

Terrence

McCreary

testimony

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

4

1 MS. CIABATTARI - YOUR HONOR, THIS IS THE CASE OF
2 TERRANCE MCCREARY VS. STATE. THE DOCKET NUMBER IS 2000-
3 CP-46-1368.

4 MR. BRADFORD - MAY WE PROCEED, YOUR HONOR?

5 THE COURT - YES, SIR.

6 MR. BRADFORD - THE PETITIONER IS TERRANCE
7 MCCREARY, AND WE CALL HIM AS THE FIRST WITNESS. MR.
8 MCCREARY, IF YOU'D COME AROUND AND BE SWORN IN.

9 TERRANCE MCCREARY, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BRADFORD -

13 Q MR. MCCREARY, HOW OLD ARE YOU?

14 A 25.

15 Q AND WHERE DID YOU LIVE BEFORE YOU BEGAN SERVING TIME?

16 A IN ROCK HILL.

17 Q AND YOU UNDERSTAND THAT AS PART OF THIS PCR PROCESS,
18 SHOULD THE JUDGE DETERMINE THAT IT'S APPROPRIATE TO GRANT
19 YOU A NEW TRIAL, THAT YOU WOULD FACE THE POSSIBILITY OF
20 CHARGES OTHER THAN THE CHARGES THAT YOU ACTUALLY ARE
21 SERVING TIME FOR?

22 A YES, SIR.

23 Q YOU UNDERSTAND THAT IN THIS CASE, SINCE THE
24 UNDERLYING MATTER IS A MURDER, THAT YOU COULD FACE CHARGES
25 UP TO AND INCLUDING THE DEATH PENALTY IF YOU WERE TO

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5

1 RECEIVE A NEW TRIAL AND THAT MATTER WERE TO GO FORWARD
2 AFTER THE SOLICITOR MADE A RECOMMENDATION THAT IT BE A
3 DEATH PENALTY CASE? DO YOU UNDERSTAND?

4 A YES, SIR. YES, SIR.

5 Q AND KNOWING THAT YOU WANT TO GO FORWARD WITH THIS
6 HEARING TODAY AND TO TALK WITH THE COURT ABOUT --- ABOUT
7 YOUR CASES. IS THAT RIGHT?

8 A YES, SIR.

9 Q NOW, IN THIS CASE FOR WHICH THERE IS A PLEA OF GUILTY
10 BY YOU, DID YOU WANT AND EXPECT TO HAVE A JURY TRIAL IN
11 THE CASE AS IT WAS GOING ALONG, AS YOU WERE BEING
12 REPRESENTED BY MR. GILLEN?

13 A YES, SIR.

14 Q AND HAD YOU DISCUSSED THAT FACT AT DIFFERENT TIMES
15 WITH MR. GILLEN?

16 A YES, ON --- ON THE FIRST MEETING WE HAD.

17 Q ALL RIGHT. SO THE FIRST TIME YOU MET WITH HIM, YOU
18 INDICATED TO HIM THAT YOU DID NOT PLAN TO PLEAD GUILTY TO
19 THE CHARGES, BUT YOU WANTED A JURY TRIAL.

20 A RIGHT.

21 Q NOW, AS THIS MATTER APPROACHED A TRIAL DATE, DID YOU
22 MEET WITH MR. GILLEN TO FURTHER DISCUSS YOUR DEFENSES AND,
23 YOU KNOW, WHETHER THE MATTER WOULD BE TRIED?

24 A CAN YOU SAY THAT AGAIN?

25 Q DO YOU RECALL THAT YOU HAD A DATE THAT THE MATTER WAS

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6

- 1 SUPPOSED TO COME UP FOR TRIAL?
- 2 A YES.
- 3 Q AND AS THAT DATE GOT CLOSER, DO YOU RECALL MEETING
4 WITH MR. GILLEN TO DISCUSS THE CASE SOME MORE.
- 5 A NO, WE MET TWICE. I HAD MET WITH HIM THE FIRST TIME.
6 THE SECOND TIME WASN'T NO --- REALLY NO MEETING, AND THE
7 LAST TIME WE TALKED WAS WHEN WE CAME TO COURT ON THAT
8 JACKSON DENO HEARING.
- 9 Q ALL RIGHT, SO ARE YOU SAYING THAT YOU RECALL MEETING
10 THREE TIMES IN TOTAL WITH MR. GILLEN DURING THE COURSE OF
11 HIS REPRESENTATION WITH YOU?
- 12 A IT'LL BE TWO TIMES.
- 13 Q ALL RIGHT. AND ONE TIME WAS WHEN HE WAS FIRST ---
14 WHEN HE FIRST BECAME YOUR LAWYER?
- 15 A YES, SIR.
- 16 Q AND THEN --- AND YOU WERE --- WERE YOU IN JAIL?
- 17 A YES, SIR.
- 18 Q AWAITING TRIAL?
- 19 A YES, SIR.
- 20 Q ALL RIGHT. AND THEN THE SECOND TIME WAS AT THE TIME
21 OF THE JACKSON DENO HEARING?
- 22 A NO, IT WAS A COUPLE WEEKS BEFORE THE DENO HEARING.
- 23 Q ALL RIGHT.
- 24 A THE LAST TIME WE SEEN EACH OTHER WAS AT THE HEARING.
- 25 Q ALL RIGHT. TELL ME WHAT YOU DISCUSSED WITH MR.

