant's claim, or raise a question of fact is "NOT" procedurally barred, If Defendant's claim will result in a fundamental miscarriage of justice. "BOTH" these exceptions were demonstrated in Petitioner's Motion for Appropriate Relief, And requires an Evidentiary Hearing to resolve these claims and issues. However, Petitioner's motion was DENIED without a Hearing.

(A) Denial of Petitioner's motion without consideration of the merits was inappropriate because good cause and "Question of Fact" existed for excusing any valid grounds listed in the Court's order. Actual prejudice resulted from Petitioner's claim. The Defendant can demonstrate good cause as defined in sec. 15A-1419(C). Petitioner's failure to raise a

Claim was the result of violations of the United States Constitution, including ineffective assistance of Trial and Appellate Counsels. The basis of Petitioner's attempts to raise post Conviction Relief is and has been an ILLEGAL sentence resulting from Conflict of Interest on the part of Mr. Zimmerman being Petitioner's former "Sentencing JUDGE" and failure of Appellate Counsel Carman "ABANDONING" issues, Not reporting Prosecutor misconduct, Vindictive Prosecution, And many more violations of law; As Petitioner pointed out in his M.A.R. For further information and proof, see EXHIBITS (D) and (E). Motion for Relief from the Judgment, and response to the State's answer. Also see EXHIBITS (F) and (G) Motion in Arrest of Judgment, And response to the States answer.

(B) By the Court's order saying "...it is procedurally barred," results in the refusal of the Superior Court Judge to exercise his discretion in the case, and was an abuse of discretion. Furthermore the Judge Albright obviously didn't exercise a casual perusal of the record, Petitioner pled Guilty and entered ALFORD pleas on Jan 29, 1999, Not Jan 25, as stated in the Court's Order (page #2 Statement #2) or the FACT it was ALFORD Pleas in 3 Counts of Solicitation to Commit First Degree Murder; Not Guilty pleas as stated in the Court's Order (page #2 statement #1). In FACT, NONE of the Court's statements seem to be in accordance of anything shown in the record. The Court didn't even get the right case numbers on page #1, It's 98 CRS 23486 Not 98 CRS 23484. This is despite the fact Petitioner's conviction was obtained by use of coerced confession, As Petitioner pointed out in "several" ways in his Motion for Appropriate Relief. See EXHIBIT (C) M.A.R. pages 20 Thru 25. Also see EXHIBIT L

Counsel threaten the Petitioner by telling him his life was in danger.

As for the Court's Order statement #3, Page #3 dated Nov. 20, 2003, this further shows how Petitioner's Rights were violated, Denial of Right to Appeal, By Trial Counsel, and Appellate Counsel Carman's Ineffective Assistance of Counsel. For further proof see Motion for Appropriate Relief Exhibit C pages #15 Thru #17.

4. As for the Court's order statement #4, on Page #3 (see EXHIBIT A-3 of 4) Petitioner has shown in this Petition for Writ of Certiorari Page #4, how Petitioner's Plea was NOT voluntary. Also Petitioner pointed out these FACTS in his M.A.R. pages #6, 7, 8, As the Court FAIL to even mention, It is NOT enough for the Court to simply NEGLECT to read the record or the Motions, to make a "BALD ASSERTION" that it contains no issues of fact, which would require an evidentiary hearing to resolve said issues of Material Fact, As the Court quoted factors as "Misunderstanding, duress, misrepresentation by others," Have No comparison to Petitioner's Federal Rights, and his conviction was obtained by violation of Privilege against self-incrimination (see EXHIBIT C M.A.R. pages 17, 18, 19, and 20) Plus as for Misunderstanding, Duress, Misrepresentation, The Due Process Clause giving rise to Petitioner's claims is contained in the Constitution of the United States of America Amendment 14. Petitioner is aware of No published decision in which "ANY" Court has questioned the proposition that the United States Constitution is a "FEDERAL LAW." Yes, the defendant was informed of the applicable maximum sentences and that no promises were made, Because "THE ATTORNEY SAID IT WAS ALL 'PRE-ARRANGED' FOR A 20 YEAR SENTENCE TOTAL!" (See EXHIBIT C M.A.R. page #18) The Court quoted STATE V. WILKINS, 131 N.C.

APP. 220 (1998) which does NOT apply in this case at bar. Now see for comparison to STATE V. WILKINS, see TREJO v. U.S. 66 F. SUPP. 2d 1274 (S.D. FLA. 1999) (A YEAR AFTER THE WILKINS CASE) "Counsel's misrepresentation of plea agreement that (1) Cooperation of any on defendant would insure to the benefit to all of them; (2) That this agreement need "NOT" be included in the plea agreement because it had been "ARRANGED" with the Prosecutor; (3) That based on their cooperation, The defendant would receive a sentence as low as five years of imprisonment, but in any case, not more than 10 yrs, Required setting aside the Guilty Plea based on Ineffective Assistance of Counsel." In case at bar, Petitioner was promised a 20 year sentence total. Again the Court must have neglected to see EXHIBIT C MAR page #22, or I'm sure the Court wouldn't have bothered to quote the WILKINS case. (EMPHASIS SUPPLIED)!

The Court's Order statement #4 page #3 referring to the "Unambiguous record creates a "formidable barrier," (Nothing more than a "Professional Smoke-Screen" concealing the TRUTH!) The quoting BLACKLEDGE v. ALLISON, and CF. UNITED STATES v. CERVANTES, Petitioner contends that he has numerous Proofs and "EXTRAORDINARY" Circumstances. "Who can name a case where a JUDGE sends a man to prison, then comes off the bench and becomes the man's Attorney, with the Promise of winning the case. But instead works with the Prosecutor to RAIL-ROAD the man and cause him to be sentenced to over a HUNDRED YEARS!" It's as if Judge Zimmerman didn't get enough of me, when he sentenced me the FIRST-time! So he became my Attorney and had me put away for the rest of my life! (See EXHIBIT C MAR/ EXHIBIT EE-1 thru 3.) IF the Petitioner is given his Constitutional Right

to an Evidentiary Hearing, he will produce MORE than one Affidavit from reliable third parties. Petitioner exhaustively expressed in his M.A.R. several examples of Prosecutor Misconduct. (see EXHIBIT C, MAR/EXHIBIT S.)

Petitioner presented many issues of Material Fact, And has undisputable proof to show at an Evidentiary Hearing, which he is entitled to under "Color of Law" and the "Ends of Justice".

5. "The Court concludes..." by statement #5 the following. (see EXHIBIT A page 4 of 4.) The case of Strickland v. Washington, "STRICKLAND" establishes a two-prong test for ineffective assistance of counsel: first, that counsel's performance must fall below an objective standard of reasonableness, and second, that the deficient representation must be so serious as to deprive defendant of a fair trial." North Carolina adopted the "Strickland" standard under the case of "State v. Braswell. Judge Albright has stated, "the defendant has failed to raise any issues of material fact about his attorneys' representation or the specific effect of the alleged conflict of interest." The Petitioner contends that Judge Albright did NOT read the M.A.R. In the case at bar, Counsel's performance fell way below an objective standard of reasonableness and as a result the defendant was seriously harmed! It can't possibly be reasonable for Counsel to have had the defendant sign (Bill of Information) Waivers on 8 Counts of Solicitation to Commit First-Degree Murder, after the Grand Jury had refused to indict on the charges, And the charges were going to be dismissed! Especially when Counsel knew the defendant was innocent! It can't be reasonable for Counsel to have had the defendant plead Guilty to "First-Degree Arson," when

the case had to be dismissed because the Prosecutor committed Double-Jeopardy! It can't be reasonable for Counsel to sit there and NOT object while the Judge sentences the defendant to 8 consecutive sentences on a single case of Solicitation to Commit First-Degree murder. It can't be reasonable for Counsel to sit there and NOT object when the Judge "ILLEGALLY" sentences the defendant in the "Aggravated Range" on 8 of the 11 sentences, BECAUSE THE CLERK MARKED THE WRONG BOX! If my case doesn't show "Conflict of Interest" I don't know if such a case exist. Judge Zimmerman sentenced the Petitioner to "PRISON" on Dec. 8, 1999. (see EXHIBIT C M.A.R./ EXHIBIT EE.) while serving that sentence Judge Zimmerman came off the Bench and became Petitioner's lawyer, to provide representation on pending charges. The Petitioner contends that Counselor Zimmerman helped the Prosecutor Rail-Road him! Look at all the UN-REASONABLE things he did. Had Counsel done their Job the Petitioner would NOT be serving a sentence of over a Hundred years!

As for Judge Albright's "SARCASTIC" remark referring to the Petitioner's M.A.R., as he put it, "A laundry list of allegations, they are unsupported by any competent evidence." In the following Assignment (#8) the Petitioner will walk the Court through the CLEAR EVIDENCE PROVEN IN THE RECORD of how the Petitioner was sentenced ILLEGALLY. The BEST is saved for LAST!

Had Judge Albright read the M.A.R. maybe he would have gotten the case numbers, the Plea hearing date, and the ALFORD pleas correct. There is a difference between an ALFORD plea and a Guilty plea.

Allow me to point-out once again as Judge Albright brings it to the attention of the Court, "The defendant stated under oath at the time of his guilty plea that he was satisfied with his attorneys and he has already had a hearing..." Petitioner was on medication at the Plea Hearing and only repeated after Counsel as instructed. Counsel had assured the Petitioner a total sentence of 20 years had been Pre-Arranged. How was the Petitioner to know Counsel had lied to him? How was Petitioner to know what Double-jeopardy was? Or that the Grand-Jury had refused to indict on the 8 counts of Solicitation, and that those charges would be dismissed if he didn't sign the waivers. How could the Petitioner know that Counsel would refuse to represent him at his Motion to withdraw? How could the Petitioner know that Counsel would sit there and NOT object to ANYTHING when the Judge sentenced him ILLEGALLY!

Yes, The Petitioner had a Withdraw hearing where he tried to raise issues of FACT. But Counsel REFUSED to represent him, And Petitioner was left to fight for himself. Petitioner was DENIED Counsel! The Court has thrown Justice out the window if it's to imply the said hearing was Just and Fair.

6. Judge Albright's statement by assignment #6 (EXHIBIT A page 4 of 4) is a flat out LIE! The Petitioner has shown: (See EXHIBIT C M.A.R. pages #8, #9 and M.A.R./EXHIBIT DD. Transcript pgs. #218 + #219.) The Court record clearly shows the P.S.I. Report was NOT available, and the defendant was sentenced WITHOUT the P.S.I. Report. Judge Albright then made the claim it is not a constitutional violation to be sentenced without the P.S.I. Report. See U.S. v. DAVENPORT, 151 F3d 1325 (11th Cir 1998) Pre-Sentence Report must be disclosed to Both defense Counsel and Defendant at least Ten (10) days prior to sentencing as MANDATED by Statute "Pursuant to N.C.G.S. 15A-1333"

Availability of "PRESENTENCE REPORT."

(A) Presentence Reports and Sentencing Services information not public records.

A written presentence report, the record of an oral presentence report, and information obtained in the preparation of a sentencing plan by a Sentencing Service Program under ARTICLE 61 of Chapter 7A are not public records and may not be made available to any person except as provided in this section.

(B) Access to Reports. The Defendant, His Counsel, The Prosecutor, Or the Court may have access at any reasonable time to a written presentence report or to any record of an oral presentence report. Access to a Sentencing Plan and information obtained in the preparation of a sentencing Plan shall be in accordance with the comprehensive sentencing service program plan developed pursuant to N.C.G.S. 7A-774

(C.) Expunging Reports. On Motion of the Defendant, the Court in it's discretion may order a written presentence report, The record of an Oral presentence report, or a Sentencing Plan expunged from the Record. (Chgd. BY 2000-67 § 15.9(C), eff. 7/1/2000.)

N.C.G.S. § 7A-774. Requirements for a Comprehensive Sentencing Service Program Plan.

Agencies applying for grants shall prepare a comprehensive sentencing service program plan for the development, implementation, operation, and improvement of a sentencing services program for the Superior Court District, As prescribed by the director. The Plan shall be updated annually and shall be submitted to the Senior Resident Superior Court Judge for the Superior Court District for the Judges advice and written endorsement. The plan shall then be forwarded to the director for approval. The Plan shall include:

(1) Goals and Objectives of the Sentencing Service Program.

(2) Specification of the kinds or categories of offenders for whom the Program will provide sentencing information to the courts.

(3) Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in N.C.G.S. 7A-773(1).

(4) Strategies for ensuring that Judges and Court officials who are possible referral sources use the Program's Services in appropriate cases.

(5) Procedures for obtaining services from existing public or private agencies and a detailed budget for staff, contracted services, and other costs.

(Chgd. BY 1999-306, § 1, eff. 1/1/2000.)

Furthermore, All the above is "MANDATED BY LAW", Pursuant to N.C.G.S. § 7A-770, And cited as the "SENTENCING SERVICES ACT"! The FALSE statement by Judge Albright given in assignment #6 (EXHIBIT A-page 4 of 4) makes me ask a lot of questions. Judge Albright is the "RESIDENT SUPERIOR COURT JUDGE" in Guilford County Court House. Surely he knows of the "Sentencing Service Act." Either Judge Albright is lying to COVER for his fellow Judge "FRIENDS", (Judge Peter McHugh and RETIRED Judge H.W. Zimmerman) Or "Someone has possibly "BACK-DATED" a P.S.I. Report to COVER their BACK-SIDE." Either way, I've got a Court-Room FULL of Witnesses who can verify "NO" P.S.I. Report was GIVEN! And Petitioner shows the M.A.R. EXHIBIT D.D.

7. As for statement #7, Courts Order page #4 (see EXHIBIT A pages 4 of 4) Petitioner argues the Appellate Counsel has the obligation to pursue what is BEST for her client, And NOT simply what is easiest for her to perform! Appellate Counsel has an obligation to represent Petitioner's Assignments of Errors, and NOT ABANDON issues of an ILLEGAL 70 to 90.4 yrs. Sentence as Counselor Carman did! The Court of Appeals RULING even verified this fact! Counselor Carman FAIL

to raise "Ineffective Assistance" claims, Or "Conflict of Interest," In that Mr. Zimmerman was Petitioner's prior sentencing Judge, Or Prosecutor Misconduct, Or any other issues of Material Fact Mandated by Law.

* 8. In closing Judge Albright has chosen to completely over-look (A) Four SERIOUS VIOLATIONS of Petitioner's Rights. Each of the following "Violations" are CLEARLY seen on the Court Transcripts, pages 220-227 of the Sentencing Hearing. (EXHIBITS I & J) Please follow me to the "Ends of Justice." If the Court has fail to agree on any other issue of Material Fact, I pray this Court will REVIEW and ADDRESS each of the following:

* A) Judge Albright said, "There is nothing in the record to support the defendant's claims that the sentences he received are illegal..." (See EXHIBIT A page 4 of 4, statement #8.)

① Petitioner contends by the State's own words, (See EXHIBIT C MAR./EXHIBIT R.) The Plea Arrangement says "... he will receive consecutive sentences in each of these cases." The Plea Arrangement stated consecutive sentences in each "CASE," NOT each COUNT! The Plea Arrangement states "... and eight counts of Solicitation to Commit First Degree Murder..." There was 8 Counts, BUT ONLY ONE CASE! For "PROOF" see the Bill of Information WAIVERS (EXHIBIT B pages 1 thru 8.) Notice each Waiver states the same "alleged" crime. DATE of NOVEMBER 4, 1998. There was only (1) one "ALLEGED" Solicitation. Petitioner contends the State violated it's own Plea Arrangement, And the Court made a SERIOUS ERROR by NOT following the EXACT wording of the Plea Arrangement. Prosecutor Panosh DECEIVED the Court by the way he presented the single (1) case of Solicitation, As if it were 8 separate cases, Instead of 8 counts as shown in the Plea Arrangement. Petitioner was ILLEGALLY sentenced on each Count of a SINGLE CASE. Petitioner had Ineffective Assistance of Counsel as they just sat there and FAIL to object! (See EXHIBIT J pages 1-6.) The Petitioner received 8 consecutive sentences.

② The Petitioner has already shown PROOF on page #3 Assignment #2 in this Motion, how he entered an ALFORD Plea (EXHIBIT H.) Now Please look at "EXHIBIT J-1 Thru 6." The Court will see that Judge McHugh pronounced Judgment under a Guilty Plea, instead of an ALFORD plea. This clearly makes the 8 Counts of Solicitation to Commit First Degree Murder an "ILLEGAL-SENTENCE". The Petitioner was NOT found Guilty, Nor did he plead guilty. An ALFORD Plea is an "ALFORD PLEA."

③ The Petitioner was ILLEGALLY sentenced in the Aggravated Range in 6 of the 8 counts of Solicitation to Commit First Degree Murder, In that to justify the Aggravated sentence the Judge used the same ELEMENTS in EACH one, to prove each OTHER. This is only allowed to be done (1) one time, Not 5 additional times. (See EXHIBIT J-1 Thru 6.)

* B.) Judge Albright said, "The sentences he received are valid and within the ranges allowed by the legislature for the crimes to which the defendant pled guilty." (See EXHIBIT A page 4 of 4 statement #8.)

④ Of the (4) Four Violations now comes the MOST SERIOUS ERROR, and VIOLATION of Petitioner's Rights. PLEASE, Look at Pages #220 through #227 of the Sentencing Transcript. (See EXHIBITS I-1 and 2; Also see EXHIBIT J-1 Thru 6.) Note cases 97 CRS 39581, 98 CRS 23486; and 99 CRS 23241, 42, 43, 44, 46, 47. In each of these cases the Petitioner was sentenced in the Aggravated Range "ILLEGALLY." Now look at the "Findings of Aggravating and Mitigating Factors." (see EXHIBIT C M.A.R. / EXHIBIT E, F, G, H, I, J, K, L) On EXHIBITS E & F under "Aggravating Factors" you will see (1) Box Marked (x) by assignment number (20), which means there is one (1) Aggravating Factor in each case. Also see EXHIBITS G, H, I, J, K, L, on each under "Aggravating Factors" you will see

x 20 x

(*NOTE: SEE N.C.G.S. 15A-1340.16 AGGRAVATING AND MITIGATING FACTORS)

(1) Box Marked (X) by assignment number (5), which means there is one (1) Aggravating Factor in each of these cases. Now in "ALL" of these cases under the "Mitigating Factors" you will see (3) BOXES Marked (X) by assignments # 12, # 18, # 19, which means there is THREE (3) Mitigating Factors in each of the 8 cases. Now that means there is (1) Aggravating Factor and (3) Mitigating Factors on each of the 8 CASES shown. If this Honorable Court will now look at the "Bottom" of Each EXHIBIT showing "Mitigating Factors", you will find: "THE WRONG BOX HAS BEEN MARKED!" Factors in Mitigation outweigh the factor in Aggravation and that a Mitigated sentence is justified, "SHOULD HAVE BEEN MARKED!" And NOT "Factors in Aggravation outweigh the factors in mitigation and that an aggravated sentence is justified. The Sentencing Transcript pages # 220-# 227 (EXHIBIT I and J.) show the Judge sentenced the Petitioner "ILLEGALLY" in the Aggravated Range on 8 of the 11 consecutive sentences he received. These FACTS are shown in the Motion For Appropriate Relief on pages # 31 and # 32, Assignment X through XIII. But Judge Albright FAIL to ADDRESS this claim. Now I ask, "How can Judge Albright say there is nothing in the record to support the defendant's claims?" Or say, "The sentences he received are valid and within the ranges allowed...?" "The only way he can say it is to throw Justice out the window. As the record shows in the Transcript, the Petitioner was quickly taken from the courtroom the moment the Judge stopped speaking. Counsel Never once OBJECTED to Anything! It was as if the Defendant had No-Counsel. Serious HARM was caused by this "ERROR" of the Court. The Petitioner received a number of "YEARS" added to his sentence. "ILLEGALLY." Petitioner ask for an Evidentiary Hearing to resolve this "Material FACT."

x 21 x

TABLE OF EXHIBITS

- (A) COURT ORDER DATED NOV. 20, 2003 (4 Pages)
- (B) 8 WAIVERS DATED JAN. 28, 1999 (8 Pages)
- (C) MOTION FOR APPROPRIATE RELIEF
- (D) MOTION FOR RELIEF FROM THE JUDGMENT
- (E) PETITIONER'S RESPONSE TO THE STATE RE: {"Motion For Relief From The Judgment."}
- (F) MOTION IN ARREST OF JUDGMENT
- (G) PETITIONER'S RESPONSE TO THE STATE RE: {"Motion In Arrest Of Judgment."}
- (H) TRANSCRIPT PAGE #4 ENTRY OF PLEA (ALFORD)
- (I) TRANSCRIPT PAGES #220-221 SENTENCING (2 Pages)
- (J) TRANSCRIPT PAGES #222-#227 SENTENCING (6 Pages)
- (K) TRANSCRIPT PAGE #19 PSYCHOLOGIST DR. WILLIAM M. TYSON
- (L) TRANSCRIPT PAGE #9 THREAT BY COUNSEL

PRAY FOR RELIEF

Wherefore, The Petitioner respectfully prays this Court issue it's Writ of Certiorari to the Superior Court of Guilford County North Carolina to permit review of the Order above specified, Upon the following issues;

1.) Did Petitioner's Motion for Appropriate Relief set forth Probable Grounds for Appropriate Relief?

2.) Are Defendant's Grounds for Relief BARRED by N.C.G.S. 15A-1419?

3.) Has Petitioner been DENIED Effective Assistance of Trial and Appellate Counsel?

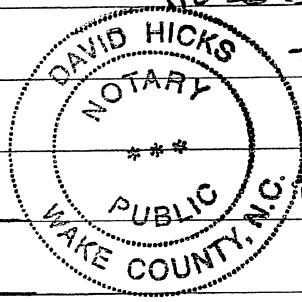
4.) Errors to be assigned in the record on Appeal constitutes in accordance with Rules of Appellate Procedure or such issues as the Court determine; And that Petitioner's case and sentence be set aside and released from prison (or) His case be remanded to the Superior Court of Guilford County North Carolina for an Evidentiary Hearing on all factual issues, see N.C.G.S. 15A-1420 (c)(1); and (4) And appoint Counsel to represent and advise him pursuant to N.C.G.S. 15A-1420(c)(4), 15A-1421, 7A-450 and 7A-451, And to be released from prison upon the posting of a suitable Bond pending Appeal pursuant N.C.G.S. 15A-536, And any other Relief this Court deems just and proper.

Pro-se: Theodore Mead Kimble

Sworn To and Before me This the 12th Day of December 2008.

Witness: *[Signature]*

Date: 12-12-08



THEODORE MEAD KIMBLE
300 WESTERN BLVD.
RALEIGH, N.C. 27606

My Commission Expires: My Commission Expires 5-18-2008.

VERIFICATION

I, Theodore Mead Kimble, Being first Duly Sworn depose and say, I am the Petitioner in the foregoing Petition for Writ of Certiorari, I have drafted and read the same, and the statements contained therein are True, As for any statements made on information and belief, Are made in good faith, And I believe to be True. Signed under penalty of perjury this the 12 day of December 2003.

Pro-se: Theodore Mead Kimble

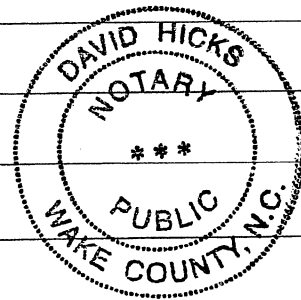
THEODORE MEAD KIMBLE

Sworn To and Before Me This The 12th Day of December 2003.

witness: David Hicks

Date: 12-12-03

My Commission Expires: _____ My Commission Expires 5-18-2008.



CERTIFICATE OF SERVICE

I, Theodore Mead Kimble, Do hereby Certify

That the foregoing Petitioner's Writ of Certiorari copy was Duly Served, By placing in the U.S. Mail, Postage pre-paid and addressed as follows:

Roy Cooper
Attorney General
P.O. Box 629
Raleigh, N.C. 27602

Pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Sworn To and Before Me This the 12th

1300 WESTERN BLVD.

Day of December 2003.

RALEIGH, N.C. 27606

Witness: David Hicks

Date: 12-12-03

My Commission Expires: My Commission Expires 5-18-2008.

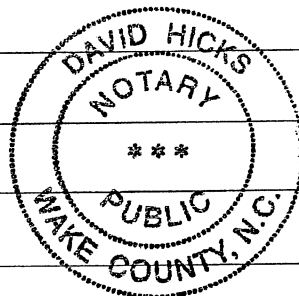


EXHIBIT (A) 1 of 4.

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

FILED
OCT 25 PM 12:18
GUILFORD COUNTY, C.S.C.
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
97 CrS 23656, 39581
98 CrS 23484, 99 CrS 23241-48
Cdf

STATE OF NORTH CAROLINA,

ORDER

v.

THEODORE MEAD KIMBLE,
Defendant.

This matter is before the Court on a paper writing filed by the Clerk on October 29, 2003. It is captioned "Motion for Appropriate Relief" and is signed by the defendant acting pro se.

In the motion, the defendant alleges ineffective assistance of counsel, in that his trial lawyer promised the conspiracy charge would be dismissed pursuant to plea agreement, that his lawyer told him the reason the dismissal wasn't in the plea agreement was because the deal was secret, that the conspiracy charge was not so dismissed, and that he received an additional sentence for conspiracy; that he was tricked and deceived in unspecified ways by his attorneys into waiving indictment by the grand jury to eight counts of solicitation to commit murder which charges were not supported by any evidence other than the testimony of "a known habitual liar, thief, homosexual"; that his attorneys told him if he did not accept the plea bargain he would get the death penalty "for sure;" that one of his attorneys had a conflict of interest in that the attorney had, while serving as a judge of the Superior Court, earlier sentenced the defendant for an earlier conviction; that defendant's attorney on appeal did not raise all of these various errors before the North Carolina Court of Appeals; that his appellate counsel refused to file a Motion for Appropriate Relief on his behalf; that his attorneys failed and refused to assist him when he filed his pro se motion to withdraw his guilty plea; and that his attorneys failed to get an affidavit from defendant's "star" witness, who then disappeared after defendant's attorneys allowed the District Attorney to threaten the witness.

The defendant further alleges that the sentences imposed were illegal and unauthorized by law in unspecified ways; that the state failed to provide the defendant and the Court with the results of a pre-sentence investigation report in violation of his right to due process; that the new arson charge to which defendant pled guilty violated his right against double jeopardy, having previously been dismissed by the state; that the District Attorney threatened various witnesses for the defendant that if they testified for the defendant they would be prosecuted for other crimes, thus depriving him of key

witnesses; and that the defendant was on unspecified medication on the day he pled guilty and did not know what he was doing.

A review of the file, including the decision by the North Carolina Court of Appeals, shows the following facts of record:

1. On 7 April 1997, Defendant was indicted by a Guilford County grand jury for first-degree murder based on the death of Patricia Gail Kimble (Kimble), Defendant's wife. The indictment alleged Kimble was murdered on 9 October 1995. On 3 November 1997, Defendant was indicted for arson and conspiracy to commit first-degree murder based on the 9 October 1995 incident, and on 6 July 1998, Defendant was indicted for first-degree arson based on the 9 October 1995 incident. Finally, on 28 January 1999, the State filed bills of information charging Defendant with eight counts of solicitation to commit first-degree murder. The eight counts of solicitation to commit first-degree murder related to incidents that occurred after the 9 October 1995 death of Kimble.
2. On 25 January 1999, Defendant pled guilty to second-degree murder, conspiracy to commit first-degree murder, and first-degree arson. Defendant also pled guilty to the eight counts of solicitation to commit first-degree murder. Sentencing was continued.
3. On 26 February 1999, Defendant filed a pro se motion to withdraw his guilty pleas on the ground he was "pressured into [his] earlier plea." The trial court subsequently held a hearing on the motion. At the conclusion of the hearing, the trial court denied Defendant's motion to withdraw his guilty pleas.
4. On 4 March 1999 through 5 March 1999, the trial court held Defendant's sentencing hearing. At the conclusion of the hearing, the trial court found aggravating and mitigating factors existed as to some of the crimes. The defendant was sentenced consistently with his plea agreement.
5. Defendant thereafter filed a Notice of Appeal. The Court entered appellate entries and appointed the Appellate Defender to represent the defendant. The Court of Appeals found no error.

Based on the record, the Court concludes that:

1. A defendant who voluntarily and intelligently enters an unconditional guilty plea waives all non-jurisdictional defects in the proceeding, including constitutional violations that occurred before entry of the plea. See State v. Reynolds, 298 N.C. 380, 395, 259 S.E.2d 843, 852 (1979) ("When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty.") By pleading guilty, defendant has waived his claims concerning the alleged defects in the indictment and concerning the prosecutor's conduct; as to the latter, the defendant was aware of all the facts he now claims show prosecutorial misconduct at the time he pled guilty based on the documents he provided with his motion. Moreover, when a defendant pleads guilty, the state no longer has to prove its case beyond a reasonable doubt. By his plea, the defendant has waived any argument he had that the State's evidence was insufficient.

2. A person is presumed competent. "Everyone is presumed to be sane until the contrary appears." Ridings v. Ridings, 55 N.C.App. 630, 633, 286 S.E.2d 614, 616, disc. rev. denied, 305 N.C. 586 (1982). The judge who accepted defendant's guilty plea had the opportunity to examine the defendant in person, and thereafter found the defendant competent to proceed. Nothing in the defendant's motion and attachments gives rise to any question about his ability to understand the nature and object of the proceedings against him, to comprehend his own situation, or to assist counsel in a rational way. NCGS § 15A-1001. Defendant's unsupported post-conviction assertions that he was incompetent at the time of the guilty plea because he was taking medicine do not overcome the Court's properly entered findings and do not require an evidentiary hearing.

3. The record further shows that the defendant was satisfied with his attorneys when he pled guilty. The defendant at that time stated under oath that he was satisfied with his attorney's services. Moreover, the defendant has already had the opportunity for a hearing on this issue in front of the judge who accepted his guilty plea and who sentenced him, when the matter was raised by the defendant in his motion to set aside the guilty plea. Any error in that decision should have been raised on appeal. The defendant's motion does not raise a question of fact and even if it did, it is procedurally barred.

4. A guilty plea is not voluntary and intelligent unless it is "entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel . . .," Brady v. United States, 397 U.S. 742, 755, 25 L. Ed. 2d 747, 760 (1970) (quoting Shelton v. United States, 246 F.2d 101, 115 (5th Cir. 1957) (Tuttle, J., dissenting)); Bryant v. Cherry, 687 F.2d 48, 49 (4th Cir. 1982), cert. denied, 459 U.S. 1073, 74 L. Ed. 2d 637, and is not "the product of such factors as misunderstanding, duress, or misrepresentation by others." Blackledge v. Allison, 431 U.S. 63, 75, 52 L. Ed. 2d 136, 147-148 (1977); State v. Loye, 56 N.C. App. 501, 289 S.E.2d 870 (1982).

The defendant's claim that his lawyers told him the conspiracy charge would be dismissed is belied by the record, including his own sworn statement and his attorneys' certification. The record unambiguously reveals that the defendant was correctly informed of the applicable maximum sentence and that there was no promise made to him that the conspiracy charge would be dismissed. The defendant swore that no other promises had been made to him, and he signed a plea agreement that did not contain any other promises. State v. Wilkins, 131 N.C. App. 220 (1998) (Defendant knew or should have known that she did not have a plea agreement with the State where the defendant signed a plea transcript which detailed the charge to which she was pleading guilty but contained no plea agreement.) Moreover, he was asked in open court about his plea agreement and he did not inform the Court at that time that he had been guaranteed dismissal of the conspiracy charge and indeed specifically pled guilty to the conspiracy charge and denied that any promises other than those in the plea agreement had been made. This unambiguous record creates a "formidable barrier" to defendant's claim. Blackledge v. Allison, 431 U.S. at 73-74. Only extraordinary circumstances would

entitle defendant to relief. Blackledge v. Allison, 431 U.S. at 80 n.19. There are no such extraordinary circumstances here and absolutely no independent indicia that the defendant's claim has merit. Cf. United States v. Cervantes, 132 F.3d 1106, 1110 (5th Cir. 1998)(must be independent indicia of the likely merit of defendant's allegations, such as one or more affidavits from reliable third parties).

5. Every criminal defendant is entitled to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). Strickland establishes a two-prong test for ineffective assistance of counsel: first, that counsel's performance must fall below an objective standard of reasonableness, and second, that the deficient representation must be so serious as to deprive defendant of a fair trial. See State v. Braswell, 312 N.C. 553, 324 S.E.2d 241 (1985) (adopting Strickland standard for ineffective assistance claims). Here, the defendant has failed to raise any issues of material fact about his attorneys' representation or the specific effect of the alleged conflict of interest. While he has made a laundry list of allegations, they are unsupported by any competent evidence. Moreover, there has been no showing that a different result would have obtained had defense counsel handled any one of these matters differently. Finally, as noted above, the defendant stated under oath at the time of his guilty plea that he was satisfied with his attorneys and he has already had a hearing on many of the issues he raises in the Motion for Appropriate Relief when he his motion to withdraw his guilty plea was heard.

6. The sentencing report is on file herein and there is no evidence that it was not available to the trial court and to the defendant before sentencing. Even if it was not, that is not a constitutional violation.

7. An attorney appointed to represent a criminal defendant on appeal has no obligation to file a Motion for Appropriate Relief on behalf of that criminal defendant.

8. There is nothing in the record to support the defendant's claims that the sentences he received are illegal. The sentences he received are valid and within the ranges allowed by the legislature for the crimes to which the defendant pled guilty.

It is therefore ORDERED that:

1. The Defendant's Motion for Appropriate Relief is DENIED.
2. The Clerk shall mail a copy of this Order to the defendant, to the District Attorney for the Eighteenth Judicial District, and to the North Carolina Department of Corrections.

This 20 day of November, 2003.


Superior Court Judge Presiding

EXHIBIT (B) 1068

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23241

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 3:50 P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor [Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant [Signature]
Signature of Attorneys for the Defendant [Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

99CRS 23242

EXHIBIT (B)
20A8

GUILFORD COUNTY
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.
FILED
JAN 28 1999
AT 350
BY [Signature]
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

v.
THEODORE MEAD KIMBLE

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

99CRS 23243

EXHIBIT (B)
3 of 8

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

Film No.

GUILFORD COUNTY
FILED
JAN 28 1999
AT 350 U.S. 1 M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X [Signature]

Signature of Attorneys for the Defendant

[Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (B)

4008

File No.

99CRS 23244

GUILFORD COUNTY
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.

FILED

JAN 23 1999

AT 350 P.M.

BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

Signature of Attorneys for the Defendant

[Signature]
[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23245

EXHIBIT (B)
SOFB

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JUN 23 1999
BY [Signature]
CLERK OF SUPERIOR COURT

Film No.
BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
X Theodore Kimble
Signature of Attorneys for the Defendant
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

99CRS 23246

EXHIBIT (B)
6018

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 23 1999
AT 3:50 U. CLERK P.M.
u. [Signature]
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature: Theodore Kimble]

Signature of Attorneys for the Defendant

[Signatures: J. H. Crumpton, A. W. [unclear]]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (B)
708

File No. 99CRS 23247

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 350 JULY 1 P M.
BY COO
CLERK OF SUPERIOR COURT

Film No.
BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
[Signature]
Signature of Attorneys for the Defendant
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

99CRS 23248

EXHIBIT (B)
80FB

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 23 1999
BY [Signature]
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant.
Theodore Kimble
Signature of Attorneys for the Defendant
[Signature]
[Signature]

EXHIBIT (H)

4

1 MR. PANOSH:- YOUR HONOR, THERE IS A TRANSCRIPT OF
2 PLEA.

3 AT THIS TIME, HOW DOES YOUR CLIENT PLEAD IN
4 97-CRS-39581, TO SECOND DEGREE MURDER?

5 MR. CRUMPLER:- HE PLEADS GUILTY, YOUR HONOR.

6 MR. PANOSH:- 97-CRS-23656, CONSPIRACY TO COMMIT
7 FIRST DEGREE MURDER?

8 MR. CRUMPLER:- HE PLEADS GUILTY.

9 MR. PANOSH:- 98-CRS-23486, FIRST DEGREE ARSON?

10 MR. CRUMPLER:- HE PLEADS GUILTY.

11 MR. PANOSH:- AND 99-CRS-23241 THROUGH 23248, EIGHT
12 COUNTS OF SOLICITATION TO COMMIT FIRST DEGREE MURDER?

13 MR. CRUMPLER:- NOW, THEY ARE THE 1998 CASES SHOWN ON
14 THE PLEA TRANSCRIPT?

15 MR. PANOSH:- IT SHOULD BE '99. THEY'RE FILED TODAY.

16 MR. CRUMPLER:- OKAY. YOUR HONOR, HIS PLEA IS
17 GUILTY, BUT UNDER THE VIRTUE OF THE ALFORD PLEAS.

18 THE COURT:- ALFORD PLEA WITH REGARD TO THE OFFENSES
19 PRESENTED ON THE BILLS OF INFORMATION ONLY?

20 MR. CRUMPLER:- YES, SIR.

21 THE COURT:- ALL RIGHT. THANK YOU. GUILTY PLEA
22 WITHOUT RESERVATION WITH REGARD TO THE OTHER MATTERS PRESENTED
23 BY THE STATE?

24 MR. CRUMPLER:- YES, SIR.

25 THE COURT:- THANK YOU.

1 has entered a plea of guilty to the offense of second
2 degree murder. The Court having previously found, and
3 the defendant having stipulated that the defendant is
4 subject to sentence for these felony offenses, and each
5 of them a prior offender level 2. In case 39581, the
6 Court makes the following findings in aggravation and in
7 mitigation. The factor found by the Court in aggravation
8 is found pursuant to North Carolina General Statutes 15A-
9 1340.16(d)(20). And it is that the defendant in the
10 commission of this offense acted with premeditation and
11 deliberation. And the Court finds further pursuant to
12 the same provisions of the North Carolina General
13 Statutes that the defendant acted for pecuniary gain in
14 the commission of the offense, the murder of Patricia
15 Kimble. The Court finds the statutory factors in
16 mitigation, and these factors are found by the
17 preponderance of the evidence. North Carolina General
18 Statute section 1340.16(e)(12)(18) and (19).

19 Upon considering the aggravating factor and
20 the mitigating factors found, the Court concludes as a
21 matter of law that the factor found in aggravation
22 outweighs the factors found in mitigation. And the Court
23 concludes as a matter of law that the defendant in this
24 action is subject to sentence within the aggravated
25 range, a prior record level 2 for the Class B2 felony of

1 second degree murder.

2 And the judgment of the Court on that finding
3 is that the defendant, Theodore Mead Kimble, should be
4 imprisoned and he is assigned to the North Carolina
5 Department of Corrections to serve a minimum term of 204
6 months and a maximum term of 254 months. And this
7 sentence imposed by this Court shall commence at the
8 expiration of any sentence the defendant is currently
9 assigned to serve in the custody of the North Carolina
10 Department of Corrections.

11 Judgment of this Court is entered next in
12 case number 23656, wherein the defendant has entered a
13 plea of guilty to the offense of conspiracy to commit
14 first degree murder. In this action the Court makes no
15 findings in aggravation or in mitigation. Upon the
16 findings previously found that the defendant is subject
17 to sentence at prior offender level 2 for this offense,
18 the judgment of the Court is that this defendant,
19 Theodore Mead Kimble, is to be imprisoned to serve a term
20 of imprisonment assigned to the North Carolina Department
21 of Corrections for a minimum term of 163 months, and a
22 maximum term of 205 months. This sentence is to commence
23 at the expiration of the sentence imposed by the Court
24 for case 97 CRS 39581.

25 Judgment is entered next in case 98 CRS

1 23486. On the defendant's plea of guilty to the offense
2 of first degree arson, the Court makes the following
3 findings in aggravation and in mitigation. Pursuant to
4 North Carolina General Statute 1340.16(d)(20), the Court
5 finds by the preponderance of the evidence that this
6 offense was committed for the purpose of avoiding
7 detection in the murder of Patricia Gail Kimble, and it
8 was committed for the purpose of covering up that murder.
9 The Court finds the following statutory mitigating
10 factors as previously found by the preponderance of the
11 evidence, factors 12, 18 and 19. The Court concludes as
12 a matter of law that the aggravating circumstance found
13 outweighs the mitigating circumstances found, and the
14 Court concludes in this action that the defendant is
15 subject to sentence in the aggravated range at prior
16 offender level 2 for this Class D felony offense. The
17 judgment of the Court on these findings is that the
18 defendant is sentenced to serve a term of imprisonment
19 assigned to the North Carolina Department of Corrections
20 for a minimum term of 82 months, and for a maximum term
21 of 108 months. This sentence shall commence at the
22 expiration of the sentence imposed by this Court in case
23 number 97 CRS 23656.

24 Judgment is entered next in case number
25 23242. That is 99 file number -- strike that -- 23241.

1 On the defendant's plea of guilty to the offense of
2 solicitation to commit first degree murder, the Court
3 makes the following findings in aggravation and in
4 mitigation. Pursuant to North Carolina General Statute
5 15A-1340.16(d)(5), this Court finds by a preponderance of
6 the evidence that this offense was committed for the
7 purpose of disrupting the enforcement of the laws, and
8 that the act of paying someone to murder a person who
9 would be expected to testify against the defendant in the
10 prosecution of the charged murder of Patricia Gail Kimble
11 is an act tending to disrupt or hinder the enforcement of
12 the laws of this state. The Court finds the same
13 statutory factors in mitigation as previously found. And
14 the Court concludes as a matter of law that the
15 aggravating factor found outweighs the mitigating factors
16 found, and concludes that the defendant is subject to
17 sentence in this action within the aggravated range prior
18 offender level 2 on the Class C felony of solicitation to
19 commit first degree murder. In that offense the judgment
20 of the Court is defendant is to be confined to serve a
21 term of imprisonment for a minimum of 108 months and for
22 a maximum of 139 months, assigned to the North Carolina
23 Department of Corrections. The sentence imposed by the
24 Court in this action is to commence at the expiration of
25 the sentence imposed by the Court in case 23486.

1 In the next action, which is 23242 on the
2 defendant's previously entered and accepted plea of
3 guilty to the offense of solicitation to commit first
4 degree murder, the Court enters the same findings in
5 aggravation and in mitigation as are recorded in case
6 23241. Court finds in this action that the factor found
7 in aggravation outweighs the factors found in mitigation.
8 The judgment of the Court is in 23242 that the defendant
9 should be confined to be assigned to the North Carolina
10 Department of Corrections for a term of 108 months
11 minimum and a maximum term of 139 months. And this
12 sentence shall commence at the expiration of the sentence
13 imposed by the Court in 23241.

14 Judgment shall be entered next by the Court
15 in case 23243. In this action, upon the defendant's plea
16 of guilty to solicitation to commit first degree murder,
17 the Court makes those same findings in aggravation and in
18 mitigation as are recorded previously in case 23241. The
19 Court concludes in this action that the factor found in
20 aggravation outweighs the factors found in mitigation,
21 and enters judgment that the defendant shall be confined
22 in this action to serve a term of imprisonment for a
23 minimum term of 108, and a maximum term of 139 months.
24 The sentence imposed by the Court in case 243 is to
25 commence at the expiration of the sentence imposed by the

EXHIBIT (J) 4 of 6

1 Court in case 23242.

2 Judgment shall be entered next in case 23244.
3 In that action the judgment of the Court is that upon the
4 finding of the same factors in aggravation and in
5 mitigation as were found by the Court in case 23241, the
6 judgment of the Court upon the conclusion that the
7 defendant is subject to sentence within the aggravated
8 range as a prior offender level 2, that he be confined to
9 serve a term of imprisonment of not less than 108 months,
10 and not more than 139 months to be assigned to the North
11 Carolina Department of Corrections. And this sentence
12 shall commence at the expiration of the sentence imposed
13 in case 23243.

14 Judgment to be entered next in case 23245.
15 In that action the Court makes no findings in aggravation
16 or in mitigation. The defendant shall be sentenced
17 within the presumptive range, prior offender level 2 as a
18 Class C felon. The judgment of the Court is that the
19 defendant should be confined to serve a term of
20 imprisonment of not less than 96 months, and a maximum
21 term of 125 months, assigned to the North Carolina
22 Department of Corrections, and this sentence shall
23 commence at the expiration of the sentence imposed by the
24 Court in case 23244.

25 Judgment to be entered next in case 23246.

1 In this action the judgment of the Court is based upon
2 the findings that the same aggravating factors and
3 mitigating factors as found to exist by a preponderance
4 of the evidence in case 23241 are found in this action.
5 The Court concludes that the aggravating factor found
6 outweighs the mitigating factors found. The judgment of
7 the Court in this action is that the defendant is ordered
8 confined to serve a term of imprisonment for a minimum
9 term of 108, and a maximum term of 139 months. This
10 sentence shall commence at the expiration of the sentence
11 imposed by this Court in case 23245.

12 Judgment is to be entered next in case 23247.
13 In this action the Court makes findings in aggravation
14 and in mitigation identical to those findings entered in
15 case 23241. In this action the judgment of the Court is
16 that the defendant should be confined to serve a term of
17 imprisonment of not less and 108 and not more than 139
18 months assigned to the North Carolina Department of
19 Corrections. And this sentence is to commence at the
20 expiration of the sentence imposed in case 23246.

21 The final judgment of this Court shall be
22 entered in case 23248. In that action the Court makes no
23 findings in aggravation or in mitigation. The judgment
24 of the Court in that action upon the previously entered
25 conclusion that the defendant is subject to sentence at

EXHIBIT(J) 6 of 6

1 prior offender level 2 is that the defendant should be
 2 confined to serve a term of imprisonment assigned to the
 3 North Carolina Department of Corrections of not less than
 4 96 and not more than 125 months. That sentence is to
 5 commence at the expiration of the sentence imposed by the
 6 Court in case 23247.

7 Take the defendant, Sheriff.

8 MR. CRUMPLER: May we approach, Your Honor?

9 THE COURT: Yes.

10 (Counsel approach the bench.)

11 THE COURT: Sheriff Barnes, may I see you,
 12 please, at the Bench.

13 (Sheriff Barnes approached the bench.)

14 THE COURT: Is there anything further at this
 15 time, Counsel?

16 MR. ZIMMERMAN: Not for the defense, if Your
 17 Honor please.

18 MR. CRUMPLER: No, Your Honor.

19 MR. PANOSH: No further. Thank you, Judge.

20 THE COURT: Court's in recess, Sheriff.

21 (A recess was taken at 11:40 a.m.)

22 * * * * *

23 END OF TRANSCRIPT

24 * * * * *

1 A. In part.

2 Q. In large part, correct?

3 A. In some part. I considered other facts.

4 Q. And did you consider any information he gave you
5 was reliable considering the fact that he was under those
6 medications? Well, let me rephrase that. Do you feel
7 that those medications would have in any way impaired his
8 ability to convey to you reliably the information he
9 wanted to convey to you?

10 MR. ZIMMERMAN: Objection, if Your Honor
11 please. This man is not a medical doctor.

12 THE COURT: Objection is overruled.

13 A. With the -- again, with the caution that I am not
14 a medical doctor, I did not detect any signs that would
15 cause me to question the reliability of what he was
16 telling me on the basis of a potential medication effect.

17 Q. Now, let me ask you about your personal
18 background. Do you have a doctorate in psychology; is
19 that correct?

20 A. Yes. I hold a doctorate in clinical psychology
21 from the University of Massachusetts at Amherst. And I'm
22 licensed to practice independently by the State of North
23 Carolina.

24 Q. And when you are practicing, you consult with a
25 psychologist--- excuse me, with a licensed psychiatrist when

1 A. Uh, no, sir. It was more of a silent threat.

2 Q. How long after you changed counsel did you begin
3 to discuss with your attorneys the chance or possibility
4 of pleading guilty?

5 A. I did not. They came back to me and recommended
6 after your press conference intimidating witnesses and
7 others.

8 Q. When they spoke to you and told you of their
9 recommendation, did you agree?

10 A. No, I did not.

11 Q. When did you agree to plead guilty?

12 A. On the spur of the moment when they looked at me
13 and told me my life was in danger.

14 Q. What date was that?

15 A. Uh, my last court appearance, the day in which I
16 was so intimidated by law enforcement.

17 Q. You had not agreed to plead guilty prior to your
18 court appearance?

19 A. No, I had not.

20 Q. Had your attorneys presented you with documents to
21 sign or to review prior to your court appearance?

22 A. Uh, yes, sir. They said none of this was final,
23 and that it was only on the drawing board, and that it
24 was only in works, that nothing would be final until I
25 stood before the judge. It was just a preliminary type

EXHIBIT ()

EXHIBIT

H

TWENTY SEVEN B DISTRICT

NO.

NORTH CAROLINA COURT OF APPEALS

x x x x x x x x x x x x x x x

STATE OF NORTH CAROLINA

V.

FROM: GUILFORD COUNTY

97CRS23656; 97CRS39581;

98CRS23486; 99CRS23241-48,

THEODORE MEAD KIMBLE

DEFENDANT.

x x

MOTION FOR RELIEF FROM THE JUDGMENT

x x

TABLE OF CONTENTS

ARTICLES AND STATUTES	i
CASES AND AUTHORITIES	ii
FACTS	2
REASONS WHY MOTION SHOULD BE GRANTED	7
LIST OF EXHIBITS	16
PRAYER FOR RELIEF	18
VERIFICATION	19
PROOF OF SERVICE	20

ARTICLES AND STATUTES

U.S. CONST. AM V, VI, AND XIV,
N.C. CONST. ART. I, SEC. 18, 19, 23,
N.C.G.S. 15A-954 (4),
N.C.G.S. 15A-955 (2),
N.C.G.S. 15A-1415 (b) (8),
N.C.G.S. 15A-1415 (e),

CASES AND AUTHORITIES

- BAKER V. BARBO, 177 F.3d 149 (3RD. CIR. 1999)
COSS V. LACKAWANNA COUNTY DISTRICT ATTORNEY,
204 F3d 453 (3RD. CIR. 2000)
JACKSON V. LEONARD, 162 F3d 81 (2ND CIR. 1998)
LORD V. WOOD, 184 F.3d (9TH. CIR. 1999)
OSBORN V. STILLINGER, 861 F2d 612 (10TH.
CIR. 1988)
TRICE V. WARD, 196 F.3d 1151 (10TH CIR 1999)
U.S. V. BARTHOLOMEW, 974 F2d 39 (5TH. CIR 1992)
U.S. V. DAVENPORT, 151 F3d 1325 (11TH. CIR 1998)
U.S. V. ELLISON, 798 F2d 1102 (7TH. CIR. 1998)
U.S. V. GORDON, 172 F3d 753 (10TH. CIR. 1999)
U.S. V. SANDERSON, 595, F2d 1021 (5TH. CIR 1979)
U.S. V. UNGER, 665 F2d 251 (8TH. CIR. 1981)
U.S. V. VAVAGES, 151 F3d 1185 (9TH. CIR. 1998)
WEST. V. U.S. 994 F2d 518 (9TH. CIR. 1993)

NO.

GUILFORD COUNTY

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA)
VS.)
THEODORE MEAD KIMBLE,)
DEFENDANT.)

"FROM: GUILFORD COUNTY
"FILE NO.'S 97CRS 23656,
"97CRS 39581; 98CRS 23486;
"99CRS 23241-48, = = = = =

MOTION FOR RELIEF FROM THE JUDGMENT

TO: THE HONORABLE COURT OF APPEALS OF
NORTH CAROLINA.

PETITIONER THEODORE MEAD KIMBLE, pro-se, respectfully
PETITIONS THIS COURT PURSUANT TO RULE 21 OF THE NORTH
CAROLINA RULES OF APPELLATE PROCEDURE TO REVIEW
THE ORDER OF THE HONORABLE PETER M. Mc HUGH,
PRESIDING JUDGE, GUILFORD COUNTY SUPERIOR COURT
N.C. DATED MARCH 5, 1999, DATE OF JUDGMENTS.

IT WAS A COERCED GUILTY PLEA IN CASES 97CRS 23656,
97CRS 39581; 98CRS 23486, AND ALFORD PLEAS IN
CASES 99CRS 23241-48. PETITIONER WAS REPRESENTED

BY THE RETIRED JUDGE H.W. ZIMMERMAN, WHO FORMALLY SENTENCED PETITIONER TO PRISON (SEE EXHIBIT (A)) WHILE PETITIONER WAS IN PRISON SERVING THE SENTENCE JUDGE ZIMMERMAN IMPOSED, MR. ZIMMERMAN CAME OFF THE BENCH AND WENT INTO PRIVATE PRACTICE. COUNSELOR ZIMMERMAN TEAMED-UP WITH FRED. G. CRUMPLER JR. TO REPRESENT PETITIONER. MR. CRUMPLER WAS NOT MUCH MORE THAN A "PUPPET", WHILE MR. ZIMMERMAN PULLED HIS STRINGS. IN SUPPORT OF THIS MOTION, PETITIONER SHOWS THE FOLLOWING:

FACTS

PETITIONER SEEKS RELIEF FROM THE JUDGMENTS UPON THE GROUNDS THAT THE SENTENCES IMPOSED WERE UN-AUTHORIZED AT THE TIME IMPOSED, CONTAINED A TYPE OF SENTENCE DISPOSITION OR A TERM OF IMPRISONMENT NOT AUTHORIZED FOR THE PARTICULAR CLASS OF OFFENCE AND PRIOR RECORD AND CONVICTION LEVEL WAS ILLEGALLY IMPOSED, OR IS OTHERWISE INVALID AS A MATTER OF LAW. (N.C.G.S. 15A-1415 (b) (8) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL NORTH CAROLINA GENERAL STATUTES 15A-1415 (e).

PETITIONER CONTENDS THAT A MOTION FOR RELIEF FROM THE JUDGMENT DEFINED AS:
A PARTY'S REQUEST THAT THE COURT CORRECT A CLERICAL MISTAKE IN THE JUDGMENT — THAT IS, A MISTAKE THAT RESULTS IN CORRECTLY REFLECTING THE COURT'S INTENTIONS — OR RELIEVE THE PARTY FROM THE JUDGMENT BECAUSE OF SUCH MATTERS AS (1) INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLIGENCE, (2) NEWLY DISCOVERED PIECES OF EVIDENCE THAT COULD NOT HAVE BEEN DISCOVERED THROUGH DILIGENCE IN TIME FOR A MOTION OF A NEW TRIAL, (3) THE JUDGMENT'S BEING THE RESULT OF FRAUD, MISREPRESENTATION, OR MISCONDUCT BY THE OTHER PARTY, OR (4) THE JUDGMENTS BEING VOID OR HAVING BEEN SATISFIED OR RELEASED.

ON THE FIRST ASSERTED GROUND FOR RELIEF, WAS THE MISREPRESENTATION OF CASE # 97CRS 23656 ARSON OF AN UNOCCUPIED DWELLING, INDICTMENT DATED NOV. 3, 1997, WHICH HAD TO BE DISMISSED BY LAW, BECAUSE THE DWELLING WAS IN FACT OCCUPIED BY PATRICIA KIMBLE, HOWEVER, PETITIONER WAS NOT MADE AWARE OF THE ERROR ON THE STATE'S PART. IN FACT THE STATE MADE AN ATTEMPT TO COVER-UP THEIR MISTAKE BY "RE-INDICTING" PETITIONER ON JULY 6, 1998. "CLEARLY PROSECUTOR MISCONDUCT". THE

PROSECUTOR USED THE EXACT SAME "WORDING" OF THE PREVIOUS INDICTMENT (NOV. 3, 97), BUT THIS TIME THE PROSECUTOR UPPED THE CHARGE TO "FIRST DEGREE ARSON", CASE #98CRS 23486, THUS COMMITTED "DOUBLE-JEOPARDY". YET COUNSELOR ZIMMERMAN HAD PETITIONER PLEAD GUILTY TO SAID INDICTMENT. HOW COULD COUNSELOR ZIMMERMAN FAIL TO SEE THAT PETITIONER HAD BEEN INDICTED FOR THE SAME CHARGE TWICE. CLEARLY INEFFECTIVE ASSISTANCE OF COUNSEL. HAD MR. ZIMMERMAN SIMPLY READ THE INDICTMENT, HE WOULD HAVE SEEN THIS ERROR. THIS CLEARLY SHOWS HOW INCOMPTANT AND UNPREPARED FOR TRIAL, SAID ATTORNEYS WERE.

