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DWI/TRAFFIC OFFENSES
FELONIES IN ALL COURTS
ACCIDENTS
PERSONAL INJURY

August 10, 1999

Ronnie Lee Kimble 0628799
Odom Corr. Rt. 1 Box 36
Jackson, NC 27845

Dear Ronnie:

Enclosed is a copy of the record on appeal. It contains the assignments of error. Bear in mind that I will probably not brief all of the assignments.

Once the record is printed, then I will file the brief.

I am and remain

Sincerely yours,


W. David Lloyd

WDL/ld
Enclosures:

ASSIGNMENTS OF ERROR

1. The trial court committed reversible error in allowing into evidence hearsay statements of the deceased victim in violation of the defendant's right to confront and cross examine witnesses against him guaranteed under the state and federal constitutions as well as in violation of North Carolina law.

rule is statement of mind ok, statement of fact not ok, but in westbrooks sup. ct used a harmless error standard to say that even if it was error to admit, other wits test. to same thing and there was not a reasonable poss. for a diff. result

- Record pp 25-27.
- Evid. T pp 37-43.
- Evid. T p 47, lines 21-25; p 48 lines 1-8.
- Evid. T pp 80-87. *V concerned upset abt ins*
- Evid. T p 146, lines 7-16. *V says she's going to leave early*
- Evid. T p 149, lines 15-18. *V says upset abt. Ins. got to take physical*
- Evid. T p 179, lines 24-25. *way T handled gent & ins. p 180*
- Evid. T p 209, lines 1-7; p 210, line 1-2. *worried abt T taking ins. out on her*
- Evid. T pp 663-674; p 675, lines 21-23.
- Evid. T pp 679-684.
- Evid. T pp 702-709.
- Evid. T p 709, lines 11-24; p 716, lines 5-7.
- Evid. T p 805, lines 16-23.
- Evid. T p 807, lines 23-25.

①

*** 2. The trial court committed reversible error in allowing into evidence hearsay statements of codefendant Ted Kimble in violation of the defendant's state and federal constitutional rights to confront and cross examine the witnesses against him as well as in violation of North Carolina law.

- Record pp 20-24.
- ~~1 Evid. T p 142, lines 2-19. T told W. that \$ for M/c came fr. Chend~~
- ~~2 Evid. T p 174, lines 1-6. T told ins. benefic.~~
- ~~3 Evid. T p 211, lines 5-10; p 213, lines 7-10. T told V's Mom she was~~
- ~~4 Evid. T p 620, lines 18-25; p 621, lines 1-15. - get married for Kyle~~
- ~~5 Evid. T p 774, lines 20-21. how to ins agent~~
- ~~6 Evid. T p 801, lines 19-25; p 802, line 1. V had have to be there~~
- ~~7 Evid. T p 805, lines 16-23. T sd V had to sign~~
- ~~8 Evid. T p 938, lines 10-19. T's statements to ins. Invest.~~
- ~~9 Evid. T pp 954-956. T's claims~~
- ~~10 Evid. T p 957, lines 7-8. T's tax returns~~
- ~~11 Evid. T p 993, lines 18-25.~~
- ~~12 Evid. T p 1006, line 25; p 1007, line 1. T tells ins that he is no longer a suspect~~
- ~~13 Evid. T p 1025, lines 19-25; p 1026, lines 1-18.~~
- ~~14 Evid. T p 1031, line 25; p. 1032, 1-12.~~
- ~~15 Evid. T p 1068, lines 7-15. line obj on Patrick Panlec~~

*Pat Wilkins
Never
mentioned
D.*

Evid. T p 1121, lines 12-14.
Evid. T p 1178, lines 12-13.
Evid. T p 1383, lines 13-19.
Evid. T p 2658, lines 8-9.

*No. R. did it
I told Church
Obj. to Micholes States coming in
Exhibit 121-124*

ted is obviously a coconspirator, so that is the first hurdle we must overcome--are they during the course of and in furtherance of the conspiracy this is a decent arg. why is telling nichols or pardee that ronnie did it as opposed to the cops any different you can argue that telling the cops other guy did it is in some way in furtherance but any confession especially where you put the finger on the other guy is not in furtherance

* 3. The trial court committed error in allowing the introduction of the report of the SBI ballistics expert on direct examination.