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1 GILLEN AT THE TIME OF THE JACKSON DENO HEARING, EXCUSE ME,
2 AT TWO WEEKS PRIOR TO THE JACKSON DENO HEARING. WHAT DID
3 Y'ALL TALK ABOUT THEN?

4 A HE WANTED ME TO PLEAD TO 30 YEARS, AND I TOLD HIM I
5 DIDN'T WANT NO PLEA.

6 Q ALL RIGHT. WELL, WHAT --- DID HE TELL YOU WHAT
7 CHARGES YOU WOULD --- HE WAS SUGGESTING YOU PLEAD GUILTY
8 TO?

9 A IT WAS MURDER AND ARMED ROBBERY, SOMETHING ---
10 ATTEMPTED ARMED ROBBERY OR SOMETHING LIKE THAT.

11 Q ALL RIGHT. IT WAS DIFFERENT CHARGES THAN YOU
12 ULTIMATELY ENTERED YOUR PLEA ON. IS THAT RIGHT?

13 A YES, SIR.

14 Q BUT THE AMOUNT OF TIME THAT YOU WERE BEING ASKED TO
15 SERVE WAS THE SAME.

16 A YES, SIR.

17 Q 30 YEARS.

18 A YES, SIR.

19 Q AND WHAT --- WHAT DID YOU SAY TO THAT?

20 A I DIDN'T WANT NO PLEA.

21 Q ALL RIGHT. WELL, --- AND AT THAT POINT DID YOU HAVE
22 DISCUSSIONS ABOUT TRIAL OR TRIAL PREPARATION OR ANY OTHER
23 THING?

24 A NO, SIR.

25 Q DID MR. GILLEN INDICATE TO YOU WHAT HE WAS DOING WITH

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8

- 1 REGARD TO GETTING THE CASE READY FOR TRIAL?
- 2 A NO, SIR.
- 3 Q DID HE TELL YOU THAT A HEARING WAS PLANNED ON THE
4 VOLUNTARINESS OF YOUR CONFESSION, THE JACKSON DENO
5 HEARING?
- 6 A HE WAS --- HE SAID WE WOULD BE GOING TO A HEARING
7 WITHIN THAT WEEK, YES. THE WEEK OF THE 17TH, I THINK.
- 8 Q ALL RIGHT. AND DID YOU, IN FACT, GO TO COURT DURING
9 THE HEARING ABOUT THE VOLUNTARINESS OF YOUR CONFESSION?
- 10 A NO.
- 11 Q YOU WERE NOT PRESENT WHEN THE HEARING WAS HELD?
- 12 A OH, YES, I WAS PRESENT, YES.
- 13 Q YOU WERE PRESENT.
- 14 A (NO RESPONSE)
- 15 Q AND DID YOU SEE THE HEARINGS OF ANY OF YOUR CO-
16 DEFENDANTS OR WAS IT JUST YOUR HEARING THAT YOU WERE
17 INVOLVED IN?
- 18 A NO, IT WAS ANOTHER CO-DEFENDANT.
- 19 Q SO YOU SAW ONE OTHER CO-DEFENDANT'S HEARING.
- 20 A NO, THEY WAS --- THEY WAS AT MY --- THEY WAS ALL OF
21 US AT THE SAME HEARING.
- 22 Q I SEE. OKAY. AND WHAT WAS THE RESULT OF THAT
23 HEARING?
- 24 A WE WERE SENTENCED.
- 25 Q ALL RIGHT. BUT THE JACKSON DENO HEARING, DID THE

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1 JUDGE DECIDE THAT THE CONFESSIONS WERE VOLUNTARY AND COULD
2 COME INTO EVIDENCE, OR DID HE DECIDE THAT THEY WOULD NOT
3 COME INTO EVIDENCE? DO YOU KNOW?

4 A I DON'T KNOW.

5 Q ANYWAY, AS A RESULT OF THAT HEARING, DID YOU HAVE
6 ANOTHER OCCASION TO MEET WITH MR. GILLEN ABOUT THE TRIAL
7 OF YOUR CASE?