NEXT, PETITIONER WOULD LIKE TO POINT OUT THAT BY COUNSEL HAVING PETITIONER PLEAD GUILTY TO A CHARGE THAT HAD TO BE DISMISSED ANYWAY, AS A MATTER OF LAW, WAS A MISCARriage OF JUSTICE AND VIOLATES DUE PROCESS OF LAW (SEE U.S. CONST. AM. V, VI, AND XIV, N.C. CONST. ART. I, SEC. 18, 19, 23). ALSO SEE JACKSON V. LEONARD, 162 F 3d. 81 (2ND CIR. 1998). APPELLATE COUNSEL'S FAILURE TO RAISE DOUBLE JEOPARDY CLAIM WHERE IT WAS APPARENT THAT JACKSON'S TWO CHARGES OF FIRST DEGREE ROBBERY AND CRIMINAL USE OF A FIRE ARM IN THE FIRST DEGREE RESTED ON THE SAME FACTUAL PREDICATE CONSTITUTES

INEFFECTIVE ASSISTANCE OF COUNSEL.

THEN TO TOP IS ALL OFF, PETITIONER WAS SENTENCED TO 163-205 MONTHS FOR CASE # 97CRS 23656 MNWAK, AND PETITIONER PRAYS FOR RELIEF FROM THAT JUDGMENT BY THIS HONORABLE COURT. PETITIONER'S NEXT ASSERTED GROUND FOR RELIEF FROM JUDGMENT IS IN CASES 99CRS - 23241 - 23248, WHERE PETITIONER WAS CONVICTED INTO AN ALFORD PLEA BY PROSECUTION AND COUNSEL MR. ZIMMERMAN, PETITIONER WAS TRICKED AND DECEIVED INTO SIGNING "WAIVERS" ON THOSE ABOVE CHARGES TO WAIVE THE FINDINGS AND THE RETURN OF BILLS OF INDICTMENT SHEETS, PETITIONER'S COUNSEL AND PROSECUTOR KNEW THAT BY PETITIONER DOING THIS, I'D BE AGREEING THAT THE ABOVE SAID CASES MAY BE TRIED UPON THE ABOVE INFORMATION ON THE BILLS OF INDICTMENT SHEETS, PETITIONER'S COUNSEL AND MR. PANISHA MADE BELIEVE IT WAS IN MY BEST INTEREST, OR PROSECUTOR WOULD MAKE CERTAIN THAT PETITIONER WOULD RECEIVE THE DEATH SENTENCE. see U.S. V. SANDERSON, 595 F.2d 1024 (5th Cir. 1979)! SO ON JAN. 28, 1999 PETITIONER SIGNED 8 WAIVERS AND RECEIVED 70 TO 90.4 YEARS ON THOSE CHARGES ALONE, AND ALL SENTENCES WERE RAN CONSECUTIVELY, SIX OF THEM WERE IN THE AGGRAVATED RANGE, TO JUSTIFY IT THEY USED THE

SAME ELEMENTS IN EACH ONE, TO PROVE EACH OTHER.
POSITIONED AT THE TIME WAS UNAWARE THAT ALL 8
CHARGES HAD BEEN PRESENTED TO THE GRAND JURY
FOR POSSIBLE INDICTMENT, ONLY THE GRAND JURY
REFUSED TO INDICT ON ALL 8 COUNTS, SOLELY ON
THE WORD OF A HABITUAL LIAR, WHO SPENT MOST OF
HIS LIFE IN AND OUT OF PRISON, WHICH (4) OTHER
WITNESSES TESTIFIED OF HOW WILLIAM WAYNE STEWART
WAS LYING, AND MAKING THE WHOLE STORY UP. ALL 8
COUNTS WOULD HAVE BEEN DISMISSED THAT VERY SAME
DAY, IF THEY COULDN'T CONN PETITIONER INTO
PLEADING GUILTY TO THEM. THIS WAS FALSE
REPRESENTATION AND FRAUD, "A GRAVE MISCARriage
OF JUSTICE". PETITIONER SEEKS THIS HONORABLE
COURT FOR RELIEF FROM THOSE JUDGMENTS TOO.

BY TRIAL COUNSEL AND PROSECUTOR WORKING HAND
IN HAND AGAINST PETITIONER TO HAVE HIM PLEAD
GUILTY AS THEY ADVISED/COERCED/INDUCED, IN
ALL THE ABOVE SAID CASES, WHICH WOULD HAVE
HAD TO BE DISMISSED AS A MATTER OF LAW,
VIOLATED ALL PETITIONERS STATE AND FEDERAL
RIGHTS, SEE U.S. V. ELLISON, 798 F 2d 1102
(7TH CIR. 1998) AND ALSO U.S. V. UNGER, 665 F 2d
251 (8TH CIR. 1981) DEFENDANTS ASSERTION THAT COUNSEL

ADVISED HER THAT IF SHE PLEAD GUILTY TO KIDNAPPING CHARGES, SHE WOULD BE GIVEN PROBATION, AND THAT IF SHE WENT TO TRIAL AND WAS FOUND GUILTY, THAT SHE WOULD PROBABLY GET THE DEATH PENALTY, STATED A VALID CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHICH REQUIRED AN EVIDENTIARY HEARING! IN CASE AT BAR, PETITIONER WAS TOLD IF HE PLEADED GUILTY TO ALL CHARGES HE WOULD GET A 20 YEAR SENTENCE, AND IF HE WENT TO TRIAL HE WOULD BE FOUND GUILTY AND RECEIVE THE "DEATH PENALTY", ALSO PETITIONER WOULD LIKE TO STRESS THE FACT THAT ALL (8) CASES HAD TO BE DISMISSED AS A MATTER OF LAW, PETITIONER WAS TRICKED INTO SIGNING WAIVERS ON ABOVE CASES. THIS WAS A GRAVE MISCARriage OF JUSTICE, EXHIBIT(C).

REASON WHY MOTION SHOULD BE GRANTED

PETITIONER WAS ALREADY SERVING 50-60 MONTHS FOR UNRELATED CHARGES, WHEN THE NEW (8) CHARGES WERE BROUGHT AGAINST HIM. THE PREVIOUS SENTENCING JUDGE WAS MR. ZIMMERMAN ON DEC. 8, 1997, SEE EXHIBIT(A) WHILE PETITIONER WAS SERVING THIS SENTENCE JUDGE ZIMMERMAN RETIRED FROM THE BENCH AND BECAME ATTORNEY ZIMMERMAN. COUNSELOR ZIMMERMAN TRICKED PETITIONER INTO BELIEVING HE COULD WIN ALL THE CHARGES AND PETITIONER

WOULD NOT GET ANY TIME. PETITIONER'S FAMILY AND COUNSEL \$50,000.⁰⁰ AS ASKED FOR, BUT JUST LIKE ANY EXTORTIONIST MR. ZIMMERMAN WANTED MORE AND MORE MONEY. WHEN MR. ZIMMERMAN REALIZED HE HAD TAKEN ALL THEIR WAS TO TAKE AND NO MORE MONEY COULD BE GIVEN, HE STATED PETITIONER WOULD HAVE TO TAKE A 20 YEAR SENTENCE. PETITIONER TOLD COUNSEL HE WAS INNOCENT AND WANTED HIS DAY IN COURT, BUT COUNSEL WOULD NOT LISTEN! WHEN PETITIONER SHOWED FOR COURT ON JAN. 28, 1999, IT WAS FOR "CHANGE OF VENUE HEARING". PETITIONER HAD NOT DISCUSSED A PLEA OF ANY KIND UP TO THIS POINT WITH COUNSEL. PETITIONER'S DESIRE HAD ALWAYS BEEN TO GO TO TRIAL. ON THIS DAY MR. ZIMMERMAN STARTED ATTACKING PETITIONER. MR. ZIMMERMAN KNEW PETITIONER WAS ON MEDICATION AND TOOK FULL ADVANTAGE OF PETITIONER'S INCOHERENT MENTAL STATE OF MIND. MR. ZIMMERMAN STATED ALL WAS PRE ARRANGED FOR A 20 YEAR PLEA AGREEMENT, AND THAT IT WAS ONLY GOOD FOR THAT DAY. THAT PETITIONER MUST PLEAD GUILTY TODAY OR HE WOULD SURELY LOSE AT TRIAL AND BE PUT TO DEATH! HE FURTHER STATED THE PROSECUTOR HAD TO HAVE A CONVICTION BECAUSE OF ALL THE PUBLICITY SURROUNDING THE CASE. ACCORDING TO COUNSEL ZIMMERMAN

PETITIONER HAD NO CHOICE IN THE MATTER AND MUST
SIGN THE PAPERS PLACED BEFORE HIM. PRIOR TO ENTER-
-ING THE COURTROOM MR. ZIMMERMAN STATED PETITION-
-ER SHOULD REPEAT WHAT HE SAYS, WHEN THE
PLEAS WERE ENTERED MR. ZIMMERMAN WHISPERED
ALL THE ANSWERS TO THE QUESTIONS THAT JUDGE
MCAUBH ASKED, AS COUNSELOR WHISPERED THE
ANSWERS PETITIONER REPEATED AS TOLD. PETITIONER
HAD NO CHOICE. HOWEVER, THE NEXT DAY AFTER
PETITIONER REALIZED HE HAD THROWN HIS LIFE AWAY,
HE FILED A MOTION TO WITHDRAW HIS PLEAS ON JAN. 29, AND
FEB. 24, 1999. THE FIRST MOTION TO WITHDRAW HIS
PLEAS AND ALL COPIES VANISHED AND PETITIONER HAD TO
FILE SECOND MOTION AND COPIES ON FEB. 24, 1999 AND
COUNSEL REFUSED TO DEFEND AND SPEAK FOR DEFENDANT
AT WITHDRAWAL HEARING, SAID THEY WOULD REMAIN
NEUTRAL AND "SIT THIS ONE OUT", SEE TRANSCRIPT
MARCH 4, 1999 PAGE # 3 LINES 17-21 EXHIBIT (B).

SEE MOTION TO WITHDRAW PLEAS (LETTERFORM) DATED
FEB. 24, 1999 EXHIBIT (D), SEE OSBORN V.
SHILLINGER, 861 F. 2d 612 (10TH CIR. 1988)

"DEFENSE COUNSEL'S PERFORMANCE WAS NOT ONLY
INEFFECTIVE, BUT COUNSEL ABANDONED THE REQUIRED
DUTY OF LOYALTY TO HIS CLIENT; COUNSEL DID NOT

SIMPLY MAKE POOR STRATEGIC OR TACTICAL CHOICES;
HE ACTED WITH RECKLESS DISREGARD FOR HIS CLIENT'S
BEST INTEREST, AND APPARENTLY WITH THE INTENTION
TO WEAKEN HIS CLIENTS CASE". THEY WERE UNPREPARED
-ED FOR TRIAL, AND ONLY WANTED TO SEND PETITIONER
AWAY FOR THE REST OF HIS NATURAL LIFE (OR)
KILL HIM WITH DEATH PENALTY IF HE REFUSED TO
PLEAD GUILTY! END NOTE.

PETITIONER WOULD LIKE TO BRING TO THE COURTS
ATTENTION N.C.G.S. 15A-954 (4) STATES "THE
DEFENDANTS CONSTITUTIONAL RIGHTS HAVE BEEN
FLAGRANTLY VIOLATED AND THERE IS SUCH
IRREPARABLE PREJUDICE TO THE DEFENDANTS
PREPARATION OF HIS CASE THAT THERE IS NO REMEDY
BUT TO DISMISS THE PROSECUTION"! ALSO SEE

BILL OF INDICTMENT CASE # 97CRS 23656 WHICH
WAS CLEARLY MISREPRESENTED DATED NOV. 3, 1997
WHICH HAD TO BE DISMISSED BY LAW, BUT PETITIONER WAS
CANNED INTO PLEADING GUILTY TO IT AS PART OF THE PLEA
BARGAIN EXHIBIT (E) AND THEN TRIED TO COVER-UP
THEIR MISTAKE BY "RE-INDICTING" PETITIONER ON
JULY 6, 1998 EXHIBIT (E) USING THE EXACT SAME
WORDING ONLY THIS TIME AS CASE # 98CRS 23486 "FIRST
DEGREE ARSON" THUS COMMITTED "DOUBLE-JEOPARDY"!

PETITIONER CONTENDS THAT HAVING THE SENTENCING "JUDGE",
JUDGE ZIMMERMAN, WHO SENT PETITIONER TO PRISON
FOR 50-60 MONTHS TO BEGIN WITH, THEN RETIRE FROM
THE BENCH, AND BECOME A LAWYER, AND THEN DEFEND
THE PERSON HE SENT TO PRISON TO BEGIN WITH, AND TELL
HIM AND HIS FAMILY THAT BEING A PRIOR JUDGE, HE
CAN "PULL STRINGS" AND GET PETITIONER OFF
WITH "NO TIME", FOR \$50,000.00, AND WHEN COUNSEL
COULDN'T GET MORE MONEY CHANGED HIS STORY TO 20
YEARS, KNOWING POSITIVELY WELL, JUST HAVING PETITION-
ER SIGN 8 WAIVERS TO ENSURE HIM 70 TO 90.4
YEARS CLAIMING IT HAD ALL BEEN ARRANGED FOR 20
YEARS FOR EVERYTHING, YET PETITIONER RECEIVED
111 YEARS MINIMUM, SHOWS "CAUSE", "MALICIOUS
PROSECUTION", AND CONFLICT OF INTEREST, AND GRAVE
MISCARriage OF JUSTICE, AND PETITIONER SHOULD BE
GRANTED RELIEF FROM JUDGMENTS.

IF THE COURT WILL LOOK AT THE RECORD,
IT'S OBVIOUS THAT MANY-MANY OF PETITIONER'S OTHER
RIGHTS, STATE AND FEDERAL WERE ALL VIOLATED, NO
P.S.I. REPORT WAS EVEN HANDED IN, AND PETITIONER
WAS SENTENCED ANYWAY, SEE SENTENCING TRANSCRIPTS
PAGES 218 AND 219 EXHIBIT (G), FAILURE TO DEFEND,
FAILURE TO INVESTIGATE WITNESSES, COUNSEL DIDN'T EVEN

WANT TO SEE THE STATEMENTS PETITIONER'S MOTHER HAD
GOTTEN FROM WITNESSES, SEE EXHIBIT (H), ALSO FAILURE
TO RAISE DOUBLE JEOPARDY CLAIM, PROSECUTOR RUNNING
WITNESSES FOR THE DEFENSE OUT-OF-TOWN DURING TRIAL
ON ANY COURT PROCEEDINGS AND COUNSEL DIDNT CARE OR
SAY ANYTHING ABOUT IT, FAILURE TO READ CO-DEFENDANT'S
TRANSCRIPTS OR EVEN OBTAIN THE 20 VOLUMES TO
BEGIN WITH, AND ONLY POSSESSED (3) VOLUMES AND
DIDNT EVEN READ THEM, FAILURE TO REPORT MISCONDUCT
OF PROSECUTOR, WORKING HAND IN HAND WITH PROSECUTOR
TO MAKE PETITIONER PLEAD GUILTY TO EVERYTHING, EVEN
CHARGES THAT WOULD HAVE TO BE THROWN OUT BY
LAW, NOT HELPING OR DEFENDING PETITIONER IN ANY
SINGLE WAY, SHAPE, OR FORM, AND NEVER OBJECTED
TO ANYTHING THE PROSECUTOR DID. PETITIONER
CONTENDS THAT THERE ARE MANY MANY MORE VIOLATIONS,
ESPECIALLY THE FACT THAT JUDGE ZIMMERMAN RETIRING
FROM THE BENCH AFTER PUTTING PETITIONER IN PRISON
FOR 50-60 MONTHS AND THEN MAKING BELIEVE HE
WAS DEFENDING HIM, AND SENDING PETITIONER AWAY
THIS TIME, FOR 111 YEARS (FOREVER) SHOULD BE PUT
IN THE GUINNESS BOOK OF WORLD RECORDS, AS IT'S A
"FIRST", AND PETITIONER'S ENTIRE CASE SHOULD BE
GRANTED RELIEF FROM JUDGMENT, PETITIONER

CONTENDS THAT HAVING PREVIOUS JUDGE REPRESENT
PETITIONER AS ATTORNEY, AND GETTING PETITIONER 111
YEARS AS SUCH A GRASS MISCARriage OF JUSTICE,
PETITIONER CAN'T FIND ANY CASE SO GRASS FOR COMP-
-ARISON, OR EVEN CLOSE TO IT. ESPECIALLY WHEN
COUNSEL AND PROSECUTOR COMPELLED/INDUCED/COERCED/
THREATEN WITH DEATH SENTENCE FOR PETITIONER TO SIGN
8 WAIVERS THAT GRAND JURY REFUSED TO INDICT, THAT
WOULD HAVE BEEN DISMISSED BY LAW, AND PETITIONER
RECEIVED 70 TO 90.4 YEARS ALONE, WAS VIOLATION OF
DUE PROCESS, SEE U.S. V. UNGER 665 F.2d 251
(8TH. CIR. 1981), SEE N.C.S. 15A 955(2) "THE
REQUISITE NUMBER OF QUALIFIED GRAND JURORS
DID "NOT" CONCUR IN FINDING THE INDICTMENT".
AND IT'S WELL KNOWN ESPECIALLY IN THE STATE OF N.C.,
FOR THE GRAND JURY TO NOT INDICT, THERE MUST BE
POSITIVELY NO EVIDENCE, BECAUSE IN N.C. THE LAW SEEMS
TO BE STRICTER THAN ANYWHERE IN THE USA. YET COUNSEL
AND PROSECUTOR THREATEN PETITIONER TO SIGN WAIVERS
ANYWAY AND KNOWING POSITIVELY, THE GRAND JURY
REFUSED TO INDICT ON THE ONLY EVIDENCE OF AN
INMATE WHO (4) WITNESSES TESTIFIED WAS "ALL LIES",
HOW WILLIAM WAYNE STEWART TOLD ALL (4) WITNESSES
IT WAS ALL LIES, YET PETITIONER WAS FORCED TO PLEAD

GUILTY (ALFORD) PLEAS TO ALL 8 CHARGES THAT HE DIDN'T COMMIT, OR RECEIVE DEATH SENTENCE, WAS A GRAVE MISCARriage OF JUSTICE AND VINDICTIVE PROSECUTION. PETITIONER CONTENDS THAT TRIAL COUNSEL NEGLECTED TO EVEN BOTHER INTERVIEWING WITNESSES THAT COULD HAVE GAVE SWORN TESTIMONY THAT PETITIONER OR CO-DEFENDANT COULDN'T HAVE HUMANLY POSSIBLY BEEN AT (TWO) PLACES AT THE SAME TIME, SEE COSS V. LACKAWANNA COUNTY DISTRICT ATTORNEY 204 F3d 453 (3RD. CIR. 2000) "DEFENSE COUNSEL'S FAILURE TO SUBP-
-ORNA CERTAIN WITNESS AND TO INTERVIEW THOSE WITNESS CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL."

LOBO V. WOOD, 184 F. 3RD. 1083 (9TH. CIR. 1999)

"COUNSEL'S FAILURE TO INVESTIGATE EVIDENCE, WHICH DEMON-
-STRATED HIS CLIENT'S FACTUAL INNOCENCE, UNDERMINES THE CONFIDENCE IN THE VERDICT AND CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL". AND COUNSEL WAITED SEVERAL MONTHS NEGLECTING TO TAKE STATEMENTS FROM DEFENSE WITNESSES, GIVING PROSECUTOR TIME TO THREATEN AND MAKE ALL WITNESSES CHANGE THEIR MIND AND CHANGE THEIR STORIES AND TESTIFY AGAINST PETITIONER OR FACE SEVERE PROSECUTION ON PENDING CHARGES.
SEE U.S. V. VAVAGES, 151 F3d 1185 (9TH. CIR. 1998)

WHICH STATES THE FOLLOWING IN PERTINENT PARTS:
"GOVERNMENTAL INTERFERENCE WITH A DEFENSE
WITNESS' CHOICE WHETHER TO TESTIFY CONSTITUTES
A VIOLATION OF "DUE PROCESS" AND REQUIRES A
REVERSAL AND A REMAND", WITH A CASUAL
PERUSAL OF THE RECORD AND PUBLIC RECORDS
AND ALL WITNESSES "RESULTS" OF THEIR PENDING
CHARGES AND CRIMINAL CASES "ALL" RESULTED IN
DISMISSALS OR PROBATION ON ALL THEIR PENDING
CHARGES IN "EXCHANGE" FOR THEIR TESTIMONY
AGAINST PETITIONER AND THE HABITUAL LIES,
WILLIAM WAYNE STEWART WAS EVEN LET OUT OF
PRISON EARLY ON A MOTION BY PROSECUTOR TO
RELEASE HIM EARLY, IN EXCHANGE FOR HIS TESTIMONY
AGAINST PETITIONER, AND PROSECUTOR PANASHA EVEN
ADMITTED ON RECORD, HE IN FACT PUT IN THE MOTION
TO HAVE WILLIAM WAYNE STEWART RELEASED EARLY
FROM PRISON, AND MADE SURE HE DIDN'T SHOW UP IN
COURT FOR THE TRUTH TO COME OUT, AND COUNSEL
SHOULD HAVE SUBPOENA HIM TO COURT, BUT NEVER
DID, AND PETITIONER CONTINUES TO SERVE THIS
ILLEGAL SENTENCE. AND PETITIONER WAS SENTENCED ILLEGALLY
WITHOUT P.S.I. REPORT, AND PRACTICALLY ALL SENTENCES IN ABBEVILLE
-ING RANGE, AND ALL CHARGES CONSECUTIVELY SEE U.S. V.
DAVENPORT 151 F3d 1325 (11TH CIR. 1998) AND

U.S. V. GARDON, 172 F. 3d 753 (10TH CIR. 1999)
ALSO U.S. V. BARTOLOMEW 974 F. 2d 39 (5TH CIR. 1992)
AND WEST V. U.S. 994 F. 2d 518 (9TH CIR. 1993).

IN SUPPORT OF THIS MOTION, PETITIONER PRAYS
THIS HONORABLE COURT WILL INVESTIGATE THE ENCLOSED
LIST OF EXHIBITS.

LIST OF EXHIBITS

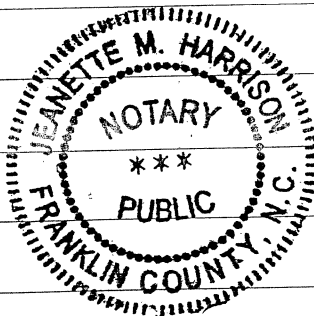
- (A) 3 PAGE JUDGMENT AND COMMITMENT, JUDGE ZIMMERMAN.
- (B) PAGE # 3 WITHDRAWAL OF PLEA HEARING ON MARCH 4, 1999.
- (C) 8 PAGES OF WAIVERS THAT PETITIONER WAS FORCED INTO SIGNING BY COUNSEL ZIMMERMAN AND PROSECUTOR.
- (D) MOTION BY PETITIONER TO WITHDRAW ALL HIS PLEAS (LETTER FORM) 3 PAGES. (FIRST MOTION 1/29/99 VANISHED).
- (E) MISREPRESENTED INDICTMENT DATED NOVEMBER 3, 1997 CASE # 97 CRS 23656.
- (F) RE-SUBMITTED INDICTMENT DATED JULY 6, 1998 CASE # 98 CRS 23486 (DOUBLE-JEOPARDY).
- (G) SENTENCING TRANSCRIPTS PAGES # 218 AND # 219 WHERE PETITIONER WAS SENTENCED NO PST REPORT!
- (H) WITNESS STATEMENTS.

END NOTE : COUNSEL'S OBLIGATION TO CONDUCT
REASONABLE INVESTIGATION EXTENDS TO
MATTERS RELATED TO SENTENCING TRICE V. WARD,
196 F3d 1151 (10TH CIR. 1999) AN ATTORNEY
WHO DOES NOT KNOW THE BASIC SENTENCE FOR AN
OFFENCE AT THE TIME HIS CLIENT IS CONTEMPLAT-
-ING ENTERING A PLEA IS INEFFECTIVE. SEE
BAKER V. BARBO, 177 F.3d 149 (3RD CIR
1999) BY COUNSEL TELLING PETITIONER TO
SIGN 8 WAIVERS THAT WOULD HAVE HAD TO
BE DISMISSED BY LAW, AND SAYING THAT IT
WOULD ALL BE RUN TOGETHER AND THAT ALL
WAS PRE-ARRANGED FOR A 20 YEAR SENTENCE,
AND THEN PETITIONER RECEIVING 70 TO 90.4
YEARS SHOWS COUNSEL "LIED" AND COULDN'T
HAVE POSSIBLY KNOWN BASIC SENTENCE (OR)
INTENDED TO SEND PETITIONER AWAY FOR THE
REST OF HIS LIFE, AND BEING "HIS FORMER
SENTENCING JUDGE", HE SHOULD KNOW THE LAW
BETTER THAN ANY ATTORNEY! EITHER WAY,
IT'S OBVIOUS PETITIONER WAS CLEARLY SENTENCED
IN VIOLATION OF ALL STATE AND FEDERAL
LAWS AND WAS CLEARLY RAILROADED!

PRAYER FOR RELIEF

PETITIONER RESPECTFULLY PRAYS THIS HONORABLE COURT REVIEW ALL PETITIONER'S CLAIMS AND THE RECORD, AND IN THE INTEREST OF JUSTICE OF THE "ENDS OF JUSTICE" GRANT PETITIONER'S MOTION AND GRANT RELIEF FROM THE ABOVE JUDGMENTS, AND ANY OTHER RELIEF THIS HONORABLE COURT DEEMS JUST AND PROPER.

RESPECTFULLY SUBMITTED THIS
THE 22 DAY OF OCTOBER 2003.



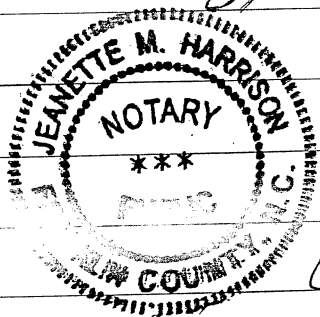
Pro-se of ~~Theodore Mead Kimble~~
THEODORE MEAD KIMBLE
Jeanette M Harrison
10-22-03
My Commission Expires 4-4-2006.

VERIFICATION

I, Theodore Mead Kimble, BEING FIRST DULY SWORN DEPOSE AND SAY, I AM THE PETITIONER IN THE FOREGOING MOTION FOR RELIEF FROM JUDGMENT, I HAVE READ THE SAME, AND THE STATEMENTS CONTAINED THEREIN ARE TRUE, AS FOR ANY STATEMENTS MADE ON INFORMATION AND BELIEF, ARE MADE IN GOOD FAITH, AND I BELIEVE TO BE TRUE. SIGNED UNDER PENALTY OF PERJURY THIS THE 22 DAY OF OCTOBER 2003.

Pro-se Theodore Mead Kimble
THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 22 DAY OF OCTOBER 2003.



MY COMMISSION EXPIRES

My Commission Expires 4-4-2008.

Jeanette M Harrison

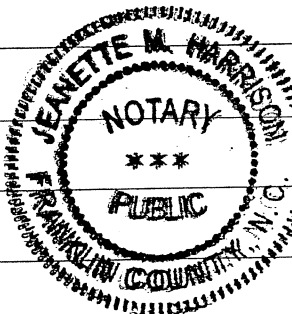
PROOF OF SERVICE

I DO HEREBY CERTIFY THAT A COPY OF
THE FOREGOING MOTION FOR RELIEF FROM
THE JUDGMENTS WAS DULY SERVED BY
PLACING THE SAME IN THE U.S. MAIL,
POSTAGE PRE-PAID AND ADDRESSED AS
FOLLOWS:

MR. ROY COOPER
ATTORNEY GENERAL
P.O. BOX 629,
RALEIGH, N.C. 27602

THIS THE 22 DAY OF OCTOBER 2003.

J Theodore Mead Kimble
THEODORE MEAD KIMBLE
1300 WESTERN BLVD.
RALEIGH, N.C. 27606



Jeanette M Harrison
10-22-03
My Commission Expires 4-4-2006.

STATE OF NORTH CAROLINA

GUILFORD County GREENSBORO Seat of Court

File No. 97CR-2

EXHIBIT A 1 of 3

In The General Court Of Justice Superior Court Division

NOTE: [This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).]

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant THEODORE MEAD KIMBLE

ACTIVE PUNISHMENT FELONY

Race White Sex M DOB 12-08-1969

CLERK OF SUPERIOR COURT (STRUCTURED SENTENCING) G.S. 15A-1301, 15A-1340.13

Attorney For State RICHARD PANOSH

Def. Found Not Indigent Def. Waived Attorney

Attorney For Defendant ROBERT L. MCCLELLAN

Appointed Retained

The defendant [X] pled guilty to: [] was found guilty by a jury of: [] pled no contest to:

Table with 5 columns: File No(s) And Offense(s), Date Of Offense, G.S. No., F./M., CL. Row 1: 97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION, 04-01-1997, 14-288.8, F, F

The Court: [X] 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0- RECORD LEVEL: [X] I [] III [] V [] 2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

The Court: [X] 1. makes no written findings because the prison term imposed is: [X] (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). [] (b) for a Class A felony. [] (c) for enhanced firearm penalty (G.S. 15A-1340.16A). [] (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. [] (e) for drug trafficking offenses. [] 2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605. [] 3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A. [] 4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5). [] 5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14. [] 6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. [] G.S. 90-95(e)(3) (drugs); [] G.S. 14-3(c) (race). [] 7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of: 015 months for a maximum term of: 018 months in the custody of the: [X] N.C. DOC. [] Sheriff pursuant to G.S. 15A-1352(b). [] Other [] Class A Felony: [] Life Imprisonment Without Parole [] Death (see attached Death Warrant and Certificates) [] Class B1 Felony: Life Imprisonment Without Parole [] Violent Habitual Felon: Life Imprisonment Without Parole

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

[] The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve. [] The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below: (NOTE: List the case number, date, county and court in which prior sentence imposed.)

(check all that apply)

1. The defendant shall pay the costs. 2. The defendant shall pay a fine of \$ _____.

The Court recommends:

3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h). 4. Psychiatric and/or psychological counseling.
 5. Work Release
 6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

The Court further recommends:

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release. 2. Work release.

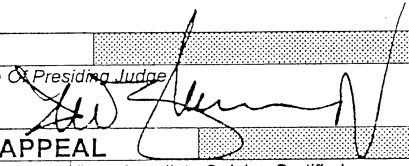
AWARD OF FEE TO COUNSEL FOR DEFENDANT

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
 The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date 12-08-1997	Name Of Presiding Judge (Type Or Print) H. W. ZIMMERMAN, JR.	Signature Of Presiding Judge 
--------------------	---	--

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified
_____	_____	_____

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court.
_____	_____	

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)
 Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)
 Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)
 Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff 12-16-97	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

STATE OF NORTH CAROLINA
Guilford County
 STATE VERSUS
 Name And Address Of Defendant
Theodore M. Kimble

GUILFORD COUNTY
FILED
 DEC 8 1997

File-No. See Transcript
 In The General Court Of Justice
 District Superior Court Division

AT 4:00 O'CLOCK P M
 BY na
 CLERK OF SUPERIOR COURT

Social Security No. NC 0725218A
 Race W Sex M DOB 12/8/69

**WORKSHEET
 PRIOR RECORD LEVEL FOR
 FELONY SENTENCING AND
 PRIOR CONVICTION LEVEL FOR
 MISDEMEANOR SENTENCING
 (STRUCTURED SENTENCING)**

G.S. 15A-1340.14, 15A-1340.21

NOTE: This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING			
NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	X 10	
	Prior Felony Class B1 Conviction	X 9	
	Prior Felony Class B2 or C or D Conviction	X 6	
	Prior Felony Class E or F or G Conviction	X 4	
	Prior Felony Class H or I Conviction	X 2	
	Prior Class A1 or 1 Misdemeanor Conviction (see note)	X 1	
		SUBTOTAL	<u>0</u>
If all the elements of the present offense are included in the prior offense		+ 1	
If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape		+ 1	
		TOTAL	<u>0</u>

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

No. Of Prior Convictions	Level
0	I
1-4	II
5+	III

PRIOR CONVICTION LEVEL

The Court has determined the number of prior convictions to be and the level to be as show above.

FELONY

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.

Points	Level
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL I

The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

Date 12/12/97 Name Of Presiding Judge (Type Or Print) H.W. Zimmerman, Jr. Signature Of Presiding Judge [Signature]

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the
4 Court on the matter of Theodore Mead Kimble, the
5 remaining case is 97 CRS 39581. I believe that the first
6 matter is a motion to withdraw filed pro se by the
7 defendant.

8 Your Honor, the State has filed an Answer to
9 the motion to withdraw, and I've served counsel with a
10 copy. I did note that on page 1 when I indicated date of
11 change of counsel, I have the wrong date there. It
12 should have been December 3rd, of '98 change of counsel.
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.
15 Zimmerman, are you appearing with the defendant at this
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing
18 by virtue of the nature of the motion. We have explained
19 to the defendant actually we will remain neutral because
20 we may be asked questions, and the defendant understands
21 that.

22 THE COURT: All right. Thank you. Mr.
23 Kimble, would you stand up, please?
24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

EXHIBIT C 1068

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

99CRS 23241

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 23 1999
AT 3:50 P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23242

EXHIBIT C
2018

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.
FILED
JAN 28 1999
350
BY [Signature]
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor [Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant. X Theodore Kimble
Signature of Attorneys for the Defendant [Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT C
3 OF 8

File No. 99CRS 23243

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 3:50 U.S. P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant.
X Theodore Kimble
Signature of Attorneys for the Defendant
[Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT C
4068

File No. 99CRS 23244

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.
FILED
JAN 23 1999
AT 350 P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
[Signature]
Signature of Attorneys for the Defendant
[Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT C
50FB

File No. 99CRS 23245

GUILFORD COUNTY
STATE OF NORTH CAROLINA

GUILFORD COUNTY
FILED
JAN 23 1999
CLERK OF SUPERIOR COURT

Film No.
**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

v.
THEODORE MEAD KIMBLE

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
R. E. P. O.

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date
1/28/99

Signature of the Defendant.
Theodore Kimble

Signature of Attorneys for the Defendant
Frank B. Campbell
AW [Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23246

EXHIBIT
6018

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 3:50 U.S. COURT P.M.
U. [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature: Theodore Kimble]

Signature of Attorneys for the Defendant

[Signatures: Fred H. Crumpler, AW]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT
708

File No. 99CRS 23247

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 350 JULLY P M.
BY [Signature]
CLERK OF SUPERIOR COURT

Film No.

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant [Signature]
Signature of Attorneys for the Defendant [Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT
8078

File No. 99CRS 23248

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 25 1999
BY [Signature]
CLERK OF SUPERIOR COURT

Film No.

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

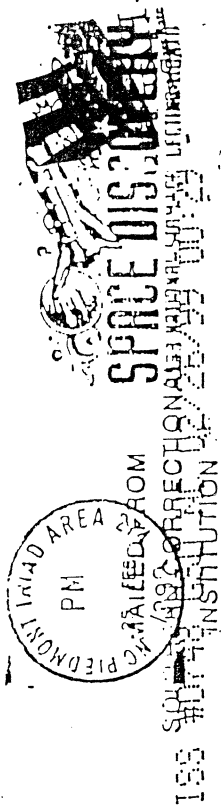
Date 1/28/99

Signature of the Defendant
[Signature]

Signature of Attorneys for the Defendant
[Signature]

EXHIBIT (D)

1 of 3

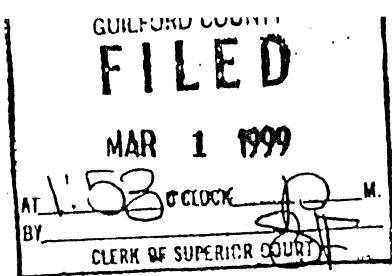


Therese Limbke
 Po Box 786
 Troy NC 27371

To: Guilford County Court #1
 Superior Court Judge Peter McHenry
 Greensboro NC 27402

27400/9999

EXHIBIT D) 2 of 3



Superior Court Judge
Peter McHugh

I Theodor M. Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is Yes! Mr Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further

Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I will not allow someone to push me around again. My mind is made up.

Thank you,
Theodore W. Kimble
2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't slide at the Kimble trial."

3/1/99 cc: Parosh
Zimmernan/Crompter

EXHIBIT (E)

STATE OF NORTH CAROLINA

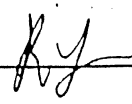
In the General Court of Justice
Superior Court Division

GUILFORD COUNTY

STATE OF NORTH CAROLINA

v.

THEODORE MEADE KIMBLE



File No.

97CRS 23656

Film No.

**INDICTMENT
ARSON
CONSPIRACY TO MURDER**

Date of Offense
October 9, 1995

Offense in Violation of G.S.
14-58 and the Common Law

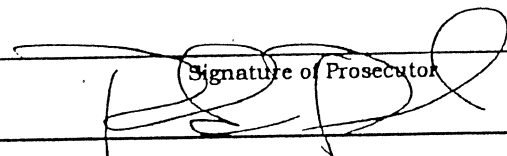
**COUNT I
ARSON OF AN UNOCCUPIED DWELLING**

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II
CONSPIRACY**

AND THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor



WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

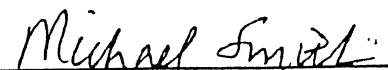
The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
 NOT A TRUE BILL

Date

NOV 03 1997

Signature of Grand Jury Foreman



253

EXHIBIT (F)

20

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

FILED

GUILFORD COUNTY

STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58

v.

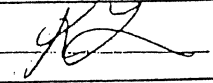
THEODORE MEAD KIMBLE GUILFORD COUNTY, N.C.

File No: **98CRS 23486**

Film No.

**INDICTMENT
FIRST DEGREE ARSON**

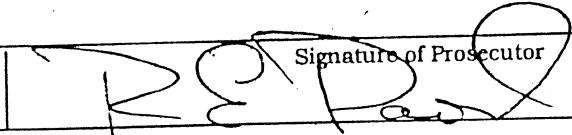
Date of Offense
October 9, 1995

BY 

Offense in Violation of G.S.
14-58 and the Common Law

FIRST DEGREE ARSON

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.


Signature of Prosecutor

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

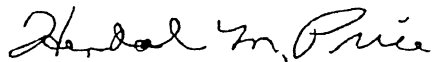
The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
 NOT A TRUE BILL

Date

JUL 06 1998

Signature of Grand Jury Foreman



1 right up to the time of her execution. That just shows
2 you not a mitigating factor, that shows that he's a cold
3 blooded murderer. He planned this and he had the ability
4 to hug and kiss his wife knowing that he was about to
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world
7 of bombs and silencers and sniper rifles. He just feels
8 that anybody who gets in his way, he should be able to
9 eliminate. We ask you to sentence him remembering that.
10 Thank you.

11 THE COURT: All right, thank you. Mr.
12 Zimmerman, are you prepared to tender your sentencing
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this
15 point in time, if Your Honor please. If Your Honor would
16 be kind enough to consider a short recess, I'll check one
17 more time and see what the problem is. This witness has
18 been subpoenaed since two weeks ago. And she was just
19 deathly ill yesterday. I apologize for having the phone
20 ringing in the courtroom. That was her calling me
21 yesterday. She couldn't get out of the bed. It's this
22 flu going around, and I can understand it because I had
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ZIMMERMAN: Absolutely satisfactory with the defendant.

(Counsel approach the bench.)

THE COURT: Counsel, the Court will provide you with a recess to attempt to provide that element of evidence.

Court will be in temporary recess, Sheriff.

(A recess was taken.)

(All parties present.)

MR. ZIMMERMAN: If Your Honor pleases, the defense appreciates Your Honor's thoughtful and serious consideration of the presentence study, and apologizes for the delay.

THE COURT: That's no need to apologize, Counsel. In this matter I'm anxious to have all the evidence that any party wishes to produce.

Is there any further evidence at this time for the State or for the defendant?

MR. PANOSH: No, thank you, Your Honor.

MR. CRUMPLER: No, Your Honor.

THE COURT: Is there any further matters before the Court enters judgment?

MR. PANOSH: No, Your Honor.

THE COURT: Judgment of this Court shall be entered first in case 97 CRS 39581, wherein the defendant

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to Mr. Kimble.

Walter A. Cole
8/2/97

EXHIBIT A 2 of 3

Time 12:00
4-18-97

Robert informed me that the Police
was on him concerning Ted and the
murder ^{case}. Robert also says that, Ted
told him some things that he shouldn't have,
but nothing concerning the murder. Robert
says he was going to plea guilty to
all larceny charges.

James Ogden

EXHIBIT H 3043

7-29-97

On July 22nd, I saw Robert Nickdown in the parking^{lot} down from Sykes Bld. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden

EXHIBIT (E)

NO. P03-956

EIGHTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

THEODORE MEAD KIMBLE } PETITIONER,) V.) STATE OF NORTH CAROLINA,) RESPONDENT.)	RE: "MOTION FOR RELIEF FROM JUDGMENT" " NO. P03-956 " FROM: GUILFORD COUNTY " FILE NO.'S 97CAS-23656, " 97CAS-39581, 98CAS-23486, " 99CAS-23241-48, = = =
--	--

PETITIONER'S RESPONSE TO THE STATES ANSWER

NOW COMES THE PETITIONER, THEODORE MEAD KIMBLE, AND SAYS:

D. AS PETITIONER STATED IN HIS RESPONSE TO THE STATES ANSWER IN HIS MOTION FOR WRIT OF MANDAMUS COMPLAINT, AND WILL RESPOND IN THE MOTION IN ARREST OF JUDGMENT, DIFFERENT ISSUES, AS THEY ARE IN FACT (3) SEPERATE MOTIONS, UNLIKE THE "CARBON COPY" RESPONSE FROM STATES ATTORNEY KATHLEEN U. BALDWIN, AS IF SHE DIDNT OR NEGLECTED TO EVEN READ SAID MOTIONS, HER PROCEDURAL HISTORY STATEMENTS ARE FALSE AS THE

RECORD CLEARLY SHOWS.

(A) PETITIONER "DID NOT" PLEAD GUILTY TO 8 COUNTS OF SOLICITATION TO COMMIT FIRST DEGREE MURDER. IT WAS "ALFORD" PLEAS, AND SINCE THE STATE'S ATTORNEY DECIDED TO TURN THEM INTO GUILTY PLEAS, THE PETITIONER MUST BRING OUT THE FACT THAT AS MANDATED BY LAW AND IS WORDED AS FOLLOWS:

"AN "ALFORD" PLEA ALLOWS A DEFENDANT TO VOLUNTARILY, KNOWINGLY, AND UNDERSTANDINGLY CONSENT TO THE IMPOSITION OF "A" PRISON SENTENCE EVEN IF HE IS UNWILLING OR UNABLE TO ADMIT HIS PARTICIPATION IN THE ACTS CONSTITUTING THE CRIME."

(B) PETITIONER PLED GUILTY TO ALL OTHER CHARGES BUT "NOT" 99CRS-23241-48, PLUS THE "FACT" IT WAS "ONE" CHARGE FOR 8 COUNTS, MEANING PETITIONER COULD ONLY HAVE RECEIVED "ONE" SENTENCE BY LAW AND DUE PROCESS, NOT 8 CONSECUTIVE SENTENCES. IN AN EXAMPLE (OR) ILLUSTRATION, "IF" A PERSON WALKS INTO A HUGE DEPARTMENT STORE WITH 500 PEOPLE INSIDE, AND THEN SOLICITS SOMEONE TO KILL "EVERYONE" IN THE STORE, IT WOULD BE ONE ("1") CHARGE OF CONSPIRACY TO COMMIT FIRST DEGREE MURDER WITH 500 COUNTS; THE PERSON COULD ONLY RECEIVE ONE ("1") SENTENCE IF HE PLEAD ALFORD, NOT 500 SENTENCES

"RUN CONSECUTIVELY"! PETITIONER WAS SENTENCED ON A SINGLE DAY. PETITIONER RECEIVED 8 CONSECUTIVE SENTENCES TOTALING TO TO 90.4 YEARS, AN ENTIRE LIFETIME. IN CASE AT BAR, SUCH A SENTENCE IS NOT LEGAL BY NO MEANS, SEE N.C.G.S. 15A-1340.14(d) IF THE DEFENDANT WAS CONVICTED OF MORE THAN ONE OFFENSE IN A SINGLE SUPERIOR COURT DURING ONE CALENDAR WEEK, ONLY THE CONVICTION WITH THE HIGHEST POINTS TOTAL IS COUNTED. IF THE DEFENDANT WAS CONVICTED OF MORE THAN ONE OFFENSE DURING A SINGLE SESSION (I.E., DAY) OF DISTRICT COURT ONLY THE MOST SERIOUS CONVICTION IS COUNTED, N.C.G.S. 15A-1051-1054 MAKE IT POSSIBLE FOR THE COURT OR PROSECUTOR TO GIVE A PERSON IMMUNITY IN EXCHANGE FOR THAT PERSONS AGREEMENT TO PLEAD GUILTY TO AN OFFENSE. WHEN THIS KIND OF IMMUNITY HAS BEEN GRANTED, THE PERSON MAY NOT BE PROSECUTED FOR THAT OFFENSE OR OFFENCES REGARDLESS OF THE EVIDENCE AGAINST HIM OR HER, THIS IS A CASE OF DOUBLE-JEOPARDY WHICH IS IN VIOLATION OF THE 5TH AMENDMENT OF THE UNITED STATES CONSTITUTION, BUT THE GREAT STATE OF NORTH CAROLINA IS FAMOUS FOR THIS TYPE OF BEHAVIOR AND CONDUCT ANYWAY, AS IS WELL KNOWN.

(C) RULE 11(e) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE GOVERNS THE CONDUCT OF THE GOVERNMENT AND THE DEFENDANT, DURING PLEA NEGOTIATIONS see U.S. v. KNIGHT, 867 F.2d 1285, 1288, (11th Cir. 1998); see e.g. U.S. v. WATKINS, 85 F.3d 498, 500 (10th Cir. 1996)

RULE 11(e)(1) AUTHORIZES PLEA AGREEMENTS WE KNOW, WHEN A DEFENDANT PLEAS GUILTY TO THE CHARGED OFFENCE OR TO A LESSER RELATED OFFENCE WITH MORE THAN ONE SENTENCE UNLESS THE SENTENCES ARE CONSOLIDATED FOR JUDGMENT.

(STILL "ONE" SENTENCE)! IN CASE AT BAR, PETITIONER WAS TOLD HE WOULD RECEIVE "ONE" SENTENCE OF 20 YEARS ON ALL COUNTS! THAT IT HAD ALL BEEN PRE-ARRANGED WITH PROSECUTOR.

see Fed. R. Crim. P. 11(e)(2); see e.g. U.S. v. Romero - TAMAYO, 212 F.3d 729, 731 (2d Cir. 2000) UNDER SUCH AGREEMENT, THE PROSECUTOR MAY MOVE FOR A DISMISSAL OF OTHER CHARGES see Fed. R. Crim. P. 11(e)(1)(A)

A DEFENDANT WHO ALLEGES THAT THE GOVERNMENT BREACHED A PLEA AGREEMENT MAY BE ENTITLED TO AN EVIDENTIARY HEARING OR AT THE COURT'S DISCRETION EXPANSION OF THE

RECORD. SEE BLACKLEGG V. WATSON, 431 U.S.
63, 75-76, 80-82, (1977) SEE EG. U.S. V.
WATSON, 988 F.2d. 544, 551-52 (5TH CIR. 1993);
PEAVY V. U.S., 31 F.3d. 1341, 1346 (6TH CIR. 1994)

IF THE DEFENDANT DEMONSTRATES THAT THE
GOVERNMENT DID BREACH THE COURT, MAY ALLOW
WITHDRAWAL OF THE PLEA, FILE A MOTION FOR
RELIEF FROM THE JUDGMENT TO HIGHER COURT,
(WHICH PETITIONER IN FACT "DID" IN CASE AT BAR)
ALTER THE SENTENCE, VACATE THE SENTENCE, OR
SPECIFIC PERFORMANCE OF THE AGREEMENT. SEE
U.S. V. LEZINE, 166 F.3d. 895, 901 (7TH CIR. 1999);
QUOTING U.S. V. HARVEY, 791 F.2d. 294, 300,
(4TH CIR. 1986), SEE ALSO U.S. V. TAYLOR, 77 F.3d
368, 372, (11TH CIR. 1996) IF THE FEDERAL COURT
FINDS THE STATE PROSECUTORS HAVE BREACHED A
PLEA AGREEMENT, IT SHOULD REMAND THE CASE SO
THAT A STATE COURT CAN DEVISE THE PROPER
REMEDY OR VACATE SENTENCE ALTOGETHER! SEE
SANTA BELLO V. NEW YORK, 404, U.S. 257,
262-63 (1971).

②. AS FOR THE STATES BRIEF PAGE #2
NUMBERS 3, 4, 5, AGAIN AS THE STATES
ATTORNEY SAID THE EXACT SAME THING IN ALL

(Three) (3) STATE'S RESPONSES TO EACH "SEPARATE"
MOTION FILED BY PETITIONER, WHICH WERE FILED
SEPARATELY AS EACH SEPARATE MOTION IS FOR
SEPARATE CIRCUMSTANCES, SO THE STATE'S
ATTORNEY COULDN'T REFUTE ANYTHING IN
PETITIONER'S (3) SEPARATE VARIOUS CONTENTIONS,
EXCEPT HOW SHE (LEFT-OUT) MOST "RELEVANT"
FACTS, LIKE HOW PETITIONER'S STATE AND FEDERAL
CONSTITUTIONAL RIGHTS WERE VIOLATED AT WITHDRAWAL
HEARING, BY COUNSEL REFUSING TO DEFEND OR
REPRESENT PETITIONER, NOT SURPRISING BECAUSE
COUNSEL ZIMMERMAN WAS PETITIONER'S FORMER SENTENCING
JUDGE IN ADVANCE, WHICH SPANS "CONF" AND GROSS
CONFLICT OF INTEREST, AND THE STATE'S ATTORNEY
AS IN ALL 3 "IDENTICAL" RESPONSES LEFT OUT HOW
APPELLATE COUNSEL CARMIN FAILED TO BRING UP
PERTINENT ISSUES ON APPEAL, FAIL TO PERSUE
PERTINENT ISSUES, "ABANDON" PERTINENT ISSUES,
FAIL TO REPORT PROSECUTOR MISCONDUCT, FAIL
TO REPORT CONFLICT OF INTEREST OF COUNSEL
ZIMMERMAN BEING PETITIONER'S FORMER SENTENCING
JUDGE, FAIL TO REPORT AVE PROCESS (NO
P.S.T. REPORT) SENTENCED IN ADVANCE, FAIL TO
REPORT DOUBLE-JEOPARDY BY PROSECUTOR, AND

AND ON AND ON, AS THE STATE'S ATTORNEY
POINSED OUT IN BRIEF FOR THE STATE PAGE #2
"5. PETITIONER SUBSEQUENTLY FILED IN THIS
COURT THE INSTANT MOTION FOR RELIEF FROM THE
JUDGMENT, ALONG WITH A MOTION IN ARREST OF
JUDGMENT AND A PETITION FOR WRITS OF HABEAS CORPUS.
THE FILES ARE SET UP SEPARATELY AND THE
STATE WILL RESPOND INDIVIDUALLY TO EACH FILING".

YES, THE STATE RESPONDED "INDIVIDUALLY" TO
EACH FILING, (WITH THE SAME EXACT RESPONSE) AND
DID NOT DENY ANY OF PETITIONER'S ISSUES IN
"ANY" OF PETITIONER'S MOTIONS, SO IN REALITY
THIS COURT SHOULD TAKE AS "ADMITTED" EACH
OF PETITIONER'S PROOFS, ALLEGATIONS, AND PRAYERS
FOR RELIEF, IN EACH SEPARATE MOTION,

3) PETITIONER READILY ADMITS, HE
COULD HAVE FILED ALL (3) MOTIONS IN THE
SENTENCING COURT, BUT PETITIONER IS AWARE
OF NO "MANDATORY" RULES OR "POSITIVE"
WARDING SAYING THE ABOVE (3) MOTIONS MUST
BE FILED IN THE SENTENCING COURT, ALSO A
MOTION FOR APPOINTMENT RELIEF PER "NOT"
NECESSARILY HAVE TO BE FILED ONLY IN THE
SUPERIOR COURT, FOR THAT MATTER. IN FACT,

WHEN AN APPEAL OR PETITION IS PENDING IN THE COURT OF APPEALS, A MOTION FOR APPOINTMENT RELIEF MUST BE FILED IN THE COURT OF APPEALS, NOT SENTENCING COURT. ALSO, PETITIONER IS A RESIDENT OF WAKE COUNTY, N.C. COURT OF APPEALS IS LOCATED IN WAKE COUNTY, PETITIONER IS ALLOWED BY LAW TO FILE MOTIONS IN WAKE COUNTY COURTS, PLUS THE FACTS SURROUNDING ALL THE VIOLATIONS, AND PROSECUTOR MISCONDUCT WHICH HAD OCCURRED IN GUILFORD COUNTY, AND ALL THE ILLEGAL SENTENCES PETITIONER RECEIVED IN GUILFORD COUNTY; PETITIONER CONTENDS HE HAS NO POSSIBLE CHANCE FOR ANY FORM OF JUSTICE WHATSOEVER IN A COURT THAT VIOLATED EACH AND EVERY SINGLE STATE AND FEDERAL CONSTITUTIONAL RIGHTS WHEN PETITIONER WAS SENTENCED, AND PETITIONER SEEKS "RELIEF FROM JUDGMENTS" WHICH WAS IMPOSED ILLEGALLY IN THE SENTENCING COURT, AND THIS HONORABLE COURT OF APPEALS HAS THE POWER TO CORRECT AND ALTER OR VACATE SAID ILLEGAL SENTENCES.

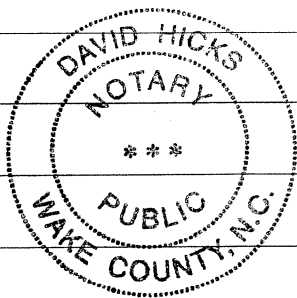
4). PETITIONER IS ALSO CONFUSED AS TO WHY STATE'S ATTORNEY BALDWIN DID "NOT" ENTER ON EITHER RESPONSE'S TO MOTION FOR RELIEF FROM JUDGMENT OR RESPONSE TO MOTION FOR

ARREST OF JUDGMENT, AS SHE MADE SUCH A
POINT OF IT IN HER RESPONSE TO WRIT OF
MANDAMUS HOW PETITIONERS FILING PRO-SE
MOTIONS ALL ACROSS THE STATE, WHICH SEEMED
TO BE "SARCASTIC" THAT INMATES SEEK JUSTICE.

WHEREFORE, PETITIONER RESPECTFULLY PRAYS
THIS HONORABLE COURT REVIEW ALL PETITIONERS
CLAIMS AND THE RECORD, AND IN THE INTEREST OF
JUSTICE OF THE "ENDS OF JUSTICE" GRANT PETITIONERS
MOTION FOR RELIEF FROM JUDGMENT AND ANY
OTHER RELIEF THIS HONORABLE COURT DEEMS
JUST AND PROPER.

RESPECTFULLY SUBMITTED THIS THE
24 DAY OF NOVEMBER 2003.

PRO-SE \$ Theodore Mead Kimble
THEODORE MEAD KIMBLE



My Commission Expires 5-18-2008.

David Hicks
11-24-03

VERIFICATION

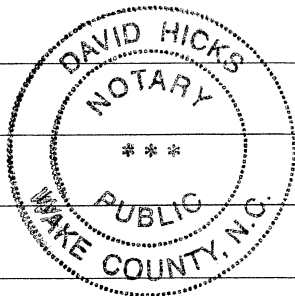
I, THEODORE MEAD KIMBLE, BEING FIRST DULY SWORN
DEPOSE AND SAY, I AM THE PETITIONER IN THE
FOREGOING PETITIONERS RESPONSE TO THE STATES
ANSWER, I HAVE READ THE SAME, AND THE
STATEMENTS CONTAINED THEREIN ARE TRUE, AS FOR
MY STATEMENTS MADE ON INFORMATION AND BELIEF,
ARE MADE IN GOOD FAITH, AND I BELIEVE TO
BE TRUE, SIGNED UNDER PENALTY OF PERJURY
THIS THE 24 DAY OF NOVEMBER 2003,

pro-se Theodore Mead Kimble
THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 24th DAY OF
NOVEMBER 2003.