Evid. T p 502, lines 14-17.

* 4. The trial court committed error in allowing the introduction of two reports of the SBI serology expert on direct examination.

Evid. T p 511, lines 7-9.

1957 Prop.
* 5. The trial court committed reversible error in allowing in testimony concerning instances of alleged insurance fraud on the part of the codefendant Ted Kimble.

Evid. T p 605, lines 22-25; p. 606, lines 1-15, lines 20-23; pp 607-164. *Prob need to raise to refer to #13*

this would qualify as 404(b) evidence against ted, so why not against d.

* 6. The trial court committed error in allowing the introduction of the report of the SBI hair identification expert on direct examination.

Evid. T p 925, lines 3-5.

3,4, & 6 7 should be grouped and raised together. rule 803(8) allows the introduction of reports by public offices or agencies except law enforcement agencies. these are all law enforcement people not corroborative--don't bother to try to find cases searched over an hour and could not find case.

* 7. The trial court committed error in allowing the introduction of the report of the SBI arson expert on direct examination.

Evid. T p 929, lines 8-11.

see 6

* 8. The trial court committed reversible error in denying the defendant's right to full and effective cross examination and confrontation under the state and federal constitutions and the rules of evidence by not allowing the defendant to pose a series of questions on cross examination to the prosecution's lead detective.

Evid. T p 1326, lines 5-6.

Evid. T p 1334, line 25; p 1335, line 1.

Evid. T p 1335, lines 17-24.

Evid. T p 1336, lines 12-13.

Evid. T p 1336, lines 17-21.

~~Evid. T p 1376, lines 2-4.~~

some of jack's stuff on church should raise--the first five concern jack trying to establish that v was alive when ronnie took the box truck back at 1 p.m. that nancy young testified she left eh office abt. 3.20 or so and sb. saw her on hte road 3.40 or so p. 1376 is trying to ask the only reason ted would need an alibi is if he had sb else murder his wife abandon that one--it doesn't make sense

9. The trial court committed reversible error in allowing in prior statements of the prosecution's main witness, Mitch Whidden, which did not corroborate his testimony and contained improper comments which would not have been admissible even on direct testimony.

Record pp 47-50.

Evid. T p 1663, lines 4-5.

Evid. T p 1676, lines 1-3.

abandone this obj. jc gives the corroboration instruction and he is subject to cross on the inconsistencies (mainly that he talked to dr. wilmington and not falwell and the second part is the introduction of the statement

* 10. The trial court committed reversible error in allowing publication of prior statements of a critical prosecution witness, Rob Nichols, which did little to corroborate his testimony and contained improper comments which would not have been admissible even on direct testimony.

Record pp 28-46.

Evid. T p 1691, lines 4-11.

raise this issue

* 11. The trial court erred in sustaining prosecution objections to leading questions of the defendant concerning whether he and his codefendant brother did various conspiratorial acts together in violation of the defendant's right to present a full and effective denial of the charges against him.

Evid. T p 2053, lines 20-25.
Evid. T p 2054, lines 18-20.
Evid. T p 2055, lines 1-3.
Evid. T p 2055, lines 19-23.
Evid. T p 2056, lines 13-17.

jack asks a series of questions like, did ted ever tell you he wanted out of his marriage and to cruise up and down hp rd. or did tell you he was interested in plasitque explosives raise it the questions are not leading

collateral

* 12. The trial court erred in allowing the prosecutor to ask the defendant to identify the pictures from his jail cell of a female jailor whom he was alleged to have had an affair with after the defendant's wife had already testified that she had filed for divorce and he had acknowledged that fact.

Evid. T p 2236, lines 13-25.
raise it have to get ard. harmless error

not relevant

* 13. The trial court erred in allowing the prosecutor to question the defendant about whether he was aware his parents had told him they were claiming to be living in his trailer so that his codefendant brother could fraudulently claim the higher living expenses of living in the parents' house on his insurance.