8 A NO, SIR.

9 Q ALL RIGHT. WAS ANYTHING COMMUNICATED TO YOU BY MR.
10 GILLEN IN WRITING OR OTHERWISE BEFORE YOU MADE YOUR COURT
11 APPEARANCE IN WHICH YOU ENTERED A PLEA OF GUILTY?

12 A NO, SIR.

13 Q DID MR. GILLEN ADVISE YOU THAT HE THOUGHT YOU SHOULD
14 PLEAD GUILTY TO ACCESSORY BEFORE AND AFTER THE FACT OF
15 MURDER AND ACCEPT A SENTENCE, A NEGOTIATED PLEA OF 30
16 YEARS?

17 A NO, HE TELL ME I NEEDED --- I SHOULD PLEA GUILTY,
18 BECAUSE IF I GO TO TRIAL, I'M GOING TO LOSE.

19 Q WELL, I UNDERSTAND THAT, BUT DID HE MAKE A
20 RECOMMENDATION TO YOU THAT YOU ACCEPT SUCH A PLEA?

21 A NO.

22 Q ~~AND YOU NEVER --- YOU NEVER AGREED --- OR DID YOU~~
23 ~~AGREE TO ACCEPT SUCH A PLEA IN MR. GILLEN'S PRESENCE~~
24 ~~BEFORE YOU WENT INTO COURT?~~

25 A NO.

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10

1 Q NOW, AT SOME POINT YOU BECAME AWARE THAT YOU WERE
2 BEFORE A JUDGE AND WITH THE --- SOMEONE FROM THE
3 SOLICITOR'S OFFICE TALKING, AND THAT THE PROCEEDING
4 INVOLVED THE ISSUE OF WHETHER YOU WERE GUILTY OF ACCESSORY
5 BEFORE OR ACCESSORY AFTER THE FACT OF MURDER. WERE YOU
6 NOT?

7 A NO.

8 Q ALL RIGHT. TELL ME WHAT HAPPENED AFTER THE JACKSON
9 DENO HEARING ON THE VOLUNTARINESS OF YOUR CONFESSION.
10 WHAT HAPPENED?

11 A I WAS SENTENCED TO 30 YEARS.

12 Q SO IT WAS AT THAT TIME THAT YOU WENT RIGHT INTO A
13 HEARING AFTER THE JACKSON DENO HEARING THAT RESULTED IN
14 YOUR GETTING A SENTENCE OF 30 YEARS?

15 A (NO RESPONSE)

16 Q IS THAT RIGHT?

17 A SAY THAT AGAIN.

18 Q ALL RIGHT. DID YOU LEAVE THE COURTROOM AFTER THE
19 JACKSON DENO HEARING OR DID YOU STAY AND THEN GO RIGHT
20 INTO A --- INTO THE GUILTY PLEA?

21 A WE WENT --- IT WAS TWO DAYS. THEY SAID --- WE GOT
22 SENTENCED ON A MONDAY. THAT WAS THE END OF THE JACKSON
23 DENO HEARING.

24 Q OKAY. BUT YOU WERE SENTENCED ON MONDAY. THAT IS,
25 THE JUDGE PRONOUNCED SENTENCED AND SAID, YOU KNOW, YOU'RE

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11

1 SENTENCED TO 30 YEARS ON THE ACCESSORY BEFORE THE FACT OF
2 MURDER AND 15 YEARS ON ACCESSORY AFTER THE FACT OF MURDER
3 TO RUN CONCURRENT. THAT HAPPENED ON THE MONDAY?

4 A YES, SIR.

5 Q ON THE FRIDAY BEFORE THAT, YOU WENT THROUGH A HEARING
6 WITH THE JUDGE AND HE ASKED YOU QUESTIONS AND SO FORTH?

7 A YES.

8 Q ALL RIGHT. WHAT DID YOU THINK WAS HAPPENING IN THAT
9 HEARING WHEN THE JUDGE WAS THERE ASKING YOU QUESTIONS AND
10 SO FORTH?

11 A I THOUGHT THEY WERE TRYING TO FIND --- FIND ENOUGH
12 EVIDENCE TO TAKE ME TO TRIAL. THAT WAS THE HEARING FOR.
13 RIGHT?

14 Q ALL RIGHT. DID YOU THINK YOU WERE --- YOU KNEW YOU
15 WEREN'T IN A JURY TRIAL.

16 A YES.

17 Q SINCE THERE WAS NO JURY PRESENT. RIGHT?

18 A YES.

19 Q ALL RIGHT. DID YOU THINK THAT WHAT YOU WERE --- WHAT
20 DID YOU THINK YOU WERE ENGAGED IN IN THAT MATTER WITH THE
21 JUDGE?