My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES



David Hicks
11-24-03

PROOF OF SERVICE

I DO HEREBY CERTIFY THAT A COPY OF THE
FOREGOING RESPONSE TO THE STATES ANSWER WAS
FULLY SERVED BY PLACING THE SAME IN THE
U.S. MAIL, POSTAGE PRE PAID AND ADDRESSES AS
FOLLOWS:

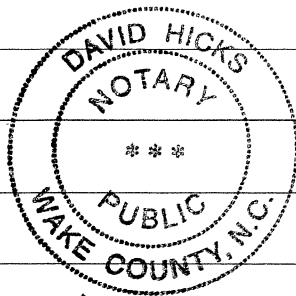
MR. RAY COOPER
ATTORNEY GENERAL
P.O. BOX 629,
RAVENNA, N.C. 27602

THIS THE 24th DAY OF NOVEMBER 2003,

Theodore Mead Kiddle
THEODORE MEAD KIDDLE
1300 WESTERN BLVD,
RAVENNA, N.C. 27606

My Commission Expires 5-18-2008.

My Commission Expires



David Hicks
11-24-03

x // x

STATE OF NORTH CAROLINA

COURT OF APPEALS

STATE OF NORTH CAROLINA)

VS.)

THEODORE MEAD KIMBLE)

DEFENDANT.)

{ FROM: GUILFORD COUNTY

{ FILE NO'S. 97CRS 23656

{ 97CRS 39581; 98CRS 23486;

{ 99CRS-23241-48

MOTION IN ARREST OF JUDGMENT

Now comes Petitioner, Theodore Mead Kimble, Pro-Se pursuant to North Carolina General Statutes 15A-1422 and says:

- 1.) Plaintiff is a resident of Wake County, North Carolina, His address is 1300 Western Blvd. Raleigh, N.C. 27606.
- 2.) On or about March 5, 1999 Petitioner was sentenced to a total of 107.5⁵ minimum years, and maximum of 137.7 years for the above alleged crimes, Presiding Judge Peter M. McHugh, Petitioner was sentenced ILLEGALLY as a matter of law.
- 3.) A Motion In Arrest of Judgment is defined as:
 - ① A Defendant's Motion claiming that a substantial Error appearing on the face of the Record Violated the whole proceeding and the Judgment.
 - ② A Post Judgment Motion in a Criminal Case claiming that the Indictment is insufficient to sustain a Judgment or that the Verdict is somehow insufficient.

4.) In support of this MOTION IN ARREST OF JUDGMENT, Petitioner shows the following:

FACTS

Persuant to N.C.G.S. 15A-1422, Grounds for Correction of Error by Appellate Division.

The following constitutes grounds for Correction by the Appellate Division.

(1) Lack of Jurisdiction.

A. The Trial Court lacked Jurisdiction over the offense.

B. The Trial Court did NOT have Jurisdiction over the person of the Defendant.

(2) Error in the Criminal Proceeding. Failure to charge A crime in that:

A. The Criminal Pleading charged acts which at the time they were committed did NOT constitute a violation of Criminal Law; or

B. The Pleading fails to state essential elements of an alleged violation as required by G.S. 15A-924(a)(5).

(3) Insufficiency of the Evidence. The Evidence was Insufficient as a matter of Law.

(4) Errors in Procedure.

A. There has been a Denial of Pre-trial Motions or Relief to which the Defendant is Entitled, so as to affect the Defendant's preparation or presentation of his defense, to his Prejudice

B. There has been a Denial of a Trial Motion or Relief to which the Defendant is Entitled, to his Prejudice

C. There has been Error in the Admission or Exclusion of Evidence, to the Prejudice of the Defendant.

D. There has been Error in the Judge's Instructions to the Jury,

to the Prejudice of the Defendant.

E. There has been a Denial of a Post-Trial Motion or Relief to which the Defendant is Entitled; To his Prejudice. This Provision is Subject to Provisions of G.S. 15A-1422.

(5) Constitutionally Invalid Procedure or Statute, Prosecution for Constitutionally Protected Conduct.

A. The Conviction was obtained by a Violation of the Constitution of the United States or of the Constitution of North Carolina.

B. The Defendant was convicted under a Statute that is in Violation of the Constitution of the United States or the Constitution of North Carolina.

C. The Conduct for which the Defendant was prosecuted was Protected by the Constitution of the United States or the Constitution of North Carolina.

(5 A) Insufficient Basis for Sentence. The Sentence imposed on the Defendant is NOT supported by Evidence introduced at Trial and Sentencing Hearing.

(5 B) Violation of Sentencing Structure. The Sentence Imposed;

A. Results from an incorrect finding of the Defendant's Prior Record level under G.S. 15A-1340.14 or the Defendant's Prior Conviction level under G.S. 15A-1340.21;

B. Contains a type of Sentence disposition that is NOT authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 For the Defendant's Class of Offense and Prior Record or Conviction level or;

C. Contains a Term of Imprisonment that is for a Duration NOT authorized by G.S. 15A-1340.17 or G.S. 15A-1340.23 For the Defendant's Class or *Offense and Prior Record or Conviction level.

*Probably should be "Class, offense".

(6.) Other Errors of Law, Any other Errors of Law was Committed by the Trial Court to the Prejudice of the Defendant.

In Reference to N.C.G.S. 15A-1443. Existence and Showing of Prejudice

(A) A Defendant is Prejudiced by Error Relating to Rights arising other than under the Constitution of the United States when there is a reasonable Possibility that, Had the Error in Question Not been Committed, A different result would have been Reached at the trial out of which the Appeal arises. The Burden of showing such prejudice under this subsection is upon the Defendant. Prejudice also exists in any instance in which it is deemed Reversible Per Se.

(B) A violation of the Defendant's Rights under the Constitution of the United States is Prejudicial unless the Appellate Court finds that it was Harmless beyond a Reasonable Doubt. The Burden is upon the State to Demonstrate beyond a Reasonable Doubt, that the Error was Harmless.

(C) A Defendant is Not Prejudiced by the Granting of Relief which he has sought or by Error resulting from his own Conduct.

Petitioner contends that several of his Rights and Rules were Grossly Violated in both N.C.G.S. 15A-1442. and N.C.G.S. 15A-1443. And several Due Process and State and Federal Rights were Violated as if Petitioner was Sentenced in a "KANGAROO COURT"; where NOBODY defended Petitioner EXCEPT Petitioner Himself, at "ALL" stages of the Proceedings, and Counsel worked Diligently and Zealously constantly with the Prosecutor "AGAINST" Petitioner. In Support of all these Allegations Petitioner shows the following:

FACTS IN SUPPORT OF

1.) Petitioner contends that having His "FORMER" sentencing Judge H.W. Zimmerman represent Petitioner as his Counsel, who retired from the Bench while Petitioner was still serving the 50-60 months sentence given to Petitioner by Zimmerman on unrelated charges, Is a Violation of Due Process of Law and A Conflict of Interest. See EXHIBIT(A) (3) Page Sentencing Papers Dated 12/8/97
Judge H.W. Zimmerman Presiding.

2.)(A) By Counselor Zimmerman and the Prosecutor forcing Petitioner to sign 8 waivers in cases 99 CRS 23241-48, which were in FACT rejected by the Grand Jury for possible Indictment and would have been DISMISSED, was a Violation of Law and Due Process. To THREATEN Petitioner by saying if he didn't sign, The Prosecutor would make sure he recieved the DEATH Sentence, And by saying it was "ALL" PRE-ARRANGED, The charges would all be consolidated into one sentence. And Petitioner would receive a 20 year Sentence for "ALL" charges, when in fact Petitioner recieved all CONSECUTIVE sentences in all charges, and recieved 70 to 90.4 years on 8 waivers alone is a Miscarriage of Justice and Due Process, See U.S. v. SANDERSON 595 F2d 1021 (5TH Cir 1979) (Trial Counsels misrepresentation of material facts, withholding information, and exerted pressure on Defendant to induce a Guilty Plea, Constituted Ineffective Assistance of Counsel and required an Evidentiary Hearing to resolve claim).

(B) In case at bar, Petitioner would like to point out that the

Supreme Court in HILL v. LOCKHART, 474 U.S. 52 L.Ed. 2d 203, 106 S.Ct. 336 (1985), Held that the two part STRICKLAND v. WASHINGTON, 446 U.S. 668, 687-88, 694, 104 S.Ct. 2052, 2064-74, 80 L.Ed. 2d 674 (1984)

Test Applies to Challenges to Guilty Pleas based on Ineffective Assistance of Counsel. The HILL Court found in the Plea Bargaining context, A Petitioner seeking to establish Ineffective Assistance of Counsel must demonstrate that:

① Counsel's advice and performance fall below an objective standard of reasonableness; and ② The Petitioner must show that there is a reasonable probability that, but for Counsel's Errors, He would NOT have Plead Guilty and would have insisted on going to trial. Id. AT (474 U.S. 59) (EMPHASIS ADDED).

③ Petitioner contends that by Counsel and Prosecutor forcing/coercing Petitioner to Plead Guilty to 8 cases that would be Dismissed by Law, and receiving 70 to 90.4 years proves Both Parts of the Two Part test Automatically; And the FACT Petitioner spent \$50,000 to obtain Private Attorneys only a few months prior (Under Duress), Shows Petitioner's intent to go to trial, Clearly proves Part (2); Plus vindictive Prosecution and Due Process violations all rolled into one at the same time, the Record speaks for itself, See EXHIBIT (B) 8 WAIVERS SIGNED.

3.) Petitioner contends that having Petitioner Plead Guilty to an INVALID Indictment Charge in case # 97 CRS 23656 "Arson of an Unoccupied Building" Nov. 3, 97' EXHIBIT (C) which was DISMISSED when approx 8 months later being RE-CHARGED with a different case number 98 CRS 23486

"First Degree Arson" July 6, 98' EXHIBIT(D), But with the same exact wording which is in fact DOUBLE-JEOPARDY and violation of Due Process of Law. See JACKSON v. LEONARD 162 F3d, 81 (2nd Cir 1998). Appellate Counsel's failure to raise Double-Jeopardy claim where it was apparent that Jackson's two charges of "First Degree Robbery" and Criminal Use of A Firearm in the First Degree" rested on the same Factual predicate constitutes Ineffective Ass. of Counsel.

4) The Prosecutor CONNED Petitioner into believing the entire Indictment 97CRS 23656 EXHIBIT(C) would in fact be DISMISSED by his Plea of Guilty, by just referring to case 97CRS 23656, which was the only Indictment that had "2" Counts, Out of ALL the Indictments. The state TRICKED Petitioner with the AID of Counselor Zimmerman, into believing by Pleading Guilty to that charge, it would be Dismissed, Even in Jan 28, 99 Transcript of proceedings Page #11 Lines 18-19 EXHIBIT(E). The Court stated "In case 97CRS 23656 shall be dismissed by the state upon your Plea of Guilty." When the D.A. illegally RE-INDICTED Petitioner on July 6, 98' (case #98 CRS 23486 EXHIBIT(D)), Committing DOUBLE-JEOPARDY, Count One of case 97CRS 23656 EXHIBIT(C) was automatically dismissed. Therefore on Jan. 28, 1999 the only charge left was "Conspiracy First Degree Murder," and Mistake or Not the Judge in FACT DISMISSED "Conspiracy First Degree Murder." The paper-work (Record) speaks for itself.

5) Petitioner contends that Trial Courts denying Petitioner's Motion to Withdraw his Pleas and Justifying it by the Court's Findings OF, FACT AND CONCLUSIONS OF LAW, And denying his Right to Withdraw his Alford Pleas despite the "Fact" Petitioner met the requirements in N.C. v. HANDY 326 N.C. 532, and the "Fact" that

Petitioner sent a Motion to Withdraw his Pleas (letter form) on Jan. 29, 99; the day after his Pleas were entered, which letter Disappeared, And Petitioner filed a second Motion to Withdraw his Pleas Feb. 24, 99'

EXHIBIT (F) see U.S. v. ALVAREZ-TAUTIMEZ, 160 F.3d. 573 (9TH Cir 1998) Also see U.S. v. ELLISON, 798 F.2d. 1102 (9TH Cir 1986) Ellison filled a Motion to withdraw his Guilty Plea in the context of a letter form. Ellison claimed his Guilty Pleas were the result of psychological pressure of Solitary Confinement, The exclusion from family and friends; and on the erroneous advice of his Court appointed Attorney, "That an immediate Guilty Plea would place him in a better and more humane living conditions and renew contact with family and friends." In case at bar, Petitioner was placed in Solitary Confinement on Dec. 22, 98 and DENIED contact with family and friends, "Prison Records" will show. Court Records were off by 3 weeks, but still it shows Petitioner was in Solitary Confinement. See EXHIBIT (G)

Note: Exhibit states one Non-contact weekly visit per week, but Petitioner was DENIED ALL visits.

6.) Petitioner was DENIED Counsel Representation at Withdrawal Hearing, Counsel REFUSED to defend Petitioner saying, "We'll sit this one out." Petitioner had to represent Himself, leaving him without Counsel. Counsel stated, "We will remain NEUTRAL because we maybe asked questions." See EXHIBIT (H) Page #3 Lines 19-21. Counsel NEVER discussed anything with Petitioner. This is a Violation of U.S. Const. AM 5, 6, 14; N.C. Const ART. I, sec 18, 19, 23. As well as other provisions in both Constitutions and Due Process.

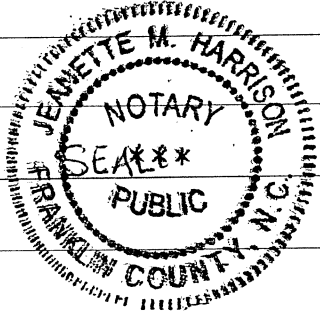
7) Petitioner contends that NO P.S.I. Report was turned into the Court, Despite the fact the lady from Step-One was subpoenaed 2 weeks before sentencing, yet Counsel never said a word, and let Petitioner be sentenced anyway, without the P.S.I. Report. See EXHIBIT (I) Pages 218 and 219 Sentencing Transcripts. Which Violates U.S Const AM. 5, 6, 14; N.C. Const. ART. I, Sec. 18, 19, 23. See U.S. v. DAVENPORT, 151 F.3d 1325 (11th Cir 1998) Pre-Sentence Report must be disclosed to both Defense Counsel and Defendant at least (10) days prior to sentencing as mandated by Statute. This clearly shows conviction obtained by the unconstitutional failure of the State to disclose to the Defendant evidence favorable to the Defendant, In Violation of Petitioner's State and Federal Rights and Due Process of Law, see U.S. v. GORDON, 172 F3d (10th Cir 1999) and U.S. v. BARTHOLOMEW, 474 F2d (5th Cir 1992) Trial Counsel NOT only didn't have a chance to object to any inaccuracies or errors in the P.S.I. Report, "NO" P.S.I. Report was ever produced! see WEST v. US, 994 F2d 518 (8th Cir 1993) Trial Counsel's failure to object to Errors in the Pre-Sentence Report can constitute Ineffective Assistance of Counsel.

8) Petitioner contends there were many-many other violations throughout the entire Proceedings, But Petitioner never recieved an Evidentiary Hearing, To bring out these issues of Material Facts, Such as Prosecutor intimidation and threatening witnesses, Running Defense witness out of town, Having a PHONY witness against Petitioner released from Prison early, Failure of

Prosecutor to turn over Evidence of Material Facts favorable to the Defense, Petitioner could go on and on, But if this Honorable Court will just look at the Record, It's obvious that Petitioner was Railroaded.

Petitioner prays this Honorable Court in view of all the above Miscarriages of Justice that were committed against Petitioner, Grant Petitioner's Motion In Arrest of Judgment, And any other Relief this Honorable Court deems Just and Proper,

Respectfully Submitted This
The 29 Day of October 2003,



Pro-se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Date: 10-29-03

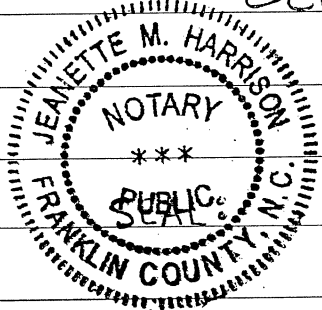
Witness: Jenette M Harrison

My Commission Expires: My Commission Expires 4-4-2006.

VERIFICATION

I, Theodore Mead Kimble, Being First Duly Sworn Depose and Say, I am the Petitioner in the foregoing Motion In Arrest of Judgment, I have read the same, And the Statements contained therein are True, As for any Statements made on information and belief, Are made in good faith, And I believe to be True.

Signed under Penalty of Perjury, This the 29 Day of October 2003.



Pro-Se: Theodore Mead Kimble

THEODORE MEAD KIMBLE

Sworn To And Before Me This The 29 Day of October 2003

Witness: Jeanette M Harrison Date: 10-29-03
My Commission Expires: My Commission Expires 4-4-2006.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT THE FOREGOING MOTION
IN ARREST OF JUDGMENT WAS DULY SERVED BY
PLACING THE SAME IN THE U.S. MAIL POSTAGE
PRE PAID AND ADDRESSED AS FOLLOWS:

Mr. Roy Cooper
Attorney General
P.O. Box 629
Raleigh, N.C. 27602

Pro-Se in Theodore Mead Kimble

SEAL:

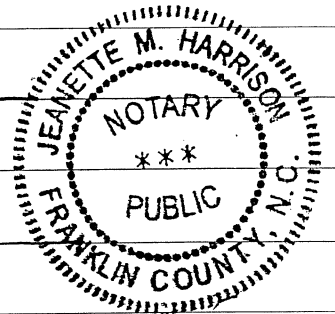
THEODORE MEAD KIMBLE
1300 Western Blvd.
Raleigh N.C. 27606

Sworn To And Before Me This The 29 Day of
October 2003

Date: 10-29-03

Witness: Jeannette M Harrison

My Commission Expires 4-4-2006.



STATE OF NORTH CAROLINA

File No. 97CR 2

EXHIBIT (A) 1 of 3

GUILFORD County

GREENSBORO Seat of Court

In The General Court Of Justice Superior Court Division

NOTE: (This form is to be used for (1) felony offense(s), and (2) misdemeanor offense(s), which are consolidated for judgment with any felony offense(s). Use AOC-CR-301 on DWI offense(s).)

STATE VERSUS

JUDGMENT AND COMMITMENT

Defendant

THEODORE MEAD KIMBLE

ACTIVE PUNISHMENT FELONY

Race

White

Sex

M

DOB

12-08-1969

CLERK OF SUPERIOR COURT

STRUCTURED SENTENCING

G.S. 15A-1301, 15A-1340.13

Attorney For State

RICHARD PANOSH

Def. Found Not Indigent

Def. Waived Attorney

Attorney For Defendant

ROBERT L. MCCLELLAN

Appointed Retained

The defendant pled guilty to: was found guilty by a jury of: pled no contest to:

File No. (s) And Offense(s)

97CRS 23655 POSSESS WEAPON OF MASS DESTRUCTION

Date Of Offense

04-01-1997

G.S. No.

14-288.8

F./M.

F

CL.

F

The Court:

- 1. has determined, pursuant to G.S. 15A-1340.14, the prior record points of the defendant to be -0-
2. makes no prior record level finding because none is required for Class A felony, enhanced firearm penalty, violent habitual felon, or drug trafficking offenses.

PRIOR

I III V

RECORD LEVEL: II IV VI

The Court:

- 1. makes no written findings because the prison term imposed is: (a) within the presumptive range of sentences authorized under G.S. 15A-1340.17(c). (b) for a Class A felony. (c) for enhanced firearm penalty (G.S. 15A-1340.16A). (d) for an adjudication as a violent habitual felon. G.S. 14-7.12. (e) for drug trafficking offenses.
2. makes the Findings of Aggravating and Mitigating Factors set forth on the attached AOC-CR-605.
3. imposes the prison term pursuant to a plea arrangement as to sentence under Article 58 of G.S. Chapter 15A.
4. finds the defendant has provided substantial assistance pursuant to G.S. 90-95(h)(5).
5. adjudges the defendant to be an habitual felon pursuant to Article 2A of G.S. Chapter 14.
6. finds enhanced punishment from a Class 1 misdemeanor to a Class I felony. G.S. 90-95(e)(3) (drugs); G.S. 14-3(c) (race).
7. finds no Extraordinary Mitigation.

The Court, having considered evidence, arguments of counsel and statement of defendant, finds that the defendant's plea was freely, voluntarily, and understandingly entered, and Orders the above offenses be consolidated for judgment and the defendant be imprisoned

for a minimum term of:

015

months

for a maximum term of:

018

months

in the custody of the:

- Class A Felony: Life Imprisonment Without Parole Death (see attached Death Warrant and Certificates)
Class B1 Felony: Life Imprisonment Without Parole
Violent Habitual Felon: Life Imprisonment Without Parole

- N.C. DOC.
Sheriff pursuant to G.S. 15A-1352(b).
Other

The defendant shall be given credit for 32 days spent in the confinement prior to the date of this Judgment as a result of this charge.

- The sentence imposed above shall begin at the expiration of all sentences which the defendant is presently obligated to serve.
The sentence imposed above shall begin at the expiration of the sentence imposed in the case referenced below:
(NOTE: List the case number, date, county and court in which prior sentence imposed.)

12/16/97 BKP

(check all that apply)

1. The defendant shall pay the costs. 2. The defendant shall pay a fine of \$ _____.
- The Court recommends:**
3. Substance Abuse Treatment Unit pursuant to G.S. 15A-1351(h). 4. Psychiatric and/or psychological counseling.
5. Work Release
6. Payment as a condition of post release supervision, if applicable, or from work release earnings, if applicable, of the items and amounts set out below.

Fine	Costs	Restitution*	Reimbursement For Atty Fee & Other Expenses	Total Amount Due
			\$1,850.00	\$1,850.00

*Name(s), address(es), amount(s) & social security number(s) of aggrieved party(ies) to receive restitution:

The Court further recommends:

The Court does not recommend:

1. Restitution as a condition of post release supervision or work release. 2. Work release.

AWARD OF FEE TO COUNSEL FOR DEFENDANT

A hearing was held in open court in the presence of the defendant at which time a fee, including expenses, was awarded the defendant's appointed counsel or assigned public defender.

ORDER OF COMMITMENT/APPEAL ENTRIES

- It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff or other qualified officer and that the officer cause the defendant to be delivered with these copies to the custody of the agency named on the reverse to serve the sentence imposed or until the defendant shall have complied with the conditions of release pending appeal.
- The defendant gives notice of appeal from the judgment of the Superior Court to the Appellate Division. Appeal entries and any conditions of post conviction release are set forth on form AOC-CR-350.

SIGNATURE OF JUDGE

Date	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge
12-08-1997	H. W. ZIMMERMAN, JR.	

ORDER OF COMMITMENT AFTER APPEAL

Date Appeal Dismissed	Date Withdrawal Of Appeal Filed	Date Appellate Opinion Certified

It is ORDERED that this Judgment be executed. It is FURTHER ORDERED that the sheriff arrest the defendant, if necessary, and recommit the defendant to the custody of the official named in this Judgment and furnish that official two certified copies of this Judgment and Commitment as authority for the commitment and detention of the defendant.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk Of Superior Court

CERTIFICATION

I certify that this Judgment and Commitment with the attachment marked below is a true and complete copy of the original which is on file in this case.

Appeal Entries (AOC-CR-350)

Felony Judgment Findings Of Aggravating And Mitigating Factors (AOC-CR-605)

Judicial Findings As To Forfeiture Of Licensing Privileges (AOC-CR-317)

Commitment Information Statement (DC-600)

Date	Signature And Seal
Date Certified Copies Delivered To Sheriff	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
12-16-97	

STATE OF NORTH CAROLINA

FILED

File-No.

See Transcript

Gulford County

DEC 8 1997

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

AT 4:00 O'CLOCK P M

Name And Address Of Defendant

BY NA P CLERK OF SUPERIOR COURT

Theodore M. Kimble

WORKSHEET PRIOR RECORD LEVEL FOR FELONY SENTENCING AND PRIOR CONVICTION LEVEL FOR MISDEMEANOR SENTENCING (STRUCTURED SENTENCING)

G.S. 15A-1340.14, 15A-1340.21

NOTE: This worksheet is provided to assist the attorney for the state in calculating and presenting the defendant's prior record level or prior conviction level. Record the defendant's prior record on the reverse side of this form or attach a copy of the defendant's prior record pursuant to G.S. 15A-1340.14(f). If sentencing for a felony, count the number of prior convictions in each offense class and enter those totals in the chart in section I below. For multiple prior convictions at one session of court, see G.S. 15A-1340.14(d). Class 1 misdemeanor offenses under Chapter 20 are not assigned any points for determining prior record level for felony sentencing except misdemeanor death by vehicle [G.S. 20-141.4(a2)]. First Degree Rape and First Degree Sexual offense convictions prior to October 1, 1994, are Class B1 convictions.

I. SCORING PRIOR RECORD/FELONY SENTENCING

Table with 4 columns: NUMBER, TYPE, FACTORS, POINTS. Rows include Prior Felony Class A Conviction (X10), Prior Felony Class B1 Conviction (X 9), Prior Felony Class B2 or C or D Conviction (X 6), Prior Felony Class E or F or G Conviction (X 4), Prior Felony Class H or I Conviction (X 2), Prior Class A1 or 1 Misdemeanor Conviction (see note) (X 1), SUBTOTAL (0), If all the elements of the present offense are included in the prior offense (+1), If the offense was committed: (a) while on probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape (+1), TOTAL (0).

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

FELONY

NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.

NOTE: If sentencing for a felony, locate the prior record level which corresponds to the prior record determined in section I above.

Table with 2 columns: No. Of Prior Convictions, Level. Rows: 0 (I), 1-4 (II), 5+ (III).

PRIOR CONVICTION LEVEL []

Table with 2 columns: Points, Level. Rows: 0 (I), 1-4 (II), 5-8 (III), 9-14 (IV), 15-18 (V), 19+ (VI).

PRIOR RECORD LEVEL [I]

The Court has determined the number of prior convictions to be _____ and the level to be as show above.

The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.

Date 12/12/97

Name Of Presiding Judge (Type Or Print) H.W. Zimmerman, Jr.

Signature Of Presiding Judge [Signature]

EXHIBIT (B) 1068

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23241

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

FILED
JAN 28 1999
AT 3:50 P.M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, knowingly solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Rose Gray Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
[Signature]
Signature of Attorneys for the Defendant
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No.

99CRS 23242

EXHIBIT (B)
2018

GUILFORD COUNTY
STATE OF NORTH CAROLINA

GUILFORD COUNTY Film No.

FILED

JAN 28 1999

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

v.
THEODORE MEAD KIMBLE

AT 350
BY [Signature]
CLERK OF SUPERIOR COURT

Offense in Violation of G.S.
14-2.6 & Common Law

Date of Offense
On or about November 4, 1998

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Patrick Roy Pardee, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

X Theodore Kimble

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (B)
3 of 8

File No. 99CRS 23243

GUILFORD COUNTY
STATE OF NORTH CAROLINA

Film No.

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 350 U.S. 1 M.
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Louie Mitchell Widden, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant.
[Signature]
Signature of Attorneys for the Defendant
[Signatures]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23244

EXHIBIT (B)
40F8

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY Film No.
FILED
JAN 23 1999
AT 350 P M
BY [Signature]
CLERK OF SUPERIOR COURT

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill David Shane Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23245

EXHIBIT (B)
50FB

GUILFORD COUNTY
STATE OF NORTH CAROLINA

GUILFORD COUNTY
FILED
JAN 28 1999
BY [Signature]
CLERK OF SUPERIOR COURT

Film No.

BILL OF INFORMATION
Solicitation to Commit
First Degree Murder

v.
THEODORE MEAD KIMBLE

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Gary Paul Lyles, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
[Signature: R. E. P. D.]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date
1/28/99

Signature of the Defendant.
X Theodore Kimble

Signature of Attorneys for the Defendant
[Signature: T. B. Campbell]
[Signature: A. W. ...]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23246

EXHIBIT (B)
6018

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

Film No.
**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

GUILFORD COUNTY
FILED
JAN 23 1999
AT 3:50 U. CLERK P.M.
CLERK OF SUPERIOR COURT

Offense in Violation of G.S.
14-2.6 & Common Law

Date of Offense
On or about November 4, 1998

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Cara R. Dudley, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor
REPP

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant
Theodore Kimble
Signature of Attorneys for the Defendant
Fred A. Crumpler
AW

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

EXHIBIT (B)
7018

File No. 99CRS 23247

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 28 1999
AT 350
BY [Signature]
CLERK OF SUPERIOR COURT

Film No.
**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law

COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Linda Thompson Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor

[Signature]

WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date

1/28/99

Signature of the Defendant.

[Signature]

Signature of Attorneys for the Defendant

[Signature]
[Signature]

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

File No. 99CRS 23248

EXHIBIT (B)
8078

GUILFORD COUNTY
STATE OF NORTH CAROLINA
v.
THEODORE MEAD KIMBLE

GUILFORD COUNTY
FILED
JAN 23
BY COO
CLERK OF SUPERIOR COURT

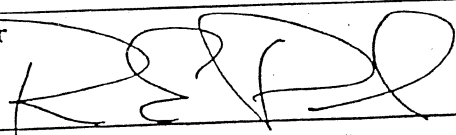
Film No.
**BILL OF INFORMATION
Solicitation to Commit
First Degree Murder**

Date of Offense
On or about November 4, 1998

Offense in Violation of G.S.
14-2.6 & Common Law


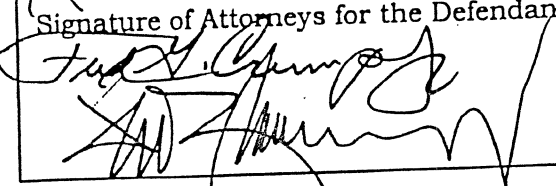
COUNT I

I, the undersigned prosecutor, upon information and belief, allege that on or about November 4, 1998, the Defendant, Theodore Mead Kimble, did unlawfully, willfully, feloniously solicit William Wayne Stewart to commit first degree murder, in that he did solicit William Wayne Stewart to willfully, deliberately and with premeditation, kill Kevin Cherry, in violation of N.C. Gen.Stat. 14-17. Said murder was to occur in Guilford County prior to the trial date of the defendant, which was set for January 25, 1999. This being a violation of N.C. Gen.Stat. 14-2.6 and the Common Law of the State of North Carolina. Said crime did occur in Troy, Montgomery County, North Carolina, and has been transferred to Guilford County for the purpose of plea and sentencing by the consent of all parties.

Prosecutor


WAIVER

I, the below signed defendant, waive the finding and the return of a Bill of Indictment and agree that the case may be tried upon the above information.

Date 1/28/99
Signature of the Defendant

Signature of Attorneys for the Defendant


581

EXHIBIT (C)

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division

GUILFORD COUNTY
STATE OF NORTH CAROLINA

v.

THEODORE MEADE KIMBLE

RJ

File No.

97CRS 23656

Film No.

**INDICTMENT
ARSON
CONSPIRACY TO MURDER**

Date of Offense
October 9, 1995

Offense in Violation of G.S.
14-58 and the Common Law

**COUNT I
ARSON OF AN UNOCCUPIED DWELLING**

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC.

**COUNT II
CONSPIRACY**

AND THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath do present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, and feloniously that conspire, combine, confederate and agree with Ronnie Lee Kimble to commit the felony of Murder in the First Degree, in that Theodore Mead Kimble did agree with Ronnie Lee Kimble to murder, kill and slay Patricia Kimble in violation of N.C. Gen.Stat. 14-17, and the common law of the State of North Carolina.

Signature of Prosecutor

[Handwritten Signature]

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

- A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
- NOT A TRUE BILL

Date

NOV 03 1997

Signature of Grand Jury Foreman

Michael Smith

253

EXHIBIT (D)

20

STATE OF NORTH CAROLINA
In the General Court of Justice
Superior Court Division

FILED

GUILFORD COUNTY
STATE OF NORTH CAROLINA 1998 JUL -6 PM 3: 58
v.
THEODORE MEAD KIMBLE GUILFORD COUNTY, N.C.

File No:
98CRS 23486

Film No.

INDICTMENT
FIRST DEGREE ARSON

Date of Offense
October 9, 1995

BY *[Signature]*

Offense in Violation of G.S.
14-58 and the Common Law

FIRST DEGREE ARSON

THE JURORS FOR THE STATE OF NORTH CAROLINA, upon their oath present and find that on or about October 9, 1995, the Defendant, Theodore Mead Kimble did unlawfully, willfully, maliciously and feloniously burn or cause to be burned a the dwelling house inhabited by Patricia Kimble, located at 2104 Brandon Station Court, Pleasant Garden, in Guilford County NC. At the time of the burning Patricia Kimble was in the dwelling.

[Signature]
Signature of Prosecutor

WITNESSES

J. D. Church
Guilford County Sheriff's Department
95-1009-0027

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.
 NOT A TRUE BILL

Date
JUL 06 1998

Signature of Grand Jury Foreman
[Signature]

1 GUILTY TO THOSE OFFENSES BECAUSE YOU CONSIDER IT TO BE IN YOUR
2 BEST INTEREST TO DO SO?

3 DEFENDANT:- YES, SIR.

4 THE COURT:- DO YOU UNDERSTAND THAT WHEN YOU PLEAD
5 GUILTY TO THOSE OFFENSES UPON THAT CONDITION THAT YOU WILL BE
6 ADJUDGED GUILTY AND SENTENCED FOR THOSE OFFENSES WHETHER OR NOT
7 YOU, IN FACT, ADMIT THAT YOU ARE GUILTY OF THEM?

8 DEFENDANT:- YES, SIR.

9 THE COURT:- HAVE YOU AGREED TO TENDER A PLEA OF
10 GUILTY TO THESE SEVERAL OFFENSES AS PART OF A PLEA ARRANGEMENT
11 THAT WAS NEGOTIATED ON YOUR BEHALF BY YOUR ATTORNEYS WITH THE
12 DISTRICT ATTORNEY?

13 DEFENDANT:- YES, SIR.

14 THE COURT:- IS THIS A CORRECT STATEMENT OF WHAT YOU
15 UNDERSTAND YOUR FULL PLEA ARRANGEMENT TO BE: THE STATE OF
16 NORTH CAROLINA HAS AGREED, PURSUANT TO THE PLEA ARRANGEMENT, TO
17 ACCEPT A PLEA OF GUILTY TO SECOND DEGREE MURDER IN CASE
18 97-CRS-39581. COUNT ONE IN THAT -- IN CASE 97-CRS-23656 SHALL
19 BE DISMISSED BY THE STATE UPON YOUR PLEA OF GUILTY. IN RETURN,
20 THE DEFENDANT AGREES TO ENTER PLEAS OF GUILTY TO SECOND DEGREE
21 MURDER IN CASE 39581, CONSPIRACY TO COMMIT FIRST DEGREE MURDER
22 IN CASE 97-CRS-23656, AND FIRST DEGREE ARSON IN CASE
23 98-CRS-23486, AND EIGHT COUNTS OF SOLICITATION TO COMMIT FIRST
24 DEGREE MURDER PURSUANT TO THE BILLS OF INFORMATION WHICH HAVE
25 BEEN SUBMITTED TO THE COURT. THE DEFENDANT AGREES PURSUANT TO

Therese Kimble
Po Box 786
Troy NC 27371

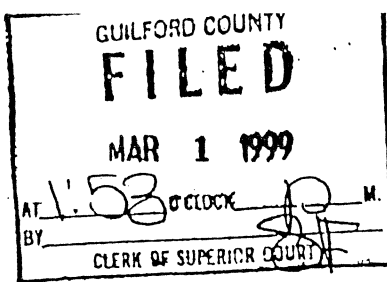
PIEDMONT TRIAD AREA
PM
MAILED FROM
1993 CORRECTIONAL INSTITUTION



To: Guilford County Court House
Superior Court Judge Peter McHugh
Greensboro NC 27402

27400/9999

EXHIBIT (F) 2 of 3



Superior Court Judge
Peter McHugh

I Therefore Mr Kimble would like to withdraw my guilty-plea on all accounts and charges. I request to go before a jury and plead my case. I was pressured into my earlier plea. I'm NOT Guilty and here by withdraw my earlier plea of Guilty.

When you read the Plea Agreement, you asked if I had been threatened in any way to force me to take the agreement? The answer is Yes! Mr Zimmerman stood by my side, under his breath saying, "Play it cool." I told him yes before hand and he was afraid I'd tell you. I ask, How can I say "No" when I'm being told if I don't, I'll be killed should I go to trial.

I believe your opinion needs to wait till the evidence is heard. I disapprove of you saying "Good Job" to my lawyers. It sounds as if you had read the newspapers and formed your own opinions. I hope a byist attitude isn't shown during the trial or favoritism to the D.A.

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further

I request a gag order be placed on the D.A. He has done nothing but brain wash the public and potential jurors. Further

Do to the D.A.'s press conferences I'd like my trial moved to Winston Salem in Forsyth County.

I've not made my decision known to my attorneys at this point, but am presently doing so. I assure you, I will not allow someone to push me around again. My mind is made up.

Thank you,

Theodore W. Kimble

2-24-99

P.S. What is justice when a D.A. tells an opposing witness, "Your life is at a fork in the road, one goes to prison the other to probation. Don't show at the Kimble trial."

3/1/99 cc: Parosh

Zimmerman/Crompler

EXHIBIT (G)

STATEMENT CONCERNING DEFENDANT'S CONFINEMENT

Prior to entry of his guilty pleas in the instant cases, defendant was in the custody of the Department of Corrections at Southern Correctional Institution in Troy, North Carolina for unrelated larceny and breaking and entering convictions. On January 12, 1999, defendant was placed on disciplinary segregation. Defendant entered his guilty pleas in the instant cases on January 28, 1999. On February 1, 1999, defendant's control status was changed to administrative segregation. On February 5, 1999, defendant was placed on maximum control and remained there until he was transferred to Caledonia Correctional Institution on February 26, 1999. Pursuant to state-wide policy, all three levels of control require 23-hour-per-day lock-up, with one hour per day for showering and individual recreation. In addition, inmates held at all three control levels are not allowed phone calls and are permitted only one non-contact week-day visit per week.

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the
4 Court on the matter of Theodore Mead Kimble, the
5 remaining case is 97 CRS 39581. I believe that the first
6 matter is a motion to withdraw filed pro se by the
7 defendant.

8 Your Honor, the State has filed an Answer to
9 the motion to withdraw, and I've served counsel with a
10 copy. I did note that on page 1 when I indicated date of
11 change of counsel, I have the wrong date there. It
12 should have been December 3rd, of '98 change of counsel.
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.
15 Zimmerman, are you appearing with the defendant at this
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing
18 by virtue of the nature of the motion. We have explained
19 to the defendant actually we will remain neutral because
20 we may be asked questions, and the defendant understands
21 that.

22 THE COURT: All right. Thank you. Mr.
23 Kimble, would you stand up, please?

24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

1 right up to the time of her execution. That just shows
2 you not a mitigating factor, that shows that he's a cold
3 blooded murderer. He planned this and he had the ability
4 to hug and kiss his wife knowing that he was about to
5 kill her to collect the insurance money.

6 This defendant, Your Honor, lives in a world
7 of bombs and silencers and sniper rifles. He just feels
8 that anybody who gets in his way, he should be able to
9 eliminate. We ask you to sentence him remembering that.
10 Thank you.

11 THE COURT: All right, thank you. Mr.
12 Zimmerman, are you prepared to tender your sentencing
13 memorandum?

14 MR. ZIMMERMAN: We don't have it at this
15 point in time, if Your Honor please. If Your Honor would
16 be kind enough to consider a short recess, I'll check one
17 more time and see what the problem is. This witness has
18 been subpoenaed since two weeks ago. And she was just
19 deathly ill yesterday. I apologize for having the phone
20 ringing in the courtroom. That was her calling me
21 yesterday. She couldn't get out of the bed. It's this
22 flu going around, and I can understand it because I had
23 some of that before I had my other problem.

24 MR. PANOSH: May we approach?

25 THE COURT: Yes, sir.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ZIMMERMAN: Absolutely satisfactory with the defendant.
(Counsel approach the bench.)

THE COURT: Counsel, the Court will provide you with a recess to attempt to provide that element of evidence.

Court will be in temporary recess, Sheriff.
(A recess was taken.)
(All parties present.)

MR. ZIMMERMAN: If Your Honor pleases, the defense appreciates Your Honor's thoughtful and serious consideration of the presentence study, and apologizes for the delay.

THE COURT: That's no need to apologize, Counsel. In this matter I'm anxious to have all the evidence that any party wishes to produce.

Is there any further evidence at this time for the State or for the defendant?

MR. PANOSH: No, thank you, Your Honor.

MR. CRUMPLER: No, Your Honor.

THE COURT: Is there any further matters before the Court enters judgment?

MR. PANOSH: No, Your Honor.

THE COURT: Judgment of this Court shall be entered first in case 97 CRS 39581, wherein the defendant

No. P03-956

EIGHTEENTH DISTRICT

STATE OF NORTH CAROLINA
COURT OF APPEALS

THEODORE MEAD KIMBLE)

PETITIONER,)

v.)

STATE OF NORTH CAROLINA)

RESPONDENT.)

RE: { "MOTION IN ARREST OF JUDGMENT" }

" No. P03-956

" FILE NO.'S 97CRS-23656,

" 97CRS-39581; 98CRS-23486;

" 99CRS-23241-48, = = =

* * * * *
PETITIONER'S RESPONSE TO THE
STATES ANSWER.
* * * * *

NOW COMES THE PETITIONER, THEODORE MEAD KIMBLE, AND SAYS:

D. THE STATES PROCEDURAL HISTORY IS FALSE, AS HER TWO (2) OTHER RESPONSES,

(A) IF THIS COURT WILL LOOK AT IND. # 97CRS-23656, WHICH WAS COUNT ONE DISMISSED, AND IND. # 98CRS-23486, THEY SHOW THE SAME EXACT WORDING, WHICH THE PROSECUTOR (MR. PANOSH) HAD PETITIONER RE-INDICTED, THUS COMMITTING DOUBLE-JEOPARDY.

(B) PETITIONER NEVER PLEAD GUILTY TO 99CRS-23241-48, IT WAS AN ALFORD PLEA AS PETITIONER POINTED OUT IN OTHER RESPONSES TO THE STATES ANSWERS. AND PETITIONER RECEIVED ILLEGAL CONSECUTIVE SENTENCES ON EACH COUNT TOTALING 70 TO 90.4 YEARS, WHICH WAS ILLEGAL AS A MATTER OF LAW.

(C) PETITIONER WAS PROMISED A TOTAL 20 YEARS SENTENCE FOR ALL PLEAS. COUNSEL HAD PETITIONER SIGN A BLANK PLEA BARGAIN, WHICH WAS FILLED IN AFTERWARD, AND FILLED IN INCORRECTLY. IT'S A FACT PETITIONER PLED ALFORD IN CASES 99CRS-2324-48, AND THE PLEA BARGAIN WAS FILLED IN AS ALL "GUILTY" PLEAS. PETITIONER IS ENTITLED TO RELIEF IN ARREST OF JUDGMENTS BY LAW.

2. (A) BRIEF FOR THE STATE PAGE #2 STATES "INCORRECTLY", "WITH-DRAW [HIS] GUILTY-
-PLEA ON ALL ACCOUNTS AND CHARGES" THE WORD "ALFORD" PLEA WAS AGAIN CONVENIENTLY LEFT OUT.

(B) THE STATE "AGAIN" LEFT OUT THE FACT THAT PETITIONER HAD TO DEFEND HIMSELF AT THE "WITHDRAW HEARING", BECAUSE COUNSEL CHOOSE TO

REMAIN "NEUTRAL", LEAVING PETITIONER WITHOUT REPRESENTATION, VIOLATING DUE PROCESS.

③. (A) STATE ASSERTS HOW PETITIONER HAD DIRECT APPEAL, BUT LEFT OUT HOW APPELLATE COUNSEL ALSO "FAIL" TO REPRESENT AND PERSUE PERTINENT ISSUES, AND ABANDON ISSUES OF THE ILLEGAL 70 TO 90.4 YEAR SENTENCES IN CASES #99CRS-23241-48. PLUS FAIL TO REPORT PROSECUTOR MISCONDUCT, AND CONFLICT OF INTEREST BY PROSECUTORS ("PARTNER"), PETITIONER'S "PRIORE" SENTENCING JUDGE MR. ZIMMERMAN NOW REPRESENTING HIM AS COUNSEL; FAIL TO BRING UP THE ISSUE OF NO P.S.I. REPORT, OR ANY OTHER PERTINENT ISSUES AS PETITIONER POINTED OUT THROUGH HIS "MOTION IN ARREST OF JUDGMENT" UNDER DISCUSSION.

(B) PETITIONER'S APPELLATE COUNSEL FILED DISCRETIONARY REVIEW IN N.C. SUPREME COURT AFTER DENIAL IN N.C. COURT OF APPEALS. YET PETITIONER CONSTANTLY INSTRUCTED HER TO FILE MOTION FOR APPROPRIATE RELIEF, AND SHOULD HAVE APPEALED IN CERTIORARI TO N.C. SUPREME COURT. NATURALLY 99 TIMES OUT OF 100 THE N.C. SUPREME COURT USUALLY ALWAYS GOES ALONG WITH THE N.C. COURT OF APPEALS RULINGS.

4. PETITIONER FILED "MOTION IN ARREST OF JUDGMENT" BECAUSE HE IS ENTITLED RELIEF FROM HIS ILLEGAL SENTENCE. IT'S NOT IN ACTUALITY A "MOTION FOR APPROPRIATE RELIEF" AS THE STATE'S ATTORNEY BALDWIN HAS STATED IN "BRIEF FOR THE STATE PAGE #2." PETITIONER CAN'T EXPECT ANY RELIEF WHATSOEVER IN A SUPERIOR COURT THAT RAILROADED HIM IN EACH AND EVERY WAY POSSIBLE, AS IF IT WAS A LYNCHING MOB. THAT'S WHY PETITIONER FILED A "MOTION IN ARREST OF JUDGMENT" TO THIS HIGHER COURT, TO TRY AND ACTUALLY RELIEVE JUSTICE.

5. THE STATE POINTED OUT HOW, "RELIEF FORMERLY AVAILABLE BY MOTION IN ARREST OF JUDGMENT, MOTION TO SET ASIDE THE VERDICT, MOTION FOR NEW TRIAL, POST CONVICTION PROCEEDINGS, CORAM NOBIS AND ALL OTHER POST-CONVICTION PROCEEDINGS' MOTIONS IS AVAILABLE BY MOTION FOR APPROPRIATE RELIEF." THE STATE LEFT OUT THE FACT THAT RELIEF IS ALSO AVAILABLE BY FILING MOTION IN ARREST OF JUDGMENT IN THE N.C. COURT OF APPEALS, AND THE FACT IT'S NOT "MANDATORY" TO FILE IT IN SUPERIOR COURT. AND TO PROVE THAT "FACT",

"IF" PETITIONER WAS NOT ALLOWED BY LAW TO FILE SAID MOTION IN THE COURT OF APPEALS, THEN MR. JOHN H. CONNELL CLERK OF N.C. COURT OF APPEALS WOULD NEVER HAVE DOCKETED THE SAID MOTIONS FOR A RULING (OR) GIVEN A DOCKET CASE NUMBER PO3-956; THIS IS DESPITE THE FACT PETITIONER HAD SOMEONE CALL HIM AND HE SAID "YES" THE MOTIONS CAN BE FILED IN THIS COURT! (919) 733-3561. MR. CONNELL SAID PROCEDURE IS THAT "IF" THE MOTIONS COULDN'T BE FILED OR HEARD IN THIS COURT, HE WOULD HAVE RETURNED THEM AND INSTRUCTED OF HOW IT WAS "MANDATORY" TO FILE THE SAID MOTIONS IN SUPERIOR COURT! THE STATE'S ATTORNEY KATHLEEN U. BALDWIN WOULDN'T NEED TO FILE (3) "SEPERATE" IDENTICAL RESPONSES EITHER, ASKING THE COURT TO DISMISS (OR) DENY PETITIONER'S MOTIONS "UNLESS" THE COURT OF APPEALS HAS THE POWER AND AUTHORITY TO GRANT PETITIONER'S MOTIONS. (EMPHASIS SUPPLIED).

3) PETITIONER WOULD ALSO LIKE TO BRING TO THE COURTS ATTENTION THAT AGAIN ON ALL (3) MOTIONS PETITIONER FILED IN THIS COURT UNDER DISCUSSION, STATES ATTORNEY BALDWIN "FAIL" TO PROTEST ANY OF PETITIONER'S CONTENTIONS IN ANY ONE OF THE THREE MOTIONS; AS IT'S OBVIOUS IN ALL (3) MOTIONS THAT ALL PETITIONER'S STATE AND FEDERAL RIGHTS WERE VIOLATED IN

SO MANY WAYS THAT PETITIONER CAN'T
COUNT THEM ALL.

7. PETITIONER CONTENDS THAT THE PURPOSE
OF THE ASSISTANT ATTORNEY GENERAL TO EVEN
RESPOND "AT ALL" TO ANY SUBMITTED MOTIONS
IS TO POINT OUT HOW PETITIONER IS WRONG
IN HIS ASSERTED GROUNDS FOR RELIEF; IN ANY
PARTICULAR MOTION. (NOT "WINNING" AT ALL COSTS) HOWEVER,
STATE'S ATTORNEY BALDWIN DIDN'T AND COULDN'T
RESPOND TO ANYTHING IN ANY OF PETITIONER'S
MOTIONS, BECAUSE AS THE BIBLE SAYS, "THE
HANDWRITING IS ON THE WALL"!

8. PETITIONER IS SEEKING JUSTICE
AND A LAWFUL SENTENCE, AND APPEALING TO
THIS HONORABLE COURT TO REVIEW PETITIONER'S
MOTIONS, THE RECORD, THE ILLEGAL INDICT-
MENTS, THE ILLEGAL SENTENCES, THE ILLEGAL
REPRESENTATION OF COUNSELOR ZIMMERMAN BEING
PETITIONER'S PRIOR SENTENCING JUDGE, THE ILLEGAL ACT
OF FORCING PETITIONER TO DEFEND HIMSELF AT THE WITH-
-DRAW HEARING, HOW PETITIONER WAS ILLEGALLY
SENTENCED WITH NO PSY REPORT, THE ILLEGAL
JUDGMENT AND COMMITMENT PAPERS, HOW
PETITIONER WAS ILLEGALLY SENTENCED ON THE DOUBLE-

- JEOPARDY INDICTMENTS, ILLEGALLY SENTENCED ON 8 WAIVERS WITH CONSECUTIVE SENTENCES AND COUNSEL JUST SAT BACK AND SAID NOTHING; ILLEGALLY FILLING IN BLANK PLEA BARGAIN, THE PROSECUTOR ILLEGALLY RELEASING AN INMATE FROM PRISON EARLY IN EXCHANGE FOR A FALSE STATEMENT AGAINST PETITIONER, THE PROSECUTOR ILLEGALLY RUNNING WITNESSES FOR DEFENSE OUT OF TOWN, THE PROSECUTOR ILLEGALLY THREATEN PETITIONER WITH THE DEATH PENALTY SENTENCE, THE PROSECUTOR ILLEGALLY COVERED-UP THE CRIME OF ROBERT NICHOLS STEALING PETITIONERS TRAILER AND SELLING IT, THE PROSECUTOR ILLEGALLY THREATEN DEFENSE WITNESSES WITH SEVERE PROSECUTION ON PENDING CHARGES IF THEY DIDN'T CHANGE THEIR STATEMENTS AND GO AGAINST PETITIONER, AND OFFERING TO DISMISS AND GIVE PRO-BATION TO ALL WITNESSES ON THEIR PENDING CHARGES IF THEY COOPERATE WITH THE PROSECUTOR. WITNESSES "RECORDS" WILL VARY THE PROSECUTOR ILLEGALLY DID WHATEVER IT TOOK TO SEND PETITIONER AWAY FOR THE REST OF HIS NATURAL LIFE. THE WORD "LEGAL" DOES NOT APPLY ANYWHERE THROUGHOUT THESE PROCEEDINGS, SO NATURALLY PETITIONER SEEKS "JUSTICE" IN THE HIGHER COURT!

WHEREFORE, IN VIEW OF ALL THE ABOVE
MISCARRAGES OF JUSTICE THAT WERE COMMITTED
AGAINST PETITIONER, PETITIONER PRAYS THIS
HONORABLE COURT GRANT PETITIONER'S MOTION
IN ARREST OF JUDGMENT, AND ANY OTHER
RELIEF THIS HONORABLE COURT DEEMS JUST AND
PROPER.

RESPECTFULLY SUBMITTED THIS THE
24 DAY OF NOVEMBER 2003.

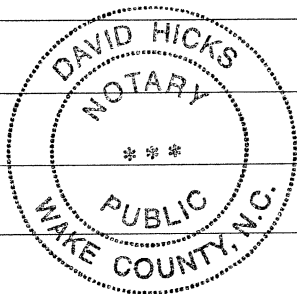
pro-se: Theodore Mead Kimble
THEODORE MEAD KIMBLE

DATE: 11-24-03

WITNESS: David Hicks

My Commission Expires 5-18-2008.

MY COMMISSION EXPIRES _____



* J *

VERIFICATION

I, THEODORE MEAD KIMBLE, BEING FIRST ONLY SWORN
DEPOSE AND SAY, I AM THE PETITIONER IN THE
FOREGOING PETITIONERS RESPONSE TO THE STATES ANSWER,
I HAVE READ THE SAME, AND THE STATEMENTS
CONTAINED THEREIN ARE TRUE, AS FOR ANY STATE-
MENTS MADE ON INFORMATION AND BELIEF, ARE MADE
IN GOOD FAITH, AND I BELIEVE TO BE TRUE.

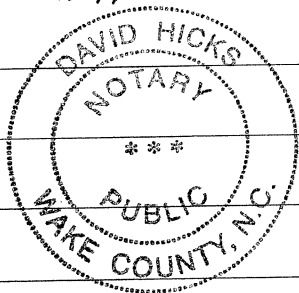
SIGNED UNDER PENALTY OF PERJURY, THIS THE 24
DAY OF NOVEMBER 2003.

Pro-se Theodore Mead Kimble
THEODORE MEAD KIMBLE

SWORN TO AND BEFORE ME THIS THE 24 DAY OF
NOVEMBER 2003,

DATE: 11-24-03
WITNESS: David Hicks

MY COMMISSION EXPIRES 5-18-2008.



CERTIFICATE OF SERVICE

I, Theodore Mead Kimble, do hereby certify
that the foregoing petitioners response to the
states answer was only served by placing the
same in the U.S. Mail, postage pre-paid and
addressed as follows:

Mr. Roy Cooper
Attorney General
P.O. Box 629,
Raleigh, N.C. 27602,

pro-se Theodore Mead Kimble
Theodore Mead Kimble
1300 Western Blvd.
Raleigh, N.C. 27606

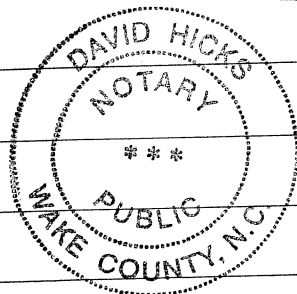
Sworn to and before me this 24th day of
November 2003.

DATE: 11-24-03

Witness: Daniel Huber

My Commission Expires

My Commission Expires 5-18-2008.



Robert Nicholes: "Proof of Perjury"

Transcript Testimony / First B & E and Ted's Confession

Summary:

Robert Nicholes committed perjury several times during his testimony at the trial of defendant Ronnie Kimble. It can be proven that Mr. Nicholes lied about his, "First B & E and Ted's Confession."

(Direct-Examination) Mr. Robert (Rob) Nicholes worked part-time and stated he worked at Lyles Building Materials from the beginning of September '96, till April 1, 1997 (TTP.1027.18-20). Although Mr. Nicholes had a prior criminal history, Ted Kimble did not. Still Rob made the assertion, "... we began stealing lumber and materials from job sites." (TTP.1028.10-12)

Mr. Nicholes claims he became closer to Ted Kimble toward November, December (TTP.1031.19-25), and continued to ask questions about the death of Ted's wife, Patricia Kimble. One late evening while on the way to a job site to steal building material, Rob asked Ted if he had anything to do with the death of his wife and Ted said, "yes." Ted then threaten to kill Rob if he told anyone (TTP.1032.1-25). Ted became upset and hysterical, and crying, and spent 20 minutes discussing his childhood (TTP.1033.1-8).