Evid. T p 2267, lines 17-25; p 2268, lines 1-18.
the question is not relevant, simply basic character assination by inuendo harmless error

* 14. The trial court comitted reversible error in allowing the testimony on collateral matters of the defendant's former girlfriend who testified she had been coerced into an abortion by the defendant and his codefendant brother after she had been impregnated by D.

collateral bound by writ, answer
S v. Broo - 222 MC 324 22 SE2926 (1942)
abortions by murder D

S v. Robinette 39 MCA 622 (79)
D denied killing. Green boys error to bring in Brit to say D told him he did

p 310 Boardis S u. Green, 296 MC 183, 250 SE2197 (78)

prop: no opened door direct to rule is that otherwise inadmiss. evid. is ad-155 to rebut

impregnated by the defendant when she was 16 years old and the defendant's stalking of her when they broke up.

Evid. T p 2565, lines 12-13.

Evid. T p 2572, lines 12-14.

irrelevant character evid. on collateral matters not harmless when coupled with pics of janet smith and parents living with him as part of insurance fraud--real thrust of da's cross is d is a bad apple

11. THE TRIAL COURT ERRED IN SUSTAINING PROSECUTION OBJECTIONS TO LEADING QUESTIONS OF THE DEFENDANT CONCERNING WHETHER HE AND HIS CODEFENDANT BROTHER DID VARIOUS CONSPIRATORIAL ACTS TOGETHER IN VIOLATION OF THE DEFENDANT'S RIGHT TO PRESENT A FULL AND EFFECTIVE DENIAL OF THE CHARGES AGAINST HIM.

Evid. T p 2053, lines 20-25.

Evid. T p 2054, lines 18-20.

Evid. T p 2055, lines 1-3.

Evid. T p 2055, lines 19-23.

Evid. T p 2056, lines 13-17.

Compounding the error in allowing the factual hearsay testimony of Patricia Kimble, the defendant was further stymied in his attempt to rebut such allegations because the trial court sustained the prosecutor's objections to his own denial of his brother's actions. On direct examination of the defendant counsel attempted to ask him if Ted told him his marriage was too confining and that he wanted to get a motorcycle and cruise High Point Road (T p 2053); if he ever mentioned an interest in plastique or explosives; (T p 2054); if he ever mentioned how to rig an explosive in a traffic pylon (T p 2055); and "Did your brother, Ted, ever tell you that he would pay you money if you would assist him in eliminating her?" (T p 2056). All of hte objections were sustained on the basis of improper leading of the witness. It is important to note that all of these questions were based directly on evidence presented by the prosecution earlier in the trial. First, the questions are not leading. They are specific because they have to be in order to rebut the specific earlier charge brought out by the prosecution. The questions themselves do not suggest an answer beyond the specificity or the fact that they are meant to be answered 'yes' or 'no.' *State v. Kim*, 318 N.C. 614, 617-618, 350 S.E.2d 347

(1986) (specific question of 'did he get his penis inside you?' not leading when put to prosecutrix in rape case because of context). Here since the prosecution had already been allowed to get into evidence the hearsay statements of Patricia regarding Ted Kimble wanting to get a motorcycle and out of his marriage so he could cruise High Point Road, there is no other way to ask the question. The defendant could not put Ted Kimble on the stand because he had asserted his right not to testify and he certainly could not cross-examine Patricia. It would be the height of hypocrisy to interpret our system of justice to foreclose the defendant the right through manipulation of the rules of evidence the right to deny that his brother had done or discussed these matters with him.

This was nothing more than calculated gamesmanship on the part of the prosecutor to discredit the defendant and his counsel in the eyes of the jury through hypertechnical manipulation of the Rules of Evidence. Particularly vexing, is that despite the testimony of Pardee and Nicholes that Ted had shown a keen interest in plastique and other explosives including how to rig an explosive in a traffic cone, the defendant was not even allowed to tell the jury that Ted, whom he was alleged to have conspired with, had never mentioned that sort of thing to him.² Before this court concludes this to be harmless error, it should consider two points. First, this is compound error with respect

2. The defendant concedes that he answered all of these questions before the objections were sustained, but under the law it is presumed that the jury followed the judge's admonition and disregarded the question and answer once sustained.

to the question about the cruising High Point Road on a motorcycle--the defendant had already objected to this evidence. Secondly, if the court allows this on whatever theory, the defendant will not have been able deny to the jury the fundamental charge against him--that his borther offered him money to kill his wife. That is error and was not harmless.