22 A I WAS ENGAGED IN TO SEE IF I COULD GO --- HAVE ENOUGH
23 EVIDENCE TO GO TO TRIAL WITH. IF NOT, WE WOULD ---

24 Q DO YOU RECALL ON THAT FRIDAY, I THINK IT WAS JULY THE
25 16TH, THAT THE JUDGE ASKED YOU IF YOU WANTED YOUR --- THE

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1 CHARGES AGAINST YOU --- INDICTMENTS --- TO BE PRESENTED TO
2 THE GRAND JURY. DO YOU RECALL THAT?

3 A YES, SIR.

4 Q NOW, INITIALLY, YOU ANSWERED THAT, YES, YOU DID WANT
5 INDICTMENTS TO BE PRESENTED TO THE GRAND JURY. WHY WAS
6 THAT?

7 A BECAUSE THAT'S WHAT I WANTED.

8 Q HAD --- WAS THAT SOMETHING THAT YOU AND MR. GILLEN
9 HAD DISCUSSED? THAT IS ---

10 A AT SOME POINT, YES.

11 Q WHAT HAD YOU DISCUSSED WITH MR. GILLEN ABOUT THE
12 GRAND JURY?

13 A I TOLD HIM THAT I WANTED TO GO TO TRIAL.

14 Q ALL RIGHT. WELL, DID HE TELL YOU THAT --- WHAT
15 CONNECTION THE GRAND JURY HAD OR WHAT PART IT PLAYED IN
16 YOUR GOING TO TRIAL?

17 A NO.

18 Q ALL RIGHT. NOW, BUT AFTER YOU SAID THAT YOU WANTED -
19 -- YOU WANTED TO HAVE YOUR INDICTMENTS PRESENTED TO THE
20 GRAND JURY, MR. GILLEN SPOKE UP --- SPOKE TO THE COURT,
21 ASKED TO TALK TO YOU, AND YOU AND HE, APPARENTLY STEPPED
22 TO THE SIDE AND TALKED ABOUT IT, AND THEN YOU CAME BACK,
23 AND YOU SAID THAT YOU WOULD WAIVE --- THAT YOU WOULD WAIVE
24 PRESENTMENT OF THE INDICTMENTS TO THE GRAND JURY.

25 A YES. BUT AT THAT POINT IN TIME HE TELL ME I SUPPOSED

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1 TO SAY NO AT THAT POINT.

2 Q YOU WERE SUPPOSED TO SAY, NO, YOU DON'T WANT THINGS
3 TO GO TO THE GRAND JURY?

4 A YES.

5 Q AND YOU CAME BACK, YOU USED THE WORD WAIVE. WAS THAT
6 YOUR WORD OR WAS THAT HIS WORD? THAT YOU WAIVE THESE
7 GOING TO THE GRAND JURY?

8 A THAT WASN'T MY WORD, NO.

9 Q ALL RIGHT. WHAT DID YOU SAY TO HIM AT THAT POINT
10 ABOUT --- ABOUT HOW THAT WOULD AFFECT YOUR RIGHT TO A JURY
11 TRIAL?

12 A I THOUGHT IT WOULD STILL GO ON.

13 Q I'M SORRY. SAY THAT AGAIN.

14 A I THOUGHT IT WOULD STILL GO ON. I MEAN SO FOR A
15 JURY.

16 Q NOW, AFTER EVERYTHING WAS FINISHED UP, THE JUDGE HAD
17 ASKED YOU QUESTIONS. ON THAT FRIDAY, DECISION WAS MADE TO
18 WAIT UNTIL MONDAY TO SENTENCE YOU AND OTHER DEFENDANTS.
19 DID YOU SAY ANYTHING TO YOUR LAWYER AT THAT POINT, TO MR.
20 GILLEN ABOUT WHAT WAS GOING ON OR WHAT YOU WERE THINKING?