(Cross-Examination) Rob Nicholes asserts the theft of building material started December 1996 (TTP.1053.21-25), and occurred over a three month period, from December 1996, till February 1997. During which time Rob had the knowledge of Ted's confession (TTP.1054.1-8).

Once pressed Rob admits to being paid \$300 for his first trip to steal materials, but claims he was lead to believe the transaction was legitimate, despite the fact the trip took place at 3:00 AM. in the morning, while it was snowing (TTP.1056.6-23). Rob flip-flops over rather or not he actually

believed the transaction was legitimate (TTP.1057.6-25). Once at the scene of the first B&E Rob claims to have waited in his car and studied for a Spanish test, while Ted removed screws from "windows and doors." Rob then helped load the items into the truck (TTP.1058.9-24). This B&E took place off Brassfield Road near Bryan Boulevard. It involved only "doors and windows" worth several thousand dollars (TTP.1060.6-23).

In the following day of testimony Rob continued to flip-flop as to whether or not he believed his first trip was legitimate, but then Rob admitted when Ted said \$300 dollars, he was there for the money (TTP.1069.9-25). Even so Rob went on trying not to give a straight answer (TTP.1070.1-13).

Rob went on to tell the jury that Ted had written him company checks labelled for "building materials" (TTP.1071.19-25), in order to pin the B&E's on him in the event he were to tell police of the confession (TTP.1072.1-25). Rob cashed the checks because as a college student he really needed the money. Rob then made it clear, prior to the 3 A.M. excursion for theft of windows and doors, he never sold any building materials to Ted (TTP.1073.1-25).

According to Rob it was during these thefts, this stealing, that he and Ted became close, and Ted made this admission to him. Rob says his first theft excursion was approximately two and a half months after meeting Ted (which would be Nov. '96) and agrees on December (96). Rob also says, "It was whenever the first snowfall was. That's how I remember. I don't remember the date" (TTP.1074.1-25).

Suddenly Rob contradicts everything he's said by making the

comment, "And I mean, for the first couple months, I'd done it for the money" (TTP.1078.2-5). Throughout Rob's entire testimony he claimed to have been fearful for his life, that Ted was going to kill him.

Although Ted left his gun at Rob's parent's house, Rob was still scared of Ted and returned the gun. Rob said this happened at his wedding reception (TTP.1079.2-17). In early February (TTP.1087.11-20).

Mr. Nicholes goes on to acknowledge his involvement in stealing go-carts from Northern Hydraulics in late January ('97). This was before his wedding (TTP.1089.17-25). Rob then agrees Ted's intimidation came well before this time (TTP.1090.1-5).

NOTE: It's important to note Rob's claims of intimidation followed Ted's supposed confession, which by all accounts of Rob's testimony took place sometime in early December '96. The thefts occurred over a three month period (Dec. '96-Feb '97), during which time Mr Nicholes had the knowledge of Ted's confession (TTP.1054.1-8)

***FACTS**: The **FACTS** do not support Robert Nicholes testimony. Anyone can see the minor contradictions and flip-flop in Mr. Nicholes testimony, but the following proves he committed "PERJURY".

Mr. Nicholes gave plenty of details to distinguish his supposed "first B & E" involvement, from all other cases. Rob said, "the theft took place off Brassfield Road near Bryan Boulevard, the only items taken were doors and windows worth thousands of dollars" (TTP.1060.6-23). Of course Rob failed to mention his parents live only two blocks away from the crime scene. As Rob stated twice, it had snowed (TTP.1056.18 / TTP.1074.16); "But it WASN'T the first snow of the year."

Nevertheless both Rob and Ted were indicted on this crime, because Rob rode around with police and pointed out all the robbed building sites (TTP.1090.23-25/TTP.1091.1-14). According to the indictments, this B & E took place in mid-January 1997, and NOT December 1996 as Rob testified. (See EXHIBITS/Indictment File No. 97CRS23708; File No. 97CRS23664.)

Mr. Nicholes also claim he never sold building materials to "Lyles" prior to his first B & E (TTP.1073.17-24), that after the first B & E Ted wrote company checks in order to pin crimes on him, if he didn't keep silent about the supposed confession. (TTP.1071.19-25/TTP.1072.1-25). Upon review of company records, the checks show Robert Nicholes sold stolen building materials to Lyles a month or more prior to the first B & E. (See EXHIBIT / Lyles Building Material, Cancelled Ch. #'s 14090 ^{See additional checks})

While Mr. Nicholes claims Ted Kimble lead him into a life of stealing, the FACTS show it to be the other way around. Rather it be Rob's prior conviction in California for having stolen property (TTP.1049.21-24), or the company records which show Rob selling stolen lumber to Lyles prior to the first B & E. By Mr. Nicholes own testimony and supporting facts, Ted wasn't involved in this theft until January 1997, therefore Ted wasn't riding around with Rob during December 1996, stealing building material and making a supposed confession.

Patrick Pardee's Transcript Testimony, and Theodore (Ted) Kimble's affidavit also contradicts Robert Nicholes' Testimony. Patrick testified that he noticed Rob bringing Ted building material on a regular basis around Christmas '96, and the first time out he was told Rob had bought the lumber from a friend (TTP.1138.1-25).

Patrick Pardee gave details of his first B&E involvement, which included Ted and Rob. According to Patrick the crime ~~took~~ place in the vicinity of Westridge and Bryan Boulevard (TTP.1139.1-25), In an upscale subdivision. The only thing taken was boards of some type; two-by-something (TTP.1140.1-16) Patrick guessed at the date and said, "approximately mid, late January," (97). (TTP.1112.21)

According to Ted Kimble's affidavit the forgoing statements of Patrick were truthful, with the exception of the date. Ted stated the same facts and said the theft was of "two-by-fours". It took place on January 2, 1997. These statements are proven FACT by the Indictment. (See EXHIBIT/Indictment File No. 97 CRS 23658)

This "Evidence" further proves perjury on the part of Robert Nicholas. According to the dates on the indictments, the theft of "two-by-fours" took place prior to the theft of "Doors and Windows." Rob Nicholas intire testimony revolved around his claim, his first involvement in the B&E's took place over the theft of "doors and windows."

Yet another lie comes to light. Rob made the claim he and Ted went and picked up "two-by-fours" Ted had bought from a job superintendent or foreman, that "we" had a billed receipt. (TTP.1061.22-25/TTP.1062.1-11). In case at bar, defendant contends Rob was making a reference to the two-by-fours reported stolen, in the Indictment File No. 97 CRS 23658. This shows another example of "Perjury". Rob Nicholas is caught in yet another lie! These were the same two-by-fours Rob lead Ted to believe he had bought from a friend. This was the first theft involvement for Patrick Pardee and Ted Kimble.

434

32

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division
GUILFORD COUNTY

File No. 97 CRS 23708

Film No.

STATE VERSUS

Defendant

ROBERT HAROLD NICHOLS

Date of Offense
Between 01/01/97
and 02/01/97

Offense in Violation of G.S.
14-54(a); 14-72(b)(2);

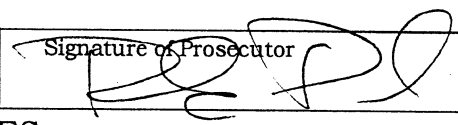
INDICTMENT

- I. FELONIOUS BREAKING AND ENTERING
- II. FELONIOUS LARCENY

I. The jurors for the State upon their oath present that on or between January 1, 1997 and February 1, 1997 and in Guilford County, the defendant, Robert Harold Nichols unlawfully, willfully and feloniously did break and enter a building under construction lot #22 located at 2017 Brassfield Rd with the intent to commit a felony therein: larceny.

II. And the jurors for the State upon their oath present that on or between January 1, 1997 and February 1, 1997 and in Guilford County, the defendant, Robert Harold Nichols unlawfully, willfully and feloniously did steal, take and carry away Eight MW vinyl clad windows and three pre-hung doors, including a 9-foot triple door set, the personal property of Dees Building Inc. having a value of \$6,000 dollars, pursuant to the commission of the felonious breaking and entering described in Count I above.

Signature of Prosecutor



WITNESSES

D.D. Kasey G.P.D. 97-58152

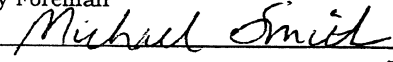
The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL

Date **NOV 03 1997**

Signature of Grand Jury Foreman



D!

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division
GUILFORD COUNTY

File No.97 CRS 23664

Film No.

STATE VERSUS

Defendant

THEODORE MEAD KIMBLE

Date of Offense

Between 01/01/97
and 02/01/97

Offense in Violation of G.S.
14-54(a);14-72(b)(2);

INDICTMENT

- I. FELONIOUS BREAKING AND ENTERING
- II. FELONIOUS LARCENY

I. The jurors for the State upon their oath present that on or between January 1, 1997 and February 1, 1997 and in Guilford County, the defendant, Theodore Mead Kimble unlawfully, willfully and feloniously did break and enter a building under construction lot #22 located at 2017 Brassfield Rd with the intent to commit a felony therein: larceny.

II. And the jurors for the State upon their oath present that on or between January 1, 1997 and February 1, 1997 and in Guilford County, the defendant, Theodore Mead Kimble unlawfully, willfully and feloniously did steal, take and carry away Eight MW vinyl clad windows and three pre-hung doors, including a 9-foot triple door set, the personal property of Dees Building Inc. having a value of \$6,000 dollars, pursuant to the commission of the felonious breaking and entering described in Count I above.

Signature of Prosecutor

WITNESSES

D.D. Kasey G.P.D. 97-58152

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL

Date NOV 03 1997

Signature of Grand Jury Foreman

Michael Smith

STATE OF NORTH CAROLINA

In the General Court of Justice
Superior Court Division
GUILFORD COUNTY

File No. 97 CRS 23658

Film No.

STATE VERSUS

Defendant

THEODORE MEAD KIMBLE

Date of Offense

Between 12/30/96
and 1/2/97

Offense in Violation of G.S.
14-54(a); 14-72(b)(2);

INDICTMENT

- I. FELONIOUS BREAKING AND ENTERING
- II. FELONIOUS LARCENY

I. The jurors for the State upon their oath present that on or between December 30, 1996 and January 2, 1997 and in Guilford County, the defendant, Theodore Mead Kimble unlawfully, willfully and feloniously did break and enter a house under construction at located at 4202 Butternut Terrace Greensboro, N.C. with the intent to commit a felony therein: larceny.

II. And the jurors for the State upon their oath present that on or between December 30, 1996 and January 2, 1997 and in Guilford County, the defendant, Theodore Mead Kimble unlawfully, willfully and feloniously did steal, take and carry away 2X4X10, 2X4X12 Lumber, the personal property of Dennis Ray Sosebee Greensboro, NC having a value of \$1758.43 dollars, pursuant to the commission of the felonious breaking and entering described in Count I above.

Signature of Prosecutor

WITNESSES

D.D. Kasey G.P.D. 97-52452

The witnesses marked "X" were sworn by the undersigned Foreman of the Grand Jury and after hearing testimony, this bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreman of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL

Date: NOV 03 1997

Signature of Grand Jury Foreman

Michael Smith

CC
21

IF IMAGES ARE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14090

66-55/531
02

PAY
TO THE
ORDER OF

Rob Nicholas

11-15-98

\$

Twenty Dollars

DOLLARS

NationsBank

NationsBank, N.A.
Carolinas

Lead Smith

FOR

⑈014090⑈ ⑈053100559⑈ 021248588⑈

⑈0000004000⑈

MP

CLARKE AMERICAN BA

GUARDIAN * SAFETY

IF IMAGES ARE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14198

66-55/531
02

PAY
TO THE
ORDER OF

Rob Nicholas

NEED FOR 9748908 EXP 10-08-01

00.001\$

88582120

12-18-96

4E:10

850610

660 6000

19

17

\$

One Hundred fifty Dollars

NationsBank

NationsBank, N.A.
Carolinas

Lead Smith

FOR

⑈014198⑈ ⑈053100559⑈ 021248588⑈

⑈0000005000⑈

MP

CLARKE AMERICAN BA

GUARDIAN * SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14159

66-55/531
02

PAY
TO THE
ORDER OF

Rob Wickles

12-7 19*96* \$

\$ *164.22*

DOLLARS

Security Features
NationsBank

NationsBank
NationsBank, N.A.
Carolinas

FOR *Well Entry 12-7-96*

Ron I. Kehl

⑆014159⑆ ⑆053100559⑆ 021248588⑆

⑆000016497⑆

CLARKE AMERICAN BA GUARDIAN SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14194

66-55/531
02

PAY
TO THE
ORDER OF

Rob Wickles

12-14 19*96* \$

\$ *162.02*

DOLLARS

Security Features
NationsBank

NationsBank
NationsBank, N.A.
Carolinas

FOR *Well Entry 12-14-96*

R. I. Kehl

⑆014194⑆ ⑆053100559⑆ 021248588⑆

⑆000016207⑆

CLARKE AMERICAN BA GUARDIAN SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14208

66-55/531
02

8/06/99
10/10/99
10/10/99
OK

00205 091 008013 12-24-96 14:29 CASHED CHECK
021248588 \$200.00

9E1096013E 19 96

\$ 200.00

PAY TO THE ORDER OF *Rob Nicholas*
Two Hundred Dollars

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

Ed Lamb

MP

FOR ⑈014208⑈ :05100559: 02124858⑈ ⑈0000020000⑈

CLARKE AMERICAN BA GUARDIAN & SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14212

66-55/531
02

9E1096013E 19 96

00203 033 068169 12-30-96 11:51 CASHED CHECK
021248588 \$110.00

\$ 110.00

PAY TO THE ORDER OF *Rob Nicholas*
ONE Hundred Ten Dollars

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

Ed Lamb

MP

FOR ⑈014212⑈ :05100559: 02124858⑈ ⑈0000011000⑈

CLARKE AMERICAN BA GUARDIAN & SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14219

66-55/531
02

12-28 19 76

PAY TO THE ORDER OF

Rob Nicholas

\$ 140.00

one Hundred forty Dollars

DOLLARS

NationsBank

NationsBank, N.A.
Carolinas

Rob Nicholas

FOR

⑆0⑆④④②①9⑆ ⑆053①00559⑆ 02①248588⑆

⑆00000①4000⑆

MP

CLARKE AMERICAN BA

GUARDIAN * SAFETY

Security features are included on back

Details on back

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14171

66-55/531
02

12-11 19 76

PAY TO THE ORDER OF

Rob Nicholas

\$ 220.00

Two Hundred twenty Dollars

DOLLARS

NationsBank

NationsBank, N.A.
Carolinas

Rob Nicholas

FOR

⑆0⑆④④①7①⑆ ⑆053①00559⑆ 02①248588⑆

⑆00000②2000⑆

MP

CLARKE AMERICAN BA

GUARDIAN * SAFETY

Security features are included on back

Details on back

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14472

66-55/531
02

PAY TO THE ORDER OF Rob Winkles 3-19 19 97 \$
ONE HUNDRED DOLLARS \$ 100.00

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

FOR Payee + Debits *[Signature]*

MP

⑈014472⑈ ⑆05310059⑆ 021248588⑈ ⑈0000010000⑈

CLARKE AMERICAN BA GUARDIAN & SAFETY

ImageSAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14228

66-55/531
02

PAY TO THE ORDER OF Rob Winkles 12-30 19 96 \$
CASHED CHECK \$152.00

one hundred fifty two Dollars \$ 152.00

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

FOR *[Signature]*

MP

⑈014228⑈ ⑆05310059⑆ 021248588⑈ ⑈0000015200⑈

CLARKE AMERICAN BA GUARDIAN & SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC. DL9748908
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14217

66-55/531
02

9E1095075 23

885842120

60.02#

EX 10-01

PAY TO THE ORDER OF Bob Wickes 96-03-21 891890 8E0 E0E00
CASHED CHECK

\$ 210.09

Two Hundred Ten Dollars 09

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

FOR

Bob Wickes

⑆014217⑆ ⑆053100559⑆ 021248588⑆ ⑆0000021009⑆ MP

CLARKE AMERICAN BA GUARDIAN * SAFETY

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14207

66-55/531
02

9E1095075-2 96

885842120

#173.34

EX 10-01

PAY TO THE ORDER OF Bob Nicholas 96-03-21 891890 160 50200
CASHED CHECK

\$ 173.34

One Hundred seventy three Dollars 09

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

FOR

Bob Nicholas

⑆014207⑆ ⑆053100559⑆ 021248588⑆ ⑆0000017334⑆ MP

CLARKE AMERICAN BA GUARDIAN * SAFETY

IT IMAGESafe logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14450

66-55/531
02

PAY
TO THE
ORDER OF

Justice works

3-14 19 *97*

\$ *105.00*

ONE Hundred & Five Dollars

DOLLARS

Security Features
Prints on back

NationsBank
NationsBank, N.A.
Carolinas

[Signature]

FOR

⑆0⑆⑆450⑆ ⑆053⑆00559⑆ 02⑆248588⑆

⑆00000⑆0500⑆

MP

CLARKE AMERICAN BA GUARDIAN SAFETY

IT IMAGESafe logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14095

66-55/531
02

PAY
TO THE
ORDER OF

Bob Nichols

11-14 19 *94*

\$ *204.09*

Two hundred and four and 09/100

NationsBank
NationsBank, N.A.
Carolinas

DOLLARS

Security Features
Prints on back

FOR

⑆0⑆⑆4095⑆ ⑆053⑆00559⑆ 02⑆248588⑆

Bob Nichols

⑆00000⑆20409⑆

MP

CLARKE AMERICAN BA GUARDIAN SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

PAY TO THE ORDER OF Rob Nicholas

9748908 10-a-2001
992842120 021248588 01-31-97 14102 CASHED CHECK
540640195 991095045 1997 \$

\$239.81

Two Hundred Thirty Nine Dollars 81/100

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

Red Smith

FOR _____

⑆014262⑆ ⑆053100559⑆ 021248588⑆

⑆000002398⑆ MP

GUARDIAN & SAFETY CLARKE AMERICAN BA

LYLES BUILDING MATERIALS - SALVAGE INC.

1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

PAY TO THE ORDER OF Rob Nicholas

9748908 10-a-2001
992842120 021248588 01-31-97 14102 CASHED CHECK
540640195 991095045 1997 \$

\$192.08

One Hundred Ninety Two Dollars 08/100

DOLLARS

NationsBank
NationsBank, N.A.
Carolinas

Red Smith

FOR _____

⑆014332⑆ ⑆053100559⑆ 021248588⑆

⑆0000019208⑆ MP

GUARDIAN & SAFETY CLARKE AMERICAN BA

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14485

PAY TO THE ORDER OF Justice watts

3-24 1997 \$

66-55/531
02

Two Hundred twenty Dollars 00/100 DOLLARS \$ 220.00

NationsBank
NationsBank, N.A.
Carrollinas

Money Orders
 Cashier's Check

Red of bank

FOR _____

⑆014485⑆ ⑆053100559⑆ 021248588⑆

⑆000002000⑆

MP

CLARKE AMERICAN BA

GUARDIAN SAFETY

IF IMAGE SAFE logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14465

PAY TO THE ORDER OF Justice watts

3-18 1997 \$

66-55/531
02

Two Hundred sixty Dollars 00/100 DOLLARS \$ 260.00

NationsBank
NationsBank, N.A.
Carrollinas

Money Orders
 Cashier's Check

Red of bank

FOR _____

⑆014465⑆ ⑆053100559⑆ 021248588⑆

⑆000002600⑆

MP

CLARKE AMERICAN BA

GUARDIAN SAFETY

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14437

PAY TO THE ORDER OF

Justice Watts

3-10-97

66-55/531 02

Three Hundred & fifty Dollars ⁰⁰/₁₀₀

\$ 350 ⁰⁰/₁₀₀

NationsBank

NationsBank, N.A.
Carolinas

DOLLARS

Security Features are included. Check on back.

GUARDIAN * SAFETY

FOR

Just Watts

⑈014437⑈ ⑆053100559⑆ 021248588⑈

⑈0000035000⑈

MP

If MicroSafe logo in light gray tone is not present on back of document - Do not cash.

LYLES BUILDING MATERIALS - SALVAGE INC.
1700 W. LEE ST. 294-0789
GREENSBORO, NC 27403

14422

PAY TO THE ORDER OF

Justice Watts

00.502\$

885842120

981095075

3-4

66-55/531 02

1D 6 01313 9

11/02

00222 050 127297

981095075

19

two hundred & five Dollars ⁰⁰/₁₀₀

\$ 205 ⁰⁰/₁₀₀

NationsBank

NationsBank, N.A.
Carolinas

DOLLARS

Security Features are included. Check on back.

GUARDIAN * SAFETY

FOR

Just Watts

⑈014422⑈ ⑆053100559⑆ 021248588⑈

⑈0000020500⑈

MP

Robert Nicholes "Proof of Perjury"

Transcript Testimony / Prior Conviction in California

(Summary)

Robert (Rob) Nicholes had prior criminal convictions in California (TTP.1049.21-24). One conviction was for receiving stolen property, knowing it was stolen. When asked, "Did you work out a deal on that case?" Rob said, "No, sir. I served 90 days." Upon being pressed on the issue Rob became offensive, D.A. Panosh jumped in with several objections (TTP.1050.1-25). Once again Rob said, "No," in reference that he had received anything from the State of California in exchange for his guilty plea. Then came several more objections from Panosh (TTP.1051.1-25).

Finally Rob broke down, he started by claiming it had been eight, nine years ago, and hard to remember. D.A. Panosh broke in with a final objection and was overruled. Rob made the claim that he had already answered the question. Yet Rob then admitted the State of California reduced his felony charge down to a misdemeanor in exchange for his guilty plea. (TTP.1052.1-14).

(FACTS)

Rob first said he did NOT work a deal, and then admitted he did, thus Rob Nicholes lied and committed perjury. D.A. Panosh knew Rob was lying when he denied working a deal, and kept trying to object in order to cover up.

Rob's criminal records show his conviction in California took place in 1993, only 5 years prior, and NOT the 8-9 years earlier as he claim. Once again, proof of another lie. (see Exhibit C-1).

Robert Nicholes: "Proof of Perjury"

Transcript Testimony / Plea Agreement Limited to Property Crimes -
Excludes (2) D.W.I.

(Summary)

Robert Nicholes signed a plea agreement with District Attorney Richard Panosh on April 18, 1999 (TTP. 1030.12-13). This agreement was limited to property crimes (TTP. 1039.24-25).

Mr. Nicholes denied having a drinking problem despite a number of D.W.I. charges, "two arrest, one dismissal." Mr. Nicholes made it clear his plea agreement with the prosecution only pertained to property crimes, that in no-way was he to receive any help from the prosecution toward the two pending D.W.I. charges, in exchange for his testimony (TTP. 1083.1-21).

(FACTS)

Upon review of Robert Nicholes' D.O.C. criminal records (see Exhibit C-1) anyone can see that Mr. Nicholes committed perjury. Both D.W.I. charges were ran concurrent on 4/30/1999, with the property crimes. Mr. Nicholes received probation on "ALL" charges.

NOTE: According to Robert Nicholes D.O.C. record, he is currently serving prison time, an active-sentence. Rob committed more property-crimes in '2002. He also committed an assault on a female in '2003.

EXHIBIT C-1




North Carolina Department of Correction Public Access Information System

W3C WAI-A
WCAG 1.0

Instructions: Here is the information you have requested for this offender.
(Note: Click here to view an Explanation of Terms and Data Elements used in the summary boxes.)

Data current as of 2:00 AM EST on: 09/21/2004

General Summary Information			
DOC Number: 0302131		Inmate Status: ACTIVE INACTIVE	
Name(s): NICHOLS, ROBERT NICHOLS, ROBERT H.		P&P Status:	
Demographics			
Gender:	MALE	Race:	WHITE
Age:	32	Birth Date:	10/08/1971
			

Most Recent Incarceration Summary	
Conviction Date: 12/11/2003	Total Term: 2 YEARS 4 MONTHS
Projected Release Date: 10/15/2005	
Primary Offense: B & E WITC FELONY (PRINCIPAL)	
Admission Date: 02/09/2004	Admitting Location: CRAVEN CI
Special Characteristics: COURT RECOM WORK REL	
Custody Classification: MINIMUM 1	Next Custody Review Date: 02/01/2005

Control Status: REGULAR POPULATION	Next Control Review: UNKNOWN
Number of Infractions: 0	Last Infraction On: N/A
Current Location: FORSYTH CC	
Previous Location: TYRRELL WORK FARM	
Last Movement: RECEIVED FROM TYRRELL WORK FARM	On: 08/03/2004
Prior Incarcerations? Y Detainers? N Escapes? N	

Most Recent Probation and Parole Summary
Status: CLOSED
Office of Supervision: DISTRICT 05 UNIT B
Crime: POSSESSING STOLEN GOODS (PRINCIPAL)
Crime Type: FELON
Punishment Type: INTERMEDIATE SS

**The sentence history for the offender follows.
Incarceration records are light blue; Supervision records are light green**

Incarceration Record for Sentence Number: BB-001					
Commitment Type:	INMATE				
Conviction Date:	12/11/2003	County of Conviction:	BRUNSWICK		
Service Status:	ACTIVE	Sentence Status:	ACTIVE		
Projected Release Date:	11/09/2004	Sentence Begin Date:	12/11/2003		
Actual Release Date:					
Punishment Type:	ACTIVE SS				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Minimum Term:	11 MONTHS	Maximum Term:	1 YEAR 2 MONTHS		
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	03050120	B & E WITC FELONY (PRINCIPAL)	12/10/2002	FELON	CLASS H

Incarceration Record for Sentence Number: BB-002

Commitment Type: INMATE
Conviction Date: 12/11/2003 **County of Conviction:** BRUNSWICK
Service Status: FUTURE **Sentence Status:** ACTIVE
Projected Release Date: 10/15/2005 **Sentence Begin Date:** 11/09/2004
Actual Release Date:
Punishment Type: ACTIVE SS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Minimum Term: 11 MONTHS **Maximum Term:** 1 YEAR 2 MONTHS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONSECUTIV TO SENTENCE NUMBER BB-001	03050120	LARCENY (PRINCIPAL)	12/10/2002	FELON	CLASS H

Incarceration Record for Sentence Number: BB-003

Commitment Type: INMATE
Conviction Date: 10/01/2003 **County of Conviction:** NEW HANOVER
Service Status: ACTIVE **Sentence Status:** ACTIVE
Projected Release Date: 09/22/2004 **Sentence Begin Date:** 01/26/2004
Actual Release Date:
Punishment Type: ACTIVE SS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Sentence Type 2: PROBATION REVOCATION
Minimum Term: 8 MONTHS **Maximum Term:** 10 MONTHS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BB-001	03000769	LARCENY (PRINCIPAL)	12/21/2002	FELON	CLASS H

Incarceration Record for Sentence Number: BB-004

Commitment Type: INMATE
Conviction Date: 04/30/1999 **County of Conviction:** GUILFORD
Service Status: EXPIRED
Projected Release Date: 09/15/2004 **Sentence Begin Date:** 01/26/2004
Actual Release Date: 09/15/2004
Punishment Type: ACTIVE SS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Sentence Type 2: PROBATION REVOCATION
Minimum Term: 8 MONTHS **Maximum Term:** 10 MONTHS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BB-001	97023715	B & E WITC FELONY (PRINCIPAL)	02/14/1997	FELON	CLASS H

Incarceration Record for Sentence Number: BB-005

Commitment Type: INMATE
Conviction Date: 04/30/1999 **County of Conviction:** GUILFORD
Service Status: EXPIRED
Projected Release Date: 09/15/2004 **Sentence Begin Date:** 01/26/2004
Actual Release Date: 09/15/2004
Punishment Type: ACTIVE SS
Sentence Type 1: DEPT OF CORR DIV OF PRISONS
Sentence Type 2: PROBATION REVOCATION
Minimum Term: 8 MONTHS **Maximum Term:** 10 MONTHS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code

CONCURRENT TO SENTENCE NUMBER BB-001	97023711	B & E WITC FELONY (PRINCIPAL)	01/20/1997	FELON	CLASS H
---	----------	----------------------------------	------------	-------	---------

Incarceration Record for Sentence Number: BB-006					
Commitment Type:	INMATE				
Conviction Date:	04/30/1999		County of Conviction:	GUILFORD	
Service Status:	EXPIRED				
Projected Release Date:	09/15/2004		Sentence Begin Date:	01/26/2004	
Actual Release Date:	09/15/2004				
Punishment Type:	ACTIVE SS				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Sentence Type 2:	PROBATION REVOCATION				
Minimum Term:	8 MONTHS		Maximum Term:	10 MONTHS	

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BB-001	97023700	B & E WITC FELONY (PRINCIPAL)	02/04/1997	FELON	CLASS H

Incarceration Record for Sentence Number: BB-007					
Commitment Type:	INMATE				
Conviction Date:	03/18/2004		County of Conviction:	NEW HANOVER	
Service Status:	EXPIRED				
Projected Release Date:	07/26/2004		Sentence Begin Date:	03/18/2004	
Actual Release Date:	07/26/2004				
Punishment Type:	ACTIVE SS				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Minimum Term:			Maximum Term:	5 MONTHS	

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code

CONCURRENT TO SENTENCE NUMBER BB-001	03059817	ASSAULT ON FEMALE (PRINCIPAL)	08/12/2003	MISD.	CLASS A1 MISDEMEANOR SS
--------------------------------------	----------	-------------------------------	------------	-------	-------------------------

Incarceration Record for Sentence Number: BA-001					
Commitment Type:	INMATE				
Conviction Date:	04/30/1999	County of Conviction: GUILFORD			
Service Status:	EXPIRED				
Projected Release Date:	10/07/2002	Sentence Begin Date: 04/15/2002			
Actual Release Date:	07/18/2002				
Punishment Type:	DWI				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Sentence Type 2:	PROBATION REVOCATION				
Sentence Type 3:	REGULAR PAROLE				
Minimum Term:		Maximum Term:	1 YEAR		
Parole Begin Date:	07/18/2002	Parole End Date:	07/18/2002		
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	97079416	DWI LEVEL 2 (PRINCIPAL)	11/21/1997	MISD.	NON CLASS CODE

Incarceration Record for Sentence Number: BA-002					
Commitment Type:	INMATE				
Conviction Date:	04/30/1999	County of Conviction: GUILFORD			
Service Status:	EXPIRED				
Projected Release Date:	04/23/2002	Sentence Begin Date: 04/15/2002			
Actual Release Date:	04/23/2002				
Punishment Type:	DWI				
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS				
Sentence Type 2:	PROBATION REVOCATION				
Minimum Term:		Maximum Term:	1 MONTH		
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER BA-001	97076136	DWI LEVEL 4 (PRINCIPAL)	10/25/1997	MISD.	NON CLASS CODE

Supervision Record for Sentence Number: 08-001					
Commitment Type:		PROBATION/PAROLE			
Conviction Date:		10/01/2003	County of Conviction:		NEW HANOVER
Punishment Type:		INTERMEDIATE SS			
Sentence Type 1:		PROBATION			
Sentence Type 2:		SUSPENDED SENTENCE			
Sentence Type 3:		DEPT OF CORR DIV OF PRISONS			
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER 07-001	03000769	POSSESSING STOLEN GOODS (PRINCIPAL)	12/14/2002	FELON	CLASS H

Supervision Record for Sentence Number: 07-001					
Commitment Type:		PROBATION/PAROLE			
Conviction Date:		10/01/2003	County of Conviction:		NEW HANOVER
Punishment Type:		INTERMEDIATE SS			
Sentence Type 1:		PROBATION			
Sentence Type 2:		SUSPENDED SENTENCE			
Sentence Type 3:		DEPT OF CORR DIV OF PRISONS			
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER 06-001	03000769	LARCENY (PRINCIPAL)	12/14/2002	FELON	CLASS H

Supervision Record for Sentence Number: 06-001	
Commitment Type: PROBATION/PAROLE	
Conviction Date: 04/30/1999	County of Conviction: GUILFORD
Punishment Type: INTERMEDIATE SS	
Sentence Type 1: PROBATION	

Sentence Type 2: SPECIAL PROBATION (SPLIT)

Sentence Type 3: COUNTY JAIL

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER 05-001	97023715	B & E (FEL/MISD) (PRINCIPAL)	02/04/1997	FELON	CLASS H

Supervision Record for Sentence Number: 05-001

Commitment Type: PROBATION/PAROLE

Conviction Date: 04/30/1999

County of Conviction: GUILFORD

Punishment Type: INTERMEDIATE SS

Sentence Type 1: PROBATION

Sentence Type 2: SPECIAL PROBATION (SPLIT)

Sentence Type 3: COUNTY JAIL

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER 04-001	97023711	B & E (FEL/MISD) (PRINCIPAL)	01/30/1997	FELON	CLASS H

Supervision Record for Sentence Number: 04-001

Commitment Type: PROBATION/PAROLE

Conviction Date: 04/30/1999

County of Conviction: GUILFORD

Punishment Type: INTERMEDIATE SS

Sentence Type 1: PROBATION

Sentence Type 2: SPECIAL PROBATION (SPLIT)

Sentence Type 3: COUNTY JAIL

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER 03-001	97023700	B & E (FEL/MISD) (PRINCIPAL)	02/04/1997	FELON	CLASS H

Supervision Record for Sentence Number: 03-001

Commitment Type: PROBATION/PAROLE
Conviction Date: 04/30/1999 **County of Conviction:** GUILFORD
Punishment Type: DWI
Sentence Type 1: PROBATION
Sentence Type 2: SPECIAL PROBATION (SPLIT)
Sentence Type 3: COUNTY JAIL

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
CONCURRENT TO SENTENCE NUMBER 02-001	97079146	DWI LEVEL 2 (PRINCIPAL)	11/21/1997	MISD.	NON CLASS CODE

Supervision Record for Sentence Number: 02-001

Commitment Type: PROBATION/PAROLE
Conviction Date: 04/30/1999 **County of Conviction:** GUILFORD
Punishment Type: DWI
Sentence Type 1: PROBATION
Sentence Type 2: SUSPENDED SENTENCE
Sentence Type 3: COUNTY JAIL

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	97076136	DWI LEVEL 4 (PRINCIPAL)	10/25/1997	MISD.	NON CLASS CODE

Supervision Record for Sentence Number: 01-001

Commitment Type: PROBATION/PAROLE
Conviction Date: 03/22/1993 **County of Conviction:** OTHER
Punishment Type: NON-N.C. OFF.
Sentence Type 1: PROBATION
Sentence Type 2: SUSPENDED SENTENCE
Sentence Type 3: INTERSTATE COMPACT
Interstate Compact State: CALIFORNIA

Note: For the most recent information on the status of the offender's record, check with the state of conviction.

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	00000000	LARCENY (OVER \$200)	11/10/1992	UNKN.	NON CLASS CODE

(PRINCIPAL)

[Back](#)

Disclaimer

Every effort has been made to report accurate and complete information. Any questions concerning the accuracy of this information should be submitted, in writing, to the North Carolina Department of Correction, c/o Public Information Office, MSC 4202, Raleigh, NC 27699-4202. Any misuse of this information is strictly prohibited and violators are subject to prosecution.

This page has been accessed 13,998,255 times since 05/06/2003.

[\[NC DOC Home Page](#) [Main Menu \]](#)

©2002 North Carolina Department of Correction.
All rights reserved.

Revision: 1.19
Send comments to webmaster@doc.state.nc.us

STATE OF NORTH CAROLINA

Guilford County

In The General Court Of Justice
Before The Clerk

IN THE MATTER OF:

Name And Address

Robert Harold Nichols

CRIMINAL RECORD CHECK

Records Check From This Date To Present

May 1983

This is to certify that I have searched the indices to criminal actions in this office from the date shown above to the present to determine:

only the convictions and pending charges, if any,

the entire criminal record, if any,

which appear in the records under the name given above, and found:

that no record was indexed by the name given above.

the following excerpts from the public records indexed by the name given above.

The criminal records in this office are indexed solely by name and not by any other identifying characteristic. This office cannot guarantee that the records listed herein belong to the individual for whom such record is sought.

File No.	Race/Sex	DOB	Charge	Date Disposed And Disposition
		10/8/71	See Attached 4 pages	

Date Of Search

8/28/00

Signature

Melissa Sutton

Deputy CSC Assistant CSC Clerk Of Superior Court

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023715 51
DF:030297 (F) FELONY LARCENY GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

DF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023723 G
DF:050997 (F) BREAKING AND OR ENTERING (F) NEVER 010200 CRS
SPEC. COND: DISMISS/ADA PANOSH
DF:050997 (F) LARCENY AFTER BREAK/ENTER NEVER 010200 CRS
SPEC. COND: DISMISSAL/ADA PANOSH

NICHOLS,ROBERT,HAROLD * 5665 HORNADA S=M R=W DOB=10081971 97CR 040741 G
AKA NICHOLS,ROBERT,HAROLD @
DF:013097 (F) BREAKING AND OR ENTERING (F) TRANSFERRED TO S.C. 110397 CR
DF:013097 (F) LARCENY AFTER BREAK/ENTER TRANSFERRED TO S.C. 110397 CR
DF:013097 (F) POSSESSION OF STOLEN GOODS (F) TRANSFERRED TO S.C. 110397 CR
DF:013097 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51
DF:013097 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51
DF:013097 (F) POSSESSION OF STOLEN GOODS (F) DISMISSED BY DA 043099 CRS

DF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD * 5665 HORNADA S=M R=W DOB=10081971 97CR 040742 G
AKA NICHOLS,ROBERT,HAROLD @
DF:021097 (F) BREAKING AND OR ENTERING (F) TRANSFERRED TO S.C. 110397 CR
DF:021097 (F) LARCENY AFTER BREAK/ENTER TRANSFERRED TO S.C. 110397 CR
DF:021097 (F) POSSESSION OF STOLEN GOODS (F) TRANSFERRED TO S.C. 110397 CR
DF:021097 (F) BREAKING AND OR ENTERING (F) DISMISSED BY DA 043099 CRS
SPEC. COND: DISMISSED BY ADA RICHARD PANOSH
DF:021097 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 043099 CRS
DF:021097 (F) POSSESSION OF STOLEN GOODS (F) DISMISSED BY DA 110597 CRS
SPEC. COND: DISMISSAL-PANOSH (DEFT INDICTED ON 1ST & 2ND COUNTS)

DF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, *END*

OF:OFFENSE DATE,DOB=BIRTH,(M)MISD,(F)FELONY,(T)TRAFFIC, MORE-
400 GUILFORD-BR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023714 G
OF:020397 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023711 51
OF:020397 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023711 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023715 G
OF:020497 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
FINE/COSTS# REST# 1286.00 SENT:008-010M TYPE: I FROB:060M SUPERVISED
SEE ALSO: 97CRS023716, 97CRS023717, 97CRS023718, 97CRS023719 PLUS MORE
OF:020497 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023716 G
OF:020397 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51
OF:020397 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

OF:OFFENSE DATE,DOB=BIRTH,(M)MISD,(F)FELONY,(T)TRAFFIC, MORE-
400 GUILFORD-BR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023717 G
OF:022497 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51
OF:022497 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023718 G
OF:020297 (F) FELONY LARCENY GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023719 G
OF:031397 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51
OF:031397 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

OF:OFFENSE DATE,DOB=BIRTH,(M)MISD,(F)FELONY,(T)TRAFFIC, MORE-
400 GUILFORD-BR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023720 G
OF:031797 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51
OF:031797 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023721 G
OF:031997 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023715 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 77CRS023704 G
OF:010197 (F) FELONY LARCENY GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023705 G
OF:010197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:010197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023706 G
OF:010197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:010197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

OF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-GR
082900 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023707 G
OF:010197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:010197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023708 G
OF:010197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:010197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023709 G
OF:010197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:010197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

OF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-GR
082900 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS,ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023711 G
OF:013097 (F) FELONY LARCENY GUILTY 043099 CRS
FINE/DOSTS# REST# 6366.00 SENT:008-010M TYPE: I PROB:060M SUPERVISED
SEE ALSO: 97CRS023712, 97CRS023713, 97CRS023714
SPEC. COND: (EAGLES)

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023712 G
OF:020697 (F) FELONY LARCENY GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023711 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023713 G
OF:021297 (F) FELONY LARCENY GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023711 51

400 GUILFORD-BR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS.ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD #11 KELVINGT S=M R=W DOB=10081971 95CR 040123 B
OF:042295 (T) LICENSE NOT IN POSSESSION DISMISSED BY DA 102695 CR
SPEC. COND: ADDED ON 26 102695

NICHOLS,ROBERT,HAROLD 11 KELVINGTD S=M R=W DOB=10081971 95CR 066878 G
OF:100595 (T) DWLR DISMISSED BY DA 010596 CR

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023699 G
OF:011497 (M) MISDEMEANOR LARCENY GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023700 G
OF:020497 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
FINE/COSTS# REST# 9545.21 SENT:008-010M TYPE: I PRDB:060M SUPERVISED
SEE ALSO: 97CRS023699, 97CRS023701, 97CRS023702, 97CRS023703 PLUS MORE
SPEC. COND: (EAGLES)
OF:020497 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

OF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-BR

082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: NICHOLS.ROBERT,H? R=RACE: S=SEX: DOB:

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023701 G
OF:110197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:110197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023702 G
OF:123096 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:123096 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

NICHOLS,ROBERT,HAROLD 5665 HORNADA S=M R=W DOB=10081971 97CRS023703 G
OF:010197 (F) BREAKING AND OR ENTERING (F) GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51
OF:010197 (F) LARCENY AFTER BREAK/ENTER GUILTY 043099 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023700 51

OF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-BR

Robert Nicholes: "Proof of Perjury"

P.1

Transcript Testimony / Mr. Nicholes Voluntary Aid to Law Enforcement and Plea Agreement

(Summary)

Robert (Rob) Nicholes signed a plea agreement on April 18, 1997, with D.A. Richard Panosh of Guilford County (TTP. 1030.12-17).

Mr Nicholes never spent any time in jail despite being charged with 28 felonies (TTP. 1044. 2-14). Under cross examination Mr Nicholes "slip", and makes a reference to an agreement that came with the original three felonies (TTP. 1044. 12-18), Then goes on to deny working a deal before his arrest (TTP. 1044. 19-24).

Once Rob spoke to Mr Panosh, he was offered an agreement in which he would not serve any time. Detective Church had promised to help Rob on the B & E charges although it wasn't his case (TTP. 1045. 6-16). Rob never had to post a bond (TTP. 1045. 17-25), despite his earlier three felony charges (TTP. 1046. 1-10).

Mr. Nicholes claims he came to the police and confessed on his own. This took place on the morning of April 1, 1997 (TTP. 1047. 12-23). Rob wanted to come forward until he knew Ted had been arrested, because he feared Ted would kill him. The minute, the morning that Ted was arrested, Rob told everything, before there was a signed plea agreement (TTP. 1055. 1-19).

Under Redirect Examination Mr Nicholes tries to explain what happen on April 1, 1997 (TTP. 1090. 19-25), But actually avoids giving much detail. Rob does mention working with Detective John Davis from Guilford County sheriff's office. Rob showed Det. Davis the stolen building materials.

Rob says he hadn't been charged on April 1, when he told Det. Davis of his involvement (TTP. 1091. 1-23). At the time of the agreement (April 18) Rob only had three charges, and ended with an additional 25-26 (TTP. 1092. 7-16).

(FACTS) Now the problem with the picture Mr. Nicholas and D.A. Panosh conspired to create is that of a small report or notice from "Crime-Stopppers." Prior to April 1, 1997, and Rob's supposed confession, Jeff Roberts called Crime-Stopppers and wanted to know if there was a reward for information on stolen go-karts. Rob testified that he was involved in the theft of go-karts (TTP. 1089. 17-21).

And who is Jeff Roberts? Jeff was Rob's best friend until the two had a big argument and fell out. Police were on stakeout around Lyles Building Material (2) weeks before an arrest was made. Ted and Patrick were only involved in the thefts during January and February '97, and stopped. Rob needed money to support his cocaine habit, so he began stealing with Jeff Roberts. Unfortunately Rob told Jeff about Ted and Patrick.

D.A. Richard Panosh didn't want anyone to know about Jeff Roberts, because Jeff could have destroyed Rob's credibility. While Mr Panosh gave the information of Crime-Stopppers to the defense of Ted Kimble, he withheld the evidence from the defense of Ronnie Kimble.

Mr. Nicholas spoke of working with Det. James Davis. It's of little wonder that Det. Davis also worked on Ted Kimble's case in the death of Patricia Kimble.

Jeff Roberts was prepared to testify for the defense, but

D.A. Panosh threaten this witness, and ran him out of town. For further details see "Grievance to The N.C. State Bar." Note the Affidavit by Theodore M. Kimble.

Less than a week after Robert Nicholes signed a plea agreement with D.A. Richard Panosh, he broke into Lyles Building Material, loaded shingles on a trailer worth \$6,000, which belong to Theodore Kimble, and stole it.

A month or two later, Jeff Roberts came into Lyles, confess to (Sr.) Ronnie Kimble, that he and Rob Nicholes were crime-partners and responsible for the theft. A police report was filed, yet D.A. Panosh refused to prosecute the case.

Two years later, while reading the Raleigh (N.C.) News & Observer, Ted Kimble found his stolen trailer for sale in the newspaper. (Sr.) Ron Kimble and wife, went and verified the trailer, filed a police report. Det. David Sizemore did a complete investigation and traced the trailer back to Rob Nicholes. Det Sizemore turned over the evidence to D.A. Panosh, but Panosh refused to issue a warrant to allow the arrest of Rob Nicholes. Exhibits supporting this claim follow. For further details see "Grievance to The N.C. State Bar."

EXHIBIT () 1 of 6



Newspaper Ad from the
Raleigh News and Observer
N.C.

Field Reference Card
CARRBORO POLICE DEPARTMENT

POLICE
EMERGENCY
911

INFORMATION
ONLY
968-7709

CASE REFERENCE NUMBER: 99-10390

OFFICER: P. Tivnan

PLEASE MAKE REFERENCE TO ANY QUESTIONS
CONCERNING YOUR CASE BY USING THE ABOVE NUMBER.

EXHIBIT () 2 of 6

Greensboro Police Detective

David Sizemore (336) 433-7277

P.O. Box 3136

Greensboro NC. 27406

EXHIBIT () 3 of 6

CASE NO: 19970127779 TIME: 1616	GREENSBORO POLICE DEPARTMENT INVESTIGATIVE REPORT - PUBLIC COPY	PAGE: 1 DATE: 11/18/2003
Case No.: 19970127779 Off/Class: AUTOTH AUTO THEFT - OTHER MV Location: 1700 W LEE ST Location: Premises: BUSINESS LOT	DIV/SQUAD: CID/AUT Earliest Occ: 04/25/1997 2100 Latest Occ: 04/26/1997 0800 Reported: 04/29/1997 0953	
ATTACKED		
Prop Value: 6,000 Extent: Method: BY TAKING AND CARRYING AWAY.	Damage Value: Type Inj: PROPERTY DESCRIPTION	
96 3 AXLE 18FT 18,000 TON TRAILER		
SOLVABILITY		
Evidence Spe: NONE CALLED Inv Officer: 1144 D L HOLLIMAN Case Status: Victim Pros?: Y Evidence: N	Ins Rpt: Y Arrest: N NAME SECTION	Warrant Adv: N Warrant Iss: N Suspect ID: N Initial Stat: INA
Role: VIC Name: Race: Sex: Age: DOB:	Victim Code: HOME ADDRESS	

Street Addr: City/St/Zip:	BUSINESS ADDRESS	

Bus. Name: LYLES BUILDING MATERIAL Street Addr: 1700 W LEE ST City/St/Zip: GREENSBORO NC 27403		
E N D O F R E P O R T		

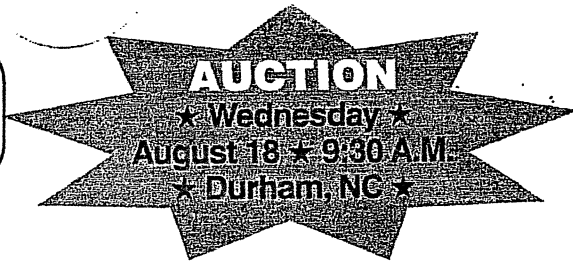
NOTE: There is a second police report which Detective David Sizemore (336)433-7277 (Gboro N.C.) can provide a case number. In the second police report (not shown) A Jeff Roberts confessed to Mr Sizemore, he and Robert Nicholes stole the trailer, yet Prosecutor Panish still refused to issue a warrant and arrest these people.



MARTIN & MARTIN

AUCTIONEERS, INC.
1618 Easley Hwy., Pelzer, SC 29669
(864) 947-7888 • George W. Martin SCAL 148, NCAL 2610

Address Service Requested



AUCTION

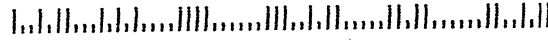
★ Wednesday ★

August 18 ★ 9:30 A.M.

★ Durham, NC ★

Presorted
First Class Mail
U.S. Postage
PAID
Eugene, Oregon
Permit No. 305

EXHIBIT () 4 of 6



#BWNFBRZ# **AUTO*****3-DIGIT 275
#NOR001339# C--- EXPRESS NUMBER
NORINA ELEC. MECH COMPANY
201 N GREENSBORO ST
CARRBORO NC 27510-1803

FOR FASTER REGISTRATION, BRING THIS BROCHURE WITH YOU!!!

AUCTION SITE PHONE

919) 477-6107

AUCTION SITE FAX

919) 471-2617

AUCTION LOCATION

3013 Denfield Street, Durham, North Carolina
Jello L. Teer (Durham Quarry)

INSPECTION

Tuesday, August 17, 9:00 A.M. to 5:00 P.M.

PAYMENT PROCEDURES

Payment in full on auction day by cash, cashier's check or certified funds. If payment is made by personal or company check, you MUST have a current letter to Martin & Martin Auctioneers, Inc., guaranteeing payment of check. Sample letter of guarantee: "Mr. _____ is a customer in good standing of our bank. We will guarantee payment of checks written on his account number ____ up to (specify amount) dollars for purchases at your auction on August 18, 1999." All titles will be mailed ten banking days after the Auction.

All sales subject to North Carolina tax laws.

DIRECTIONS TO AUCTION

FROM CHARLOTTE, NC: Take I-85 North to Exit 176B (Duke Street). Follow it north to the sixth light, turn right onto Horton Road. Go under the next light. You are now on Denfield Street. Follow to the end of Denfield Street through the gate to Auction Site.

FROM RICHMOND, VA: Take I-85 South to Exit 176B (Duke Street). Go north to the fifth light, turn right onto Horton Road. Go under the next light. You are now on Denfield Street. Go to the end of the road through the gate to the Auction Site.



* 843-700 0000

Hand CK # 1515

EXHIBIT () 6 of 6

Transcript Testimony / Explosives and Target Practice

(Summary)

Robert (Rob) Nicholes made the claims that Ted Kimble showed him a silencer, rifles, several guns, and small explosives (TTP.1035.20-24). At one point Rob possess one of Ted's guns (TTP.1103.22-25). Although Rob possessed a gun he was still afraid of Ted, because over a period of months working at Lyles, Ted had showed Rob his capabilities of being a sniper, and how to make C-4 explosives. Rob stated they had made explosives at work, he was convinced Ted had many ways to take someone out and get away with it. Rob then said his discussions with Ted on such subjects were one-way, that he only listen to Ted talk of such things, that it wasn't a give-and-take situation (TTP.1104.1-25). Rob then changed his testimony and admitted to his involvement in the conversations (TTP.1105.1-13).

Suddenly Rob takes off in another direction, and claims Ted would bring out guns and silencers when Patrick Pardee was around, that Ted would shoot at a picture of Michael Jordan on a billboard across the street. This supposedly happen at Lyles Building Material (TTP.1105.14-25). Rob claimed there was target practice taking place in the middle of town. Rob then changed his statement and claimed the sign was actually on the same side, but down Lee Street. Rob said "we" were using a .22, but then denied firing the gun himself. Rob then tries to recant and says he doesn't want to get into that, "Never mind. I withdraw that." (TTP.1106.1-16).

Rob goes on to deny he ever mention "C-4", but explosives, yes. Then said he was present when Ted blew some stuff up, and felt it was all methods

of intimidation to keep him in line (TTP. 1107.1-10).

(FACTS)

First, Rob Nicholes made the claim that these outrageous acts took place at Lyles Building Material, 1700 West Lee Street, Greensboro, N.C. Lee Street is a major road with heavy traffic, there are other businesses all around Lyles. It's simply impossible that anyone could stand 20 Ft. beside a major road shooting a .22 rifle at a billboard for target practice, in the middle of the city, and have no one call the police. Maybe this is why Rob said, "Never mind. I withdraw that." (TTP. 1106.16). To my knowledge there is NO bullet holes in any of the billboards near Lyles.

Second, Rob claim, "we had made explosives at work" (TTP. 1104.6-7), and that he witness Ted blow stuff up. Once again, Rob is making the claim that this happen next to a major road, in the middle of town. It's important to note, in Rob's testimony he claim Ted showed him how to make "C-4" (TTP. 1104.6), then denied he ever said "C-4" (TTP. 1107.3).

It should also be noted, after Ted's arrest and Lyles Building Material was searched, the Greensboro newspaper printed "mis-information," and stated explosives were recovered from Lyles. Actually, there was only a small bag of holiday fireworks. Rob testified that he researched the case (TTP. 1054.17-20/1079.18-24/1087.21-25/1088.1-2). Obviously Rob read the mis-information and based his lies upon it.

Rob Nicholes was only a part-time employee, while James Ogburn was a full-time employee. Where was James Ogburn when the target practice was going on, or the explosives were going off?

Robert Nicholes "Proof of Perjury"

Transcript Testimony / Gun Left at My home - Parent's home

(Summary)

Robert (Bob) Nicholes made the claim Ted Kimble came to his house on several occasions, early in the morning, and flashed a gun on him. Bob was intimidated and very scared (TTP. 1077. 9-17). Bob was so scared he couldn't go to his parents for help, nor could he quit his job. Ted even brought a Glock 19 to Bob's wedding reception, at Bob's parents, to intimidate him, But Ted accidentally forgot the gun when he left. Bob returned the gun because his father didn't want the gun at his house (TTP. 1079. 1-17).

Bob went on to explain how he couldn't tell his father of the situation he was in for fear of dragging his family into a dangerous situation. (TTP. 1086. 1-25). Bob's father only learned of the situation just prior to Ted's arrest (TTP. 1087. 9-13).

(FACTS)

First, Bob made a mistake and said Ted left the gun at his house. Transcript Testimony Page 1079. Line 6 "... And left it at my house." Then lines 9-10, "... and the man brings a gun to intimidate me, inside my house and my parent's home." Bob was directly asked, "... Ted Kimble left his Glock pistol at your house; is that right?" (TTP. 1085. 23-25). Bob said, "Uh-huh" (TTP. 1086. 1). Bob was then asked, "That was your folks' house at that time, is that right?" Bob answered, "Correct." (TTP. 1086. 2-3). Bob did NOT live with his parents. Bob lied, he changed his testimony in the middle of questioning.

Robert Nicholas

Transcript Testimony / Coworker: James Ogburn

Direct Examination

TTp. 1027. 18-Q. And how long did you work at Lyles for Ted Kimble?

19-A. I worked there from the beginning of September, till
20 April 1, 1997.

21-Q. So September of '96 through April of '97?

22-A. Yes, Sir

23-Q. And were you a full-time employee?

24-A. No, I was not. I was part-time employee. I was --

TTp 1034. 25-Q. Did you know James Ogburn?

TTp 1035. 1-A. Yes.

2-Q. Who is James Ogburn?

3-A. James Ogburn is another one of Ted's employees, my
4 coworker.

5-Q. Did you discuss this matter with James Ogburn?

6-A. Yes, I did.

7-Q. Did he make any statements to you about keeping your
8 mouth shut?

9-A. Is that Ted Kimble you're --

10-Q. Yes.

11-A. -- referring to? Yes.

NOTE: Where was James, why didn't he testify? Because Parosh threaten him!