21 A NO, SIR.

22 Q ~~DID YOU HAVE THE OPPORTUNITY TO TALK TO HIM AT THAT~~
23 POINT AFTER YOU LEFT THE COURTROOM AND SO FORTH?

24 A YES.

25 Q DID YOU HAVE THE OPPORTUNITY TO TALK TO HIM?

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14

- 1 A YES, SIR.
- 2 Q DID YOU TALK TO HIM AFTER YOU LEFT THE COURTROOM THAT
3 DAY?
- 4 A NOT LONG. YES.
- 5 Q NOT LONG? WHAT DID YOU SAY WHEN YOU DID TALK TO HIM?
- 6 A I DIDN'T REALLY SAY NOTHING.
- 7 Q YOU DIDN'T SAY ANYTHING?
- 8 A NO.
- 9 Q ALL RIGHT. DID YOU TALK AT ALL ABOUT WHAT YOU ---
10 WHAT YOU THOUGHT THE SITUATION WAS?
- 11 A NO.
- 12 Q WHAT DID YOU THINK THE SITUATION WAS AFTER THAT
13 FRIDAY AFTER YOU HAD BEEN BEFORE THE JUDGE?
- 14 A I THOUGHT THEY WOULD GO OVER YONDER I MEAN AND PICK
15 THE JURY. I MEAN, WELL, SEND MY INDICTMENT ON TO THE
16 GRAND JURY AND SET A DATE FOR A JURY TRIAL.
- 17 Q SO AS FAR AS YOU KNEW, YOU HAD NOT ENTERED ANY PLEA
18 OF GUILTY ON THAT DAY. IS THAT RIGHT?
- 19 A YES. YES.
- 20 Q ALL RIGHT. NOW, ON THE MONDAY WHEN YOU CAME BACK ---
21 DID YOU MEET WITH MR. GILLEN OVER THE WEEKEND OR ANY
22 MEMBER OF HIS STAFF?
- 23 A NO.
- 24 Q DID YOU ASK TO?
- 25 A NO.

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15

- 1 Q DID YOU ASK TO MEET WITH HIM?
- 2 A NO.
- 3 Q YOU GOT TO SAY YES OR NO. I ---
- 4 A NO.
- 5 Q AND WHEN YOU CAME BACK INTO THE COURTROOM BEFORE
- 6 JUDGE HAYES TO BE SENTENCED OR --- AND, IN FACT, WERE
- 7 SENTENCED WHEN HE SAID, YOU KNOW, THE SENTENCE OF THIS
- 8 COURT IS 30 YEARS ON THE ACCESSORY BEFORE THE FACT OF
- 9 MURDER AND 15 YEARS FOR ACCESSORY AFTER THE FACT OF
- 10 MURDER, WHAT ABOUT AT THAT POINT? DID YOU UNDERSTAND WHAT
- 11 HAD HAPPENED?
- 12 A AT THAT TIME I COULDN'T SPEAK.
- 13 Q WELL, I MEAN DID YOU --- DID YOU UNDERSTAND AT THAT
- 14 POINT THAT YOU WERE NOT LOOKING AT THE POSSIBILITY OF A
- 15 JURY TRIAL?
- 16 A AT SOME POINT, YES, BUT I COULDN'T SAY ANYTHING. YOU
- 17 KNOW, I DIDN'T EVEN KNOW WHAT WAS GOING ON.
- 18 Q DID YOU SAY --- SO, YOU DIDN'T SAY ANYTHING TO THE
- 19 JUDGE.
- 20 A NO, SIR.
- 21 Q DID YOU SAY ANYTHING TO MR. GILLEN?
- 22 A AT THE END OF THE HEARING.
- 23 Q AT THE END OF THE HEARING? WHAT DID YOU SAY TO MR.
- 24 GILLEN?
- 25 A I TOLD HIM I WANT --- I WANT TO APPEAL.

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16

1 Q AND WHAT WAS HIS RESPONSE TO YOU?

2 A HE WOULD GET WITH ME LATER.

3 Q ALL RIGHT. AND, NOW, DID ---

4 MS. CIABATTARI - YOUR HONOR, I JUST --- I'M
5 SORRY. I COULDN'T UNDERSTAND WHAT THAT LAST ANSWER WAS,
6 PLEASE.

7 THE COURT - CAN YOU SPEAK A LITTLE MORE CLEARLY,
8 SIR. HAVING TROUBLE UNDERSTANDING YOU.

9 MR. MCCREARY - ALL RIGHT.

10 THE COURT - I UNDERSTOOD HIM TO SAY HE SAID HE
11 WOULD TALK TO HIM LATER.

12 MR. BRADFORD - YES, I THINK HE SAID HE WOULD GET
13 WITH ME LATER.

14 Q IS THAT CORRECT? IS THAT WHAT YOU SAID?

15 A YES, SIR.

16 Q AND DID YOU MEET OR GET WITH MR. GILLEN AFTER YOU
17 WERE SENTENCED?

18 A NO, SIR.

19 Q DID YOU HEAR FROM HIM BY TELEPHONE OR BY MAIL?

20 A BY MAIL.

21 Q AND BY MAIL DID HE SAY ANYTHING TO YOU ABOUT
22 APPEALING?

23 A NO, SIR.

24 Q AND, IN FACT, DO YOU KNOW IF AN APPEAL WAS FILED
25 RELATING TO YOUR GUILTY PLEA AND SENTENCE?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

17

1 A I HAD SOMEBODY --- I HAD A FAMILY MEMBER CALL
2 COLUMBIA ABOUT THE APPEAL, AND THEY SAID I WASN'T LISTED
3 UP UNDER THERE.

4 Q SO AS FAR AS YOU KNOW NO APPEAL WAS TAKEN?

5 A YES.

6 Q AND YOU NEVER HAD ANY DEALINGS WITH MR. GILLEN OR
7 ANYONE ELSE ABOUT AN APPEAL.

8 A YES.

9 MR. BRADFORD - IF YOU WOULD, ANSWER ANY
10 QUESTIONS THAT THE ATTORNEY GENERAL'S OFFICE MAY HAVE.

CROSS EXAMINATIONBY MS. CIABATTARI -

13 Q MR. MCCREARY, WHO ARE YOUR CO-DEFENDANTS IN THIS
14 CASE?

15 A MONTE GORDON, ANTONIO GORDON AND GARY MOFFITT.

16 Q GARY WHO?

17 A MOFFITT.

18 Q MOFFITT. OKAY. AND WERE YOU ORIGINALLY CHARGED WITH
19 MURDER?

20 A YES, MA'AM.

21 Q BUT YOU PLED --- YOU DIDN'T PLEAD TO MURDER.

22 A NO, MA'AM.

23 Q AND YOU SAY THAT YOU MET WITH YOUR ATTORNEY ONLY
24 TWICE?

25 A YES, MA'AM.

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

18

1 Q YOU MET WITH HIM ONE TIME WHEN YOU FIRST --- HE WAS
2 FIRST APPOINTED? IS THAT CORRECT?

3 A YES, MA'AM.

4 Q THEN YOU WERE WITH HIM --- YOU NEVER MET WITH HIM
5 BEFORE YOU WENT TO TRIAL?

6 A NO, MA'AM.

7 Q YOU NEVER MET WITH HIM BEFORE THE PRE-TRIAL MOTIONS?

8 A YES, IT WAS A --- IT WAS A BRIEF MEETING. IT WASN'T
9 NO MEETING MEETING.

10 Q YOU HAD A BRIEF MEETING BEFORE THE PRE-TRIAL MOTIONS?

11 A BEFORE THAT --- BEFORE THE DENO HEARING, JACKSON DENO
12 HEARING.

13 Q ALL RIGHT. SO YOU MET HIM ONCE WHEN HE WAS
14 APPOINTED. YOU MET HIM FOR A BRIEF TIME BEFORE THE PRE-
15 TRIAL MOTIONS.

16 A YES.

17 Q YOU HAD TWO DAYS OF PRE-TRIAL MOTIONS, AND THEN YOU
18 HAD ONE DAY OF SENTENCING.

19 A YES.

20 Q THAT'S AT LEAST FIVE TIMES. RIGHT?

21 A WELL, THAT AIN'T NO LEGAL MEETING.

22 Q OKAY.

23 A HE DIDN'T COME TO A MEETING AND MEET WITH ME. THAT
24 WAS IN THE COURTROOM.

25 Q OKAY. WHEN DID YOU ASK HIM TO FILE AN APPEAL? AFTER

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19

1 THE GUILTY PLEA OR AFTER THE SENTENCING?

2 A RIGHT AFTER HE --- THE JUDGE GOT THROUGH TALKING.

3 Q I UNDERSTAND THAT, BUT DIDN'T YOU PLEAD GUILTY ONE
4 DAY, AND THEN ON THAT MONDAY YOU WERE SENTENCED?

5 A NO, I WAS SENTENCED ON THAT MONDAY.

6 Q MR. MCCREARY, LET ME ASK THIS AGAIN. THERE'S JACKSON
7 V. DENO HEARING, I THINK, ON THE --- PROBABLY WOULD'VE
8 BEEN ON THE 12TH. RIGHT?

9 A YES.

10 Q OKAY. AND THEN YOU WENT BEFORE THE JUDGE. ALL OF
11 THE CO-DEFENDANTS WENT BEFORE THE JUDGE AND Y'ALL PLED
12 GUILTY. RIGHT?

13 A THEY PLED GUILTY.

14 Q YOU NEVER PLED GUILTY.

15 A NO.

16 Q WERE ORIGINALLY ALL THREE OF YOU GUYS GOING TO TRIAL?

17 A NO. THEY PLED GUILTY. I WANTED A TRIAL.

18 Q NO, I'M TALKING ABOUT ORIGINALLY. OKAY? BEFORE THE
19 DAY WHEN THEY PLED GUILTY, WERE ALL THREE OF YOU GUYS,
20 ANTONIO, MONTE AND YOU, WERE Y'ALL GOING TO TRIAL?