EXHIBIT () 1 of 2 Time 12:00
4-19-97

Robert informed me that the Police
was on him concerning Ted and the
murder ^{case}. Robert also says that, Ted
told him some things that he shouldn't have,
but nothing concerning the murder. Robert
says he was going to plea guilty to
all necessary charges.

James Ogden

7-29-97

On July 22nd, I saw Robert Nicklous in the parking^{lot} down from Syler Blvd. Materials. He stated to me that he wasn't going to testify against Ted, concerning the murder of his wife. Rob also asked me to inform Mr. Kimble of this matter too. Robert says that he would be in contempt of court, for not testifying, and that he would deal with that. His primary message was for me to inform Mr. K

of his actions concerning this matter.

James Ogden

EXHIBIT ()

Leaving work, James and I ran into Rob and talked with him in the parking lot of the boat place. He talked about how well he was doing with his new business and the new home he just purchased. He also spoke on Ted and Ron in reference to how they were doing etc. and mentioned that he was not going to testify to that "bull-shit" because it wasn't right. He stated that he and his wife had talked about it and he had had a change of heart and realized it was wrong to do so. She had the same feelings. He stated that instead he would take the "contempt of court charge" and do the time at the County farm. He told James that he was telling him this so that he could relay it to MR. Kimble.

Walter A. Cole Jr.
8/2/97

Robert Nicholas

Transcript Testimony / Contradiction

Direct Examination

TIP. 1029. 1-A. A lot of the building materials were resold on the
2 premises. Others, there was a storage trailer across the
3 street that was rented by Ted, and he had had the blueprints
4 for a home that he was going to build, and was taking the
5 materials in order to build a home. He was filling up the
6 trailer with the materials he needed.

TIP. 1041. 7-Q. As a result of your efforts, was there certain property
8 recovered?

9-A. Yes, there was a lot of it recovered.

Note: First, Rob testified a lot of the building materials were resold, then claims by his help, a lot of it was recovered.

Robert Nicholes : Proof of Perjury
Transcript Testimony / Arrest Warrant

(Summary)

Robert Nicholes testified that he did not work his Plea Arrangement (April, 1997) prior to his arrest (TTP-1044.19-24).

(FACTS)

As the following arrest warrant shows, Robert Nicholes wasn't arrested until 11/03/97, "Yet another lie."

16(NB) CHECK DIGITS WERE FOUND

ORDER FOR ARREST

STATE OF NORTH CAROLINA VS.

MARSHALL, ROBERT HAROLD
1665 HORNADAY RD

GREENSBORO NC 27409

RACE: W SEX: M DOB: 10/08/71

DR LIC NO:

SOC SEC NO:

LIC NO:

COMPLAINANT:

CLERK OF SUPERIOR COURT

RELATED CASES:

380

- 97CRS023700 97CRS023701
- 97CRS023702 97CRS023703
- 97CRS023704 97CRS023705
- 97CRS023706 97CRS023707
- 97CRS023708 97CRS023709
- 97CRS023711 97CRS023712
- 97CRS023713 97CRS023714
- 97CRS023715 97CRS023716

Location Of Court GREENSBORO, NC ROOM 6E4C

STATE OF NORTH CAROLINA

GAULFORD-GR. COUNTY

SUPERIOR COURT DIVISION

In The General Court Of Justice

CHARGE DESCRIPTION	G. S. NUMBER
01 M MISDEMEANOR LARCENY	14-72(A)
19 B BREAKING AND OR ENTERING (F)	14-54(A)
19 F LARCENY AFTER BREAK/ENTER	14-72(B)(2)
06 F FELONY LARCENY	14-72(A)

TO ANY OFFICER WITH AUTHORITY AND JURISDICTION TO SERVE AN ORDER FOR ARREST:

THE GRAND JURY OF THIS COUNTY HAVING RETURNED A TRUE BILL OF INDICTMENT, A COPY OF WHICH IS ATTACHED.

YOU ARE DIRECTED TO ARREST THE DEFENDANT AND BRING HIM BEFORE THE COURT AT THE PLACE, DATE AND TIME INDICATED BELOW OR UPON THE FIRST DAY OF COURT FOLLOWING HIS ARREST. IF COURT IS NOT IN SESSION, THEN YOU ARE TO TAKE HIM BEFORE A JUDICIAL OFFICIAL FOR THE PURPOSE OF DETERMINING CONDITIONS OF RELEASE AND COMMITMENT IF HE IS UNABLE TO COMPLY.

RELEASE IS TO BE THE OFFICIALS DISCRETION.
Deflt. must be fingerprinted.

97CRS23719-23

Court Date 12/05/97 Court Time 09:30 AM

Date Of Issue 11/03/97

Signature ESTEE REMINGTON

Deputy CSC Assistant CSC Clerk Of Superior Court

Magistrate District Court Judge Superior Court Judge

97030657

ORIGINAL (Over)

Return of Defendant and For Arrest or not served within one hundred and thirty (130) days... of the Defendant's arrest... of the Defendant's arrest... of the Defendant's arrest...

RETURN OF SERVICE

Date Served as Required by Rules 11-6-97 11-6-97 Date Returned 11-6-97

11-6-97 [Signature] MAA

REDELIVERY/REISSUANCE

Date Recalled or Served Date Returned

RETURN FOLLOWING REDELIVERY/REISSUANCE

Date Recalled or Served Date Returned

APPEAL ENTRIES

WAIVER OF PROBABLE CAUSE HEARING

Signature of Defendant Signature of Attorney

PRIOR CONVICTION: No./N.W.I. 0 [] [] [] [] [] M1 CL. A1 M1 CL. A1

PLEA: guilty no contest guilty no contest not guilty not guilty

JUDGMENT: The defendant appeared in open court and freely, voluntarily and understandingly entered the above plea...

Restitution Attorney's Fee Community Service Fee Other

- 6. complete... hours of community service during the first... days of probation, as directed... 7. not be found in or on the premises of the complainant or... 8. not assault, communicate with or be in the presence of the complainant or... 9. Other:

It is ORDERED that this: Judgment is continued upon payment of costs. case be consolidated for judgment with sentence is to run at the expiration of the sentence in... COMMITMENT: It is ORDERED that the Clerk deliver two certified copies of this Judgment and Commitment to the sheriff...

PROBABLE CAUSE: Probable cause is found as to all Counts except... and the defendant is bound over to Superior Court... CERTIFICATION

I certify that this judgment is a true and complete copy of the original which is on file in this case. NOTE: If DWI, use AOC-CR-301 (revise) or AOC-CR-310 (probation). If active sentence to DOC, use AOC-CR-902. If supervised probation, use AOC-CR-904.

1 Q And Mr. Nicholes, do you know Theodore Kimble?

2 A Yes, I do.

3 Q How do you know Theodore Kimble?

4 A He was my employer at Lyles Building Materials.

5 Q Would you keep your voice up when you speak, please.

6 A Yes, sir.

7 Q When did you start to work for Ted Kimble?

8 A I believe it was September. It was in correlation to
9 me starting with school.

10 Q And this was subsequent to the death of Patricia
11 Kimble?

12 A Yes.

13 Q In addition to working with him -- or describe your
14 duties at your place of employment, Lyles.

15 A Stacking of lumber, building dog houses, storage
16 buildings, assisting customers with loading of lumber,
17 shingles, building materials, etc.

18 Q And how long did you work at Lyles for Ted Kimble?

19 A I worked there from the beginning of September, till
20 April 1, 1997.

21 Q So September of '96 through April of '97?

22 A Yes, sir.

23 Q And were you a full-time employee?

24 A No, I was not. I was a part-time employee. I was --
25 one of the reasons I worked there, Ted had given me the

1 opportunity to be able to come and work in between classes.
2 I was in my last semester at UNCG. And it was, you know,
3 within two blocks of the school, so I could come up there
4 and work.

5 Q Now, did there come a time when your relationship with
6 Theodore Kimble went on to other matters?

7 A Yes, there was.

8 Q Would you briefly describe that for the ladies and
9 gentlemen of the jury.

10 A We just -- we became closer and confided in each other
11 certain things that had happened in our lives. And we began
12 stealing lumber and materials from job sites.

13 Q And when this lumber -- how was this lumber or
14 materials from job sites stolen?

15 A It was loaded up into trailers and trucks and vans of
16 -- that were Ted's.

17 Q And who participated in that?

18 A Myself, Ted and Patrick Pardee.

19 Q And was Pardee with you on all these occasions or some
20 of them?

21 A No, sir, he was -- just some of them. There's some
22 where we were all together, some maybe where they were all
23 together, some where Ted was alone.

24 Q What was -- what happened to the building materials and
25 lumber that was stolen?

1 A A lot of the building materials were resold on the
2 premises. Others, there was a storage trailer across the
3 street that was rented by Ted, and he had had the blueprints
4 for a home that he was going to build, and was taking the
5 materials in order to build a home. He was filling up the
6 trailer with the materials he needed.

7 Q Were there any of the materials that were sold from
8 Lyles?

9 A That were stolen that were resold?

10 Q Yes.

11 A Yes, sir.

12 Q And as a result of your conduct, you have been charged;
13 is that correct?

14 A Yes, I have.

15 Q And you've been charged with multiple counts of
16 breaking and entry and larceny; is that correct?

17 A Yes, 28, 30.

18 (Mr. Panosh showed an exhibit to Mr. Lloyd.)

19 Q And did there come a time when you reached an agreement
20 with the State of North Carolina?

21 A Yes.

22 MR. PANOSH: May I approach the witness?

23 THE COURT: You may.

24 Q I show you Number 115. Would you look at that, please.

25 A Yes.

1 Q What is 115? First of all, do you recognize your
2 signature on the second page?

3 A Yes, I do.

4 Q Is 115 an agreement to testify in this case?

5 A Yes, it is.

6 Q And did you have an attorney to prepare that agreement?

7 A Yes, I did.

8 MR. PANOSH: Your Honor, we'd seek to introduce
9 into evidence 115.

10 THE COURT: The Court'll allow the introduction of
11 Exhibit 115.

12 Q What is the date of that agreement?

13 A April 18, 1997.

14 Q On April the 18th and subsequent to that date, did you
15 -- were you interviewed by officers of the Guilford County
16 Sheriff's Department?

17 A Yes, I was.

18 Q And also the State Bureau of Investigation?

19 A Yes.

20 Q And did you give them information pertaining to the
21 theft that you were involved in?

22 A Yes, I did.

23 Q In the course of the time that you knew Theodore
24 Kimble, did there come a time when you became aware of the
25 fact that his wife had been killed?

1 A Yes.

2 Q Would you explain that to the jury.

3 A As Ted and I during this theft ring, I guess, for lack
4 of better words, we became very close. We were with each
5 other from, you know, 7:00 o'clock at night until 3:00,
6 4:00, 5:00 in the morning sometimes. He would say that he
7 was spending the night at Patrick's, tell his parents that,
8 and then we'd really all be out at night. We -- I guess we
9 got to a point where we had confided enough, and I'm -- I
10 mean, I've done a lot of things that I'm not really proud
11 of. I've made some mistakes. But we began to get to a
12 point where Ted really confided in me and I guess began to
13 trust me or needed someone to talk to.

14 And October -- my birthday is October 8, so I can
15 recollect the day pretty well, the -- it was near the
16 anniversary of Patricia's death, and the news crews came
17 around. And that was the first time I learned of it, was
18 about a month after I started working there. And as the
19 months progressed, when we got closer, more towards
20 November, December, I was interested and heard more about
21 it, and had asked questions, just for my own well-being, and
22 I'd become close with Ted. And I hindered him and asked him
23 a lot of questions. And at first, you know, "I have an
24 alibi. No, I didn't," and --

25 MR. LLOYD: Well, object for the record, Your

1 Honor, as to what Ted Kimble said on those occasions.

2 THE COURT: Objection's overruled.

3 Again, members of the jury, the Court would
4 caution and admonish you that you should not -- that this
5 evidence is being offered for the purpose of statements that
6 Ted Kimble may have made. They may not be considered
7 against Ronnie Kimble, unless you find that he was part of a
8 conspiracy and was a co-conspirator with Ted Kimble, and
9 only under those circumstances or under that finding by you
10 beyond a reasonable doubt there was a conspiracy would they
11 be admissible and be considered against this defendant,
12 Ronnie Kimble.

13 Proceed.

14 A The evening in particular, it was actually late
15 evening, night, Ted and I were in his white box truck,
16 heading out to a job site, to get some materials. And I
17 flat out asked him "Did you have anything to do with -- or
18 did you kill Patricia, or kill your wife?" And he said no.
19 And then I asked if he had anything to do with it, and he
20 said yes, he did. And it's -- a lot happened that night, as
21 far as that, but he said yes, he did. He -- I continued to
22 ask questions, and he kind of danced around it, but said,
23 you know, "Ask me no questions and I'll tell you no lies."
24 And I continued to ask. And then I was threatened to be
25 quiet about it, and I would be killed if I ever said

1 anything.

2 He then began to -- he was very upset and hysterical
3 and crying, saying I didn't understand, and went on to a 20-
4 minute discussion on Ted as a child. His father drank a
5 lot, and that's one reason he didn't want me to drink -- me
6 to drink at all. His father drank a lot and would hit him
7 and his brother and his mom. And told me, you know, the
8 stories like that. And then it just kind of ended.

9 Q In the course of discussing the situation, did you ever
10 make reference to the life insurance policy?

11 A Yes, we had -- we had discussed it.

12 Q What did he tell you?

13 A He -- in regards to the insurance policy, he said
14 something to the effect of, that he was mad because he
15 wasn't getting any money, because she hadn't taken a
16 physical.

17 Q Did he ever discuss or make reference to the life
18 insurance application?

19 A In reference to, he had forged an application
20 signature.

21 Q What do you mean?

22 A He had signed his wife's name.

23 Q When you said he threatened you, specifically what did
24 he say?

25 A Specifically, he told me that if I ever went and told

1 everyone, that he would kill me, and that I should know that
2 he could get away with it.

3 Q What did he say about that?

4 A He just -- I mean, if -- he just told me -- I mean, he
5 could -- he'd get away with it. If the law hadn't caught
6 him now, you know, they're obviously not going to come after
7 him. It was a good year later.

8 Q During the period of time that you were with him, did
9 you ever see him carrying a gun?

10 A At all times. He carried either a Glock pistol, or he
11 had a small, I believe it was a .25-caliber that he would
12 carry. One of the two were with him I'd say 90 percent of
13 the time. Whenever we went out at night or anything like
14 that, he carried it.

15 Q Did he make any statements to you in reference to law
16 enforcement's ability to apprehend him?

17 A He said that they couldn't. If they had anything on
18 him, that they would have picked him up already.

19 Q Did he make any statements to you in reference to what,
20 if anything, was taken at the time of her death?

21 A He had -- he had talked about, this was in the same --
22 along the same conversation as how stupid the law was, that
23 they had -- no one even realized that stuff that was put
24 down as stolen was never even taken.

25 Q Did you know James Ogburn?

1 A Yes.

2 Q Who is James Ogburn?

3 A James Ogburn is another one of Ted's employees, my
4 coworker.

5 Q Did you discuss this matter with James Ogburn?

6 A Yes, I did.

7 Q Did he make any statements to you about keeping your
8 mouth shut?

9 A Is that Ted Kimble you're --

10 Q Yes.

11 A -- referring to? Yes.

12 Q What did he say?

13 A I was -- again, I was told to keep my mouth shut, or I
14 was -- my life was threatened.

15 Q When you say your life was threatened, what do you
16 mean?

17 A That he would kill me. And it was on -- it was on
18 several occasions, and that was in -- you know, in
19 correlation with always having the gun around.

20 Q Besides the gun, did he have any other objects that he
21 showed you?

22 A A silencer, miscellaneous rifles, I mean, several guns,
23 rifles, his Glock, the small gun, the silencer, small
24 explosives and whatnot.

25 Q In your presence, did he make threats toward any other

1 person?

2 A Mr. Church.

3 Q Who's that?

4 A Jim Church sitting next to you, the investigating
5 officer.

6 Q Detective Church?

7 A Yes, Detective Church.

8 Q What, if anything, did he say about Detective Church?

9 A It was -- when we are talking, it was -- Ted had told
10 me that Mr. Church was following him around everywhere,
11 going around, talking bad about him, had gone to his
12 girlfriend's house, who was Rhonda, and told her parents
13 that she was dating a murderer, and was very upset about it,
14 and said that if he kept it up, that he was going to kill
15 him.

16 Q He was going to do what?

17 A That he was going to kill Detective Church.

18 Q Now, on this occasion, when you got in trouble, was
19 this the first time that you've been involved in criminal
20 activity?

21 A No, it's not.

22 Q Have you been convicted of other criminal matters?

23 A Yes, I have.

24 Q Would you tell the jury about that, please.

25 A I have been convicted of, in California, knowledge of

1 stolen property, and fighting in public. And here, in
2 Greensboro, solicitation to commit embezzlement, and I have
3 a larceny charge.

4 Q And all those are misdemeanors?

5 A Yes.

6 Q Now, have you ever been convicted of a felony?

7 A I have not been convicted of a felony.

8 Q Now, prior to reaching the information -- the agreement
9 that is State's Exhibit Number 15 (sic), what have you done
10 in reference to law-enforcement officers, and specifically,
11 Detective Church?

12 A I'm not following.

13 Q Well, let me ask you this. Just read the State's --
14 the agreement, please.

15 A Starting with "That the defendant," or --

16 Q "The parties agree." The very first line, please.

17 A "The parties to this criminal action hereby stipulate
18 and agree to the following facts:

19 "That the defendant is charged with several counts of
20 breaking and entry and larceny, may be charged with related
21 offenses, which are also property crimes.

22 "That the defendant has offered and agreed to testify
23 in regard to the death of Patricia Kimble and to the
24 involvement of Theodore Kimble in various crimes related to
25 breaking and entry and larcenies. That the defendant has

1 been interviewed by his attorney and stated that he has
2 information to offer in these cases, and that said
3 information directly points to the guilt of Theodore Kimble,
4 Ronnie Kimble or Patrick Pardee and is direct and personal
5 knowledge of the type that North Carolina can use in its
6 prosecution of Theodore Kimble, Ronnie Kimble or Patrick
7 Pardee.

8 "Based upon the foregoing facts, the State of North
9 Carolina hereby agrees that in the event that the defendant,
10 Robert H. Nicholes, agrees to cooperate with officers of the
11 Guilford County Sheriff's Department and the Greensboro
12 Police Department and testifies, if called upon, in a
13 truthful manner, consistent with previous statements to the
14 Guilford County Sheriff's Department and the Greensboro
15 Police Department, the State of North Carolina will
16 recommend that he receive a probationary sentence.

17 "In return, the defendant agrees, Robert H. Nicholes,
18 that he will voluntarily appear and testify in any trial
19 related to the death of Patricia Kimble.

20 "That he will voluntarily appear and testify in any
21 trial related to the breaking and entry and larceny crimes
22 involving Theodore Kimble or Patrick Roy Pardee.

23 "That said testimony shall be truthful, complete, and
24 not inconsistent with prior statements of the defendant to
25 the Greensboro Police Department.

1 "The defendant, Robert H. Nicholes, understands that if
2 he fails to cooperate as set forth in his (sic) agreement by
3 (sic) the State of North Carolina shall have the option of
4 moving to set aside this plea agreement and prosecute the
5 defendant to the fullest extent allowed by the law. That
6 the defendant consents and agrees that the State of North
7 Carolina shall have the right to move to set aside his plea
8 agreement and sentence, in the event that the defendant
9 willfully fails to comply with this agreement.

10 "Further, the defendant, Robert H. Nicholes, agrees to
11 take a polygraph or participate in other law-enforcement
12 activities designed to corroborate his testimony.

13 "The defendant, Robert H. Nicholes, understands that he
14 must be totally truthful in his cooperation with the State
15 of North Carolina, that if the defendant, Robert H.
16 Nicholes, lies or intentionally omits or mistates the facts
17 of the death of Patricia Kimble, or his knowledge of the
18 facts leading up to the death of Patricia Kimble, or if he
19 refuses to testify or intentionally submits false testimony,
20 the State of North Carolina will not be bound by this
21 agreement, and that the State of North Carolina will use his
22 statements to prosecute him to the fullest extent of the
23 law.

24 "The defendant understands that this agreement is
25 limited to property crimes, and that if in the course of the

1 investigation, it is determined that he has participated as
2 a principal or an accessory in any crime against a person,
3 this agreement does not protect the defendant from
4 prosecution for that crime against a person. Further, if in
5 the course of the investigation it is determined that he has
6 participated as a principal or an accessory in any crime
7 against a person, his statements and any information gained
8 or uncovered as a result of this (sic) statement can be used
9 to prosecute him to the fullest extent of the law.

10 "Further, this agreement only binds the District
11 Attorney's Office of Guilford County and is not intended to
12 bind or affect or hinder the decision of any other
13 prosecutorial agency, state or federal, to indict and
14 prosecute the defendant, Robert H. Nicholes, and that this
15 agreement does not prohibit said prosecution.

16 "This 18th day of April, 1997," and signed --

17 Q Now --

18 A Yes.

19 Q -- in there, it's made reference to your cooperation
20 with the Greensboro Police Department. What was that in
21 regard to?

22 A The Greensboro Police Department in regards to the
23 materials that were taken.

24 Q Did some of those offenses occur in the city of
25 Greensboro?

1 A Yes.

2 Q As a result of that, did you meet with Detective Kasey
3 of the Greensboro Police Department?

4 A Yes, I did.

5 Q And did you show her the locations?

6 A I did.

7 Q As a result of your efforts, was there certain property
8 recovered?

9 A Yes, there was a lot of it recovered.

10 MR. PANOSH: No further questions.

11 THE COURT: You may cross-examine the witness.

12 MR. LLOYD: Thank you, Your Honor.

13 CROSS-EXAMINATION by MR. LLOYD:

14 Q Now, Mr. Pardee --

15 THE COURT: Mr. Nicholes.

16 Q Excuse me. Mr. Nicholes. You've just gone over the
17 deal that you and your attorney worked out with the State of
18 North Carolina, in exchange for your testimony; is that
19 correct?

20 A Yes.

21 Q And basically -- Well, let me ask you this, Mr. Pardee
22 (sic). You were charged with how many counts of theft or
23 larceny or breaking or entering? How many felonies as a
24 result of the theft conspiracy ring involving you and Ted
25 Kimble and Patrick Pardee?

1 A To my count, it's 25 total.

2 Q 25?

3 A 19 B&E, six larceny.

4 Q All right. And had you not -- and those are all felony
5 charges, are they not?

6 A Those are felony charges.

7 Q All right. And had you not worked out a deal, you were
8 aware that those are all Class H felonies and you could have
9 gotten at least, depending on your record, but assuming the
10 very best, that none of your record came in, you could have
11 gotten at least five to six months for each one of those
12 felonies, could you not?

13 A Yes, I could have.

14 Q And if you had been convicted of all 28 of them or
15 however many it was, the judge could have given you six
16 months on each one, to run consecutively, one after another?

17 A Yes, sir.

18 Q So, conservatively, Mr. Nicholes, you were facing
19 possibility of some 14 years in prison for your actions in
20 the theft ring with Ted Kimble and Patrick Pardee, were you
21 not?

22 A It was a possibility.

23 Q All right. And you talked to your lawyer?

24 A Yes.

25 Q All right. And you and your lawyer negotiated this

1 deal, the one you've just referred to, with the State of
2 North Carolina, didn't you?

3 A Yes.

4 Q All right. And the fact of the matter is, Mr. Pardee
5 -- Mr. Nicholes. Excuse me. I apologize. -- Mr.
6 Nicholes, that if Mr. Panosh is satisfied with your
7 testimony, you will get probation in these offenses, and you
8 will not serve one single day of time; is that correct?

9 A According to the agreement, that is correct.

10 Q All right. And in terms of the agreement and what you
11 must do, you have to testify consistent with your previous
12 statements; is that correct?

13 A Correct.

14 Q And that's set out in the agreement as you read, that
15 if you're called upon to testify, you must testify
16 consistent with your earlier statements?

17 A Correct.

18 Q Now, when you were arrested in this case, Mr. Nicholes,
19 did you post a bond?

20 A I don't recall.

21 Q All right. Well, let me ask you this, Mr. Nicholes.
22 You're not in jail awaiting trial or the disposition of
23 these 28 felonies that you've referred to earlier, are you?

24 A No, I'm not.

25 Q All right. So you're out of jail?

1 A Yes.

2 Q All right. So at some point, you were arrested; is
3 that right?

4 A Yes.

5 Q And how long did you spend in jail, before you were
6 released?

7 A I didn't spend any time.

8 Q You did not spend any time?

9 A No, sir.

10 Q So was that because the magistrate didn't set a bond in
11 your case, even though you were charged with 28 felonies?

12 A No. I believe the agreement came with -- the original
13 charge was three felonies, and I agreed to tell everything I
14 knew. It didn't go in the order you're referring to.

15 Q All right.

16 A I was charged with three, and then I admitted to the
17 rest of it and everything else I knew, because until Ted was
18 put in jail, I didn't have a chance.

19 Q So you actually worked out your deal before you were
20 even arrested; is that right?

21 A No. I had -- I had told additional -- had told
22 additional -- yeah, I'd agreed to disclose information that
23 I knew before I'd actually signed an agreement. And that
24 was stuff I had discussed with Detective Church.

25 Q All right. So you talked to Detective Church about

1 that; is that right?

2 A Yes, it is.

3 Q And he assured you that if you told him what he wanted
4 to hear, you wouldn't spend any time in jail, you wouldn't
5 be arrested on this charge?

6 A That's not true. I did not -- I was not offered any
7 agreement in regards to me not serving any time until I had
8 talked to Mr. Panosh.

9 Q All right. Well, Detective Church told you that he'd
10 help you out, didn't he?

11 A Yes.

12 Q All right. And he didn't serve an arrest warrant on
13 you and take you across the street and bring you before the
14 magistrate at that time, before he took you over to talk to
15 Mr. Panosh, did he?

16 A No. It wasn't his case.

17 Q Well, the police officers in charge of the case didn't
18 serve a warrant on you and take you across the street to the
19 magistrate?

20 A Yes, they did.

21 Q All right. But you were not required to post a bond;
22 is that right?

23 A No, I wasn't.

24 Q All right. And Mr. Nicholes, isn't it true that
25 Detective Church talked to the magistrate, in terms of your

1 bond?

2 A I don't know.

3 Q All right.

4 A I did not have much relation with Mr. Church.

5 Q But at any rate, you were not -- even though you were
6 arrested on three felonies --

7 A Uh-huh.

8 Q -- you were not put in jail, and you were not required
9 to post a bond at that time; is that right?

10 A No, I wasn't. No, I wasn't.

11 Q Now, you indicated earlier that -- Well, let me ask
12 you this, Mr. Nicholes. When you talked to Detective
13 Church, did you have a lawyer at that time?

14 A No.

15 Q All right. So this was something that you and
16 Detective Church worked out; is that right?

17 A We didn't work out anything. I told him what I knew.

18 Q Okay.

19 A I was in a situation where I couldn't just come out and
20 announce this to the world.

21 Q All right. So you talked to Detective Church at that
22 time, and he told you that he would help you out; is that
23 right?

24 A It's his job. Yes.

25 Q His job is not --

1 A His job is --

2 Q -- to arrest people --

3 MR. PANOSH: We'd object to his arguing with the
4 witness, please.

5 THE COURT: Overruled. He's clarifying his
6 answer.

7 Q Is his job not to arrest people and bring them to
8 justice?

9 A That was not his case. It was his job to find the
10 murderer of Patricia Kimble, and that's what he was doing,
11 through me.

12 Q All right. So even though this wasn't his case, he
13 talked to you?

14 A Yes.

15 Q And he told you he'd help you, right?

16 A Yes. I came to them, though. It was before any of
17 this, before any of this. The 20-- the 25 additional
18 larcenies came because I told where the materials were. I
19 didn't want part of it anymore, as of Ted being arrested on
20 April 1. I came to the police. I'm the one that told them
21 what was going on. It was not --

22 Q Okay.

23 A -- vice versa.

24 Q So -- and Mr. Nicholes, the reason you came to the
25 police at this time and told them about the 28 -- to some 28

1 break-ins and larcenies is because you were a good citizen?

2 A No. It was because Ted had been arrested, and I didn't
3 have to worry about him killing me.

4 Q Well, Mr. Nicholes, if you had gone to Detective Church
5 prior to that time, and told him what you knew, don't you
6 think that Detective Church would have offered you
7 protection at that time?

8 MR. PANOSH: Object to speculation.

9 THE COURT: Sustained to the form.

10 MR. LLOYD: All right.

11 Q Well, Detective Church would have offered you
12 protection at that time, wouldn't he?

13 A I don't know that. It had been a year, and there
14 hadn't been an arrest. I'm not willing to risk my family's
15 life or my life on speculation, whether Detective Church can
16 help me.

17 Q Well, you certainly could have gone to Detective Church
18 prior to that time and told him what you knew, and asked him
19 if he would offer you protection at that time, or if he
20 would arrest Ted Kimble and put him in jail, so you wouldn't
21 have to worry about it; couldn't you have done that, Mr.
22 Nicholes?

23 A I was in fear.

24 Q But you could have done that, you could have gone to
25 Detective Church. Were you worried that Detective Church

1 was going to run to Ted Kimble and say that "Rob Nicholes is
2 ratting on you"? Is that what you were worried about, Mr.
3 Nicholes?

4 A Not at all. I feared for my life.

5 Q All right. But you certainly could have done that, and
6 asked Detective Church if he would offer you protection, or
7 arrest Ted Kimble and put him in jail?

8 MR. PANOSH: Object. I believe he's answered.

9 THE COURT: Overruled.

10 You may answer that.

11 A Not without knowing 100 percent that something would be
12 done. Like I said, I'm not willing to gamble my life on
13 that. I know what I knew. I know what was told to me. And
14 I wasn't willing to go and risk my life on that. I was
15 threatened. I wasn't going to do that.

16 Q Well, you certainly didn't think that when you gave
17 that information to Detective Church, that he was going to
18 turn around and run to Ted Kimble and tell him that "Rob
19 Nicholes had given me this information," did you?

20 A No.

21 Q Now, you indicated on direct examination that you had
22 convictions in California for what you referred to as
23 knowledge of stolen property?

24 A Yes.

25 Q Is that basically, Mr. Nicholes, that you received

1 stolen property, knowing that it was stolen?

2 A Yes.

3 Q All right. And did you work out a deal on that case,
4 with the District Attorney's Office there?

5 A No, sir. I served 90 days.

6 Q All right. Did you plead guilty to that charge --

7 A Yes, I did.

8 Q -- or did you --

9 A I've made mistakes, and I feel bad about it, but I tell
10 the truth.

11 Q Well, in connection with your 90-day plea, what I'm
12 asking you, Mr. Nicholes, is --

13 MR. PANOSH: We object.

14 MR. LLOYD: Well --

15 MR. PANOSH: He's answered --

16 THE COURT: Overruled.

17 MR. PANOSH: -- about his prior criminal history.

18 THE COURT: Finish your question, sir.

19 MR. LLOYD: Thank you, Your Honor.

20 Q In connection with this knowledge of stolen property
21 that you pled guilty to in California, my question to you,
22 Mr. Nicholes, you said you did a 90-day sentence upon a
23 guilty plea. State of California give you anything in
24 exchange for your guilty plea?

25 MR. PANOSH: We object.

1 THE COURT: Overruled.

2 A No.

3 Q Were you represented by a lawyer in that case?

4 MR. PANOSH: We object. Details of this prior
5 conviction are not appropriate.

6 THE COURT: Overruled.

7 A The question --

8 Q Did you have a lawyer in the California case?

9 A Yes, I did.

10 Q All right. So is what you're telling the members of
11 the jury is that your lawyer didn't do anything for you,
12 that you just pled guilty and you got 90 days?

13 MR. PANOSH: Object, please.

14 THE COURT: Sustained.

15 Q Mr. Nicholes, isn't it a fact that that charge was
16 reduced from a felony charge to a misdemeanor charge?

17 MR. PANOSH: We object, please.

18 THE COURT: Overruled.

19 You may answer.

20 A I don't remember what the original charge I was
21 arrested for was.

22 Q Well, you got something from the state of California,
23 in exchange for your guilty plea; your lawyer did something
24 for you in that case, didn't he?

25 A I'm sure.

1 Q All right.

2 A I was 19 years old.

3 Q All right.

4 A I mean, it's hard to -- it was something to that
5 effect, when the actual charge or the actual situation
6 arose. It's hard to remember. It's, you know, going on
7 eight, nine years ago.

8 Q Okay. And your lawyer got the charge reduced from a
9 felony down to a misdemeanor?

10 MR. PANOSH: Objection.

11 THE COURT: Overruled, if he knows.

12 A I've answered that. Yeah, that's his job.

13 Q All right. So that is in fact what happened?

14 A It's in fact what happened.

15 Q All right. Now, this charge of solicitation to commit
16 embezzlement, was that here in Greensboro or was that in
17 California?

18 A That was here --

19 MR. PANOSH: We object.

20 A -- in Greensboro.

21 MR. PANOSH: Rule 609.

22 THE COURT: Overruled.

23 Q You can answer the question.

24 A That was here in Greensboro.

25 Q All right. Did you have a lawyer in that situation?

1 A Yes, I did.

2 Q All right. And in that situation, Mr. Nicholes, did
3 you work out an agreement with the State of North Carolina?

4 A Yes, I did.

5 Q All right. And was that charge reduced from a felony
6 charge down to a misdemeanor charge?

7 A Yes, it was.

8 Q So, Mr. Nicholes, you're well-versed in how to make
9 deals with the State, aren't you?

10 A No. I'm well-versed on how to tell the truth, when
11 I've done something wrong. That's what I'm well-versed on.
12 It's not being versed, it's telling the truth. I said I've
13 made mistakes and I'm not proud of it --

14 Q Well --

15 A -- but admit it and deal with it.

16 Q You certainly had this information for a considerable
17 period of time that you've testified to, haven't you, Mr.
18 Nicholes?

19 A Not really. In the whole scheme of things, no, it's
20 not a long time.

21 Q Well, you -- I believe you indicated to Mr. Panosh that
22 as far as the thefts were concerned, you got started in
23 December of 1996 --

24 A Yes.

25 Q -- is that right?

1 A Uh-huh.

2 Q All right. And the thefts were ongoing through January
3 and February?

4 A Yes.

5 Q All right.

6 A That's three months.

7 Q Okay. So you had that knowledge at that time?

8 A Yes.

9 Q You could have come forward with that knowledge at that
10 time?

11 A Not when a man had told me he had had his wife killed,
12 and my life was threatened, no, I couldn't. What don't you
13 understand about that? I couldn't. I was -- I was
14 threatened. My life was threatened. I had nowhere to go.
15 If he wasn't arrested, what would make me think that what I
16 say is going to change anything? Nothing.

17 Q You could have gone to Detective Church or whoever was
18 the -- you found out was the lead investigator in the case.
19 You'd researched this case, didn't you?

20 A Sure.

21 Q All right. You could have gone to the lead
22 investigator, which you knew to be Detective Church --

23 A Sure.

24 Q -- given him this information, and he could have
25 arrested Ted Kimble?

1 A I didn't know that, and it wasn't worth -- I mean, it
2 wasn't worth it to me to find out. The minute -- the
3 morning that Ted was arrested, I told everything that I knew
4 about everything, because I knew that I was covered. I
5 wasn't going to risk my life. I've got two little girls and
6 a wife that I've got to protect, too.

7 Q In fact, Mr. Nicholes, you knew -- you had figured out
8 the system here, and you knew you could parlay information
9 to save your own skin --

10 A That's not true.

11 Q -- as long as you told the authorities what they wanted
12 to hear; isn't that right, Mr. Nicholes?

13 A That's not true. I came to them. Before I was offered
14 an agreement, I offered information. That was the whole
15 reason the truck and all the goods were found, was before I
16 signed anything on April 1. This agreement is April 18th.
17 Everything was taken care of before this agreement was even
18 signed, and that was when I knew I was going to probably
19 serve 10 years in jail.

20 Q So you knew early on that you were looking at a whole
21 --

22 A Sure.

23 Q -- armload of time here, didn't you?

24 A Uh-huh. Sure did.

25 Q Now, Mr. Nicholes, going back to your activities in the

1 theft ring, you -- what did you get out of the theft ring?

2 A A ruined life. I mean, look where I am.

3 Q Well, let me ask you this, Mr. Nicholes. Did you get
4 anything else out of it besides a ruined life, such as money
5 or goods or --

6 A I was compensated for my time.

7 Q Well, what was your pay rate at Lyles Building Supply?

8 A \$6.50 an hour.

9 Q Are you saying that Ted Kimble paid you at the rate of
10 \$6.50 per hour when you went out on these theft excursions?

11 A I don't recall what it was.

12 Q Well, you told investigators that the first time you
13 went out with Ted Kimble, that he paid you \$300?

14 A Right. But if you also read the first time I went out,
15 I was told it was legitimate. Ted told me that we were
16 going up -- going to pick up materials that were his. He
17 called me at 3:00 in the morning, to go help him, when it
18 was snowing. That was before there was any knowledge that
19 any of these materials were stolen.

20 Q Okay. So your testimony is, the first time you went
21 out with Ted Kimble, that you thought it was legitimate?

22 A There was a number of times before I figured out what
23 was going on, yes.

24 Q All right. And Mr. Nicholes, Ted Kimble called you at
25 3:00 a.m.; is that right?

1 A Approximately, yes.

2 Q All right. And he told you -- what did he tell you at
3 that time?

4 A Asked me to -- or asked -- said he needed some help and
5 to meet him at the shop.

6 Q Okay. Did you not think it was a little odd that you
7 were meeting at 3:00 o'clock in the morning?

8 A Sure. But at the time, he was my boss and he was my
9 friend.

10 Q Okay. And --

11 A Wasn't an -- I mean, it wasn't an odd request. Ted,
12 you know, liked people to do favors for him and help him
13 out. And he treated me well.

14 Q All right. Well, prior to this time, had he ever
15 called you up at 3:00 o'clock in the morning and asked you
16 to come down to the shop and help him out?

17 A No.

18 Q Was Patrick Pardee down at the shop at that -- on that
19 occasion?

20 A No.

21 Q All right. So it was just you and Ted?

22 A Yes.

23 Q And what did Ted -- when you got down to Lyles, what
24 did Ted say to you?

25 A I don't remember exactly. Something to the effect, we

1 needed to go pick up some doors and windows.

2 Q Okay. Did you say something to Ted at that time about
3 the fact that it was 3:00 o'clock in the morning, and you
4 thought that was a little bit odd time to go to be picking
5 up doors and windows?

6 A No.

7 Q Didn't say anything to him?

8 A Huh-uh.

9 Q Did you in fact go and pick up doors and windows?

10 A I drove there. I didn't pick up anything.

11 Q All right.

12 A I had to actually study for a Spanish test that night,
13 while in the car, while we was up there.

14 Q Okay. So you just drove the truck?

15 A Yeah. I mean, I helped him -- what the situation was,
16 and I guess I -- I mean, he went up there and had to take
17 out some screws and whatnot. I helped him load the windows
18 afterwards into the truck.

19 Q Okay.

20 A That's what I was there for. He couldn't carry them by
21 himself.

22 Q All right. So they were too heavy to be carried by
23 themselves?

24 A Sure. Right.

25 Q But before he got the windows to the truck, he had to

1 remove some screws, to get the windows out of the house; is
2 that right?

3 A Uh-huh.

4 Q And what about the doors, Mr. Nicholes? Did he have to
5 remove any screws or any hinge pins or anything like that,
6 to get the doors?

7 A Yes.

8 Q All right. So, while you were studying for your
9 Spanish test real hard at that time, you noticed him moving
10 the -- removing the screws and the hinge pins?

11 A No. When I picked up the windows -- if you know
12 anything about windows, you have a replacement window and
13 you have windows with nailing fins. When we got them into
14 the car, they had obviously been nailed into the house.

15 Q Okay.

16 A And that's how I know that. That's what I do for a
17 living. I'm in home improvements.

18 Q Okay.

19 A I mean, I knew that. I was working at Lyles Building
20 Material.

21 Q So you were well-versed in construction techniques, and
22 you knew all about installing windows and how to frame a
23 house basically --

24 A No.

25 Q -- and that sort of thing?

1 A Well, well-versed isn't it. It's not -- doesn't take
2 rocket science to know that a nail's been put in a window
3 and whether it's a brand new window from Home Depot.

4 Q Okay.

5 A That's not being well-versed.

6 Q So you were sitting out in front of some residential
7 section. Where was this, Mr. Nicholes?

8 A It's off of Brassfield Street --

9 Q Okay.

10 A -- Brassfield Road.

11 Q Was this near Bryan Boulevard?

12 A Close to.

13 Q Okay. Was it an upscale residential section?

14 A Yes.

15 Q All right. And there were a number of houses under
16 construction in that section?

17 A Several.

18 Q All right. And since you know about home improvements,
19 Mr. Nicholes, what would you estimate the value of these
20 doors and windows was?

21 A Several thousand dollars.

22 Q So they were expensive doors and windows --

23 A Uh-huh.

24 Q -- is that right? Did you question Ted Kimble about
25 the nails that had been removed?

1 A No, not that night, I didn't.

2 Q All right.

3 A He just said that it was -- that what had come up was,
4 on the first several occasions, you know, knowing builders
5 and whatnot. And there was some stuff, there was some
6 lumber that was legitimately acquired through these means.
7 Sometimes builders will purchase special-order items that
8 aren't right or aren't correct, and they're already paid
9 for, they need to get the other items, so they would sell
10 them. And oftentimes, people would come in and sell, you
11 know, brand new windows to Ted. And, you know, there is --
12 I mean, at the time, I didn't know anything, in regards to
13 anything different. I mean, there -- sure, there was new
14 windows, and people would bring in lumber that was left over
15 from a building site and whatnot to Lyles. That's what
16 Lyles is about --

17 Q All right. Did you --

18 A -- selling materials.

19 Q I didn't mean to cut you off, Mr. Nicholes. Do you
20 need to say anything more in your answer?

21 A No. I'm fine.

22 Q But had you ever been out to a residential site with
23 Ted Kimble, to pick up any building materials from a
24 residential site?

25 A Yes. We had -- we had picked up two-by-fours before,

1 and had a billed receipt for them for that.

2 Q Was somebody present then?

3 A Yes. I mean, we had receipts and everything. And we
4 had showed Ted's dad everything, because he was concerned
5 about it, at first.

6 Q So on those occasions, you went out to a residential
7 site, and Ted actually paid for the materials, he paid the
8 job superintendent or the foreman --

9 A Right.

10 Q -- whoever it was?

11 A Correct.

12 Q But on this occasion, Mr. Nicholes, this was at 3:00
13 o'clock in the morning; is that right?

14 A Approximately 3:00 o'clock in the morning, yes.

15 Q All right. And after you got these items loaded up in
16 the truck, Ted -- did Ted Kimble pay you the \$300 when you
17 got back to Lyles, or did he pay you then?

18 A I don't remember. It may have been within the next
19 couple days. I'm really --

20 Q All right.

21 A -- not sure. I don't recall.

22 Q And how long did that take, Mr. Nicholes?

23 A What, to load the doors and windows.

24 Q Yes, sir. Well, the whole thing, the trip from Lyles
25 and back to Lyles.

1 A Three and a half, four hours.

2 Q Okay. But if you'd gotten paid at your normal rate,
3 you would have gotten a little bit under \$30; is that right?

4 A Correct.

5 Q Okay. Now, you said earlier that you did this several
6 times, before you realized that Ted Kimble was stealing
7 these items; is that right?

8 A I don't remember the amount of times or anything like
9 that, but it was -- it was all in -- I mean, everything was
10 so where, you know, when we were out doing this stuff and we
11 became closer, and he was inviting, you know, my wife and
12 child and myself out to dinner and everything, just became
13 close, and then, you know, I was told about Patricia, and I
14 mean, everything just came into line at one time. I mean, I
15 feel I was manipulated. I feel that it was all set up to be
16 like this.

17 Q Well, do you feel like Ted Kimble tricked you, by
18 telling you that, when you went out that first time, and any
19 subsequent times, that this was a legitimate trip, where he
20 was just going to get some doors and windows that he'd
21 already paid you -- that he had already paid for?

22 A I don't know what I was feeling at the time. I mean,
23 -- I mean, I don't -- I don't know how to address that.

24 THE COURT: I hate to interrupt you at this point.
25 How much longer are you going to be with this witness?

1 MR. LLOYD: Awhile, Your Honor.

2 THE COURT: You may step down, sir. You may step
3 down, Mr. Nicholes.

4 THE WITNESS: Me?

5 THE COURT: Yes.

6 (The witness left the witness stand.)

7 THE COURT: Members of the jury, we'll take our
8 evening recess. You'll need to be back in the morning at
9 9:30. Please report to the jury room. Again, remember your
10 jury responsibility sheets.

11 Have a nice evening. I'll see you in the morning.

12 (The jury left the courtroom at 5:03 p.m.)

13 THE COURT: Any other matters before the evening
14 recess?

15 MR. PANOSH: No.

16 MR. LLOYD: No, Your Honor.

17 THE COURT: 9:30 in the morning, sheriff.

18 (A recess was taken at 5:04 p.m., until 9:30 a.m. Tuesday,
19 August 18, 1998.)

20

21

* * * * *

22

23

24

25

1 TUESDAY, AUGUST 18, 1998

2 (Court convened at 9:34 a.m. The defendant was present.
3 lthe jury was not present.)

4 THE COURT: Any matters we need to take care of
5 before we bring the jury in?

6 MR. PANOSH: No, Your Honor.

7 MR. LLOYD: Your Honor, just briefly. In light of
8 Your Honor's ruling yesterday, Judge, we would simply ask,
9 the Court's done this for us before, if we could just
10 interpose a line objection when the next witness -- I don't
11 know that he's going to be the next witness, but the one
12 that we talked about, Patrick Pardee, in the hearing, if we
13 could just interpose a line objection to the first objection
14 that we had.

15 THE COURT: The Court will allow that.

16 MR. LLOYD: Thank you, Your Honor.

17 THE COURT: Bring them in.

18 Mr. Nicholes, if you'll return to the witness
19 stand, please, sir.

20 (The witness Robert H. Nicholes returned to the witness
21 stand.)

22 (The jury entered the courtroom at 9:36 a.m.)

23 THE COURT: I'm pleased to have the jury panel
24 back. I hope each of you had a nice evening and feeling
25 okay. Anyone on the jury panel experiencing any problems

1 this morning that I should know about, if you'll raise your
2 hand, I'll be glad to talk with you about that.

3 Okay. I believe -- you may continue with the
4 examination of the witness, cross-examination, Mr. Lloyd.

5 MR. LLOYD: Thank you, Your Honor.

6 ROBERT H. NICHOLLES, having been previously duly sworn,
7 testified as follows during CONTINUED CROSS-EXAMINATION by

8 MR. LLOYD:

9 Q Now, Mr. Nicholes, you told us yesterday that the first
10 several trips, first several stealing trips that you went on
11 with Ted Kimble, where you were stealing building materials
12 from home sites --

13 A Yes, sir.

14 Q -- you thought those were legitimate excursions, didn't
15 you?

16 A Better put, I wanted to believe they were legitimate.
17 Ted was a friend of mine and -- I mean, of course, 3:00
18 o'clock in the morning, it would cross my mind that maybe it
19 wasn't legitimate. Ted was a friend. I mean, I -- my
20 better judgment, I knew it was wrong. I was there to -- for
21 the money. When he said \$300, I was there for the money.

22 Q Well, I thought you told us yesterday, Mr. Nicholes,
23 that certainly with respect to that first trip, the one at
24 3:00 o'clock in the morning, you thought that was a
25 legitimate enterprise?

1 A I thought it was -- it was legitimate. I mean, it
2 crossed my mind, but at first -- I mean, you believe in a
3 friend, you don't know any different. You go with your
4 judgment at the time. Sure, it crossed my mind.

5 Q And you told investigators that the first several
6 occasions when you went with Ted to steal these building
7 materials, that you thought that those times were
8 legitimate; is that right?

9 A Wanted to believe they were legitimate, yes.

10 Q And you told investigators that you thought they were
11 legitimate?

12 A That I wanted to believe they were legitimate, yes, I
13 did.

14 Q When was the first time, Mr. Nicholes, that you
15 realized conclusively that these late-night excursions to
16 people's homes, where you took windows and doors and other
17 building materials, were not legitimate?

18 A Soon thereafter the first couple I believe -- I knew --

19 Q Now --

20 A -- that it was wrong.

21 Q I didn't mean to cut you off. Are you through with
22 your answer?

23 A That's okay.

24 Q Did Ted Kimble pay you the same way he had for the
25 first one at 3:00 a.m. in the morning?

1 A No.

2 Q All right. Did he pay you in cash?

3 A Yes.

4 Q All right. When you say "No," did he just not pay you

5 --

6 A It was -- it was --

7 Q -- as much?

8 A Yes, sir, it was not as much.

9 Q Was that because what you were stealing was not as
10 valuable as the valuable doors and windows that you stole
11 that first time, at 3:00 a.m. in the morning?

12 A I'm not sure how he came up with his method of payment

13 --

14 Q All right.

15 A -- but it was not \$300.

16 Q All right. But at any rate, you were satisfied with
17 that, were you not?

18 A Yes.

19 Q And at some point, Mr. Nicholes, Ted Kimble actually
20 wrote you checks from the business for the building
21 materials supplies that you had stolen; is that right?

22 A No, that's not. He had written me checks for building
23 materials that we had stolen.

24 Q All right.

25 A It was not checks that I had -- it was -- when we are

1 out and -- as I had said yesterday, when we were out going
2 to steal stuff, and he told me that he was responsible for
3 the death of Patricia, he told me that everything was there,
4 and if I ever went to the police, that I would be in
5 trouble, and that's why the checks were there, to -- so he
6 would be able to pin it on me. He asked myself and my wife
7 to get the trailer in our name, so it could not come back to
8 him. He's a very smart man. He was not stupid.

9 Q Well, Mr. Nicholes, did you get the trailer in your
10 name?

11 A No, I did not.

12 Q All right. But you accepted the checks, nevertheless?

13 A Yeah. That was included in my paychecks, for the most
14 part. There was -- then -- when you're talking about
15 receiving checks, you're maybe talking about one or two, and
16 usually, that was put right into my weekly pay at \$6.50 an
17 hour.

18 Q So you're saying that Ted inflated your hours there at
19 the business, and included that in your paycheck, when he
20 paid you for these building supplies.

21 A Sometimes. There were checks that were given to me
22 that said "For building materials." And Ted had explained
23 that that was if anything ever came about, it was -- it was
24 -- he had the proof on paper that I brought him the building
25 materials.

1 Q Okay. So on these checks that were separate from your
2 pay, that said "building materials," you accepted those
3 checks, didn't you?

4 A Yes, I did.

5 Q And you cashed them and you negotiated them?

6 A Yes, I did.

7 Q All right. Even though you say that Ted Kimble's motive
8 in doing that was to get something on you; is that right?

9 A To help -- partially, yes. I mean, of course -- I
10 needed the money. I mean, I'll be -- I needed the money. I
11 was a student. Ted had helped me out a lot. He was a
12 friend. But I had gotten into a situation where, you know,
13 when we became friends, that I just knew too much. And he
14 knew. I mean, the reason, you know, that I did this stuff,
15 I was -- that's why I believe precisely why he told me
16 everything he did.

17 Q Now, Mr. Nicholes, prior to the 3:00 a.m. excursion,
18 when you and Ted stole the windows and doors, had you ever
19 sold any building materials --

20 A No.

21 Q -- to Ted Kimble --

22 A No.

23 Q -- before that time?

24 A Huh-uh.

25 Q Now, over the course of the time that you and Ted were

1 involved in these thefts, this stealing, as you indicated
2 yesterday in your testimony, this is when this, as you
3 described it, closeness between you and Ted transpired; is
4 that right?

5 A That's correct.

6 Q And as this closeness developed, it was at some point
7 when, after that closeness between you and Ted became
8 established, that Ted made this admission to you that you've
9 testified to in court yesterday; is that right?

10 A That is correct.

11 Q Now, how long had you known Ted before you got this
12 3:00 a.m. call and he came over and picked you up and you
13 went out on this first theft excursion?

14 A Approximately two and a half months.

15 Q All right.

16 A It was whenever the first snowfall was. That's how I
17 remember. I don't remember the date.

18 Q All right. So you -- do you recall telling
19 investigators that it was about three months after you'd
20 known him --

21 A Yeah. That would put --

22 Q -- that that occurred?

23 A -- it in the December --

24 Q All right.

25 A -- area.

1 Q So that would have been sometime in December --

2 A Correct.

3 Q -- sometime before the first of the year? And the
4 stealing escalated with time; is that right?

5 A Yes.

6 Q And you told police that there were at least 20
7 occasions when you and Ted went out to steal, by yourselves;
8 is that right?

9 A Yes.

10 Q And that there were another, say, three to five times
11 when Patrick Pardee went with you two to steal?

12 A Correct.

13 Q Now, when was the first time that Patrick Pardee was
14 involved?

15 A I don't recall.

16 Q Well, with relation, starting with the 3:00 a.m. theft
17 as the first actual theft --

18 A Right.

19 Q -- involving you and Ted, can you pinpoint a time when
20 Patrick became involved after that?

21 A I really can't, no.

22 Q Now, if you know, Mr. Nicholes, was Patrick Pardee and
23 Ted Kimble involved in stealing building materials before
24 you and Ted became involved in stealing building materials?

25 A I don't believe so.

1 Q And when you first -- when Patrick Pardee first became
2 a member of your conspiracy, what did you tell -- you and
3 Ted tell him was the purpose of going out late at night and
4 taking these building supplies from homes?

5 A I never discussed it with Patrick. They were -- they
6 had been best friends. Patrick just came along.

7 Q All right. So it was obvious to you that Patrick knew
8 exactly what you and Ted were doing; is that correct?

9 A Yes.

10 Q All right. I mean, you were going out late at night.
11 Did you have the scanners operating at that time, Mr.
12 Nicholes?

13 A There were police scanners.

14 Q And the purpose of the scanners was, that one of you
15 would listen in on the scanners, to see if the police had
16 any report of a theft going on?

17 A That is correct.

18 Q And if they -- if you did hear something on the police
19 scanner concerning a theft in your area, then you would know
20 to leave; is that correct?

21 A Yes.

22 Q Now, you told police officers that you were basically a
23 reluctant participant in these thefts involving Ted; is that
24 right?

25 A As time went on, yes, I was reluctant.

1 Q All right. And you told police officers that at times,
2 you told Ted that you would not participate --

3 A That is --

4 Q -- in the thefts?

5 A That is correct.

6 Q And that -- and you told police officers at that time
7 that Ted should -- told you you were going to participate?

8 A That is true.

9 Q And showed you his gun?

10 A Right. And came to my home at 3:00, 4:00, 4:30 in the
11 morning --

12 Q All right.

13 A -- several occasions.

14 Q And you were intimidated?

15 A Yes, I was intimidated.

16 Q And you were scared?

17 A I was very scared.

18 Q All right. And you went ahead and went on these theft
19 excursions because you were afraid of Ted; is that right?

20 A On -- I got out of what I could. I would -- there's
21 many times when he'd call or come over and I'd hide, and my
22 wife would tell him I wasn't there. But yes, I mean, I did
23 go on some, for fear. I mean, I had -- it was -- he was my
24 sole source of income. He was threatening me with, you
25 know, my life and my family's well-being, because of the

1 things I knew, because of the things he told me.

2 Q So basically, at this time, you were participating
3 almost solely because you were afraid of Ted?

4 A As the time went on, yes. And I mean, for the first
5 couple months, I'd done it for the money.

6 Q Now, Mr. Pardee (sic), during that period of time when
7 you say you participated, not for the money, but out of fear
8 for Ted, did you look for another job at that time?

9 A Yes, I looked for other jobs. It's -- I mean, I was
10 senior year, last semester. There were certain courses I
11 had to take, you know. Many employers are not going to hire
12 you for two hours in the morning and then three in the
13 afternoon. It was -- there was no way I could do it. Plus,
14 I was -- I was told that I could not leave.

15 Q Did you go to your parents, and tell them that you were
16 in a real bind, and that you only needed enough money to
17 finish up your last semester, and could they please help you
18 out?