21 A YES.

22 Q OKAY. DO YOU KNOW WHY YOU DIDN'T END UP GOING TO
23 TRIAL AND WHY THEY STARTED TO PLEAD GUILTY?

24 A NO.

25 Q NOW, IF YOU HAD GONE TO TRIAL, WOULD IT NOT HAVE BEEN

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

20

1 THAT YOUR THREE OTHER PEOPLE, THAT THEY HAD PLED GUILTY
2 AND WERE GOING TO TESTIFY AGAINST YOU?

3 A THAT WAS ON THEM.

4 Q I'M SORRY?

5 A THAT'S ON THEM. I WAS WANTING TO TAKE A --- I WAS
6 WANTING TO GO TO TRIAL.

7 Q YOU WANTED TO GO TO TRIAL EVEN THOUGH ANTONIO AND
8 MONTE WOULD'VE PLED GUILTY AND THEN WOULD'VE BEEN
9 TESTIFYING AGAINST YOU?

10 A YES.

11 Q EVEN THEN YOU WANTED TO GO TO TRIAL?

12 A YES.

13 Q FOR MURDER?

14 A YES.

15 Q OKAY. MR. MCCREARY, DO YOU REMEMBER WHEN YOU WERE
16 BEFORE A JUDGE AND THE SOLICITOR WENT OVER THE INDICTMENTS
17 AND SAID THAT YOU WERE PLEADING GUILTY TO ACCESSORY BEFORE
18 THE FACT AND ACCESSORY AFTER THE FACT? DO YOU REMEMBER
19 ALL THAT?

20 A YES, MA'AM.

21 Q OKAY. AND DO YOU REMEMBER WHEN THE SOLICITOR TOLD
22 THE JUDGE THAT YOU WERE WAIVING PRESENTMENT? YOU THINK
23 ONE OF THE REASONS YOU WERE WAIVING PRESENTMENT IS BECAUSE
24 THEY WERE LETTING YOU PLEAD TO THESE LESSER CHARGES AND
25 DROPPING THE MURDER CHARGE? DO YOU REMEMBER THAT?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

21

1 A SAY THAT AGAIN.

2 Q DO YOU REMEMBER THEM LETTING TO PLEAD TO ACCESSORY
3 BEFORE THE FACT AND ACCESSORY AFTER THE FACT, AND THEN
4 THEY WERE GOING TO DROP THE MURDER CHARGE? DO YOU
5 REMEMBER THAT HAPPENING?

6 A THE PLEA THEY SAY WAS MURDER AND ATTEMPTED ARMED
7 ROBBERY AND I THINK A WEAPON CHARGE. IT WASN'T NO
8 ACCESSORY. THAT'S THE PLEA THEY OFFERED.

9 Q OKAY. CAN I JUST SHOW YOU THIS? AND IT'S ON PAGE
10 162, JUST SO WE'RE CLEAR. YOU SEE HERE WHERE IT SAYS ---
11 THIS IS THE SOLICITOR, NOW. ALL RIGHT. SHE SAYS, THIS IS
12 THE STATE VS. TERRANCE MCCREARY AND THE INDICTMENTS, AND
13 THERE ARE FOR ACCESSORY BEFORE THE FACT TO MURDER. HE'S
14 PLEADING GUILTY AS HE'S CHARGED AND WAIVING PRESENTMENT.
15 ALSO, ACCESSORY AFTER THE FACT FOR MURDER. HE'S ALSO
16 WAIVING PRESENTMENT TO THAT. AND THEN AS PART OF THE PLEA
17 AGREEMENT, WE'RE DISMISSING THE OTHER CHARGES. DO YOU
18 REMEMBER ALL THIS HAPPENING?

19 A YES.

20 Q YOU DO?

21 A YES, MA'AM.

22 Q OKAY. SO YOU WERE PLEADING GUILTY TO ACCESSORY
23 BEFORE THE FACT TO MURDER, ACCESSORY AFTER THE FACT OF
24 MURDER, AND THEY WERE DROPPING THE MURDER CHARGE?

25 A YES, THAT WHAT HE SAID. I DIDN'T WANT NO GUILTY

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

22

1 PLEA. THAT'S WHY WHEN THE JUDGE ASKED ME DID I WANT TO GO
2 BEFORE THE GRAND JURY, I SAID YES. THAT'S THE WHOLE POINT
3 OF ME SAYING YES.

4 Q OKAY. LET'S GET INTO THAT. ON PAGE 160 SAYS, THE
5 JUDGE SAID, YOU WISH TO HAVE THESE CASES REVIEWED BY THE
6 GRAND JURY OR GIVE UP THAT RIGHT. AND YOU SAY, I WOULD
7 LIKE THE RIGHT TO GO TO THE GRAND JURY?

8 A WELL, I SAID IT TWICE.

9 Q OKAY. AND THEN DID YOU TALK TO MR. --- WELL, YOU
10 SAID IT ONCE, AND THEN YOU TALKED TO MR. GILLEN. THAT'S
11 YOUR ATTORNEY. RIGHT?