19 A No, I didn't.

20 Q But you could have, couldn't you, Mr. Nicholes?

21 A Sure. But why involve even more people, is the way I
22 was thinking. I mean, yeah, I was -- I was -- I was scared,
23 I was frightened. I'm not going to bring in my -- the rest
24 of my family. I didn't know what I was dealing with.

25 Q Well, Ted wouldn't have known if you'd gone to your

1 family, would he?

2 A Sure, if I come up with the money and quit. He told me
3 I was not going to quit, that I was staying there. I was
4 staying there. I mean, the man brought a Glock 19 to my
5 wedding reception. That's how -- that's how it was. That's
6 how the relationship was. And left it at my house. My
7 father made me return it to him that night. That was the
8 kind of situation I was in. This is my wedding reception,
9 and the man brings a gun to intimidate me, inside my home
10 and my parents' home.

11 Q And this same man who brought the gun to intimidate
12 you, left the gun at your house; is that correct?

13 A Yes, he did, by accident.

14 Q All right. But you returned the gun to him; is that
15 correct?

16 A I returned it. My father told me it could not be at
17 our house.

18 Q Now, during the time that you worked for Ted Kimble,
19 you developed curiosity about his probable involvement in
20 his wife's death; is that correct?

21 A Yes.

22 Q And you even went to the trouble of looking up old news
23 articles on the school's computer; is that correct --

24 A Yes, I did.

25 Q -- Mr. Nicholes?

1 A I did that, I believe, the day after the anniversary.

2 Q All right. And you read those articles?

3 A Yes.

4 Q And you learned something about the facts, at least
5 what was known in the news articles, about -- surrounding
6 Patricia's death; is that right?

7 A There -- in those articles, there wasn't many facts,
8 because it was still part of a pending investigation. It
9 just said that she was shot and burned, and it looked like
10 an apparent, someone was trying to rob them. There weren't
11 any details.

12 Q But at any rate, you started essentially badgering Ted,
13 about whether or not he had anything to do with his wife's
14 death?

15 A Inquiring, yes.

16 Q All right. So you asked him on a number of occasions?

17 A A number of occasions.

18 Q And you told investigators that the response you got
19 from him was usually just no response at all; is that right?

20 A No response, or he had an alibi.

21 Q All right. But you persisted?

22 A Yes.

23 Q You kept asking him again and again?

24 A To an extent, yes.

25 Q All right.

1 A I mean, it wasn't like daily 30 times, but yes --

2 Q All right.

3 A -- I kept on asking him.

4 Q And according to your testimony here yesterday, finally
5 one night, he basically admitted having involvement in his
6 wife's death --

7 A Yes.

8 Q -- is that correct? And Mr. Nicholes, this was the
9 same man that you were very much afraid of; is that right?

10 A Yes.

11 Q This was the man that you were too afraid to even quit
12 your job?

13 A Yes.

14 Q Too afraid to turn him down on any of these stealing
15 excursions?

16 A I turned him down on some. I told you that. I did.
17 On most of them I went, though, yes. Yes, I was very
18 afraid.

19 Q All right. Too afraid to involve your parents?

20 A Correct.

21 Q Too afraid to even go to the police; is that right, Mr.
22 Nicholes?

23 A Yes.

24 Q Now, on some of these stealing excursions, Mr.
25 Nicholes, when you were with Ted, he spoke to you about your

1 drinking; is that right?

2 A Not on the -- on the trips themselves, but he had
3 talked to me about going out and drinking, yes.

4 Q And basically, he didn't approve of your drinking; is
5 that right?

6 A No, he did not.

7 Q All right.

8 A That was one thing he was -- he did not like drinking.

9 Q Now, Mr. Nicholes, at that time, did you have a
10 drinking problem?

11 A Not a drinking problem. I was a senior in college and
12 I would go out and drink, just like -- yes -- I mean, I
13 would not have a drinking problem, I went out and socially
14 drank, yes.

15 Q Well, have you been convicted of DWI?

16 A No.

17 Q All right. Had you been arrested for that?

18 MR. PANOSH: Object.

19 THE COURT: Overruled.

20 A Yes.

21 Q And had you been arrested more than once, Mr. Nicholes?

22 A At that time, no. Yes, I have been arrested more than
23 once for that.

24 Q And Mr. Nicholes, as a result of those DWI arrests,
25 have you had a substance abuse assessment?

1 A No.

2 Q Do you feel like, Mr. Nicholes, that you have a
3 drinking problem?

4 A No.

5 Q That's despite the fact that you had at least two
6 arrests for DWI; is that right?

7 A Two arrests, one dismissal.

8 Q All right. And was that dismissal as a result of your
9 cooperation in this case?

10 A No.

11 Q And have the police or prosecution or anyone made you
12 any promises concerning your other DWI arrests, in exchange
13 for your testimony here against Ted Kimble?

14 A No. I read yesterday on this, it clearly states that
15 it has nothing to do with anything else but the larcenies
16 and B&E's with Ted Kimble. Everything else is not part of
17 this agreement.

18 Q Do you expect any help from the prosecution concerning
19 your DWI, even though it's not stated on your written plea
20 agreement?

21 A Not at all.

22 Q Did you talk to your lawyer concerning that?

23 A I don't have a lawyer.

24 Q All right. In fact, Mr. Nicholes, you don't need a
25 lawyer, do you?

1 A That's not it at all. There's, I mean, situations that
2 has nothing to do with this really. I mean, if you want the
3 answer, I blew a .07 and was taken in. That's -- I should
4 have been let go at the time, and that's why it's going to
5 go to trial and be dismissed. I was drinking, yes, but I
6 was legally not intoxicated.

7 Q All right.

8 A And that's why I don't need an attorney.

9 Q Well, did the police officer cite you for being
10 intoxicated with some other intoxicants, such as marijuana
11 or some drug?

12 A No, sir.

13 Q Now, Mr. Nicholes, were you drinking when you were out
14 with Ted Kimble on these incidences when you were stealing
15 from people's homes?

16 A Rarely. Rarely.

17 Q Was that because Ted didn't approve of it?

18 A Yes.

19 Q Now, Mr. Nicholes, you and Ted Kimble didn't steal just
20 from people's homes, did you?

21 A No.

22 Q You stole from Home Depot --

23 A Uh-huh.

24 Q -- is that right?

25 A That's right. Ted rented a forklift and brought all

1 his equipment down, and we stole material from Home Depot,
2 with Patrick.

3 Q All right. So Patrick Pardee was involved in that one?

4 A Yes, sir.

5 Q All right. And there was another occasion when
6 Northern Hydraulics was broken into --

7 A Yeah.

8 Q -- and items stolen from that? Were you involved in
9 that, Mr. Nicholes?

10 A Yes.

11 Q All right. Was Patrick Pardee involved in that one?

12 A Yes, he was.

13 Q And what did you all steal from Northern Hydraulics?

14 A Go-carts.

15 Q Okay. Anything else that you can recall --

16 A Yeah.

17 Q -- Mr. Nicholes?

18 A There's -- my direct involvement was go-carts. There
19 was just -- some generators taken, a lawn mower taken.

20 Q And out of that theft, did you get one or some of the
21 go-carts?

22 A I received a go-cart.

23 Q Now, Mr. Nicholes, you indicated in your testimony that
24 at some point, Ted Kimble left his Glock pistol at your
25 house; is that right?

1 A Uh-huh.

2 Q That was your folks' house at that time; is that right?

3 A Correct.

4 Q All right. And your dad was well -- was aware of the
5 fact that the gun was not yours and was Ted's?

6 A Right.

7 Q All right. And you told him that, didn't you?

8 A Yes.

9 Q And he told you at that time that he wanted you to take
10 it back to Ted, that he didn't want any guns in his house;
11 is that right?

12 A Yes.

13 Q Mr. Nicholes, wasn't that the perfect opportunity to
14 bring up to your father the mess you were in, and talk to
15 him about it?

16 A I believe not. My dad is in a very prominent position
17 in the -- in the city. It's already -- this has brought him
18 a bunch of embarrassment. I knew that bringing him into it
19 at that time would be even worse. I mean, I could not
20 afford to bring my family into that situation. And I didn't
21 know -- you know, I didn't know what I was getting into.

22 Like I said, I was very, very terrified of the situation.

23 Q Well, you stated that at this time, you feared for your
24 life --

25 A I sure did.

1 Q -- did you not? And you thought that that was --
2 despite the fact that you feared for your life, you could
3 not bring your father into this situation?

4 A Correct, for fear of his.

5 Q Now, before you talked to police officers, when you
6 were arrested, did you tell anyone that you were scared to
7 death of Ted Kimble?

8 A Yes.

9 Q Did you tell anybody in authority?

10 A Not at the time, no.

11 Q All right. You certainly didn't tell your father?

12 A My father knew before I -- before Ted was arrested,
13 when everything was kind of coming to a head, so to speak.

14 Q All right. But you didn't tell him on this occasion,
15 when the gun was in the house, did you?

16 A No, I didn't. That was early February.

17 Q While you and Ted were still stealing things --

18 A Yes.

19 Q -- is that right?

20 A Yes.

21 Q Now, you indicated in your testimony earlier, Mr.
22 Nicholes, that you had read the newspaper articles off the
23 Internet, the old newspaper articles; is that right?

24 A It's not the Internet. It's a microfiche file that has

25 --

1 Q Okay.

2 A -- the Greensboro paper on it, yes.

3 Q All right. So these -- but these at any rate were the
4 old newspaper articles that covered the course of the
5 investigation of Patricia's death; is that right?

6 A It was the -- it was the original -- the original
7 article --

8 Q All right.

9 A -- is what I had read.

10 Q So you would have known as much as anybody in the
11 general public knew, at least at that time; is that right?

12 A That she was shot in the head and burned to death, yes.

13 Q Okay. So you were certainly armed with enough facts,
14 and you knew that Detective Church was the lead investigator
15 in the case, based on your review of the newspaper articles,
16 that you could have gone to Detective Church and told him
17 about Ted Kimble, and asked for his protection, couldn't
18 you?

19 A I was in fear of myself, and Ted had all that other
20 stuff. I'm a senior in college, graduating, you know, great
21 grades, have a great future in front of me, Ted's sitting
22 there with -- you know, I mean, I had been in trouble
23 before. I had told you that. At the time, I knew I was
24 doing wrong, and I had been manipulated to the point where I
25 was in between a rock and a hard place. That's precisely

1 the reason why I was -- why Ted told me those things.

2 Q But as far as your participation in the theft ring, Mr.
3 Nicholes, some of this was, according to your testimony, was
4 done based on Ted's coercion of you, you were virtually
5 doing these thefts at gunpoint on some occasions; is that
6 right?

7 A Not at gunpoint, with -- not -- I mean, reference to
8 showing me his pistol, yeah. It wasn't at gunpoint, though.

9 Q But as far as you were concerned, it was life-
10 threatening intimidation; that's what you've testified to,
11 isn't it?

12 A That I was afraid for my life, yes.

13 Q And that's why you did at least some of these thefts;
14 is that correct? That's what you've testified to before,
15 isn't it?

16 A Some of them, yes.

17 Q All right. Now, Mr. Nicholes, when was it that you and
18 Ted and Patrick Pardee stole the go-carts from Northern
19 Hydraulics?

20 A I really don't remember the date. Generally late
21 January, perhaps.

22 Q Okay. Was it after your wedding, right about your
23 wedding?

24 A No. It was before.

25 Q Okay. In terms of when Ted was intimidating you, was

1 this before or after the intimidation? Was this -- this was
2 after Ted had come to your house on several occasions and
3 shown you his gun and said that you were going out with him;
4 is that right?

5 A Correct.

6 Q All right. And isn't it a fact, Mr. Nicholes, that
7 after y'all got the go-carts, that you went out riding on
8 the go-carts?

9 A No, I actually did not go ride the go-carts. Patrick
10 and Ted rode the go-carts. I had the one at my house, but
11 as far as going and taking them around the shop and taking
12 them out, they did that. Ted had taken them out with his
13 girlfriend a couple times.

14 Q Well, you certainly drove your go-cart, didn't you?

15 A I drove my go-cart, yeah.

16 Q All right.

17 MR. LLOYD: That's all I have, Your Honor.

18 REDIRECT EXAMINATION by MR. PANOSH:

19 Q You indicated that you cooperated with the police and
20 the sheriff's department prior to making your agreement.
21 Would you give the ladies and gentlemen of the jury the
22 details of that, please.

23 A The details of that were, upon April 1st, when it was
24 brought up about the -- when Ted was arrested, I had worked
25 with the Greensboro Police Department, to show them -- drove

1 around with them in the car, to show them where items had
2 been stolen. I took them to -- what's the name of that? --
3 there's a place where trucks -- where you can put stuff
4 inside trucks, and I took them across the street and pointed
5 out everything that was taken there. This is before any
6 agreement or anything. I done this as soon as I knew that
7 Ted was arrested. I felt I had to. And worked with the
8 Greensboro Police Department and then everything out of the
9 city. I had worked with John Davis of the sheriff's
10 department, the Guilford County sheriff, and went through
11 much of the same thing, showing him what stuff on Lyles
12 Building Material property was stolen and what stuff over in
13 the truck had been stolen, and the different job sites where
14 the stuff had come from.

15 Q What day was it that you showed John Davis the items
16 that were in possession of Lyles Building Supply that were
17 stolen?

18 A That was the day of the arrest, April 1st.

19 Q At that time, had you been charged?

20 A I hadn't been charged.

21 Q Did you tell Detective Davis of your involvement on
22 that day?

23 A Yes, I did.

24 Q Drawing your attention to the agreement, State's Number
25 115 I believe it is, do you see that in front of you?

1 A Yes.

2 Q How many case numbers are on it? Would be --

3 MR. PANOSH: May I approach the witness?

4 THE COURT: You may.

5 A I don't have that one --

6 (Mr. Panosh indicated on the exhibit.)

7 Q Do you see that portion of the agreement that makes
8 reference to the case numbers?

9 A Yes, I do.

10 Q How many cases were you charged with at the time you
11 made the agreement?

12 A I was charged with three.

13 Q And because of your statements, were there subsequent
14 charges that you made reference to, totaling how many?

15 A Yeah. I was -- I was charged after -- I was charged
16 with additional 25, 26.

17 (Mr. Panosh showed exhibits to Mr. Lloyd and Mr. Hatfield.)

18 MR. LLOYD: Your Honor, I'd like to be heard
19 outside the presence of the jury.

20 THE COURT: All right.

21 Members of the jury, if you'll step in the jury
22 room a moment, please.

23 (The jury left the courtroom at 10:10 a.m.)

24 THE COURT: All right, sir.

25 MR. LLOYD: Judge Cornelius, Mr. Panosh has handed

1 us a number of exhibits. They are mainly books or
2 pamphlets. Here's one called "Homemade Detonators, How to
3 Make Them, How to Salvage Them, How to Detonate Them."
4 "Two-Component High-Explosive Mixtures." "Snipers."
5 "Ultimate Sniper, the Video." "Homemade C-4, Closer Look."
6 "Dispensable Silencers." Must be another one called
7 "Silencers" in this. I don't know what it is. Here's
8 another item on silencers.

9 Your Honor, I would assume that he intends at this
10 time to introduce these items through the testimony of Mr.
11 Nicholes. I would first point out that he certainly had a
12 chance to do that on direct. We've now been through cross-
13 examination, and now he seeks to introduce these.

14 Obviously, our position on this stuff, Your Honor,
15 is, it's very damaging, from the standpoint of simply smear.
16 I don't know whether it would be admissible against Ted in
17 his trial, under some sort of 404(b) rationale. I think it
18 goes basically to character, Your Honor. And the problem
19 that we have with it, although none of this -- I don't
20 expect Mr. Nicholes to testify that Ronnie Kimble had
21 anything to do with this. It's once again trial by
22 innuendo, trial by character assassination, character
23 assassination on Ted Kimble, and therefore, character
24 assassination on Ronnie Kimble, by virtue of the fact that
25 he is Ted Kimble's brother. And that's why I think it is so

1 objectionable, Your Honor. If there was ever a body of
2 evidence that failed under whatever else you want to
3 consider, Your Honor, this has to fail under a 403 balancing
4 test. The potential and the danger for unfair prejudice so
5 far outweighs any possible probative value on this, that it
6 just cannot be admissible. And I ask Your Honor to exclude
7 it.

8 THE COURT: Mr. Panosh?

9 MR. PANOSH: May I ask questions?

10 THE COURT: Sir?

11 MR. PANOSH: May I ask the witness questions?

12 THE COURT: Yes, you may.

13 VOIR DIRE EXAMINATION by MR. PANOSH:

14 Q Drawing your attention to the exhibits that I'm placing
15 before you, are you familiar with these items from working
16 at Lyles Building Supply?

17 A Yes, I am.

18 Q And referring to the red sticker number, would you tell
19 the Court for the record what they are.

20 A State's Exhibit 117 is "How to Build Silencers, an
21 Illustrated Manual." Ted had showed me this, on how to go
22 to Lowe's or Home Depot and build a silencer.

23 Do you want me to go through them all, Mr. Panosh?

24 Q Yes. If you can keep them in numerical order, it would
25 be appreciated.

1 A Okay.

2 Q If you can find 115 and start with that.

3 A Start with this, 116, perhaps?

4 Q All right. Start with 116.

5 A Okay. 116 is "How to Make Disposable Silencers."

6 Q Is there more than one book in there?

7 A Yes, there is.

8 Q And in the course of dealing with Theodore Kimble, did
9 he show you or discuss those books, which are State's
10 Exhibit 116?

11 A Yes. I'd seen them all. He was proud of being able to
12 do this and handiwork with guns and whatnot. He would -- we
13 -- a couple times, Patrick and myself and he were at the
14 shop and he'd shoot animals or shoot at billboards and
15 whatnot.

16 Q Drawing your attention to Number 117, what is that?

17 A That was the -- 117 was how to build the silencers.
18 And this is where you can go down to Home Depot or Lowe's
19 and buy the materials, in order to not hear the gunshot.

20 Q Number 118, what is that, please?

21 A 118 is "Homemade C-4."

22 Q What is C-4, if you know?

23 A C-4 is an explosive.

24 Q Did you discuss that with Theodore Kimble?

25 A Yes, on -- Yes. He had told me how to -- how to do it

1 at one point.

2 Q Number 119?

3 A 119 is "Ultimate Sniper, the Video."

4 Q Did he discuss the fact that he considered himself to
5 be a sniper?

6 A He did not use the word "sniper," but yes, how he could
7 -- often, he had a -- one rifle that you could shoot someone
8 at a half a mile away, and he frequently talked about seeing
9 people on utility poles and whatnot down on Lee Street and
10 how he could shoot them and no one would ever know.

11 Q 120?

12 A "Improvised Radio Detonation Techniques."

13 Q What's that about?

14 A Again, with explosives, how to, you know, with radio
15 control, how to be able to detonate explosive devices.

16 Q Did Theodore Kimble discuss with you his ability to
17 make bombs?

18 A Yes, mailbox bombs, how to put them under a pylon, and
19 when the pylon was moved, the person would be killed.

20 Q 121?

21 A "Detonators, How to Make Them, How to Salvage Them, How
22 to Detonate Them."

23 Q Again, is that referring to his ability to make bombs?

24 A It is.

25 Q 122?

1 A "Two-Component High-Explosive Mixtures."

2 Q Did you see that in Ted Kimble or did he -- Ted
3 Kimble's presence or did he discuss it with you?

4 A We discussed this, and he had -- he had made some
5 mixtures on Lyles' premises before.

6 Q 123?

7 A "Never Say Lie."

8 Q What is that?

9 A It's a book on how to beat a polygraph test, how to act
10 truthful when you're in interviews and whatnot.

11 Q Did he discuss that with you?

12 A Yes, in detail. I was taking sociology classes when I
13 started working there, and that's when he disclosed that he
14 had failed a polygraph test in regards to this, and did I
15 know how he could pass it.

16 Q If you testify in that regard, you're not to mention
17 that he took a polygraph.

18 A Do not mention that?

19 Q Do not mention it.

20 A Okay.

21 Q 124?

22 A "How Big Brother Investigates You."

23 Q Is there a 125?

24 A I do not have a 125.

25 Q Did there come a time when you became aware of the fact

1 that he had a silencer?

2 A Yes.

3 Q I show you now 125. Do you recognize that item?

4 A Yes.

5 Q Is that -- what is that item?

6 A That is a silencer.

7 Q Is that the one that Ted Kimble showed you, or one of
8 the ones he showed you?

9 A This is one of the ones he showed me. I've seen them
10 made out of plastic, too, or PVC.

11 Q I show you now 126. What is that?

12 A Video, "Deathtrap, the Video." It's --

13 Q And what does -- does that refer to booby traps?

14 A It's booby trap devices.

15 Q Did you and Ted discuss that?

16 A We discussed not the video per se, but yes, we had
17 discussed different booby traps and whatnot, how to rig up
18 certain things.

19 Q Based upon your experience at Lyles, did you know he
20 had that in his possession, that videotape?

21 A No, I did not.

22 MR. PANOSH: We'd withdraw that one.

23 Q When you testified to the jury earlier that you were
24 afraid of Theodore Kimble and his ability to harm you, did
25 you know about all these materials?

1 A Yes. It was made very evident to me at all times.

2 MR. PANOSH: No further on voir dire.

3 MR. LLOYD: I don't have any questions, Your
4 Honor.

5 THE COURT: Do you wish to be heard, gentlemen?

6 MR. PANOSH: Your Honor, we agree that on direct
7 examination, these items were not relevant, and we would
8 agree with some of counsel's arguments. However, on cross-
9 examination, they spent 20 minutes trying to stake this man
10 out to say how his fears were unreasonable. They
11 specifically pointed out that at one point, he had Ted
12 Kimble's gun, and at that point, he could have gone to the
13 police. But now, in light of that, Your Honor, we're
14 entitled to show why this man had a real, substantial fear
15 of Ted Kimble. He didn't need a gun to kill him. He knew
16 that he knew how to make bombs, remote-control detonating
17 devices. He knew that he was -- considered himself to be a
18 sniper. He had a book on sniping. And he could kill people
19 from a half mile away.

20 These are the things that went into this man's
21 consideration, when he decided not to go to the police. And
22 we wouldn't have brought it out on direct, but now that
23 they've spent all this time trying to show that his fears
24 were unreasonable, they have opened the door and it should
25 come in.

1 MR. LLOYD: Judge, in terms of our opening the
2 door, I don't see how my cross-examination opened the door.
3 He'd already testified that he was very afraid of Ted
4 Kimble, scared to death of him, were his words on direct
5 examination. And he went into the reason for that. He told
6 him that, according to his testimony, was that Ted had
7 threatened to kill him if he ever went to the police. Now,
8 certainly we're entitled to probe that.

9 It doesn't make any difference, Your Honor, in
10 terms of the legal analysis of this -- whether this evidence
11 is admissible. We're certainly entitled to sift him on
12 cross-examination, based on what he said on direct
13 examination, which is what we did.

14 And, Your Honor, regardless of what Mr. Panosh
15 says about our opening the door on this matter through our
16 cross-examination, you still have to pass this evidence
17 through the final sieve of 403. You've got to determine
18 whether the danger for unfair prejudice substantially
19 outweighs any probative value this might have. And we're
20 not -- from Mr. Panosh's standpoint, the witness has never
21 said, "Well, maybe I wasn't afraid of Ted Kimble." He has
22 been steadfast throughout all my cross-examination that he
23 was very much afraid of Ted Kimble, and that's why he never
24 went to the police or anyone else.

25 So this is just a subterfuge to gain admission for

1 this evidence, which wasn't admissible in the first place.
2 Mr. Panosh even admits that. And it's not admissible now,
3 Your Honor.

4 THE COURT: Do you have any evidence at any point
5 that a silencer was used in this offense?

6 MR. PANOSH: The silencer was not used in this
7 offense. That silencer was seized on April the 1st at Lyles
8 Building Supply from the desk of Ted Kimble.

9 THE COURT: The Court's going to exclude the
10 evidence and would find that the probative value -- the
11 prejudicial value -- prejudicial aspects of this evidence
12 would outweigh any probative value it might have to this
13 defendant.

14 Other questions for this witness?

15 MR. PANOSH: Your Honor, does your ruling preclude
16 me from asking him the basis of his fear?

17 MR. LLOYD: It's already been covered, Your Honor.
18 It's gone over.

19 THE COURT: What is the basis for his fear?
20 What's the question you intend to ask him, sir?

21 FURTHER VOIR DIRE EXAMINATION by MR. PANOSH:

22 Q Let me ask you, sir, specifically, in regard to the
23 time that you had possession of Ted Kimble's gun, were you
24 still afraid of him?

25 A Yes.

1 Q Why?

2 A Because he was capable of hurting me, regardless of a
3 gun. He had many other guns. He had taught me how to -- or
4 showed me how -- you know, how to explode things through
5 mailboxes. Or I had gotten in an argument at school once,
6 and he told me to get rid of the guy by putting a bomb under
7 a pylon at the end of his driveway, and when he lifted it
8 up, he would be killed.

9 MR. PANOSH: Your Honor, that would be the
10 substance of what I'm trying to get in.

11 MR. LLOYD: We'd raise the same arguments as
12 before, Your Honor. I think now we've got evidence of Ted
13 Kimble supposedly telling this witness that you need to get
14 rid of this -- somebody who's done you wrong at school or
15 whatever, by putting a bomb on his property.

16 MR. PANOSH: We wouldn't seek to introduce the
17 statements of that in regard to that. We want to introduce
18 the fact that he was afraid at the time that he had
19 possession of Ted's gun, and the reasons being that he knew
20 that Ted Kimble had the ability to use a sniper rifle or use
21 a bomb or use other weapons in his possession to kill him,
22 even though he had possession of his 9mm Glock.

23 MR. LLOYD: Well, his testimony, Your Honor, has
24 been entirely consistent with that. He's never backed up on
25 that. When I cross-examined him about it, he said he was

1 still afraid of Ted, regardless of whether he had his gun or
2 not. So I don't even see what the relevance of that is.

3 MR. PANOSH: The relevance is, they went into it
4 on cross-examination. They asked him again and again and
5 again if it wasn't a reasonable thing for him to do at the
6 time he had Mr. Kimble's gun, was just go turn himself in.
7 They implied, if they didn't state it, there would be no
8 reason for him to be afraid of Mr. Kimble at the time he had
9 Kimble's gun.

10 THE COURT: The Court'll allow very limited
11 questions in that area, not any specific instance of blowing
12 up someone's -- dealing with this witness, but you may
13 establish the witness's knowledge of Ted's capabilities as
14 to ability to do certain things.

15 MR. PANOSH: May I instruct the witness, so he
16 doesn't --

17 THE COURT: Yes, make sure he understands.

18 (Mr. Panosh conferred with the witness.)

19 (The jury entered the courtroom at 10:28 a.m.)

20 THE COURT: Proceed.

21 CONTINUED REDIRECT EXAMINATION by MR. PANOSH:

22 Q Drawing your attention to that period of time when you
23 were in possession of Mr. Kimble's gun, Mr. Ted Kimble's
24 gun, were you still afraid of him?

25 A Yes, very much so.

1 Q Would you explain to the ladies and gentlemen of the
2 jury why you were still afraid of him.

3 A Over the period of months working for Ted Kimble, he
4 had shown me that he was capable of being a sniper and
5 proclaimed, you know, being very proud of that, had showed
6 me silencers, how to make C-4 explosives. We had made
7 explosives at work. He made it very evident to me that he
8 was able to take someone out and able to get away with it,
9 and that's why I feared. I could have his gun, I could have
10 two of them, but he had three more and explosives,
11 silencers, everything else, how to get away with it, he knew
12 how. I feared for myself and my family. I couldn't go to
13 anyone else.

14 MR. PANOSH: No further.

15 THE COURT: Mr. Lloyd?

16 MR. LLOYD: Just a few questions, Your Honor.

17 RE-CROSS-EXAMINATION by MR. LLOYD:

18 Q Mr. Nicholes, you testified just a moment ago that you
19 were afraid of Ted Kimble because he had shown you silencers
20 and talked to you about how to make C-4. When Ted Kimble
21 talked to you about -- discussed with you how to make
22 silencers and that sort of thing, this was a give-and-take
23 situation, where you discussed back with him, didn't you?

24 A No, I did not. I was shown. I was told. He was -- at
25 the time, you know, I'd be working, he was my employer. I

1 would go in and he would show me this stuff. It was, as far
2 as I feel, just straight intimidation. I have no interest
3 in guns. I've never owned one. I've never had any interest
4 in that whatsoever.

5 Q So is it your testimony, Mr. Nicholes, that during
6 these -- would you characterize them as lectures then?

7 A Conversations. They weren't lectures. I mean -- I
8 don't know.

9 Q So there was some response on your part; is that
10 correct?

11 A Sure there was response. I didn't say there -- sit
12 there and just, you know, not say anything. I'm sure there
13 was a conversation involved, yes.

14 Q Well, let me ask you this, Mr. Nicholes. Did you ever
15 tell Ted Kimble that you weren't interested in that sort of
16 thing and that you didn't care about it, and, you know, why
17 not let's talk about basketball?

18 A Yes, I did. I did. Myself and when Patrick Pardee was
19 there, when he would bring out guns and silencers, I did not
20 like them around. He would shoot Michael Jordan's picture
21 off a billboard across the street, and I didn't like that.
22 I do not like guns.

23 Q All right. Now, this was at Lyles Building Supply?

24 A Uh-huh.

25 Q All right. And this was basically, what you're

1 testifying to was target practice from Lyles across the
2 street? Was this across Lee Street?

3 A The sign was actually on this side of Lee Street, on
4 the same side, but down the street.

5 Q Okay. And what kind of gun was this that Mr. Kimble
6 had?

7 A At the time what we were using was simply a .22.

8 Q Now, did you fire the gun on these occasions --

9 A No, I --

10 Q -- Mr. Nicholes?

11 A -- did not.

12 Q Okay. You indicated that Patrick Pardee was there.
13 Did he fire the gun on these occasions?

14 A No, Patrick didn't fire any guns. Patrick really
15 didn't -- I mean -- No, I don't want to get into that.
16 Never mind. I withdraw that.

17 Q All right. Well, what is your testimony regarding
18 Patrick Pardee?

19 A He was a friend of Ted's. I really was -- besides just
20 "Hi, bye" and being around, there's really -- I really don't
21 know anything about Patrick.

22 Q All right. But did he fire the gun on these occasions,
23 is my question?

24 A No, he did not fire the gun.

25 Q All right. Now, you've indicated that there was some

1 discussion from Ted Kimble involving C-4 explosives; is that
2 right?

3 A I didn't mention C-4, but explosives, yes.

4 Q Explosives?

5 A Uh-huh.

6 Q And is it your testimony, Mr. Nicholes, that you didn't
7 participate in those discussions with Ted Kimble?

8 A On -- I was there when he had blown some stuff up. But
9 as I -- as I stated, I believe this was all methods of
10 intimidation, to keep me in line.

11 Q Did it occur to you at that time, Mr. Nicholes, to go
12 to Detective Church and tell him about this activity?

13 A No, it didn't, because all I could think about is going
14 home and having my door blow up, or my wife going in her car
15 and having her car blow up. It was made very clear to me
16 that, you know, a gun was a moot point. I mean, it was -- I
17 mean, he had many methods of hurting me. I was very scared
18 for myself and my family.

19 Q You knew from your research of the death of Patricia
20 Kimble, and you knew from what Ted Kimble had told you, that
21 he was a suspect in his wife's murder; is that correct?

22 A That is correct.

23 Q All right. And it didn't occur to you, Mr. Nicholes,
24 to go to Detective Church or some other law-enforcement
25 official and say, "This is the situation. I'm scared to

1 death. I'm scared to death that this man is going to kill
2 me. Whatever you do in this situation, you cannot let him
3 know that I've been to see you"? It didn't occur to you to
4 do that?

5 A No, it didn't.

6 Q Now, when Ted Kimble was talking to you about all these
7 silencer things and explosive things, did you ever tell
8 Kimble that -- Mr. Ted Kimble that you had fought somebody
9 and ripped out somebody's eye?

10 A No.

11 Q And that it cost your insurance company a great deal of
12 money, as a result of that?

13 A No.

14 Q You never told him anything?

15 A No, sir.

16 Q Did that in fact happen, Mr. Nicholes?

17 A No, sir.

18 Q You weren't involved in a fight, under those
19 circumstances?

20 A Not under those circumstances, no.

21 Q Were you involved in a fight when there was a serious
22 injury?

23 MR. PANOSH: Objection. He's answered that,
24 please.

25 THE COURT: Overruled.

Patrick Pardee "Proof of Perjury"

Transcript Testimony

(Summary)

Patrick Pardee said Ted Kimble was a friend. Patrick would often drop by Lyles Building Material, where Ted worked, to visit. Approximately mid, late January '97, around 7:30pm., Ted asked Patrick to help him and Robert Nicholes go pick up some excess building materials, purchased at a job site. Patrick went along and helped, unaware the property was stolen (TTP. 1112.12-25/1113.1).

Patrick started helping Law Enforcement the day after Ted's arrest (TTP. 1119.18-25), which was the day of his own arrest (April 2nd). Patrick told of the various homes and businesses in which were broken into. Patrick did NOT tell the police at that time of any knowledge he had of Ted's involvement in the murder of Patricia Kimble (TTP. 1120.1-25).

Patrick went on to claim, approximately mid, late January '97, while either loading or unloading some lumber, Ted said the police were closing in on him for the death of his wife. Patrick asked Ted if he did it. Ted said no, his brother Ronnie did it (TTP. 1121.1-20).

Patrick never spent any time in jail (TTP. 1135.13-15). Patrick told investigators that Robert Nicholes would bring Ted stolen material, and he would buy them (TTP. 1137.17-25). Ted resold the material through Lyles. Patrick noticed this happening on a regular basis around Christmas of '96, or shortly thereafter. The first time Patrick went to help load the stolen lumber, he was told Rob Nicholes had bought the building materials from a friend (TTP. 1138.1-25). This took place in the vicinity of Westridge and Bryan Boulevard (TTP. 1139.1-25).

The theft took place in a new, upscale subdivision. The items stolen were some type of boards, 2x8's, or 2x6's, or 2x4's (TTP.1140.1-16).

When first arrested on April 2nd, Patrick told officers of his involvement in the theft ring, but failed to say anything about Patricia Kimble's death. It wasn't until April 7th that Patrick said anything about Patricia to Law Enforcement (TTP.1148.2-25). Patrick rode around approximately five or six times with police to point out construction sites in which building materials were stolen, yet never said anything about Patricia's death (TTP.1149.1-25). Despite knowing Ted had been arrested (TTP.1150.1-3).

Patrick Pardee was arrested on April 2, 1997 (Tuesday). It wasn't until Friday that Patrick said anything about Patricia Kimble's death, and the supposed confession by Ted Kimble (TTP.1148.13-21). Since Patrick stated he had rode around with police 5 to 6 times, and pointed out where the stolen building material came from, prior to reporting the information of Patricia's death, it stands to reason Patrick was referring to "Friday", April 12th (TTP.1149.7-25). This means Patrick went 10 days without saying anything. Regardless, Prior to Patrick's statement he had lunch at Chili's restaurant on High Point Rd. in Greensboro, N.C., at which a woman named Melanie Oxendine works. Patrick told Melanie he didn't know anything about Patricia Kimble's death, that the D.A. was threatening him to lie. Melanie Oxendine's Transcript Testimony is enclosed and follows.

Although Patrick Pardee committed perjury on the subject of

Patricia Kimbles death and the supposed confession by Ted Kimble, he was truthful about most of the things he said about the B & E's, but not all. Furthermore Patrick's testimony, and statements to investigators proves Robert Nicholes committed perjury during his testimony.

Patrick incriminated Robert Nicholes as the leader of the theft ring, when he pointed out how Rob was bringing Ted stolen building material on a regular basis. Patrick said he noticed this taking place shortly after Christmas '96 (late Dec.) The first time out for Patrick, he admits being told Rob Nicholes had bought lumber from a friend. (TTP. 1138.1-25). This contradicts everything Robert Nicholes testified to. Rob said he never sold building materials to Ted Kimble prior to the first theft of "Doors and Windows", he was involved in (TTP. 1093.17-24). This took place during January '97 according to the criminal indictment, which follows as an Exhibit (see Robert Nicholes File).

EXHIBIT (A) AGAINST PATRICK PARDEE
(STATE'S WITNESS)

1 THE COURT: Any rebuttal evidence for the
2 defendant?

3 MR. HATFIELD: Yes, sir. One witness.
4 Melanie Oxendine, please.

5 THE COURT: Come around, please, ma'am.

6 MELANIE WILLIAMS OXENDINE, being first duly sworn, testified
7 as follows during DIRECT EXAMINATION by MR. HATFIELD:

8 Q Will you state your name, please.

9 A Melanie Williams Oxendine.

10 Q Where do you live, ma'am?

11 A 6401 Nazarene Church Road, Pleasant Garden.

12 Q Now, I see you have some papers up here. You didn't
13 bring those with you to testify, did you?

14 A No.

15 Q Would you just close those --

16 A Yeah.

17 Q -- and put them aside. Ms. Oxendine, where do you
18 work?

19 A Chili's restaurant.

20 Q How long have you worked there?

21 A Five years.

22 Q Do you know Ted Kimble?

23 A Yes, I do.

24 Q Do you know Patrick Pardee?

25 A Yes, I do.

1 Q Would you briefly tell the jury how it is that you know
2 Ted Kimble.

3 A I've known Ted Kimble for 14 years.

4 Q And in the early days of your acquaintanceship with
5 him, tell the jury what happened.

6 A When I was younger, do you mean?

7 Q Yes, ma'am.

8 MR. PANOSH: We'd object. It's not surrebuttal.

9 MR. HATFIELD: Just want to show the connection.
10 I'm getting right to Patrick Pardee. It's --

11 THE COURT: Overruled.

12 A We dated from, I was 12 to 15.

13 Q Nothing serious?

14 A No.

15 Q Just a childhood friendship?

16 A Yes.

17 Q What church are you a member of?

18 A Monnett Road Baptist Church.

19 Q Now, throughout the subsequent years, did you remain an
20 acquaintance of Ted Kimble's?

21 A Acquaintance, yes.

22 Q That's all?

23 A That's all.

24 Q Now, did there come a time that you became aware that
25 Ted Kimble had married a woman named Patricia? Did you know

1 anything about that marriage?

2 A I know they got married, yeah.

3 Q Did you know her?

4 A No.

5 Q Did you hear about the death of Ted's wife?

6 A Yeah.

7 Q And at any time after her death and prior to his arrest
8 in April of 1997, did Ted Kimble discuss anything with you
9 about his wife's death?

10 A No.

11 Q Shortly before he was arrested in April of 1997, did
12 you have some encounters with Ted Kimble?

13 A Yes.

14 Q Will you briefly tell the jury what that was.

15 A Him and Patrick Pardee come and saw me on December 24,
16 1996. They were out Christmas shopping. They wanted to buy
17 some gift certificates. That's when I met Patrick Pardee.

18 Q Now, you remember it was the 24th, because you sold
19 them gift certificates --

20 A It was Christmas Eve.

21 Q -- to give to their friends? And these were gift
22 certificates for your place of employment?

23 A Correct.

24 Q And that is Chili's?

25 A Correct.

1 Q Now, after that, did you get to know Patrick Pardee?

2 A Yes. He come in several times with business
3 acquaintances, and he come in with Ted Kimble a lot to eat.

4 Q Did you go out with Ted on a casual basis shortly
5 before he was arrested?

6 A Twice.

7 Q Okay. Tell the jury about that, please.

8 A Once we went with Patrick Pardee to the lake for the
9 day. We come back. And one time he took me to dinner with
10 my daughter.

11 Q Was there any romantic involvement?

12 A No, not -- no.

13 Q Now, after Ted was arrested in April of 1997, did you
14 speak to Patrick Pardee?

15 A Yes.

16 Q Tell the jury the circumstances of that, please.

17 A It was two days after Ted got arrested, he come into
18 Chili's. He was pale. He come up to the bar, and I said,
19 "How are you?" He said, "I'm not doing too good." He said,
20 "I feel like I've lost 10 pounds within a week." I said,
21 "Well, what's wrong?" And he said, "Well, I was in
22 Charlotte, and two investigators come and woke me up 3:00 or
23 3:30 in the middle of the night, to take me back to
24 Greensboro, because they wanted to investigate and ask me
25 questions." And he said, "They wanted to know everything I

1 knew about Ted and this homicide. I told them that I didn't
2 know anything, that if I knew anything, I would have not
3 have hung around him, I wouldn't have went to Gatlinburg
4 with him, I wouldn't have been his friend for the last year
5 and a half."

6 Q So in essence, Patrick Pardee told you that he knew
7 nothing of any involvement that Ted may have had in the
8 death of Patricia; is that right?

9 A Exactly.

10 Q Did he say anything more about that?

11 A He said that he had a career to get into, and that this
12 kind of stuff upset that, that he needed to go on. He said
13 -- what else did he say? That's about it.

14 Q Did he tell you anything about what he was being
15 investigated for?

16 A He was being investigated for the breaking and
17 entering.

18 Q Now, prior to his telling you that, had you had any
19 idea that he was involved in activity like that?

20 A No.

21 Q And what did you say to him about that?

22 A I said, "How could you do something so stupid like
23 that?"

24 Q Did he give you any explanation?

25 A He said -- he raised his hand and said, "I'm not saying

1 anything to incriminate myself."

2 MR. HATFIELD: Thank you.

3 No further questions.

4 CROSS-EXAMINATION by MR. PANOSH:

5 Q Now, in addition to dating Theodore Kimble those last
6 few weeks before he was arrested, did you have any further
7 contact?

8 A Now, do you mean?

9 Q Yes.

10 A I see him every week. I go with his parents to see him
11 every week.

12 Q So, since April of 1997, you've been visiting him on a
13 weekly basis; is that correct?

14 A Prior -- except for the two weeks after he was
15 arrested, yes.

16 Q And that's strictly friendship?

17 A Friendship only.

18 Q At the time that Patrick made these statements that
19 you've testified to, he was aware that you were seeing Ted?

20 A I wasn't seeing him. We went out twice. I wasn't
21 dating him.

22 Q Was the two times that you went out with him just prior
23 to your conversation with Patrick?

24 A Yes.

25 Q And when was the first time you reported this

1 information to law-enforcement officers?

2 A When was the first time -- say that again.

3 Q When was the first time you reported this information
4 to law-enforcement officers?

5 A To law enforcement? All I talked to was lawyers.

6 Q Did there come a time when you determined that it was
7 important enough to tell the police department or the
8 sheriff's department about the information you had?

9 A I felt that he gave me the information I wanted to
10 know. He said he knew nothing about it.

11 Q And did you report that to the officers?

12 A No. I didn't know he had anything to do with this
13 case, until he showed up.

14 Q You were unaware that Patrick Pardee was involved in
15 this case until this trial; is that what you indicated?

16 A Exactly.

17 MR. PANOSH: No further.

18 REDIRECT EXAMINATION by MR. HATFIELD:

19 Q Now, since your conversations with Patrick Pardee in
20 April of 1997, have you continued to see him from time to
21 time?

22 A Patrick Pardee?

23 Q Yes.

24 A No. He will not come in the restaurant anymore.

25 Q So he knows where -- you have been working there

1 continuously since long before any of these events took
2 place?

3 A Correct.

4 Q And he met you in connection with your employment in
5 the restaurant?

6 A Correct.

7 Q And since you had this one conversation with him, where
8 he told you he knew nothing about Patricia's death, he just
9 has steered clear of your restaurant?

10 MR. PANOSH: Objection. Leading his own witness.

11 THE COURT: Sustained.

12 Q Is it your testimony that you have not seen him again,
13 after all --

14 A I have not seen him again or talked to him.

15 Q Now, you knew that Ted Kimble was charged with murder,
16 didn't you?

17 A Yes, I did.

18 Q Did you have any idea that Patrick Pardee was a
19 material witness for --

20 MR. PANOSH: Objection to --

21 Q -- the state --

22 MR. PANOSH: -- leading his own witness.

23 THE COURT: Sustained.

24 Q Did you know that Patrick Pardee was a potential
25 witness?

1 A No.

2 Q Did Mr.'s Church and Pendergrass ever come to see you?

3 A No.

4 Q Did you have any idea before this trial proceeded that
5 you had any evidence that might have a bearing on this case?

6 A No.

7 Q Well, now, you understand that Ted Kimble's not on
8 trial?

9 MR. PANOSH: We object to leading, please.

10 THE COURT: Sustained.

11 Q Who's on trial here?

12 A Ronnie Kimble.

13 MR. PANOSH: Objection.

14 Q Is Ted Kimble on trial?

15 A No.

16 MR. HATFIELD: No further questions.

17 MR. PANOSH: No further.

18 THE COURT: You may step down.

19 MR. HATFIELD: That's all we have. Thank you very
20 much.

21 THE COURT: Any evidence for the State?

22 MR. PANOSH: No, Your Honor.

23 (The witness left the witness stand.)

24 THE COURT: Members of the jury, this completes
25 the evidence, and on Monday, it'll be your duty to decide

Patrick Pardee

Transcript Testimony / Boat Purchase

TTP. 1128.7 Q. And does it indicate to you -- indicate that on

8 December the 29th of 1995, you bought the boat that belonged
9 to Theodore and Patricia Kimble?

10-A. Yes, sir, it does.

11-Q. And why did you purchase that property?

12-A. I had called the marina and asked them what the boat

13 was worth, and he told me approximately \$9,000. I figured

14 if I can get a \$9,000 boat for just under \$6,000, plus help

15 a friend out, from getting the boat repossessed, might as

16 well.

17-Q. What do you mean, "help a friend out"?

18-A. Well, he told me that they were getting ready to

19. repossess it, and I didn't want him to ruin his credit.

20-Q. Do you still have the boat?

21-A. Yes, sir, I do.

(FACTS)

Nations Bank / Bank of America, can verify Ted Kimble was never late on a payment, nor was the bank about to repossess the boat.

STATE OF NORTH CAROLINA

In The General Court Of Justice

ORDER FOR ARREST

GUILFORD--OR COUNTY

SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA
 VS.

CHARGE DESCRIPTION: 0. S. NUMBER
 06 F BREAKING AND OR ENTERING (F) 14-541(A)
 06 F LARCENY AFTER BREAK/ENTER 14-721(B) (2)
 03 F FELONY LARCENY 14-721(A)
 01 M MISDEMEANOR LARCENY 14-721(A)

WARRIOR, PATRICK, R
 2414 COUNTRY LAKE DR

GREENSBORO NC 27405

BIRTH: M SEX: M DOB: 12/04/66

SSN: [REDACTED]

ENC NO: [REDACTED]

LDN NO: [REDACTED]

COM LAHHAHT:

COURT OF SUPERIOR COURT

RELATED CASES:

- 97CR0023697 97CRS023698
- 97CR0023699 97CRS023690
- 97CR0023691 97CRS023692
- 97CR0023693 97CRS023694
- 97CR0023695 97CRS023696
- 97CR0023698 97CRS023698

TO ANY OFFICER WITH AUTHORITY AND JURISDICTION TO SERVE AN ORDER FOR ARREST:

THE GRAND JURY OF THIS COUNTY HAVING RETURNED A TRUE BILL OF INDICTMENT, A COPY OF WHICH IS ATTACHED.

YOU ARE DIRECTED TO ARREST THE DEFENDANT AND BRING HIM BEFORE THE COURT AT THE PLACE, DATE AND TIME INDICATED BELOW OR UPON THE FIRST DAY OF COURT FOLLOWING HIS ARREST. IF COURT IS NOT IN SESSION, THEN YOU ARE TO TAKE HIM BEFORE A JUDICIAL OFFICER FOR THE PURPOSE OF DETERMINING CONDITIONS OF RELEASE AND COMMITMENT IF HE IS UNABLE TO COMPLY.

RELEASE IS TO BE THE OFFICIALS DISCRETION.
 Deft. must be fingerprinted.

Location Of Court	Court Date	Court Time	Date Of Issue
GREENSBORO, NC ROOM 09AC	12/05/97	09:30 AM	11/03/97

Signature: ESTIE BENNINGTON

<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> Clerk Of Superior Court
<input type="checkbox"/> Magistrate	<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Superior Court Judge

ORIGINAL
 (Over)

STATE OF NORTH CAROLINA

Guilford County

In The General Court Of Justice
Before The Clerk

IN THE MATTER OF:

Name And Address

Patrick R. Pardee

CRIMINAL RECORD CHECK

Records Check From This Date To Present

May 1983

This is to certify that I have searched the indices to criminal actions in this office from the date shown above to the present to determine:

only the convictions and pending charges, if any,

the entire criminal record, if any,

which appear in the records under the name given above, and found:

that no record was indexed by the name given above.

the following excerpts from the public records indexed by the name given above.

The criminal records in this office are indexed solely by name and not by any other identifying characteristic. This office cannot guarantee that the records listed herein belong to the individual for whom such record is sought.

File No.	Race/Sex	DOB	Charge	Date Disposed And Disposition
		12/4/66	See Attached 3 pages	

Date Of Search

8/28/00

Signature

Melissa Sutton

Deputy CSC Assistant CSC Clerk Of Superior Court

400 GUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: PARDEE,PATRICK? R=RACE: S=SEX: DOB:

PARDEE,PATRICK,R 1414 COUNTRY S=M R=W DOB=12041966 97CR 005485 H
JF:021097 (F) BREAKING AND OR ENTERING (F) DISMISSED BY DA 110697 CR
JF:021097 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 110697 CR
JF:021097 (M) SHOPLIFTING CONCEALMENT GOODS DISMISSED BY DA 110697 CR
--- ---

PARDEE,PATRICK,R 1414 COUNTRY S=M R=W DOB=12041966 97CR 005486 H
JF:011397 (F) BREAKING AND OR ENTERING (F) DISMISSED BY DA 102897 CR
JF:011397 (F) LARCENY AFTER BREAK/ENTER DISMISSED BY DA 102897 CR
JF:011397 (F) POSSESSION OF STOLEN GOODS (F) DISMISSED BY DA 102897 CR
--- ---

PARDEE,PATRICK,R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023686 G
JF:031297 (F) BREAKING AND OR ENTERING (F) GUILTY 121599 CRS
FINE/COSTS# 111 REST# 6635.00 SENT:006-00BM TYPE: C PROB:024M UNSUPERVISE
SEE ALSO: 97CRS023687, 97CRS023688, 97CRS023689, 97CRS023690 PLUS MORE
JF:031297 (F) LARCENY AFTER BREAK/ENTER GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51

JF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 GUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: PARDEE,PATRICK? R=RACE: S=SEX: DOB:

PARDEE,PATRICK,R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023687 G
JF:020497 (F) BREAKING AND OR ENTERING (F) GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
JF:020497 (F) LARCENY AFTER BREAK/ENTER GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- ---

PARDEE,PATRICK,R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023688 G
JF:013097 (F) FELONY LARCENY GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- ---

PARDEE,PATRICK,R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023689 G
JF:020697 (F) FELONY LARCENY GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023686 51
OF:020397 (F) BREAKING AND OR ENTERING (F) GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
OF:020397 (F) LARCENY AFTER BREAK/ENTER GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- --

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023691 G
OF:020497 (F) BREAKING AND OR ENTERING (F) GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
OF:020497 (F) LARCENY AFTER BREAK/ENTER GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- --

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023692 G
OF:020397 (F) BREAKING AND OR ENTERING (F) GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
OF:020397 (F) LARCENY AFTER BREAK/ENTER GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- --

OF: OFFENSE DATE, DOB=BIRTH, (M) MISC, (F) FELONY, (T) TRAFFIC, MORE-
400 GUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: PARDEE, PATRICK? R=RACE: S=SEX: DOB:

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023693 G
OF:022097 (F) FELONY LARCENY GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- --

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023694 G
OF:020197 (F) FELONY LARCENY GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- --

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023697 G
OF:020297 (F) FELONY LARCENY GUILTY 121599 CRS
CONSOLIDATED FOR JUDGMENT WITH 97CRS023686 51
--- --

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023698 G
OF:031397 (F) BREAKING AND OR ENTERING (F) NEVER 122899 CRS
OF:031397 (F) LARCENY AFTER BREAK/ENTER NEVER 122899 CRS
--- --

OF: OFFENSE DATE, DOB=BIRTH, (M) MISC, (F) FELONY, (T) TRAFFIC, MORE-
400 GUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: PARDEE, PATRICK? R=RACE: S=SEX: DOB:

PARDEE, PATRICK, R 1414 COUNTRY S=M R=W DOB=12041966 97CRS023710 G
OF:011497 (M) MISDEMEANOR LARCENY DISMISSED BY DA 051000 CRS
SPEC. COND: DISMISSAL BY DA PANOSH
--- --

PARDEE, PATRICK, RAY 1414 COUNTRY S=? R=? DOB=? 84CRS015169 G
OF:031084 (T) MISDEMEANOR DEATH BY VEHICLE GUILTY 100484 CRS
FINE/COSTS# 49 REST# SENT:001- Y TYPE: PROB:002Y SUPERVISED
SPEC. COND: SUVR DRIVER'S LIC 1 YR;PERFORM 50 HRS COMMUNITY SVC
OF:031084 (T) SPEEDING GUILTY 100484 CRS
FINE/COSTS# REST# SENT: - TYPE: PROB:NONE
SPEC. COND: CONSOLIDATED FOR JUDGMENT WITH MISC DEATH BY MV COUNT
OF:031084 (T) DRIVE LEFT OF CENTER GUILTY 100484 CRS
FINE/COSTS# REST# SENT: - TYPE: PROB:NONE
SPEC. COND: CONS FOR JUDGM WITH MISC DEATH BY MV COUNT (ROSS/DEAN
--- --

OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, MORE-
400 BUILFORD-GR
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: PARDEE, PATRICK? R=RACE: S=SEX: DOB:

PARDEE, PATRICK, ROY 1414 COUNTY S=M R=W DOB=12041966 88CR 044523 G
OF: 070288 (M) SECOND DEGREE TRESPASS DISMISSED BY DA 081688 CR
--- ---
PARDEE, PATRICK, ROY 1414 COUNTRY S=M R=W DOB=12041966 89CR 014266 H
OF: 101289 (T) SPEEDING 072 IN 55 ZONE DISMISSED BY DA 030690 CR
--- ---
PARDEE, PATRICK, ROY 1414 COUNTRY S=M R=W DOB=12041966 91CR 063767 G
OF: 092191 (T) RECKLESS DRIVING TO ENDANGER CHARGED CR
(I) IMPROPER EQUIP - SPEEDOMETER RESP LESSER OFFENSE 120991
FINE/COSTS: 130 REST# SENT: - TYPE: PROB: NONE PAID
SPEC. COND: HAINES

OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, *END*

1 A Not when there was a serious injury, no.

2 Q Did you tell Ted Kimble about that fight?

3 A What fight? I just said no, that I -- I wasn't
4 involved with a fight with a serious injury.

5 MR. LLOYD: That's all I have, Your Honor.

6 MR. PANOSH: We'd renew our motion in reference to
7 116 to 124, based upon the cross-examination.

8 THE COURT: The motion is denied.

9 You may step down, Mr. Nicholes.

10 You may stand and stretch, if you'd like, members
11 of the jury.

12 Next witness, please.

13 (The witness left the witness stand.)

14 MR. PANOSH: Mr. Pardee, please.

15 PATRICK PARDEE, being first duly sworn, testified as follows
16 during DIRECT EXAMINATION by MR. PANOSH:

17 Q Would you state your name, sir.

18 A Patrick Pardee.

19 Q Mr. Pardee, do you know Theodore Kimble?

20 A Yes, sir, I do.

21 Q Do you know Ronnie Kimble?

22 A Yes, sir, I do.

23 Q And how do you know Pat-- how do you know Theodore and
24 Ronnie Kimble?

25 A I know Ted Kimble through church. And I met his

1 brother, Ronnie Kimble, on several occasions.

2 Q Are you indicating that you met Ronnie through Ted?

3 A Yes, sir.

4 Q Did there come a time when you began to work on a part-
5 time basis at Lyles Building Supply?

6 A Never officially, sir.

7 Q Did there come a time when you were there frequently?

8 A Yes, sir.

9 Q Why were you there?

10 A Because at the time, I was unemployed, I was waiting on
11 a company to make me an offer, and he asked me to help him
12 out.

13 Q Immediately prior to being unemployed, what was your
14 occupation?

15 A I was a college student.

16 Q Did there come a time when you received full-time
17 employment, obtained full-time employment?

18 A After that?

19 Q Yes.

20 A Yes, sir.

21 Q Where did you work?

22 A A company called PageNet, Incorporated.

23 Q What were your duties with PageNet?

24 A I was an account representative.

25 Q In the course of your duties, was it your

1 responsibility to sell pagers and pager accounts?

2 A Yes, sir, and also service current customers.

3 Q Now, did there come a time when you and Theodore Kimble
4 began to be involved in illegal activities?

5 A Yes, sir, there was.

6 Q And was that in the early part of 1997, leading up till
7 March of 1997?

8 A Yes, sir, it was.

9 Q And as a result of that, you were eventually charged in
10 those offenses; is that correct?

11 A Yes, sir, that's correct.

12 Q Have you reached an agreement with the State of North
13 Carolina in regard to your pending charges?

14 A Yes, sir.

15 (Mr. Panosh showed an exhibit to Mr. Lloyd.)

16 MR. PANOSH: May I approach the witness?

17 THE COURT: You may.

18 Q Showing you now State's Number 116, would you look at
19 that, please.

20 (Time was allowed for the witness.)

21 Q What is Number 116?

22 A It's the agreement I had with the State of North
23 Carolina.

24 Q And do you recognize the date? First of all, do you
25 recognize your signature thereon?

1 A Yes, sir, I do.

2 Q And what was the date that was signed?

3 A Well, it says July 16, 1997, but actually, I believe it
4 was 1998.

5 Q Do you recall signing that in the last few months?

6 A Yes, sir, I do.

7 Q Where were you when you signed that?

8 A At my attorney's office.

9 Q And are you indicating that you were there at your
10 attorney's office last month and signed it?

11 A Yes, sir.

12 Q Would you tell the ladies and gentlemen of the jury how
13 your involvement in these criminal activities began.

14 A I was in college until approximately Christmas 1996.
15 The company called PageNet had called, interested in hiring
16 me. I thought they were going to go ahead and hire me, so I
17 went ahead and dropped out before Christmas break, so I
18 could get a full refund for that semester, move back home in
19 Greensboro. Ted was a friend of mine. I'd go up there and
20 frequently visit him at Lyles Building Materials. And one
21 night approximately mid, late January, he asked me if I
22 would help him and Robert Nicholes go pick up some building
23 materials that he had purchased from a job site, that they
24 didn't need, excess building materials, approximately 7:30
25 at night. So I went and helped him. And at the time, I did

1 not realize that they were stolen, until probably --

2 MR. LLOYD: Your Honor, I'm having a hard time
3 hearing. Could you ask the witness to speak up.

4 THE COURT: A little bit louder, please, Mr.
5 Pardee. Kindly keep your voice up, sir.

6 THE WITNESS: Yes, sir.

7 A I didn't find out that they were stolen till
8 approximately about a week later, me and Ted were talking.
9 I thought, I thought, wait a minute, something's not right.
10 And he said that actually, that he did not purchase the
11 building materials that we had just stolen from the job
12 site.

13 Q Did you receive money or other compensation as a result
14 of assisting him in picking up those stolen property?

15 A Not at the time.

16 Q Did you receive money later?

17 A Yes, sir.

18 Q And did you thereafter continue in similar criminal
19 activities with Theodore Kimble?

20 A Yes, sir, I did.

21 Q And each time you went to construction sites; is that
22 correct?

23 A Yes, sir.

24 Q And on each occasion, you stole from those construction
25 sites; is that correct?

1 A Yes, sir.

2 Q Did there also come a time when you went to Home Depot
3 and was involved in a theft at Home Depot?

4 A Yes, sir, there was.

5 Q Would you tell the ladies and gentlemen of the jury
6 about that, please.

7 A It was around midnight. Ted had rented a forklift, and
8 he had two big trailers.

9 Q Speak up, please.

10 A I'm sorry. It was around midnight one night. Ted had
11 rented a forklift from a forklift company. He had two big
12 trailers. We drove the trailers to Home Depot right off of
13 Battleground Avenue. We used the forklift to load up the
14 trailers, then we drove the stuff -- the stolen materials
15 back to Lyles Building Materials, then we came back and we
16 picked up the forklift and brought it back to his place of
17 business.

18 Q What type and quantity of materials were stolen from
19 Home Depot?

20 A It was some pressure-treated fence pickets. I believe
21 he also got a bathtub or shower and various other small
22 pressure-treated items.

23 Q And how many trailer loads were there of materials?

24 A If I recall correctly, there was two.

25 Q And who participated in the theft from Home Depot?

1 A Myself, Ted Kimble and Robert Nicholes.

2 Q And do you remember the date of that?

3 A I do not recall off the top of my head, sir.

4 Q If the charges allege February the 6th, would that be
5 the approximate time period?

6 A That could be approximate, yes, sir.

7 Q What was done with those materials?

8 A He attempted to sell them through his business.

9 Q After the theft of the materials from Home Depot, did
10 you go to Lyles Building Supply and see them there on the
11 yard, being offered for sale?

12 A Yes, sir, I did.

13 Q And at that time, who was running the business?

14 A Ted Kimble.

15 Q And who was running it when Mr. Ted Kimble wasn't
16 there?

17 A Usually his father would stop by and watch the place.

18 Q That would be Ronnie, Sr.?

19 A Yes, sir.

20 Q Now, in regard to all of the materials that you stole
21 with Theodore and/or Mr. Nicholes, did they all go to Lyles?

22 A No, sir, they did not.

23 Q Where did some of them go?

24 A Ted had rented a tractor-trailer trailer across the
25 street, and a lot of the building materials ended up in that

1 tractor-trailer.

2 Q Can you give the ladies and gentlemen of the jury an
3 estimate of whether half of it went to the trailer or what
4 amount went to the trailer, as opposed to going to Lyles?

5 A I would -- approximately half of it went to the trailer
6 and approximately half of it went to his business for sale.

7 Q Did there come a time when you also participated in a
8 theft from a business known as Northern Hydraulics on Sandy
9 Ridge Road?

10 A Yes, sir.

11 Q What was taken there?

12 A Several go-carts, I believe it was a couple of
13 generators, and I believe there was also a lawn mower.

14 Q Do you know what happened to the go-carts?

15 A Yes, sir.

16 Q What happened to them?

17 A Right before they picked up Ted, Ted wanted me to help
18 him hide them or get rid of them, and so --

19 Q Where did you -- Go ahead.

20 A We took two of them off, put them under a bridge right
21 off of Highway 220. Two more, at the end of a business
22 park, down just north of Randleman. And then two more out
23 in a field down near Ramseur, North Carolina.

24 Q Now, on or about April the 1st of 1997, you were
25 arrested; is that correct?

1 A Yes, sir.

2 Q And shortly thereafter, did you cooperate with the
3 sheriff's department in locating those particular items?

4 A Yes, sir, I did.

5 Q Did you show them where they were hidden?

6 A Yes, sir, I did.

7 Q What became of the generators, if you know?

8 A I do not know for sure, sir.

9 Q All right.

10 A Ted --

11 Q That's fine. Where were the generators the last time
12 you saw them?

13 A In a storage building at Lyles Building Materials.

14 Q Would you describe those generators.

15 A They were in two boxes. They were brand new. I never
16 actually saw them, just the boxes.

17 Q Were they small, large? Did it take one man, two men
18 to move it? Could you describe them, please.

19 A One of them, one man could probably move it fairly
20 easily. The other one, it would have to be a really big
21 person or preferably two people to move it.

22 Q And in the course of breaking into these various
23 building sites, did you also remember taking a garden tub?

24 A I think so.

25 Q Okay. Where did --

1 A I'm not sure --

2 Q -- that go?

3 A -- exactly what a garden tub is.

4 Q Where did that go?

5 A If it's the tub I'm thinking of, it was at Lyles
6 Building Materials for sale.

7 Q Do you remember a theft that involved the taking of
8 dishwashers and a Reddy Heater, propane heater?

9 A Yes, sir, I do.

10 Q Where did those items go?

11 A The dishwasher ended up in the tractor-trailer trailer
12 across the street. And the Reddy Heater ended up at Lyles
13 Building Materials.

14 Q In use or for sale?

15 A For use.

16 Q Do you remember the theft of certain Marsh kitchen
17 cabinets and marble work sink and kitchen items?

18 A Yes, sir, I do.

19 Q Where did those go?

20 A Storage building on -- at Lyles Building Materials.

21 Q For sale?

22 A No, sir.

23 Q Did you say "Yes"?

24 A No, sir, not for sale.

25 Q When you say a storage building, what do you mean?

1 A He had several storage buildings throughout the
2 property. He put them in one out near the front and had it
3 locked up.

4 Q Now, you've indicated that Ronnie Kimble, Sr., Ted and
5 Ronnie's father, was the actual -- was at the business. How
6 frequently was he at the business?

7 A Approximately several times a week.

8 Q And when he was there, did he have access to the entire
9 business?

10 A Yes, sir, as far as I know.

11 Q And --

12 MR. LLOYD: Your Honor, we would ask to approach
13 at this time.

14 MR. PANOSH: Well, that was the last question on
15 that subject. If you want to --

16 MR. LLOYD: That's fine.

17 THE COURT: Proceed. Move on.

18 Q Did there come a time when you began to cooperate with
19 the officers of the Greensboro Police Department and the
20 Guilford County Sheriff's Department in reference to the
21 items that you've stated you and -- Ted and you and Mr.
22 Nicholes stole?

23 A Yes, sir.

24 Q When was that?

25 A Approximately the day after Ted was arrested.

1 Q Ted was arrested on April 1st; is that correct?

2 A I believe so.

3 Q When were you arrested?

4 A The following morning.

5 Q The following --

6 A Following morning.

7 Q And after you were arrested, were you interviewed by
8 those officers?

9 A Yes, sir, I was.

10 Q And in addition to pointing out the items you've
11 already told me you pointed out, did you do anything else?

12 A I'm not sure if I understand.

13 Q Did you tell them about the various homes that -- under
14 construction and businesses you'd broken into?

15 A Yes, sir, I did.

16 Q At that time, did you have any type of agreement?

17 A No, sir, I didn't.

18 Q Did you tell them at that time about Ted's involvement
19 or any knowledge you had of Ted's involvement in the murder
20 of Patricia Kimble?

21 A No, sir, I didn't.

22 Q Did there come a time when you had knowledge of Ted's
23 involvement in the murder of Patricia Kimble?

24 A Yes, sir.

25 Q What, if anything, did he tell you? And describe the

1 circumstances.

2 A I'm not sure if I understand.

3 Q All right. When was the first time that Ted Kimble
4 made statements to you in reference to the murder of
5 Patricia Kimble?

6 A It was approximately mid, late January of '97. Me and
7 him were either loading or unloading some lumber from the
8 truck, and I could tell something had been bothering him for
9 a while. I asked him what was bothering him. He said he
10 felt the police were closing in on him. And I asked him
11 "Well, what do you mean?"

12 MR. LLOYD: Objection, Your Honor, on the grounds
13 previously raised.

14 THE COURT: Overruled.

15 A I asked him what he meant. And he felt -- he said that
16 the police were closing in on him. And I said, "What do you
17 mean?" He said that -- he said that -- he said they were
18 closing in on him for the death of his wife. I asked him if
19 he had any -- if he did it. He said no, his brother Ronnie
20 did it.

21 Q During that conversation, did he discuss with you his
22 -- where he was on the night of her death?

23 A He had told me where he was, yes, sir.

24 Q What did he tell you?

25 A He told me that he had closed up Lyles Building

1 Materials approximately 5:30, and then he had drove to his
2 part-time job at Precision Fabrics at approximately 6:00
3 o'clock.

4 Q Did he tell you why he had obtained that part-time job?

5 A He told me it was for an alibi.

6 Q Did he explain what he meant by that?

7 A He had said that basically, so he'd have an alibi and
8 the police wouldn't think he was a suspect.

9 Q Did he give you more details as to how the murder was
10 accomplished?

11 A He had told me that his brother had went to the house
12 and had shot her in the head, and then poured gasoline on
13 the body and lit it.

14 Q Did he tell you why the murder was committed?

15 A For the insurance money.

16 Q Did he give you details about the insurance money?

17 A He had told me later that he wished that the policy
18 would have been in effect.

19 Q What did he mean -- or what did he say about that?

20 A He said that he didn't think he was going to collect,
21 because she hadn't taken her physical yet and that the
22 policy wasn't in effect.

23 Q Did he indicate to you what weapon or -- was used or
24 any other details of the offense?

25 A His Glock .45.

1 Q Did he indicate whose weapon that was?

2 A He told me it was his.

3 Q Were you familiar with that particular weapon?

4 A I'd seen it a couple of times.

5 MR. PANOSH: May I approach?

6 Q Showing you now State's Exhibit 84-A, is that the
7 weapon that you said you'd seen a couple of times?

8 A Yes, sir.

9 Q And when you saw it, where was the weapon or how were
10 you shown it?

11 A One night, his wife had a Bible study at their home,
12 and it was just for the girls, so me and Ted and several
13 other people had went out and got something to eat that
14 night. And when we came back, he was showing it to me,
15 because it was dark, and it's got a laser pointer on it. He
16 was showing me how you could point to a window and on the
17 wall. And I'd seen it at his business a couple of times.

18 Q When you saw it at his business, where was it?

19 A On his desk.

20 Q When you saw it this evening that you've previously
21 referred to, where was it before he showed it to you?

22 A He was carrying it.

23 MR. PANOSH: May I approach?

24 Q I show you now State's Exhibit 95. Do you recognize
25 that, sir?

1 A It appears to be Ted's holster.

2 Q Ted's holster?

3 A Yes, sir.

4 Q And when you indicated that he was carrying the gun,
5 was he using that holster?

6 A I believe so. He usually kept it in the holster.

7 Q When you say he usually kept it in his holster, how
8 frequently did you see him with the gun?

9 A This particular one?

10 Q Yes.

11 A Not very often. At the time, we didn't hang out a
12 whole lot, because he was married.

13 Q Okay. On the occasions that you did see him, how
14 frequently did he have the gun?

15 A Often.

16 Q Excuse me?

17 A Often.

18 Q In the course of your acquaintanceship with him, prior
19 to the death of Patricia, did you and he ever go looking or
20 shopping for guns?

21 A Yes, sir.

22 Q Would you tell the jury about that, please.

23 A One time we went to a place called Cherry's Fine Guns
24 up on Wendover Avenue. When we were in there, he was
25 looking at some handguns. I don't know too much about the

1 handguns. He was asking the salesperson about one
2 particular gun and asked about a silencer or -- of some
3 sort, if a silencer would fit on the end. And when I heard
4 that, I was like, "Well, why don't you just go to Wal-Mart
5 and get a silencer a lot cheaper?" And that's when they
6 both looked at me real funny and said, "Those are illegal,"
7 and then kind of dropped it after that. And we left the
8 store shortly thereafter.

9 Q Did there come a time when Theodore Kimble made any
10 statements to you in reference to disclosing the information
11 he had told you?

12 A He told me if I told anybody, that he would kill me.

13 Q Did you believe him?

14 A Yes, sir, I did.

15 Q Why did you believe him?

16 A Because he was a very intimidating person.

17 Q What, if any, physical objects did you see in his
18 possession, on his person or at Lyles, that reinforced your
19 belief that he could kill you?

20 A I saw at least two other handguns, and he also had a
21 high-powered rifle which I'd saw on numerous occasions.

22 Q Did he make statements in regard to that rifle?

23 A He told me that he could kill a man from a half a mile
24 away. I asked him why he wanted it, and he said it was an
25 investment.

1 THE COURT: How much longer are you going to be
2 with the witness, Mr. Panosh?

3 MR. PANOSH: About five, 10 minutes.

4 THE COURT: All right, sir.

5 MR. PANOSH: Keep going?

6 THE COURT: Yes. The jury needs a break shortly.

7 MR. PANOSH: Yes, sir.

8 THE COURT: But if it's only going to be five
9 minutes, proceed.

10 MR. PANOSH: Yes, sir.

11 Q Did he ever make statements to you in reference to
12 Detective Church?

13 A Yes, he did.

14 Q What did he say?

15 A He told me he'd like to kill Detective Church, because
16 he was standing in his way of him collecting the insurance
17 money.

18 Q Now, did there come a time when you became aware of Ted
19 Kimble's financial status?

20 A Yes, sir, there was.

21 Q And did there come a time when you loaned him money?

22 A Yes, sir, I did.

23 Q How much money did you loan him?

24 A \$5,500.

25 Q And was that loan repaid to you?

1 A Not all of it.

2 Q And was that loan on or about August the 16th of '96?

3 A Yes, sir, it was.

4 Q After the death of Patricia Kimble, did there come a
5 time when you obtained any property from Theodore Kimble?

6 A Yes, sir, there was.

7 Q When was that?

8 A Approximately, very end of December or first of January
9 of '95-'96. I had purchased a ski boat.

10 MR. PANOSH: May I approach?

11 THE COURT: Yes.

12 Q Showing you now what has been previously marked as
13 State's Exhibit Number 104, the estate file of Patricia
14 Kimble, and showing you a check which is attached thereto,
15 dated December the 29th of 1995, for \$1,000. Is that your
16 check?

17 A Yes, sir, it is.

18 Q And it was made payable to whom?

19 A Ted Kimble.

20 Q Would you explain why that was made payable to Ted
21 Kimble.

22 A He told me he would sell me the boat if I would pay off
23 the loan and give him \$1,000.

24 Q And showing you another check attached to that same
25 exhibit, for \$4,779, made payable to NationsBank. Would you

1 -- is that your signature?

2 A Yes, sir, it is.

3 Q And what was that for?

4 A That was to pay off the loan for the boat.

5 Q And is there a bill of sale also here?

6 A Yes, sir, there is.

7 Q And does it indicate to you -- indicate that on
8 December the 29th of 1995, you bought the boat that belonged
9 to Theodore and Patricia Kimble?

10 A Yes, sir, it does.

11 Q And why did you purchase that property?

12 A I had called the marina and asked them what the boat
13 was worth, and he told me approximately \$9,000. I figured
14 if I can get a \$9,000 boat for just under \$6,000, plus help
15 a friend out, from getting the boat repossessed, might as
16 well.

17 Q What do you mean, "help a friend out"?

18 A Well, he told me that they were getting ready to
19 repossess it, and I didn't want him to ruin his credit.

20 Q Do you still have the boat?

21 A Yes, sir, I do.

22 Q Are you indicating then that the reason you bought the
23 boat is because Ted offered to sell it to you?

24 A Yes, sir, he did.

25 MR. PANOSH: This would be a good break point,

1 Your Honor.

2 THE COURT: All right.

3 You may step down, sir.

4 (The witness left the witness stand.)

5 THE COURT: Members of the jury, we'll take our
6 morning recess. Please remember the jury responsibility
7 sheet. At the end of the 15-minute period, please report
8 back to the jury room.

9 Everyone else remain seated, while the jury leaves
10 first.

11 (The jury left the courtroom at 11:06 a.m.)

12 THE COURT: You may declare a 15-minute recess,
13 sheriff.

14 (A recess was taken at 11:07 a.m.)

15 (Court reconvened at 11:23 a.m. The defendant was not
16 present. The jury was not present.)

17 THE COURT: Come back to the witness stand,
18 please, Mr. Pardee.

19 (The witness returned to the witness stand.)

20 (The defendant entered the courtroom at 11:24 a.m.)

21 MR. LLOYD: Your Honor --

22 THE COURT: Yes.

23 MR. LLOYD: -- before we bring the jury in, I just
24 noticed that in Mr. Pardee's plea agreement, I think it's
25 Paragraph 6, says that he's taken a polygraph test. And we

1 would ask that that portion of it be redacted.

2 THE COURT: Granted.

3 MR. LLOYD: I don't think that's properly
4 admissible.

5 MR. HATFIELD: He granted it.

6 MR. LLOYD: I understand.

7 There's a similar paragraph, though it doesn't say
8 that Mr. Nicholes took a polygraph. It says that he would
9 agree to take a polygraph. And our position all along, of
10 course, as Your Honor well knows, is that the testimony of
11 these two individuals should not be admissible, but I'd ask
12 Your Honor to take a look at that.

13 THE COURT: If you'll redact that part before it's
14 submitted to the jury.

15 MR. LLOYD: All right.

16 THE COURT: Mr. Panosh, if you'll look at it and
17 make sure it's taken care of.

18 (The jury began to enter the courtroom.)

19 MR. PANOSH: Before they come in, please. Before
20 they come in, I'd like to talk to the judge.

21 (The jury left the courtroom.)

22 THE COURT: All right, sir.

23 MR. PANOSH: Your Honor, I have great difficulties
24 with that, because he has read it -- not he, but Mr.
25 Nicholes has read that portion to the jury. And without any

1 question, somebody's going to remember that, and they're
2 going to go back through there and look at it.

3 THE COURT: Well, I don't think that's the one
4 they were talking about, basically.

5 MR. PANOSH: No, he's talking about redacting a
6 portion of Mr. Nicholes. Mr. Nicholes has already put that
7 into evidence, without objection. And I just don't --

8 THE COURT: Well, I'm not going to redact that
9 part. This is the one that --

10 MR. PANOSH: All right.

11 MR. LLOYD: I don't have --

12 THE COURT: -- they're talking about the --

13 MR. LLOYD: -- any problem with that.

14 (The jury entered the courtroom at 11:27 a.m.)

15 THE COURT: You may continue, Mr. Panosh.

16 FURTHER DIRECT EXAMINATION by MR. PANOSH:

17 Q Drawing your attention to State's Exhibit 116, the
18 agreement, other than the date, is that correct? The
19 substance of the --

20 MR. PANOSH: May I approach?

21 THE COURT: Yes.

22 Q Drawing your attention to this agreement, Number 116,
23 you've indicated that there's a correction to the date.

24 A Yes, sir.

25 Q Would you please make that correction.

1 (The witness complied.)

2 Q Other than that correction -- have you read this
3 agreement?

4 A Yes, sir, I have.

5 Q Is it correct?

6 A Yes, sir, it is.

7 MR. PANOSH: Your Honor, we'd seek to introduce
8 116, pursuant to your orders.

9 THE COURT: The Court'll allow the introduction of
10 116.

11 MR. PANOSH: No further questions.

12 (Mr. Lloyd and Mr. Panosh conferred.)

13 CROSS-EXAMINATION by MR. LLOYD:

14 Q Now, Mr. Pardee, you've indicated on direct examination
15 that you have negotiated a deal with the State; is that
16 right?

17 A Yes, sir.

18 Q All right. And the deal that you've negotiated with
19 the State covers --

20 MR. PANOSH: We object. I don't believe "deal" is
21 made reference in that document in any way.

22 THE COURT: Sustained.

23 Rephrase it.

24 MR. LLOYD: All right.

25 Q The agreement that you've entered into with the State

1 of North Carolina, Mr. Pardee, covers all the charges that
2 arose from this conspiracy involving you and Ted Kimble and
3 Rob Nicholes to steal building materials from homes of
4 people and also these other incidents at Home Depot and
5 Northern Hydraulics; is that right?

6 A Yes, sir.

7 Q All right. And Mr. Pardee, how many actual counts of
8 larceny or breaking and entering, how many felony counts
9 were you charged as a result of that?

10 A I believe it was 12.

11 Q 12? And did you discuss your situation with your
12 lawyer?

13 A Excuse me?

14 Q Did you discuss your situation with your lawyer?

15 A Yes, sir, I did.

16 Q All right. And you were aware as a result of those
17 discussions with your lawyer that you were looking at, in
18 the best possible situation, with no prior record, five to
19 six months on each one of those felonies, were you not?

20 A Yes, sir.

21 Q All right.

22 MR. PANOSH: We object to that question and ask
23 that it be stricken.

24 THE COURT: Overruled.

25 Q So if there were 12 felony charges, Mr. Pardee, and as

1 you were aware after you discussed the situation with your
2 lawyer, you realized that you could be sentenced to
3 somewhere in the neighborhood of six years for your
4 involvement in the theft conspiracy with Ted Kimble and Rob
5 Nicholes; is that right?

6 MR. PANOSH: We object to that question, please.

7 THE COURT: Overruled.

8 A Yes, sir, I am.

9 Q All right. And in exchange for your testimony, the
10 district attorney, in the terms of that plea agreement, has
11 agreed to recommend a probationary sentence; is that right?

12 A Yes, sir, it is.

13 Q All right. And there's another clause in your plea
14 agreement, Mr. Pardee, that says if appropriate, the
15 district attorney will also recommend that you be placed in
16 the first offenders' program; is that right?

17 MR. PANOSH: We object.

18 THE COURT: Overruled.

19 MR. PANOSH: That's not in there, Your Honor.

20 THE COURT: Well, sustained then.

21 Q Well, let me ask you this. Mr. Pardee, was it your
22 understanding that if you qualified for the first offenders'
23 program, the district attorney would make a recommendation
24 that you go into that program?

25 A I don't fully understand the program.

1 Q Well, you've indicated that based on your agreement
2 that we've already talked about, the district attorney is
3 going to recommend probation for you; is that right?

4 A Yes, sir, it is.

5 Q And who makes the determination whether or not to
6 recommend probation for you?

7 A I believe it's the district attorney.

8 Q The district attorney? So if Mr. Panosh is satisfied
9 with your testimony, then it's your understanding of the
10 plea agreement that he will make the recommendation to the
11 judge that you get probation in this case; is that right?

12 A Yes, sir, it is.

13 Q And when you were arrested on these charges, Mr.
14 Pardee, did you spend any time in jail?

15 A No, sir, I did not.

16 Q All right. Now, that was before you had signed the
17 plea agreement, was it not?

18 A Yes, sir, it was.

19 Q Because you didn't sign your plea agreement until
20 somewhere in the neighborhood of a month ago; is that right?

21 A That's correct.

22 Q Now --

23 MR. LLOYD: If I may approach, Your Honor.

24 (Mr. Lloyd picked up an exhibit from the witness stand.)

25 Q Mr. Pardee, your plea agreement says that you

1 understand that if you fail to cooperate as set forth in
2 this agreement, that the district attorney can move to set
3 aside the plea agreement, and prosecute you to the fullest
4 extent of the law; is that right?

5 A Yes, sir, that's correct.

6 Q And you also understand that according to your plea
7 agreement, this agreement is limited to property crimes,
8 "and that if in the course of the investigation, it is
9 determined that he," meaning you, "has participated as a
10 principal or an accessory in any crime against a person,
11 this agreement does not protect the defendant from
12 prosecution for that crime against a person." You're aware
13 of that clause in your plea agreement, are you not?

14 A Yes, I am.

15 Q And you're aware, also, that as a term of your plea
16 agreement, Mr. Pardee, you are to testify consistent with
17 statements that you have earlier given investigators in this
18 case; is that right?

19 A I'm sorry. Please --

20 Q As part of your plea agreement, that you were to
21 testify consistent with earlier statements you've given to
22 law-enforcement officers in this case --

23 MR. PANOSH: We object.

24 Q -- is that right?

25 MR. PANOSH: We should go with the agreement, not

1 with what he's putting in.

2 THE COURT: Sustained.

3 Q Let me ask you this, Mr. Pardee. Is that your
4 understanding of your agreement?

5 A I'm sorry. I didn't follow you.

6 Q That you were to testify consistent, the same as, with
7 statements you have given to law-enforcement officers in
8 this case?

9 A That I be not inconsistent.

10 Q All right. Okay. Now, Mr. Pardee, you stole a lot of
11 building materials with Ted Kimble and Rob Nicholes, didn't
12 you?

13 A Yes, sir, I did.

14 Q Do you have any idea what the total value of those
15 materials were and all the items that y'all stole?

16 A I've heard the total value was approximately \$40,000.

17 Q And in terms of how you became involved in this theft
18 conspiracy with Ted Kimble and Rob Nicholes, you told
19 investigators that Rob Nicholes would bring by stolen
20 building materials to Ted Kimble and he would buy them; is
21 that right?

22 A That sounds correct.

23 Q All right. And that's in fact what happened, didn't
24 it, Mr. Pardee?

25 A Yes, sir.

1 Q All right. And you also told investigators that Rob
2 Nicholes would bring by stolen building materials on almost
3 a daily basis; is that right?

4 A Sometimes.

5 Q And that Ted Kimble would pay Rob Nicholes for those
6 building materials and then resell them through Lyles; is
7 that right?

8 A That's correct.

9 Q All right. Now -- and the first time that you noticed
10 this activity going on was sometime around Christmas of '96;
11 is that correct?

12 A Shortly thereafter sometime.

13 Q All right. And this was before you were actually ever
14 physically involved in any of the thefts; is that right?

15 A Yes, sir, that's correct.

16 Q All right. Now, the first time that you became
17 involved in a theft, Ted and Rob Nicholes -- you went out
18 with both of them on that occasion, didn't you?

19 A Yes, sir, I did.

20 Q And they both told you that Rob Nicholes had bought
21 some building materials, some building supplies, from a
22 construction friend of his; is that right?

23 A I believe Ted Kimble told me that --

24 Q All right.

25 A -- yes, sir.

1 Q And Rob certainly -- Rob Nicholes certainly did not
2 contradict that, did he?

3 A I do not recall.

4 Q All right. Well, he was present there with you and
5 Ted, though, was he not?

6 A He was in the same area --

7 Q All right.

8 A -- yes, sir.

9 Q And that the story that you heard was that, Rob had
10 purchased these building supplies from some friend of his
11 who was in the construction business, either a construction
12 foreman or a construction superintendent; is that right?

13 A Yes, sir, it is.

14 Q All right. And that all y'all were doing was going
15 over to pick them up at this time?

16 A Yes, sir.

17 Q All right. And what time of the day was this, that you
18 went over to pick up the materials?

19 A Approximately 7:00, 7:30 in the evening.

20 Q All right. Was it to a residential site, Mr. Nicholes?

21 A Yes, sir, it was.

22 Q I mean Mr. Pardee. I apologize. And where was it?

23 A It was in the vicinity of Westridge and Bryan
24 Boulevard.

25 Q And was that a -- basically a new subdivision of

1 upscale homes that someone was constructing?

2 A Yes, sir, it was.

3 Q All right. And if you remember, Mr. Pardee, what did
4 you pick up on that occasion?

5 A Some boards. I do not recall the size.

6 Q Okay. And by "boards," you mean lumber --

7 A Yes, sir.

8 Q -- is that right? Okay. So you just don't remember
9 whether they were two-by-eights, two-by-sixes, two-by-fours;
10 is that what you're saying?

11 A Yes, sir.

12 Q All right. And I believe you indicated on direct
13 examination it was sometime around 7:30; is that right?

14 A Yes, sir, that's correct.

15 Q And this would have been what time of year?

16 A Approximately late January.

17 Q All right. So it was dark at that time; is that right?

18 A Yes, sir, it was.

19 Q And did you load up those materials into the box truck?

20 A Yes, sir, we did.

21 Q How much was there on this occasion?

22 A Excuse me?

23 Q How much was there on this occasion? How much lumber
24 did you take on this occasion?

25 A It filled the box truck up about two-thirds of the way.

1 Q All right. And for the members of the jury, Mr.
2 Pardee, how big was the box truck, do you know?

3 A I don't know the dimensions, sir.

4 Q Well, would -- when you went into the back of the box
5 truck, could you stand up in it without hitting your head?

6 A I don't believe I could stand up straight without
7 hitting my head.

8 Q Okay. But it was fairly close; is that right?

9 A Yes, sir, it was.

10 Q All right. So these -- and when you all got through
11 filling up the lumber, putting the lumber in, the box truck
12 was about two-thirds of the way filled at that time; is that
13 right?

14 A Yes, sir.

15 Q All right. Now, did Ted Kimble pay you when you got
16 back to Lyles and unloaded the lumber?

17 A No, sir.

18 Q But he paid you at some later time, didn't he?

19 A Yes, sir.

20 Q All right. Do you remember how much he paid you, Mr.
21 Pardee?

22 A I don't recall the exact amount.

23 Q Well, was it more than \$50?

24 A Ted still hadn't finished paying me for the loan, so
25 any money that he paid me, I put it towards the loan that he

1 owed me.

2 Q Well, is it your testimony, Mr. Pardee, that -- you had
3 loaned him some money, approximately \$5; is that -- or
4 \$5,000; is that right?

5 A \$5,500.

6 Q \$5,500. And he paid you -- how much did he pay you
7 initially?

8 A \$4,000.

9 Q All right. So he still owed you another \$1,500; is
10 that right?

11 A Yes, sir, that's correct.

12 Q All right. Now, is it your testimony that he was
13 repaying you on the loan, or was he paying you for your
14 participation in stealing these building materials that
15 night at 7:30 or 8:00 o'clock?

16 A He told me later he would pay me. Any money that he
17 paid me after that, I applied towards the loan that he owed
18 me.

19 Q Well, but did you consider this payment for your work
20 in helping to steal the building materials?

21 A I'm sorry. I didn't follow.

22 Q Did you consider the money that Ted paid you to be for
23 your work in helping stealing the building materials? Was
24 that part of your share of the job?

25 A Ted told me he would pay me for it.

1 Q All right. So you're just not clear on whether or not
2 he was paying you for your work in helping to steal the
3 materials, or whether it was repayment of the loan?

4 A As far as --

5 Q Is that what your testimony was?

6 A As far as I was concerned, it was repayment on the
7 loan.

8 Q All right. So then is your testimony, Mr. Pardee, that
9 you never received any compensation for participating, for
10 your part in the conspiracy to steal these building
11 materials?

12 A I was promised payment.

13 Q Now, you stole another -- a number of other items, as
14 well as the building materials, on that first night; is that
15 right?

16 A Yes, sir, that's correct.

17 Q All right. And I believe you indicated you
18 participated in the theft of the go-carts, didn't you?

19 A Yes, sir, I did.

20 Q And did you get one of those go-carts as -- did you
21 consider one of those go-carts as yours, for your
22 participation in stealing?

23 A No, sir. We usually kept those up at Lyles Building
24 Materials.

25 Q All right. Is it your testimony, Mr. Pardee, that you

1 didn't receive anything from participating in the go-cart
2 theft?

3 A I had rode the go-carts on numerous occasions.

4 Q Just went out and rode the go-carts around with Ted and
5 had a good time; is that right?

6 A That's correct.

7 Q All right. But that was the only -- is it your
8 testimony that that was the only payment that you got for
9 your participation in the theft of the go-carts?

10 A If I'd wanted one of the go-carts, I'm sure he would
11 have given me one.

12 Q Well, did you not take one because it was stolen
13 merchandise?

14 A Excuse me?

15 Q Did you not take one of the go-carts because it was
16 stolen merchandise?

17 A Yes, sir.

18 Q So that was your only reservation in not taking the
19 go-cart, because it was stolen?

20 A Yes, sir.

21 Q All right. And any money that you got from Ted Kimble,
22 you just applied to the loan; is that right?

23 A Yes, sir, that's correct.

24 Q All right. So you never got any of the materials that
25 y'all stole, and you never got any money for participating

1 in the theft ring; is that right?

2 A That's correct.

3 Q Now, you indicated that when you first went out on this
4 first theft, at 7:00 or 8:00 o'clock at night, when you
5 filled the box truck up to two-thirds of the way, then at
6 that time, you thought this was a legitimate deal, as you
7 had been told, that this was simply a construction friend of
8 Rob Nicholes who had sold the materials to Ted and Rob; is
9 that right?

10 A Yes, sir, that's correct.

11 Q Now, when did you realize, Mr. Pardee, that these night
12 outings, when you went to people's homes that were under
13 construction, and took building materials, were not in fact
14 legitimate enterprises and were in fact thievery? When did
15 you realize that, Mr. Pardee?

16 A Approximately late January of '97.

17 Q All right. And how long would that have been after
18 this first time that you've described, when you filled the
19 box truck up two-thirds?

20 A Approximately one or two weeks.

21 Q All right. So how many times did you go out with Ted
22 Kimble and Rob Nicholes on stealing trips before you
23 realized that it was in fact stealing?

24 A It was either the second or the third trip.

25 Q And you went on stealing trips after that, didn't you?

1 A Yes, sir, I did.

2 Q And in fact, there were occasions when you used
3 scanners to monitor the police radio traffic; is that right?

4 A Yes, sir, that's correct.

5 Q And at some point, you told Ted Kimble that he needed
6 to get another scanner that covered another frequency, to
7 pick up the sheriff's department; is that right?

8 A I do not recall that.

9 Q You don't recall telling investigators that he needed
10 to change -- or he needed to get a scanner that covered the
11 600 megahertz cycle, as well as the 800 megahertz cycle, so
12 that he could pick up the sheriff's department?

13 A I don't recall what the frequencies were. He had one
14 scanner he had installed in his vehicle, and I told him that
15 he ought to get a portable one. He got a portable one that
16 he could wear on his belt.

17 Q Uh-huh. Did you tell him also at that time -- that at
18 that time, Mr. Pardee, that he needed to get the other
19 frequency for the sheriff's department or the police
20 department, whichever one he couldn't pick up on the initial
21 one he had?

22 A Ted Kimble had a book that gave the frequencies of the
23 sheriff's department, police departments, I believe it was
24 all across the U.S.

25 Q Well, my question to you, Mr. Pardee, is, do you recall

1 telling Ted Kimble that he needed to get another scanner, to
2 cover that frequency that he did not have with the first
3 one?

4 A I do not recall that.

5 Q Now, after you joined this conspiracy in theft with Mr.
6 Nicholes and Ted Kimble, did you consider yourself an equal
7 partner in this conspiracy, Mr. Pardee?

8 A No, sir, I did not.

9 Q Were you afraid of Ted Kimble, as Mr. Nicholes has
10 stated he was?

11 A Yes, sir, I was.

12 Q And were you participating in this theft ring, as Mr.
13 Nicholes has stated that he was, simply out of fear of Ted
14 Kimble?

15 A Yes, sir, I was.

16 Q Now, did you at any time consider going to Detective
17 Church or any other law-enforcement officers and telling
18 them what you knew, and asking them to keep it confidential,
19 if they couldn't make an arrest on Ted at that time?

20 A Yes, sir --

21 Q Did you consider --

22 A -- I thought --

23 Q -- doing that?

24 A -- about it.

25 Q Did you do it?

1 A No, sir, I did not.

2 Q Now, when you were first arrested, I believe you said
3 on direct examination that you were arrested a day after Ted
4 Kimble was arrested; is that right?

5 A Yes, sir, that's correct.

6 Q All right. And you told officers about your
7 participation in the theft ring; is that right?

8 A Yes, sir, I did.

9 Q But initially, you did not tell officers about what Ted
10 Kimble -- what you've testified that Ted Kimble said
11 concerning Patricia's death, did you?

12 A That's correct.

13 Q And if you -- were you arrested -- is it your
14 recollection, Mr. Pardee, that you were arrested on April
15 the 2nd?

16 A I believe that's correct.

17 Q All right. And it was not until April the 7th that you
18 told anyone in law enforcement about what you've testified
19 here today concerning statements made by Ted Kimble
20 concerning Patricia Kimble's death; is that right?

21 A It was that Friday.

22 Q All right. So --

23 A I don't remember the exact date.

24 Q Were you arrested on -- what day of the week were you
25 arrested on?

1 A It was either a Monday or a Tuesday.

2 Q All right. And you told investigators about your
3 participation in the theft ring --

4 A That's correct.

5 Q -- is that right?

6 A That's correct.

7 Q And you even went so far as to go around with them and
8 show them items that had been stolen during the time you and
9 Ted Kimble and Rob Nicholes operated the theft ring; is that
10 right?

11 A Yes, sir, I did.

12 Q All right. And if you recall, Mr. Pardee, how many
13 times did you go around with officers?

14 A Approximately five or six times.

15 Q All right. So there were a number of times you were
16 with police officers, showing them all the things that had
17 been stolen in the theft ring; is that right?

18 A Yes, sir, that's correct.

19 Q And of course, all those times that you were with those
20 officers, you had a chance to tell them what you've told
21 this jury here, about these statements that you say Ted
22 Kimble made?

23 A Yes, sir.

24 Q And you did not do so, did you?

25 A No, sir, I did not.

1 Q All right. Now, you knew at that time Mr. Kimble had
2 been arrested?

3 A Yes, sir, I did.

4 Q And you knew that he had been arrested for the murder
5 of Patricia Kimble, didn't you?

6 A I didn't know the reasoning behind it, but I knew he'd
7 been arrested.

8 Q Okay. But you knew he was safely in custody?

9 A For the time.

10 Q Now, you did not work for Ted Kimble, did you?

11 A No, sir, I did not.

12 Q So you never drew a paycheck from him; is that right?

13 A No, sir, I never drew a paycheck from him.

14 Q So the times that you came around Lyles Building
15 Supply, there was -- you were under no compulsion to come to
16 Lyles at that time, were you?

17 A He asked me to come and help him out at his business --

18 Q All right.

19 A -- so I did.

20 Q Well, now, you were not going to get paid for that,
21 were you?

22 A He was paying me cash. He was --

23 Q All right.

24 A -- not paying me a check.

25 Q Okay. But you voluntarily came; is that right?

1 A Well, I came because I feared him.

2 Q Did you turn down the money that he paid you?

3 A No, sir, I did not.

4 Q Did you tell him that you had other things to do, and
5 that you couldn't -- sorry, that you couldn't come over at
6 that time?

7 A I did on several occasions.

8 Q Did you do that on a frequent basis?

9 A Sometimes.

10 Q But nevertheless, at least with respect to the times
11 that you did come over there, you went over there of your
12 own free will, did you not?

13 A Yes, sir, I did.

14 MR. HATFIELD: Can we take a moment, Your Honor?

15 THE COURT: You may.

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

17 MR. LLOYD: If I could have just a moment more,
18 Your Honor.

19 (Mr. Lloyd and Mr. Hatfield conferred further.)

20 MR. LLOYD: That's all I have.

21 THE COURT: You may step down, sir.

22 Next witness, please.

23 (The witness left the witness stand.)

24 MR. PANOSH: Detective Church, please.

25 JAMES D. CHURCH, being first duly sworn, testified as

Joy Hedgecock Dyer: "Proof of Perjury and Prosecutor Misconduct"

The Transcript testimony of Joy H. Dyer has so many contradictions, it's impossible to list them all. Her statement to police is yet another example of a falsified police report filed by Det. J. D. Church. As other witnesses, while Ms Dyer was on the stand, she acknowledged inaccuracies, and statements she never made, within her reported statement (TTP. 2579, 19-24 / TTP. 2589, 22-25).

The Defendants contend nearly everything Joy Dyer said was a lie, orchestrated by the misconduct of D.A. Richard Parosh. See EXHIBIT/Affidavit by Edna Kimble, contained within The Grievance to The N.C. State Bar.

Edna Kimble and other witnesses heard Joy Dyer leaving the courtroom make the comment, "I don't know what the hell he wanted me to say." After Bonnie Kimble's conviction, a review of Joy Dyer's criminal record was made. Upon review it was discovered Ms. Dyer had several pending charges dismissed by D.A. Parosh. It turns out D.A. Parosh had a Plea Arrangement made with Joy Dyer in exchange for her testimony, which was not disclosed to the Defense, and clearly not disclosed to the jury.

Please note the following contradictions, and straight out lies found in Joy Dyer's transcript testimony, and her purported statement to investigators prior to trial. Of the four page statement, we start with Page 1, "In the spring of 1991..., Dyer stated she began dating Bonnie Kimble,..." (P.1). During trial Joy agreed that

this statement was wrong (TTP. 2579.22-24). Joy was dating Ronnie Kimble prior to 1991 (TTP. 2579.21), Joy was 15, just turning 16, so she started dating Ronnie in 1990 (TTP. 2580.8).

In early spring 1991 Joy became pregnant by Ronnie. After making Ronnie aware of the pregnancy, Joy claims Ronnie took her to see Ted Kimble, Ronnie's older brother, at the residence of Patricia Blakeley, located at 2410 Brandon Station Court, Pleasant Garden, North Carolina (P.1). At trial Joy only acknowledged calling it "Patricia's house," obviously Det. Church added the rest (TTP. 2589.22-25). Joy didn't know this was three full years before Ted Kimble married Patricia (TTP. 2589.11-13). Ofcourse Joy should have known since she testified that Ted Kimble was dating Janet Blakeley during the time she was dating Ronnie, and that their relationship lasted longer than hers. This further contradicts the police report which claims at the time Ted and Patricia were dating and later married (P.1).

The police report goes on to quote Ms Dyer. Once at Patricia's house, Ted questioned Joy of the validity of her pregnancy. (P.1). Then Ted insisted that Dyer accompany him to Phar-Mor Pharmacy for a pregnancy test (P.2), (TTP. 2565.14-17). Note in the police report Ms. Dyer stated "she" purchased an early pregnancy test (E.P.T.) (P.2), but testified that Ronnie went in and purchased the test (TTP. 2565.18-19/TTP. 2566.11). Once the E.P.T. was purchased Ms Dyer claims to have went to the Phar-Mor restroom (TTP. 2565.23), after utilizing the kit and obtaining a positive reading, she then notified Ted and showed him the results (P.2). Everyone rode back to Patricia's

house, and stood around (TTP-2566.11-16). At this point Ms. Dyer gave two completely different statements. In the police report Ms. Dyer stated Ted told her, she could not possibly have the baby because she wasn't married to Ronnie; Furthermore Ronnie did not have a good enough job to support her and the baby, then Ted began insisting she have the abortion. When asked, Dyer stated she was never physically threatened by Ted or Ronnie Kimble to have the abortion. (P.2). During the trial Joy Dyer changed her statement and said, she nor Ronnie knew what to do. Ted was like, "Well, I'll figure out what to do." Ted kept saying, "You're not going to ruin my family... my father's a pastor." That's when Ted showed Ms Dyer a gun he had on his side. Joy claim to be very, very nervous, and afraid. Ronnie then drove Joy home (TTP.2566.18-25/TTP.2567.1-25).

It needs to be pointed out, earlier in the trial Joy Dyer briefly testified and identified Ted's gun (TTP.757.20-25/TTP.758.1-6). Not only did Joy claim this to be the gun Ted flashed on her at Patricia's house, Joy claim there was a time Ted had brought the gun to her house for target practice, in her mom's front yard. Joy even noted a laser scope, red beam on the gun (TTP.758.7-19) The target practice supposedly took place in '92 or '93 (TTP.759.20). (Since the target practice never took place, Mr. & Ms. Hedgecock can verify Ted has never been at their house shooting a gun.)

Joy Dyer went on with her story and told of having the abortion (P.2) (TTP.2568.1-24) Not long after the abortion, Joy broke off the relationship with Ronnie (TTP.2568.25/TTP.2569.1-10).

Not only did Joy fail to mention anything about Ted Kimble having a gun in the police report, she never mentioned being scared, only upset. The FACT of the matter is, "TED KIMBLE DID NOT OWN A HAND-GUN AT THE TIME JOY DYER WAS PREGNANT!" While on the stand, Ms. Dyer identified both the gun and holster as that of which Ted flashed on her, at Patricia's house in the spring of 1991. Gun Permit Records from Guilford County Sheriff Clerk's Office prove Ms. Dyer committed "PERJURY"! Since Ms. Dyer had never seen the gun prior to trial, the only way she would know the gun had a laser scope on it, is by J.D. Church or D.A. Panosh showing it to her.

Joy Dyer testified to lie after lie. This was all part of Ms. Dyer's "secret" Plea Arrangement with D.A. Richard Panosh. Ms. Dyer's four page police report contradicts nearly everything she testified to. It's obvious that Det. J.D. Church falsified the police report, as he did in the case of Jeff Clark. Ms. Dyer contradicted her own testimony on the stand many times.

While Ms. Dyer testified Ted came over for target practice in '92 or '93 (TTP. 759.20); First, Ms. Dyer testified she broke up with Ronnie shortly after the abortion (May 1991) (P.2) (TTP. 2569.1-10) Second, "And had no more dealing with the Kimble family", then, "I broke up with him that summer in '92 ..." (TTP. 2590.8-12). It's all a matter of which statement one wish to believe. The police report quotes Ms. Dyer stating she dated Ted Kimble off and on (P.2). Ms. Dyer testified she had intercourse with Ted one time at age 15, before meeting Ronnie Kimble, (TTP. 2576.7-19), but then testified she never had a relationship with Ted (TTP. 2580.16).

Although Ms Dyer kept saying she was scared for her life (TTP. 2592.6), Joy admits she was never threatened physically, nor has she ever said that (TTP. 2593.1-13). Over and over Joy Dyer testified Ted showed her his gun while a Patricia's house, and told her she wasn't going to ruin his family (TTP. 2597.1-16). Obviously Joy was unaware Ted didn't own a handgun at that time.

A note of interest. Ms Dyer's statement to Det. Church goes on to make "wild and outrageous claims," All of which are false and have NO supporting evidence. This statement was taken on July 31, 1996.

NOTE: The last page of Ms Dyer's criminal record (enclosed) shows several charges dismissed by D.A. Richard Panosh. This Plea Arrangement was NOT disclosed.

Dyer is a former girlfriend of Ronnie Lee Kimble, white male, brother-in-law of victim Patricia Kimble, and was interviewed for this purpose.

Dyer stated she currently resides with her parents at their 7016 Hemphill Road, Julian, North Carolina, residence, telephone number 910-685-4425, after having separated from her husband, William Henry Dyer, white male, approximately one month ago. Dyer stated she and her husband both have one small female child. Dyer stated she has finished high school and has completed two years at Guilford Technical and Community College (GTCC) in the medical assistant program. Dyer stated she is currently unemployed, due to a recent car wreck involving Dyer's twin sister Faith, who died as a result.

In the spring of 1991 and while attending Vandalia Christian School, Dyer stated she began dating Ronnie Kimble, who was also a student (junior) at Southeast High School. During their courtship, Dyer stated she became pregnant by Kimble. At some point after making Ronnie Kimble aware of the pregnancy, Dyer stated she was picked up at her parents' residence, 7016 Hemphill Road, Julian, North Carolina, by Kimble and taken to the residence of Patricia Blakley, white female, located at 2410 Brandon Station Court, Pleasant Garden, North Carolina, where they were met by Ronnie Kimble's older brother Ted. According to Dyer, Patricia Blakley and Ted Kimble, white male, were both dating at that time and later married.

Once at the 2410 Brandon Station Court location, Dyer stated she was approached by Ted Kimble, who began to question the validity of Dyer being pregnant. Dyer stated she assured Ted that she

was pregnant, but Ted insisted that Dyer accompany him to the PharMoor Pharmacy on High Point Road in Greensboro, North Carolina, where Dyer purchased an early pregnancy test (EPT), which was subsequently utilized for verification. While at the PharMoor Pharmacy, Dyer stated she entered the ladies room and after utilizing the early pregnancy test kit, obtained a positive reading that she was, in fact, pregnant. Once she had verified the test results, Dyer stated she left the ladies room to notify Ted and show him the results.

After this, Dyer stated she was then told by Ted that Dyer could not possibly have the baby because Dyer and Ronnie were not married. Dyer stated she was further told by Ted Kimble that Ronnie did not have a good job needed to support Dyer and the baby. Dyer stated Ted Kimble began insisting that she have the abortion, which upset Dyer. When asked, Dyer stated she was never physically threatened by Ted or Ronnie Kimble to have the abortion. Following the confrontation with Ted Kimble regarding the abortion issue, Dyer stated she had decided to have the baby but reconsidered, after being confronted by Ronnie Kimble, who was also insistent that Dyer should have the abortion.

According to Dyer, sometime in the spring (May) of 1991, Ronnie Kimble came to her parents' residence, picked Dyer up, and proceeded to a High Point abortion clinic (unable to recall the exact location or name of the particular abortion clinic), where she had the abortion. Dyer stated she did not pay for the abortion but believes Ronnie Kimble did. After completing the abortion, Dyer stated she was driven back home by Ronnie Kimble and dropped off. Following this, Dyer stated she dressed and drove herself to school, where she received an award as part of the softball team. Shortly after having the abortion, Dyer stated she broke up with Ronnie Kimble, after having dated him for approximately three years.

During the entire time she dated Ronnie Kimble, Dyer stated Ronnie Kimble was overly "possessive." Dyer stated Ronnie Kimble constantly questioned who Dyer was seeing and associating with and never allowed Dyer to be in the company of other male or female friends. Prior to dating Ronnie Kimble, Dyer stated she dated Ted Kimble off and on.

Dyer stated and recalls on one occasion while dating Ronnie Kimble, she was at her place of employment, Mayflower Seafood Restaurant in Greensboro, North Carolina, when Ronnie Kimble came to the above restaurant, wanting to see and speak with Dyer. Dyer stated she refused to leave the restaurant to speak with Ronnie Kimble and while standing at the door, she observed

Ronnie Kimble pointing a rifle at her. During their relationship, Dyer stated she was always frightened of Ronnie Kimble. Dyer stated Ronnie Kimble was also prejudiced against blacks and recalls on one occasion when Ronnie Kimble observed some young black males (approximately 12 years of age) walking on High Point Road in Greensboro, North Carolina, when he told Dyer to, "Raise up, I'm going to get my gun," because Ronnie Kimble thought the young black males might throw some rocks at his truck. After this, Dyer stated Ronnie Kimble turned his truck around and began driving in the direction of the young black males.

When asked, Dyer stated Ronnie Kimble has always been dominated by his older brother Ted. According to Dyer, Ronnie would drop whatever he was doing whenever Ted called. On a past occasion and while at Ted and Ronnie Kimble's residence, Dyer stated she recalls Ted and Ronnie talking about "staging" a vehicle wreck to collect the insurance proceeds. Prior to her involvement with Ronnie Kimble, Dyer stated she recalls being told by Ronnie Kimble that he and Ted Kimble had, in fact, staged a vehicle accident. As part of the scheme, Ted broke Ronnie's nose to appear as though Ronnie sustained the broken nose during the accident. As a result of the "staged" accident, Dyer stated she was told by Ronnie that he was provided with part of the insurance money by Ted.

Following this and during her relationship with Ronnie Kimble, Dyer stated she was blamed by Ted Kimble for the destruction of his blue Isuzu truck, which Dyer denied. Dyer stated and recalls the truck was, in fact, damaged by Ted, who utilized a key to make a large scratch mark down the side of the truck. Dyer stated Ted Kimble subsequently submitted a claim for the damage to his Isuzu truck and "pocketed" the insurance proceeds. Dyer stated she also recalls Ted Kimble purposely destroying a radio amplifier contained in his personal vehicle in order to obtain a new one. Dyer explained that the warranty for the amplifier had expired and that Ted Kimble was unable to get his money back. According to Dyer, the Kimble family is very materialistic. When asked, Dyer stated she has not seen Ronnie Kimble since her marriage to Henry Dyer. Dyer stated that she would not be surprised to learn that Ted and Ronnie were involved in Patricia Kimble's death. Based on Ronnie Kimble's training in the Marine Corps, Dyer stated Ronnie Kimble was capable of committing Patricia's death. When asked, Dyer stated for a profit, Ted Kimble would be able to talk his brother Ronnie into conspiring with him (Ted) to kill Patricia Kimble because both are "money driven" and "schemers." According to Dyer, Ronnie Kimble never mentioned his childhood, but she does

recall that on a past occasion he told Dyer that he felt his mother liked Ted more than him (Ronnie). Dyer further related Ronnie Kimble's mother Edna did not seem to care for Dyer very much and recalls on one occasion in the past being referred to as a "bitch" by Edna Kimble.

The interview with Joy Dyer was concluded at approximately 2 p.m. on July 31, 1996.

HGP:jbp



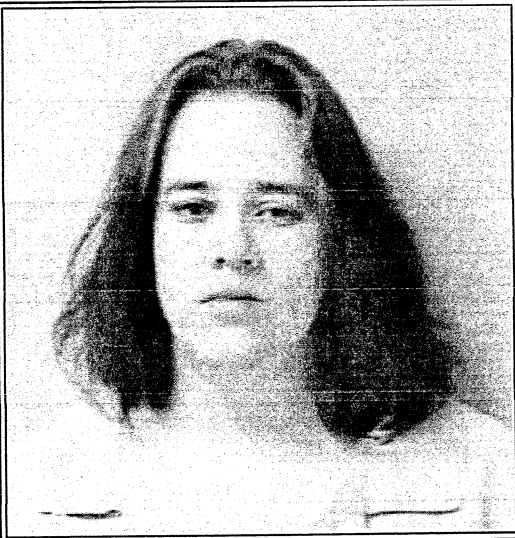
North Carolina Department of Correction Public Access Information System

W3C WAI-A
WCAG 1.0

Instructions: Here is the information you have requested for this offender.

(Note: Click here to view an Explanation of Terms and Data Elements used in the summary boxes.)

Data current as of 2:00 AM EST on: 09/21/2004

General Summary Information			
DOC Number: 0793727		Inmate Status: ACTIVE INACTIVE	
P&P Status:			
Name(s): DYER, JOY H.			
Demographics			
Gender:	FEMALE	Race:	WHITE
Age:	30	Birth Date:	09/14/1974
			

Most Recent Incarceration Summary	
Conviction Date: 02/26/2003	Total Term: 1 YEAR 6 MONTHS
Projected Release Date: 02/09/2005	
Primary Offense: ROBBERY W/DANGEROUS WEAPON (ACCES A/F)	
Admission Date: 02/10/2004	Admitting Location: NCCI WOMEN
Special Characteristics: REGULAR	

Custody Classification: MINIMUM 1	Next Custody Review Date: 09/02/2004
Control Status: REGULAR POPULATION	Next Control Review: UNKNOWN
Number of Infractions: 0	Last Infraction On: N/A
Current Location: FOUNTAIN CCW	
Previous Location: NCCI WOMEN	
Last Movement: RECEIVED FROM NCCI WOMEN	On: 03/09/2004
Prior Incarcerations? N Detainers? N Escapes? N	

Most Recent Probation and Parole Summary
Status: CLOSED
Office of Supervision: DISTRICT 18 UNIT H
Crime: ROBBERY W/DANGEROUS WEAPON (ACCES A/F)
Crime Type: FELON
Punishment Type: INTERMEDIATE SS

**The sentence history for the offender follows.
Incarceration records are light blue; Supervision records are light green**

Incarceration Record for Sentence Number: BA-001			
Commitment Type:	INMATE		
Conviction Date:	02/26/2003	County of Conviction:	GUILFORD
Service Status:	ACTIVE	Sentence Status:	CORRECT
Projected Release Date:	02/09/2005	Sentence Begin Date:	02/09/2004
Actual Release Date:			
Punishment Type:	ACTIVE SS		
Sentence Type 1:	DEPT OF CORR DIV OF PRISONS		
Sentence Type 2:	PROBATION REVOCATION		
Minimum Term:	1 YEAR 3 MONTHS	Maximum Term:	1 YEAR 6 MONTHS

Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	03024069	ROBBERY W/DANGEROUS WEAPON (ACCES A/F)	09/25/2002	FELON	CLASS F

Supervision Record for Sentence Number: 01-001					
Commitment Type: PROBATION/PAROLE					
Conviction Date: 02/26/2003			County of Conviction: GUILFORD		
Punishment Type: INTERMEDIATE SS					
Sentence Type 1: PROBATION					
Sentence Type 2: SUSPENDED SENTENCE					
Sentence Type 3: DEPT OF CORR DIV OF PRISONS					
Sentence Type 4: SPECIAL PROBATION (SPLIT)					
Commitment	Docket#	Offense (Qualifier)	Offense Date	Type	Sentencing Penalty Class Code
INITIAL	03024069	ROBBERY W/DANGEROUS WEAPON (ACCES A/F)	09/25/2002	FELON	CLASS F

Back

Disclaimer

Every effort has been made to report accurate and complete information. Any questions concerning the accuracy of this information should be submitted, in writing, to the North Carolina Department of Correction, c/o Public Information Office, MSC 4202, Raleigh, NC 27699-4202. Any misuse of this information is strictly prohibited and violators are subject to prosecution.

This page has been accessed 13,998,372 times since 05/06/2003.

[[NC DOC Home Page](#) [Main Menu](#)]

STATE OF NORTH CAROLINA

Guilford County

In The General Court Of Justice
Before The Clerk

IN THE MATTER OF:

Name And Address

Joy H. Dyer

CRIMINAL RECORD CHECK

Records Check From This Date To Present

May 1983

This is to certify that I have searched the indices to criminal actions in this office from the date shown above to the present to determine:

only the convictions and pending charges, if any,

the entire criminal record, if any,

which appear in the records under the name given above, and found:

that no record was indexed by the name given above.

the following excerpts from the public records indexed by the name given above.

The criminal records in this office are indexed solely by name and not by any other identifying characteristic. This office cannot guarantee that the records listed herein belong to the individual for whom such record is sought.

File No.	Race/Sex	DOB	Charge	Date Disposed And Disposition
		9/14/74	See Attached 1 page	

Date Of Search

8/28/00

Signature

Melissa Sutton

Deputy CSC Assistant CSC Clerk Of Superior Court

400 BUILFORD-6F
082800 CRIMINAL CHECK- PENDING--DISPOSED--MOTOR V.--UNSERVED--CONVICTED
CRITERIA- NAME: DYER,JOY? R=RACE: S=SEX: DOB:

DYER,JOY,HEDGECOCK	2323 KERSEY	S=F	R=W	DOB=09141974	96CR 046761	G
OF:052896 (M) SHOPLIFTING CONCEALMENT GOODS				DISMISSED BY DA	022800	CR
--+	--+	--+				
DYER,JOY,HEDGECOCK	7016 HEMPHIL	S=F	R=W	DOB=09141974	97CR 027022	G
OF:011897 (T) DWLR				DISMISSED BY DA	022800	CR
--+	--+	--+				
DYER,JOY,HEDGECOCK	115 E CARTER	S=F	R=W	DOB=09141974	97CR 057405	G
OF:062797 (T) DWLR				DISMISSED BY DA	022800	CR
--+	--+	--+				
DYER,JOY,HEDGECOCK	601D W TERRE	S=F	R=W	DOB=00230000	98CR 090975	G
OF:090295 (M) COMMUNICATING THREATS				DISMISS DEFER PROSC	022800	CR

OF:OFFENSE DATE, DOB=BIRTH, (M)MISD, (F)FELONY, (T)TRAFFIC, *END*

082800 INFRACTION CHECK PENDING--DISPOSED--MOTOR V.--UNSERVED--RESPONSE-
CRITERIA- NAME: DYER,JOY? RACE: SEX: DOB:

DYER,JOY,HEDGECOCK	5516 CASCADE	S=F	R=W	DOB=09141974	96IF 020722	G
OF:032396 (I) SPEEDING	045 IN 35 ZONE			CHARGED		IF
(I) SPEEDING	044 IN 35 ZONE			CONV LESSOR OFFENSE	072396	
PEN/COSTS 60					SATISFIED	
SPEC. COND: AC						
--+	--+	--+				

OF:OFFENSE DATE, S=SEX, R=RACE, DOB=BIRTH, (T)TRAFFIC, (I)INFRACTION, *END*

1 that Ted didn't need to take a job. How do we cross-examine
2 all this stuff? I mean, we've talked about the individual
3 hearsay exceptions, and our position is, it doesn't fit.
4 It's not then existing mental or emotional condition. It's
5 a statement of fact. But it's not a fact, based on what the
6 other --

7 THE COURT: I'm going to exclude it as to this
8 defendant.

9 MR. PANOSH: All right.

10 (Proceedings continued in open court.)

11 MR. PANOSH: Your Honor, we'd withdraw this
12 witness. Thank you.

13 THE COURT: You may step down, Ms. Young.
14 (The witness left the witness stand.)

15 MR. PANOSH: Ms. Dyer, please. Come up.

16 MR. LLOYD: Your Honor, may we approach? We'd
17 request a voir dire on this witness.

18 MR. PANOSH: This is not going to be within the
19 motion for limine.

20 THE COURT: How long is the voir dire going to
21 take?

22 MR. PANOSH: Your Honor, it isn't going to be
23 necessary. This is not covered by the motion in limine.

24 THE COURT: Sir?

25 MR. PANOSH: This witness's testimony is not

1 covered by the motion in limine.

2 THE COURT: Proceed.

3 JOY HEDGECOCK DYER, being first duly sworn, testified as
4 follows during DIRECT EXAMINATION by MR. PANOSH:

5 Q State your name, please.

6 A Joy Hedgecock Dyer.

7 Q And are you familiar with Janet Blakley?

8 A Yes, sir.

9 Q And in the course of your acquaintanceship with Janet
10 Blakley, did there come a time when you introduced Theodore
11 Kimble to --

12 A Yes, sir.

13 Q -- you introduced the two?

14 A Yes, sir.

15 Q And are you also acquainted with Ronnie Kimble?

16 A Yes, sir.

17 Q And in the course of your acquaintanceship with Ronnie
18 Kimble, did you and he date for a period of time?

19 A Yes, sir.

20 Q Now, in the course of your acquaintanceship with Ted
21 and Ronnie Kimble, did there ever come a time when Theodore
22 Kimble showed you a particular gun?

23 A Yes, sir.

24 Q Would you describe that, please.

25 A It was a black gun --

1 Q Could you keep your voice up.

2 A Yes, sir. It was a black gun with a -- with a scope.

3 MR. HATFIELD: I can't hear this witness.

4 THE COURT: A little bit louder, please, Ms.

5 Hedge-- or --

6 A I said, it was a black gun, just --

7 Q And is this the gun that -- where were you when you saw
8 this?

- 9 A I was at Patricia house.

-10 Q Did there come a time when that gun was brought to your
-11 house, in reference to target practice?

12 A Yes, sir.

13 Q Okay. Would you describe that, please.

-14 A Ted had come over to the house and asked if he could
-15 shoot the gun. We was in my mom's front yard. We had took
-16 a cardboard -- cut out a piece of cardboard, set it to the
17 side, and was shooting the gun.

18 Q What do you remember about that particular gun?

19 A It had a laser scope, like a red, red beam.

20 Q How frequently did Ted carry that gun?

21 A I wouldn't know.

22 Q Did you date Ronnie Kimble before or after he joined
23 the Marine Corps?

24 A Before.

25 Q And after he joined the Marine Corps, did there come a

1 time when you had any further contact with him?

2 A Yes. He --

3 Q When was that?

4 A He had come to my mother house when I was engaged to my
5 ex-husband at the time. He had ran from his mother house
6 across the field through the woods, to come and see me.

7 Q And how do you know he was in the Marine Corps at that
8 time?

9 A He had on his uniform.

10 Q Do you know approximately when it was that you saw Ted
11 with that particular gun -- or Ted and Ronnie with that
12 particular gun?

13 MR. HATFIELD: Objection. That's not what she
14 testified to.

15 THE COURT: Sustained.

16 Q Drawing your attention to the time that they were
17 target practicing, who was present?

—18 A Ted and Ronnie.

19 Q And when was that?

20 A In '92 or '93.

21 Q Okay.

22 MR. PANOSH: Thank you. No further questions.

23 MR. HATFIELD: May I take a minute to --

24 THE COURT: Wait a minute, ma'am.

25 MR. HATFIELD: Could I confer with counsel, before

1 I --

2 THE COURT: Yes, you may.

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

4 MR. HATFIELD: No questions. Thank you, Judge.

5 THE COURT: You may step down, Ms. Hedgecock.

6 (The witness left the witness stand.)

7 MR. PANOSH: We'd recall Reuben Blakley for a
8 limited purpose.

9 MR. HATFIELD: Object.

10 THE COURT: Overruled.

11 MR. PANOSH: May I approach the witness?

12 THE COURT: Mr. Blakley, the Court will remind you
13 you're still under oath, sir.

14 (Mr. Panosh placed exhibits on the witness stand.)

15 REUBEN BLAKLEY, being first duly sworn, testified as follows
16 during DIRECT EXAMINATION by MR. PANOSH:

17 Q Mr. Blakley, you've previously testified that you were
18 the first person to arrive and discover the fire?

19 A Yes, sir.

20 Q When you walked around the house, as you've previously
21 testified to, would you tell the ladies and gentlemen of the
22 jury whether the windows were open or closed.

23 A All the windows were closed and all the doors were
24 closed.

25 Q And during the period of time that the -- there were

1 Q What was your function there that day?

2 A Security of -- prisoner security, to insure he didn't
3 leave the custody of the sheriff's department.

4 Q During the period of time that he was present in the
5 inter-- in the conference room, did you stay with him at all
6 times?

7 A Yes, sir.

8 Q During the period of time that I left the room, did you
9 stay with him at all times?

10 A Yes, sir.

11 Q Did he ever indicate to you that he had any changes or
12 discrepancies in his statement?

13 A No, sir, he did not.

14 MR. PANOSH: No further questions.

15 THE COURT: Questions?

16 MR. LLOYD: No questions, Your Honor.

17 THE COURT: Step down, sir.

18 Next witness, please.

19 (The witness left the witness stand.)

20 MR. PANOSH: Ms. Dyer, please. Come up, please.

21 Ms. Dyer.

22 JOY HEDGECK DYER, being first duly sworn, testified as
23 follows during DIRECT EXAMINATION by MR. PANOSH:

24 Q Your name is presently what?

25 A Joy Hedgecock Dyer.

1 Q And during the period of time before you were married
2 to Mr. Dyer, you were Joy Hedgecock; is that correct?

3 A Yes, sir.

4 Q And you've previously testified that you dated Ronnie
5 Kimble?

6 A Yes, sir.

7 Q Did there come a time when there was a pregnancy in
8 relationship to that dating?

9 A Yes, sir.

10 Q Would you tell the ladies and gentlemen of the jury the
11 details of that, please.

12 MR. HATFIELD: Objection. That's irrelevant.

13 THE COURT: Overruled.

14 A I had -- me and Ronnie had been dating for a while. I
15 was late on my period, so I had told Ronnie. We went over
16 to Patricia house, where Ted was at. We told Ted, and Ted
17 was like, "Well, let's go get a pregnancy test." So we
18 drove to Phar-Mor. Ronnie went in and purchased the test,
19 came back and gave it to me. I went into Phar-Mor --

20 MR. HATFIELD: I can't hear her.

21 THE COURT: A little bit louder, please, Ms. Dyer.

22 A little bit louder, please.

23 A I went to Phar-Mor rest room.

24 Q Could you back up and say -- you said you drove. Who
25 drove where?

1 A Ted was driving.

2 Q And who was with Ted?

3 A Me and Ronnie.

4 Q Where did you go?

5 A To Phar-Mor.

6 Q Phar-Mor's a --

7 A Drug--

8 Q -- pharmacy?

9 A Yes, sir, it's like a --

10 Q What happened at Phar-Mor?

11 A Ronnie went in, purchased a pregnancy test, came out
12 and gave it to me. I went into the rest room at Phar-Mor
13 and took the test, came back out and showed it to him. And
14 it was positive. We drove back to Patricia house. We was
15 standing out at Patricia house. I didn't know what to do.
16 I was very nervous and upset. I was young.

17 Q How young were you, ma'am?

18 A I was about 16 years old. Ronnie didn't know what to
19 do, either. Ted was like, "Well, I'll figure out what to
20 do." Ted kept on saying, "You're not going to ruin my
21 family. You're not going to ruin my family. My family's a
22 pastor -- my father's a pastor." That's when -- he had --
23 he had a gun on him at that time. And that's when he had
24 showed it to me. I just got very, very nervous. I was
25 afraid. I did not know what to do. Then when Ted said that

1 he would think of something, he would figure it out, that's
2 when Ronnie drove me back to my mom and dad's house.

3 Q You said he had the gun on him. Who is "he"?

4 A Ted.

5 Q Where did you see the gun?

6 A It was on his hip.

7 Q Excuse me?

8 MR. HATFIELD: It was what?

9 A It was -- it was in -- like in a holster right here.

10 (Indicated.) He lifted up his sweat -- I could see it under
11 his sweat shirt.

12 Q Did there come a time when you did see that gun?

13 A Yes, sir.

14 Q And where -- what were you discussing at the time you
15 were shown the gun? What were you saying?

16 A Can you --

17 Q What was being said at the time that the gun was shown
18 to you?

19 A He told me that I wasn't going to ruin his family, his
20 father was a pastor.

21 Q Who said that you weren't going to ruin his family?

22 A Ted.

23 Q What happened after -- you said Ronnie took you back to
24 your home?

25 A Yes, sir.

1 Q What happened after that in regards to the pregnancy?

2 A The next thing I know, my mom and dad had woke me up
3 one Saturday morning, told me to get ready, that Ronnie was
4 coming over to take me out to eat breakfast. So I got
5 ready, I got dressed. Ronnie came and picked me up. I
6 went, with the intentions that I was going to eat breakfast.
7 And instead of going to eat breakfast, we went to an
8 abortion clinic in High Point.

9 Q Who was driving?

10 A Ronnie was.

11 Q Was Ted with you?

12 A No.

13 Q Did you then have an abortion?

14 A Yes, sir.

15 Q Do you know who went in and filled out the paperwork?

16 A I filled it out. He was there with me.

17 Q Who was with you?

18 A Ronnie.

19 Q Ronnie went into the clinic with you?

20 A Yes, sir.

21 Q Do you know who paid for it?

22 A I assume he did. I didn't.

23 Q Was the abortion your idea?

24 A No, sir.

25 Q How long after that did you and Ronnie break up?

1 A Not long after.

2 Q After the breakup, what occurred in regard to Ronnie?

3 A Well, I had wrote him a letter, told him that I didn't
4 -- I thought it was best that we didn't see each other
5 anymore. He had sent two dozen roses up to work, where I
6 worked at Mayflower, and it had a note on it that said "Just
7 because." He would sit in the parking lot and wait for me
8 to come out, and I would have to avoid -- I would have to go
9 out another door or with people around me, because I was
10 very scared.

11 Q How many times do you remember him being in the parking
12 lot?

13 A Two or three times.

14 Q Any portion of those events that sticks out in your
15 mind?

16 A Yes, sir.

17 Q What was that?

18 A One special time when he had sent the roses up that
19 day, that same night, when I walked out, he was holding a --
20 there was a rifle out the window, the window was rolled down
21 halfway. The windows are tinted. It was a Ford Ranger
22 truck. The windows were tinted. And the window was halfway
23 down, and the rifle was out of it. I ran back inside and
24 got some fellows in the kitchen to help me walk out and get
25 into my sister car that was parked on the side.

1 Q After that, did there ever come a time when he came in
2 further contact with you?

3 A Yes, sir.

4 Q What was that?

5 A He would follow me to church, sit behind me when I was
6 with my -- which is my ex-husband now, he would be sitting
7 beside me, he would drop notes over my shoulder, saying, "I
8 want you back. Can't we work this out?" and other things.
9 And another time, he ran over to my mom house when he -- in
10 his uniform.

11 Q Drawing your attention to the time when he dropped the
12 notes, were you married at that time?

13 A No, sir.

14 Q Do you remember when it was that he appeared at your
15 mother's house in his uniform?

16 A '94. I know I was pregnant.

17 Q And that was not -- that pregnancy had nothing to do
18 with Ronnie; is that correct?

19 A No.

20 Q That was Mr. Dyer?

21 A Yes, sir.

22 Q And he came to your house?

23 A Yes, sir.

24 Q Other than saying it was '94, can you be more specific
25 about the time?

1 A Probably around July. I was about five months
2 pregnant.

3 Q When was your baby born?

4 A In September.

5 Q So that would have been four months prior to September?

6 A Yes, sir. She was born in the -- in the latter part of
7 September, September 24th. My husband -- my -- it was my
8 fiance at the time, he was sitting there with me when Ronnie
9 came up.

10 Q And what was the -- does your husband have any
11 disabilities?

12 A Yes, sir. He hearing impaired.

13 Q Okay. And what was the nature of the conversation,
14 when he came to your house that evening in his uniform?

15 A He had told me that he -- it didn't matter that I was
16 pregnant, if I still loved him, cared about him, he would
17 raise the baby, he would take care of it.

18 Q He was asking to --

19 A To try to work it back out.

20 Q Now, during the period of time that you knew Ted and
21 Ronnie, did they associate together?

22 A Somewhat.

23 Q What would they do?

24 MR. HATFIELD: Objection.

25 THE COURT: Overruled.

1 A Ted and Ronnie -- at one part when me and Ronnie first
2 got together, I know that we would go out and double-date
3 together. That's when my twin sister was alive.

4 Q Did there come a time when you were enrolled at GTCC?

5 A Yes, sir.

6 Q When was that?

7 A In '92, when I graduated, I enrolled in -- right after
8 I graduated from high school, into GTCC.

9 Q Did there come a time when anything happened in regard
10 to Ronnie at GTCC?

11 A Yes, sir.

12 MR. LLOYD: Well, objection, Your Honor. Doesn't
13 have anything to do with anything that's come before.

14 THE COURT: Overruled.

15 Q Would you tell the ladies and gentlemen of the jury
16 about that, please.

17 A Yes, sir. I was in the pool room. I had a break from
18 in between my classes. And I was shooting some pool. And
19 he came up in the -- he came up to the college, and came up,
20 wanted to speak to me. He came in the pool room and grabbed
21 me by the arm and took me out to the -- to the front of the
22 college, and was sitting there telling me that he had to
23 talk to me. We sat and talked for a while. I don't
24 remember exactly what the conversation was about. I
25 remember he came up there and got me and pulled me around to

1 the front, to where his car was parked. It was a -- or his
2 truck was parked.

3 Q Were you dating at that time?

4 A No, sir. We had broke up.

5 MR. PANOSH: No further questions. Thank you,
6 ma'am.

7 CROSS-EXAMINATION by MR. HATFIELD:

8 Q Do you know what year you were born in?

9 A '74.

10 Q So in the spring of 1991, were you 16 years old?

11 A Yes, sir, I was.

12 Q And did you say that during that period when you were
13 16 years old, you were going to Vandalia Christian School?

14 A Yes, sir, I was.

15 Q But at that time, your twin sister was still living; is
16 that right?

17 A Yes, sir.

18 Q And you dated Ronnie that year?

19 A Yes, sir.

20 Q And he came to your house numerous times, didn't he?

21 A Of course. Several times.

22 Q And he got to be very good friends with your mother and
23 father, didn't he?

24 A Uh-huh.

25 Q Are you still close to your mom and dad today?

1 A Yes, I am.

2 Q And you know that they care a great deal about Ronnie,
3 don't you?

4 MR. PANOSH: Objection.

5 Q Don't you know --

6 THE COURT: Sustained.

7 Q Don't you know that even after he broke up with you, he
8 continued to be friends with your parents?

9 A I know that they spoke, yes, I do.

10 Q They spoke on many, many occasions, didn't they?

11 A Well, I could not say. I do not live at home.

12 Q Because --

13 A I'm not with my mother and father.

14 Q Because eventually you had a falling out with your
15 parents, didn't you?

16 A I've never had a falling out with my father or mother.

17 Q Now --

18 A I moved away from home, to be on my own.

19 Q But you're really not on your own, are you?

20 A Yes, I am.

21 Q You're just living with a man, aren't you?

22 A No.

23 MR. PANOSH: Objection.

24 THE COURT: Overruled.

25 Q Aren't you living with Mr. Jeter?

1 A No.

2 MR. PANOSH: Object.

3 THE COURT: Overruled.

4 Q Are you living with Mr. Graham?

5 MR. PANOSH: Objection.

6 A Mr. --

7 THE COURT: Well, sustained, unless you've got
8 some basis for that, counsel.

9 MR. HATFIELD: I do.

10 Q Are you living --

11 THE COURT: Overruled.

12 Q -- with Mark Anthony Graham at the present time?

13 A No. Who's Mark Anthony Graham? He's the one that --
14 he's the one that was driving the car on my sister, to when
15 she was killed.

16 Q Are you living with Bobby Jeter at the present time?

17 MR. PANOSH: Objection.

18 A No, I'm not.

19 THE COURT: Sustained.

20 Q Now, when you started going with Ronnie Kimble, how
21 long was it after you and he began going together that you
22 became pregnant?

23 A About two years.

24 Q So it was a really long relationship, wasn't it?

25 A Yes, sir.

1 Q And it was a very close relationship, wasn't it?

2 A Yes, sir.

3 Q But it wasn't the first relationship in which you had
4 engaged in sexual intercourse in your life, was it?

5 MR. PANOSH: Object, please.

6 THE COURT: Sustained.

7 Q Isn't it a fact you had intercourse with Ted Kimble?

8 MR. PANOSH: Object, please.

9 THE COURT: Overruled.

10 THE WITNESS: Do I answer?

11 THE COURT: You need to answer, ma'am.

12 A Yes, I have.

13 Q And your -- the incidents of sexual intercourse with
14 Ted Kimble took place before you went with Ronnie Kimble;
15 isn't that right?

16 A That's right. I met -- I met Ronnie through Ted.

17 Q And actually, you were 15 years old when you had your
18 relations with Ted Kimble; isn't that right?.

19 A Yes, sir. And it was one time.

20 Q What?

21 A Yes, sir. And it was only one time.

22 Q It happened up at a church gathering?

23 MR. PANOSH: We object --

24 A No.

25 MR. PANOSH: -- to relevance.

1 THE COURT: Well, sustained as to that.

2 Q Now, the business about one time is what you told your
3 mom and dad, isn't it?

4 MR. PANOSH: Objection.

5 THE COURT: Sustained.

6 Q You said you had sexual intercourse with Ted Kimble one
7 time, but as a matter of fact, that's simply what you told
8 your mom and dad, isn't it?

9 MR. PANOSH: Object, please.

10 THE COURT: Overruled.

11 THE WITNESS: Do I answer?

12 THE COURT: You need to answer, ma'am.

13 A That's what I told my mom and dad? I never told my mom
14 and dad about that. My sister came in and found us and
15 told, and I got grounded for a month. And why I was
16 grounded, that was the only time I had -- that I had
17 intercourse with Ted, was, he was let in through my bedroom
18 window, with my twin sister's boyfriend at the same time.
19 That was the only time. I was grounded for a month after
20 that, in which Ted and Janet started to date.

21 Q And you have been angry at Ted Kimble ever since,
22 haven't you?

23 A No. I am not angry at anybody.

24 Q Because you felt he took advantage of you when you were
25 just a kid?

1 A No. No.

2 Q Are you saying you're not angry at Ted Kimble over
3 that?

4 A No.

5 Q So are you saying that after that happened, you were
6 grounded for a month, that you then became friends with Ted
7 Kimble?

8 A We spoke.

9 Q And you say that at the same time that he had his
10 relationship with you and you were grounded for a month,
11 that he began to date Janet Blakley; is that right?

12 A Yes, sir.

13 Q And how many years did Ted date Janet Blakley?

14 A About a -- he dated -- they dated longer than me and
15 Ronnie did.

16 Q So the relationship between Ted Kimble and Janet
17 Blakley began before your relationship with Ronnie Kimble,
18 didn't it?

19 A About the same time.

20 Q And it lasted longer than your relationship with Ronnie
21 Kimble, didn't it?

22 A Yes, it did.

23 Q Now, when did you go to High Point and have this
24 abortion?

25 A In '91.

1 Q So you --

2 A It was -- it was the same day that I received an award
3 at school for second team all-state softball.

4 Q And you're quite positive it was 1991?

5 A (The witness nodded her head up and down.)

6 Q Well, you said in your statement that you gave to the
7 District Attorney's Office, "In the spring of '91, while
8 attending Vandalia Christian School, Dyer stated she began
9 dating Ronnie Kimble," didn't you?

10 A When -- can you please refrain (sic) it.

11 (Mr. Hatfield handed a document to the witness.)

12 Q Can you read that, please. (Indicated.)

13 (Time was allowed for the witness.)

14 A Me and Ronnie were dating before 1991.

15 Q So the statement's wrong?

16 MR. PANOSH: We object.

17 THE COURT: Sustained.

18 Don't make any comment.

19 Q Is there an error in this statement, in terms of when
20 it purports to say that you started dating Ronnie Kimble?

21 A Yes, sir, because we was dating before 1991.

22 Q Okay. So the statement's wrong in that respect, isn't
23 it?

24 A (The witness nodded her head up and down.)

25 Q Would you answer the question, please.

1 A What was the question?

2 Q The question is, the statement was wrong, with respect
3 of when it says you started dating Ronnie Kimble?

4 A I just answered your question.

5 Q So when did you start dating Ronnie Kimble?

6 A When I was a freshman in high school.

7 Q And how old were you then?

8 A 15, just turned 16, 15.

9 Q Well, then how old were you when you had your
10 relationship with Ted Kimble?

11 A 15. It was the same time. That's what I'm trying to
12 tell you, it was the same time.

13 Q So you had a relationship with Ted Kimble, and then you
14 turned around and began a relationship with Ronnie Kimble;
15 is that what you're testifying to?

16 A Me and Ted never had a relationship.

17 Q Well, he climbed in your window with another guy,
18 didn't he?

19 A Uh-huh.

20 MR. PANOSH: We object. Been over that.

21 THE COURT: Well, overruled.

22 You may answer that, ma'am.

23 A Yes, sir, he did.

24 Q And subsequently, you say you began dating Ronnie
25 Kimble?

1 A Yes, sir, after the month was up that I was grounded.
2 Ronnie had come down to the house. In fact, it was me, Ted,
3 Faith, Randy, Ronnie and my sister Donna had all went to a
4 movie. That's when the first time that I had met Ronnie.

5 Q Now, at that time, Ted Kimble did not live with his
6 parents, did he?

7 A No, sir. He lived at the end of my road.

8 Q And that's not very far from where your parents' house
9 is, is it?

10 A No, sir.

11 Q So you were living with your parents' house -- at your
12 parents' house with them, weren't you?

13 A Yes, sir.

14 Q And Ted and a roommate of his were living just a little
15 ways away in a house trailer, weren't they?

16 A Yes, sir.

17 Q And you used to --

18 A But I didn't know that, until Ted had stopped me one
19 day when I was running down the road. I had no idea.

20 Q So you'd already -- he'd already climbed in the window
21 and visited you?

22 A No.

23 Q So he stopped you when you were running down the road
24 before?

25 A One day -- that's how we actually met. We spoke for a

1 while before anything was even engaged.

2 Q You and Ted spoke for a while before anything was
3 engaged?

4 A Yeah. Because I mean, I didn't -- I didn't do anything
5 until after school was out, and I was -- I was still in
6 school when I met Ted, before the -- before the summer
7 break. I was still in school. Me and Ted didn't do
8 anything until that summer.

9 Q And then -- and at that time --

10 A Because I remember I was grounded on July 4th, because
11 he was up at the top of the road, shooting off fireworks.

12 Q And you could see the fireworks out your window?

13 A On the front -- I was sitting on the front porch. And
14 every morning before he would leave for work, he'd leave a
15 rose.

16 Q Every morning when he left for work, what?

17 A He would come by and put a rose on the porch, when I
18 was grounded.

19 Q A little token of his affection?

20 A I assume so.

21 Q So, even though you were grounded, you continued to
22 communicate with Ted Kimble?

23 A No, I didn't.

24 Q And when was it that you met Ronnie Kimble?

25 A I met Ronnie before I had gotten grounded.

1 Q You met Ronnie because you knew him through school;
2 isn't that right?

3 A No, I didn't meet Ronnie through school. I met Ronnie
4 through Ted. Because Ronnie had went out with my sister
5 Donna one time to the movies. That's how I met Ronnie.
6 Ronnie was supposed to be going out with Ted -- I mean, with
7 Janet while I was with Ted. Then Ted wanted to date Janet
8 when I was -- when I had gotten grounded, then Ted and Janet
9 got together. And then after that, that is when Ronnie had
10 started coming over to the house more often and stuff, and
11 we just eventually got together.

12 Q Janet Blakley is your cousin, isn't she?

13 A No.

14 Q She's no relation to you?

15 A No. We were --

16 Q But she was a friend at that time?

17 A Yes, sir.

18 Q Are you and she the same age?

19 A No, sir. She's a little older than me.

20 Q So, you're saying that the way that the thing happened
21 is, Ronnie Kimble dated Janet Blakley and you dated Ted
22 Kimble?

23 A No, I never said that they dated. I said that they
24 were supposed to go out, and they never did.

25 Q Who --

1 A So he --

2 Q Who determined that they were supposed to go out?

3 A That's what the thing were. I was supposed to go out
4 with Ted, Ronnie was supposed to meet Janet, and Faith, my
5 twin sister, was with Randy. We was all --

6 Q I'm sorry. I couldn't hear. Who was the last name?

7 A My twin sister, Faith, was with Randy Fields.

8 Q Randy Fields?

9 A Yes.

10 Q All right. Did that happen?

11 A No, it didn't.

12 Q And what did happen, you met Ronnie instead?

13 A No. Ronnie ended up going out with my sister Donna.

14 We all went to the movies. Donna and Ronnie rode in the
15 back of Ted's pickup truck with us. We went to the movies
16 and then we come back out. And then when I got grounded,
17 that's when Ted told me that he would like to take Janet
18 out, and I told him, "Well, that's fine."

19 Q Because you were forbidden to have any further dealings
20 with Ted, right?

21 A I wasn't forbidden, no. When I got off of grounding,
22 it would have been fine.

23 Q But your parents found out about what had happened
24 because of your sister, and that's why they grounded you?

25 A Well, yeah. I mean -- yes, of course.

1 Q And they were determined to prevent you from having any
2 more to do with Ted?

3 A No, they didn't. If that was so, why would my parents
4 invite them, Janet, Ronnie, Ted, Patricia, all of them, to
5 the New Year's Eve party that they had? If I was forbidden,
6 why would my parents go out the way to invite them into
7 their house? I don't understand that.

8 Q So at that time, it was a very happy, friendly group?

9 A For -- yes, sir.

10 Q And that happy, friendly group evolved into a steady
11 relationship between you and Ronnie Kimble; is that right?

12 A Yes, sir.

13 Q And that was the first steady relationship that you
14 ever had?

15 A As far as into the terms that me and him was, yes.

16 Q And that was the first steady relationship he'd ever
17 had, wasn't it?

18 A No.

19 Q Now, did you and he consider yourselves to be in love?

20 A Yeah, concerning at the -- at the age that I was, I --
21 yeah, I guess so. I guess that's what you would call it.

22 Q And you weren't dating anybody else, and he wasn't --

23 A No. No.

24 Q And he wasn't dating anybody else, was he?

25 A No, sir, not that I know of.

1 Q And then, you found that you were pregnant; isn't that
2 right?

3 A Yes, sir.

4 Q Now, precisely when was it that you learned that you
5 were pregnant?

6 A I can't tell you the exact date, sir.

7 Q Can you tell me --

8 A That's --

9 Q Can you tell me whether it was in 1991 or 1992?

10 A It was -- it was '91.

11 Q And you say that in 1991, as your relationship
12 progressed with Ronnie, Ted's relationship progressed with
13 Janet Blakley; is that right?

14 A I didn't involve myself in their relationship, sir.

15 Q Well, didn't you say that Ted went with Janet Blakley
16 for several years?

17 A Yes, sir, he -- yes, sir, he did.

18 Q All right. Then at some time in 1991, you sensed that
19 you might be expecting a baby; is that right?

20 A Well, yes, sir. When I missed my period, I assumed so.

21 Q Did you tell Ronnie you missed your period?

22 A Yes, sir, I did. That's why we went to Phar-Mor.

23 Q Were you concerned about that?

24 A Of course.

25 Q Did you discuss it with your mom?

1 A No, I didn't.

2 Q You didn't discuss it with your mom, because she is
3 completely opposed to abortion; isn't that right?

4 A Yes, that's right.

5 Q And so is your father; isn't that right?

6 A Yes, that's right.

7 Q And for them, it's a matter of religious conviction;
8 isn't that right?

9 A Yes, sir. And it's also a matter of religious
10 conviction for myself, also.

11 Q But you don't always live up to your convictions, do
12 you?

13 MR. PANOSH: We object, please.

14 THE COURT: Sustained.

15 Q You didn't live up to your conviction in this case, did
16 you?

17 A That wasn't my choice.

18 Q You went ahead and had the abortion, didn't you?

19 A I was scared.

20 Q You were scared to have a baby when you were 16 years
21 old?

22 A I would rather have a baby than to have an abortion.

23 Q That's what --

24 A If that --

25 Q -- you think now?

1 A If that was the case, I would not have my child that I
2 have now.

3 Q Well --

4 A I wasn't married then.

5 Q You don't even have custody of the child you had --

6 MR. PANOSH: We object.

7 A I do, too.

8 THE COURT: Sustained.

9 Q Isn't it a fact that in your separation agreement with
10 your husband, that he has physical custody and you and he
11 have legal joint custody?

12 A That's right.

13 MR. PANOSH: Object.

14 A We have joint custody.

15 THE COURT: Overruled.

16 Q So the fact is that your current child, who was born on
17 September 24, 1994, named Arizona --

18 MR. PANOSH: We object, please.

19 THE COURT: Sustained.

20 Q -- that child is in the custody of your ex-husband?

21 THE COURT: She's answered that, sir.

22 Q Now, in 1991, you say that you went, not to Janet
23 Blakley's house, but to Patricia Blakley Kimble's house?

24 A (The witness nodded her head up and down.)

25 Q That's the lady who died, that this case is all about?

1 A That's exactly right.

2 Q And you say that in 1991, you went over there, and Ted
3 and Patricia were living there?

4 A No, not -- I -- not that I know of. Ted was there.

5 Q Ted was at Patricia --

6 A That's right.

7 Q -- Blakley Kimble's house --

8 A That's right.

9 Q -- in 1991?

10 A That's right.

11 Q Are you aware that this is three full years before Ted
12 Kimble and Patricia Kimble got married?

13 A No, I didn't know that.

14 Q Because you didn't know that Ted and Patricia didn't
15 even know each other in 1991, did you?

16 MR. PANOSH: Objection.

17 THE COURT: Well, sustained.

18 Q The fact is, you didn't go to Patricia Kimble's house,
19 because Ted Kimble didn't even know Patricia Kimble in 1991;
20 isn't that right?

21 A No, that's not right. I went to Patricia house.

22 Q And you said, you told the investigators when they
23 wrote up this report, that it was at Brandon Station Court,
24 didn't you?

25 A It was Patricia house.

1 Q But you know that Ted Kimble did not even know Patricia
2 Blakley Kimble then, don't you?

3 MR. PANOSH: Objection.

4 A If --

5 THE COURT: Well, sustained.

6 A If I --

7 Q When did Ted Kimble marry Patricia Blakley?

8 A I have no idea. When I broke up with Ronnie, my
9 dealings with the Kimble family, I had no more. I broke
10 that off. I had no more dealings with the Kimble family
11 after '92. I broke up with him that summer in '92, and
12 that's when I started dating my ex-husband.

13 Q Now, you stated when you told the investigators about
14 all this stuff, that sometime in May of 1991, you went to an
15 abortion clinic; is that right?

16 A Yes, sir.

17 Q And at the time you talked to them, you said you
18 couldn't remember the location of the clinic; is that right?

19 A That's right. I know it's in High Point, because I
20 know we went down High Point Road, past Jefferson-Pilot, and
21 all that. I remember that, because I was sick, and I had my
22 head out the window.

23 Q Now, you don't know who paid for it, do you?

24 A No, I don't know who the money -- who had -- who gave
25 up the money. I didn't pay for it, so obviously it got

1 paid.

2 Q You don't know whether it had to be paid for or not, do
3 you?

4 A No.

5 Q Now, did Ronnie Kimble walk into that clinic with you?

6 A Yes, he did.

7 Q Did you walk in of your own free will?

8 A No.

9 Q Are you saying that you were dragged into the clinic?

10 A I was held by the arm. I was scared.

11 Q If you were held by an arm, why didn't you tell the
12 investigators that when they wrote this report?

13 A (No response was given by the witness.)

14 Q When you got inside the clinic, did you meet a medical
15 doctor?

16 A A nurse, a woman.

17 Q Did you --

18 A She set me down. She wanted to make sure that we
19 watched a movie, a video, like they always -- I guess they
20 said that that was routine.

21 Q And she had you sign some papers, didn't she?

22 A Yes, sir.

23 Q And the papers indicated that you understood what you
24 were doing, and that you were doing it freely and
25 voluntarily; isn't that right?

1 A Yes, sir, that's what -- we signed the papers.

2 Q Now, did someone make you sign those papers?

3 A No one forced -- no one held my hand and made me sign
4 the papers, no.

5 Q And no one --

6 A But I was scared for my life.

7 Q And no one --

8 A I was scared.

9 Q No one dragged you in there, either, did they?

10 A What do you mean, drag me by the hair in there?

11 Q You're just making all that up now, in the aftermath,
12 aren't you?

13 MR. PANOSH: Object, please.

14 THE COURT: Sustained.

15 Q Isn't it a fact that you felt no fear whatsoever,
16 except the fear you felt that your mother would find out
17 what you were doing?

18 A My mother?

19 Q Yes, sir -- yes, ma'am.

20 A No. My mom and dad would have supported me and loved
21 me and took care of me and the baby.

22 Q Well, why did you tell the investigators, when asked,
23 "Dyer stated she was never physically threatened by Ted or
24 Ronnie Kimble to have the abortion"? Why did you tell the
25 investigators that?

1 A I wasn't physically threatened.

2 Q You said --

3 A Not physically.

4 Q You said, when I wasn't around, and this jury wasn't
5 around, and no one was putting any pressure on you at all,
6 you said that you were never physically threatened, didn't
7 you?

8 A Not physically, yes, sir.

9 Q But now you're in here --

10 A I haven't said that, even still sitting here, I have
11 not said that I was physically threatened. I haven't come
12 out of my mouth and said that I was physically threatened.
13 I have -- I have not said that.

14 Q Have you ever gone back to try to locate that abortion
15 clinic, so that you could find out more about it?

16 A No, sir.

17 Q When did your mom and dad finally find out what you'd
18 done?

19 A I don't know.

20 Q You've talked about it with them, haven't you?

21 A No.

22 MR. PANOSH: Object.

23 THE COURT: Overruled.

24 Q Now, do you remember what years you worked at the
25 Mayflower seafood restaurant?

1 A Yes, sir, '92 and '93.

2 Q When were those years?

3 A '92 and '93.

4 Q So sometime in 1992, after you had the abortion, you
5 and Ronnie decided not to see each other anymore; is that
6 right?

7 A Yes, sir. That's what --

8 Q And he had a difficult --

9 A -- I decided.

10 Q Excuse me?

11 A That's what I had decided.

12 Q You decided?

13 A Yes, sir.

14 Q So it was really a unilateral decision, you didn't want
15 to have anything more to do with him?

16 A Yes, sir.

17 Q Because you found Mr. Dyer?

18 A No, sir.

19 Q Well, you engaged in an extramarital relationship with
20 Mr. Dyer, too, didn't you?

21 MR. PANOSH: Object.

22 THE COURT: Overruled.

23 Q Didn't you?

24 A Yes, sir.

25 Q And you incurred a pregnancy with Mr. Dyer, didn't you?

1 A That's right.

2 Q And before you had a chance to marry Mr. Dyer, Ronnie
3 said that if you would come back to him, he would take
4 responsibility for that; isn't that right?

5 A Uh-huh.

6 Q Ronnie didn't want that abortion any more than you did,
7 did he?

8 A I guess -- I don't know.

9 Q You know he didn't want it any more than you, don't
10 you?

11 A I don't know.

12 Q You know that he was just as torn up over that as you
13 were, don't you?

14 A During -- Okay. If he was so torn up about that, then
15 why would he put that through me -- would why he -- why
16 would he cause me to go through that?

17 Q Because both of you mutually agreed --

18 MR. PANOSH: Object to him answering the question.

19 Q Isn't it a fact --

20 THE COURT: Overruled.

21 Q -- that both of you mutually agreed that you were just
22 too young to have a baby --

23 A No, sir.

24 Q -- and to take care of -- That's what you both agreed
25 to, isn't it?

1 A No, that is not what I agreed to.

2 Q Ronnie Kimble begged you to get married and to face
3 life and to have that baby and to not have an abortion,
4 didn't he?

5 A No, sir.

6 Q Now, you say that you went to Patricia Blakley Kimble's
7 residence --

8 MR. PANOSH: It's been asked and answered, please.

9 Q -- on Brandon Church (sic) Court --

10 THE COURT: Overruled.

11 Q -- and met Ted Kimble there; is that right?

12 A Yes, sir.

13 Q And you're saying that he had a gun strapped to his
14 hip; is that right?

15 A Yes, sir.

16 Q And where was Patricia?

17 A In the house. She wasn't outside.

18 Q And at that time, was Ted Kimble living at that house?

19 A I don't know that. Not that I know of, no.

20 Q And were you able to see, under the circumstances, what
21 this gun looked like?

22 A It was a black gun. That's all that I seen.

23 Q Did he ever take it out of the holster?

24 A Not then. Not then.

25 Q And as a matter of fact, there was a shirt covering it?

1 A It was a sweat shirt.

2 Q Yes. So you couldn't even see it, could you?

3 A He showed it to me. He lifted it up and then put the
4 sweat shirt back down.

5 Q And told you he had a gun on his hip?

6 A He showed it to me. He didn't tell me.

7 Q And did he tell you that he was going to do anything
8 with that gun?

9 A No, sir, he didn't say that. Only thing, when he
10 showed me the gun, he told me that I was not going to ruin
11 his family, that his father was a pastor.

12 Q He was -- that you were not going to ruin his family?

13 A (The witness nodded her head up and down.)

14 Q But you're going to ruin his family now, if you
15 possibly can, aren't you?

16 A (The witness shook her head from side to side.)

17 MR. PANOSH: Object, please.

18 THE COURT: Sustained.

19 Q What is your reason for coming in here and dredging up
20 these events from seven or eight years ago in your miserable
21 life?

22 MR. PANOSH: Objection.

23 THE COURT: Sustained.

24 Q What is your reason for coming here and bringing these
25 things to everybody's attention, eight years after they

1 happened?

2 A I was asked these questions from the past. I had no
3 dealing with this. They came to me. I did not find
4 anybody. My dealing of being here is to tell the truth.

5 Q That's what they told you upstairs, isn't it?

6 A I haven't even been upstairs.

7 Q Well, where were you when you wrote the statement that
8 said that you were never physically threatened by Ted or
9 Ronnie Kimble? Where were you then?

10 A Wrote a statement?

11 Q When you told the people that wrote this statement down

12 --

13 A In Greenville --

14 Q -- where were you?

15 A -- North Carolina.

16 Q What?

17 A In Greenville, North Carolina. They came to me.

18 Q And you told them that back in the days when you were
19 dating Ronnie Kimble, that he was overly possessive, didn't
20 you?

21 A Yes, sir.

22 Q And that's really what that's about, is the fact that
23 while you were still going with him, you just decided to
24 move to another person, and you took up a relationship with
25 Mr. Dyer; isn't that right?

1 A No, sir. I was broke up with Ronnie for a good two,
2 three months, before me and Henry even got together. My
3 twin sister, Faith, was dating his twin brother at the time,
4 Sammy.

5 Q What period of time did you work at the Mayflower?

6 A From '92 to '93.

7 Q So when was it that you claim that Ronnie Kimble came
8 to the Mayflower and sat outside, after he'd given you
9 roses?

10 A In May of -- May of 1992, right after I had graduated
11 from high school. That's when I got -- when I got -- when I
12 had graduated from high school, the day after I graduated,
13 my family went to the beach for six days. We came back.
14 The following week, me and my twin sister went together to
15 Mayflower and applied for a job.

16 Q Now, according to the language that is incorporated in
17 this statement that was written down in Greenville, it says
18 that "sometime in the spring (May of 1991)," you all went to
19 get this abortion. Is this accurate?

20 MR. PANOSH: Objection. This has been over --

21 MR. HATFIELD: I want to --

22 MR. PANOSH: -- at least twice.

23 MR. HATFIELD: I want to orient it to the
24 Mayflower thing. I think I can ask --

25 THE COURT: Well, Mr. Hatfield, we've been over

1 it three or four times. I remember that the --

2 MR. HATFIELD: Well, I'm slow to remember. I'm
3 sorry, Your Honor.

4 THE COURT: One more time.

5 Answer it, ma'am.

6 Q Was it -- is it accurate when it says May of 1991?

7 A As far as?

8 Q When you had the abortion.

9 A Yes, sir.

10 Q So are you saying now that in May of 1992, you
11 graduated from high school and received your awards? Did
12 you just say you graduated from high school in May of 1992?

13 A That's right, May 29, 1992.

14 Q And are you saying that a full year after you had this
15 abortion, that Ronnie Kimble was still bringing you roses?

16 A Yes, sir, it was.

17 Q And that sometime around May of 1992, you say you saw
18 him out in the parking lot one day and you thought he had a
19 gun with him?

20 A Yes, sir.

21 Q Who else was there?

22 A Several people that worked there.

23 Q Can you name them?

24 A No. It's been so long ago. They were kitchen people.

25 Q So there isn't anybody that you can think of now who

1 would back you up on this?

2 A Not now. She's dead.

3 Q Your sister's dead?

4 A Yes.

5 Q So it's true, as I just asked you, that there's no one
6 who can back you up on that story, right?

7 A No, sir.

8 Q And you never really told that story until these
9 investigators went down and asked you about it, did you?
10 You never told that story to anybody, about thinking that
11 you saw Ronnie with a gun?

12 A Wrong.

13 Q Well, who did you tell it to?

14 A I told my sister. My sister Bonnie, she knew about the
15 abortion. My sister Donna knew about the abortion. They
16 both knew when it happened.

17 Q Now --

18 A I talked to my sister instead of my parents, because I
19 felt like I was closer to my older sister.

20 Q Plus, they're not as opposed to abortion as your
21 parents?

22 A Oh, yes, they are. Very.

23 Q Now, what did this gun look like?

24 A Which gun?

25 Q This gun you claim you saw.

1 A When I had the pregnancy test and we came back to
2 Patricia house --

3 Q No.

4 A -- and Ted --

5 Q The gun that you claim you saw in Ronnie's possession.

6 A In Ronnie's possession, the one at Mayflower, it was a
7 rifle. He carried it behind his seat in the truck.

8 Q Was there a rack on the --

9 A No.

10 Q -- window of the truck?

11 A It was behind the seat.

12 Q And you had seen it on many previous occasions?

13 A Yes. We target practiced with it, went to turkey
14 shoots, shot in my mama's back yard in the woods.

15 Q You shot the gun yourself, didn't you?

16 A Yes, I had.

17 Q What kind of gun was it?

18 A This was a rifle. I don't -- I don't know. I'm not an
19 expert on guns, sir.

20 Q And was it in rather new condition, or was it an older
21 gun?

22 A I cannot remember that.

23 Q Is it something that Ronnie had had for as long as you
24 knew him?

25 A I can't say -- I would not know that.

1 Q So, in a full year after you've had your abortion, and
2 many, many, many months after you had broken up with Ronnie,
3 you say that he was still trying to communicate with you,
4 and that he left you some flowers at Mayflower; is that
5 right?

6 A Yes, sir.

7 MR. PANOSH: Objection.

8 Q And you say --

9 THE COURT: Overruled.

10 Q -- that you saw this gun, that you'd seen many times
11 before, in his possession then; is that right?

12 A Yes, sir. This was after we had broken up. He had
13 been following me to church, about ran my ex-husband off the
14 road, chasing him up and down Randleman Road.

15 Q Did you tell the people that wrote this report about
16 your ex-husband, so they could go ask him about this?

17 A Yeah, if -- yeah, I have.

18 Q Did you tell these investigators that Ronnie Kimble's
19 mother did not particularly like you?

20 MR. PANOSH: Object.

21 THE COURT: Overruled.

22 THE WITNESS: Answer?

23 THE COURT: You may answer.

24 A Yes, sir.

25 Q And that bothered you, didn't it?

1 A I guess to some degree, back in -- back when we was
2 dating.

3 Q And did you also tell these investigators that you
4 thought that Ronnie Kimble's parents paid more attention to
5 Ted than they did to Ronnie?

6 A Yes, sir.

7 Q And you knew that of -- as a fact, of --

8 A Yes, sir.

9 Q -- your own observation, didn't you?

10 A Yes, sir.

11 Q Everything that Ted did was right, wasn't it?

12 MR. PANOSH: Object.

13 THE COURT: Overruled.

14 Q In their -- in your observation, everything that Ted
15 did was right, wasn't it?

16 A Accord-- what I thought?

17 Q Yeah, what you say. You saw that the way Ted was
18 treated was, everything he did was right? .

19 A The way I thought the way that everything that he did
20 the way his parents thought --

21 Q Yeah.

22 A -- was right? Yes, sir.

23 Q And everything that Ronnie did was a little bit
24 lacking, wasn't it?

25 A Uh-huh.

1 Q And during the time before you broke up with Ronnie,
2 you felt very sorry for him for that situation, didn't you?

3 A Yes, sir. Well, during the whole time that we was
4 together.

5 Q So, aren't we really just looking back on a typical
6 teenage relationship that just didn't go anywhere? Isn't
7 that what this is all about?

8 MR. PANOSH: Object.

9 THE COURT: Sustained.

10 Q You were a teenager and he was a teenager; isn't that
11 right?

12 A Yes, sir.

13 Q And no matter what you and he might have wanted to do,
14 you were just too young to really do it, weren't you?

15 A What do you mean --

16 Q You just --

17 A -- too young to really --

18 Q You couldn't get married and have that baby and --

19 A I could have got married.

20 Q -- big house in the country --

21 A I could have --

22 Q What?

23 A I could have gotten married or had the baby.

24 Q How were you going to support yourselves?

25 A I don't know. I could have lived at home with my mom

1 and dad.

2 Q And Ronnie could have mowed lawns, right?

3 THE COURT: Well, sustained. Move along.

4 Q Isn't it a fact that the -- that Ronnie was very
5 industrious in running his yard care business during this
6 period when you knew him?

7 A Yes. He had a lawn care service.

8 Q And he had quite a few customers, didn't he?

9 A Yes, sir. I helped out on occasions.

10 Q And he worked real hard whenever he was not in school;
11 isn't that right?

12 A That's right.

13 Q And he paid his way for everything, didn't he?

14 A Yes, sir, as far as I -- as far as I know, yes, sir.

15 Q And until your relationship went sour, he took good
16 care of you, didn't he?

17 A What do you mean took good care of me?

18 Q He dated you and was nice to you and made you feel good
19 and did things with you and was a good companion for you,
20 wasn't he?

21 A At the beginning.

22 Q And then the pregnancy came along, didn't it?

23 A Yes, sir.

24 Q Things changed?

25 A (The witness nodded her head up and down.)

EXHIBIT

M

Dear Mr Zimmerman,

Once again I would like to write and request all "Case Discovery", notes, records, and documents pertaining to my case. Since you are no longer my counsel I am entitled to my own files. Please send "everything" to the following address. Thank you for your help.

Sincerely, T

David Johnson

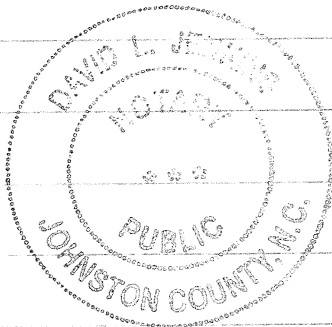
9-27-04

Theodore Kimble

Theodore Kimble #0599011

1300 Western Blvd.

Raleigh, NC 27606



My Commission Expires 12-10-2008.

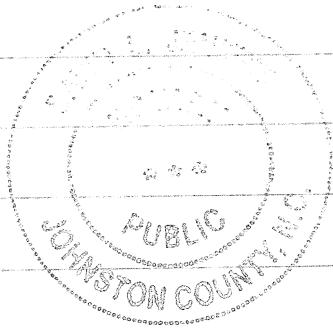
Dear Mr Crumpler,

Once again I would like to write and request all "Case Discovery", notes, records, and documents pertaining to my case. Since you are no longer my counsel I am entitled to my own files. Please send "everything" to the following address. Thank you for your help.

Sincerely,

David J. J. J.
9-27-04

Theodore Kimble
Theodore Kimble #0599011
1300 Western Blvd.
Raleigh N.C. 27606



My Commission Expires 12-10-2008.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <i>Fred G. Crumpler Jr.</i> <i>301 North Main St.</i> <i>Winston Salem, NC</i> <i>27150</i>	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No <i>DEC 15 2003</i> <i>WINSTON SALEM NC</i>	
PS Form 3811, August 2001	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Domestic Return Receipt	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7001 2510 0005 3525 2404		
102595-02-M-1035		

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <i>Butch Zimmerman</i> <i>114 W. 2nd Avenue</i> <i>Lexington, NC</i> <i>27292</i>	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No	
PS Form 3811, August 2001	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
Domestic Return Receipt	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7001 2510 0005 3525 2398		
2ACPRI-03-P-4081		