12 A RIGHT.

13 Q AND Y'ALL HAD A DISCUSSION.

14 A (NO RESPONSE)

15 Q SEE HERE, IT SAYS, MAY I HAVE A MOMENT, YOUR HONOR?
16 WE HAD DISCUSSED THIS PREVIOUSLY. THE COURT SAID, SURE,
17 AND THEN THE COURT REPORTER IS SAYING THAT Y'ALL CONFERRED
18 TOGETHER.

19 A RIGHT.

20 Q OKAY. YOU REMEMBER THAT?

21 A (NO RESPONSE)

22 Q AND WHAT DO YOU SAY RIGHT HERE? I'D LIKE TO WAIVE
23 THAT RIGHT, YOUR HONOR. ALL RIGHT. DID YOU SIGN THAT
24 WAIVER OF INDICTMENT?

25 A THAT WHAT?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

23

1 Q DID YOU SIGN THE WAIVER OF INDICTMENT ON THE
2 INDICTMENTS FOR ACCESSORY BEFORE THE FACT AND ACCESSORY
3 AFTER THE FACT?

4 A YES. YES.

5 Q DO YOU REMEMBER WHEN HE ASKED YOU HOW YOU PLED TO
6 ACCESSORY BEFORE THE FACT AND WHAT YOU SAID?

7 A GUILTY.

8 Q DO YOU REMEMBER WHEN HE SAID HOW DO YOU PLEAD TO
9 ACCESSORY AFTER THE FACT AND WHAT YOU SAID?

10 A GUILTY.

11 Q SO YOU DID PLEAD GUILTY THAT DAY BY SAYING I'M
12 GUILTY.

13 A WELL ---

14 Q DO YOU REMEMBER WHEN THE JUDGE ASKED YOU IF ANYONE
15 HAD PROMISED YOU OR THREATENED ANY FORCE TO GET YOU TO
16 PLEAD GUILTY AND WHAT YOU SAID?

17 A NO.

18 Q YOU DON'T REMEMBER OR THAT'S WHAT YOU SAID TO HIM?

19 A I DON'T REMEMBER.

20 Q IF I TOLD YOU YOU SAID NO, WOULD YOU DISAGREE WITH
21 THAT IF IT'S IN THE RECORD?

22 A I GOT TO SEE IT, MA'AM.

23 Q OKAY, I'LL SHOW YOU. SEE RIGHT HERE ON PAGE 168.
24 HAS ANYONE THREATENED YOU, COERCED YOU OR USED ANY FORCE?
25 WHAT DO YOU SAY?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

24

- 1 A NO.
- 2 Q AND THEN HE ASKED YOU, ARE YOU ENTERING YOUR PLEAS
3 FREELY AND VOLUNTARILY? WHAT DO YOU SAY?
- 4 A YES.
- 5 Q DO YOU ALSO REMEMBER MAKING A STATEMENT DURING
6 SENTENCING CONCERNING THIS CASE?
- 7 A NO, MA'AM.
- 8 Q YOU DON'T REMEMBER IT?
- 9 A (NO RESPONSE)
- 10 Q HOW ABOUT THIS RIGHT HERE. PAGE 202. DO YOU
11 REMEMBER SAYING THAT? I'M SORRY FOR HURTING ALL THE
12 PEOPLE AND MR. KRENN AND HIS FAMILY, FOR TAKING THE LIFE
13 OF HIS SON, HIS ONLY SON. I WISH WE COULD BRING HIM BACK,
14 BUT WE CAN'T, AND I'M JUST SORRY. DO YOU REMEMBER SAYING
15 THAT?
- 16 A YES, I REMEMBER SAYING THAT.
- 17 Q ALL RIGHT. SO NOW YOU DO REMEMBER PLEADING GUILTY
18 AFTER LOOKING AT THIS TRANSCRIPT. YOU REMEMBER THAT.
- 19 A I'M SAYING, YES, THAT WHAT HE WANTED ME TO DO, YES.
- 20 Q DO YOU REMEMBER ANSWERING THE QUESTIONS AS YOU'VE ---
- 21 A YES.
- 22 Q --- JUST TESTIFIED THAT YOU DID?
- 23 A YES, MA'AM.
- 24 Q DO YOU REMEMBER ON PAGE 203 AFTER THE JUDGE GAVE YOU
25 YOUR SENTENCE HE SAYS, IF YOU BELIEVE THERE HAS BEEN ANY

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

25

1 ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR PLEA, YOU
2 HAVE TEN DAYS TO FILE AN APPEAL; YOU UNDERSTAND THAT? AND
3 WHAT YOU'D SAY?

4 A YES, SIR, AND THAT WHEN --- THAT'S WHEN I MENTIONED
5 TO MY LAWYER, MA'AM.

6 Q THAT'S RIGHT. BUT YOU KNEW YOU HAD TO FILE AN APPEAL
7 WITHIN TEN DAYS BECAUSE THE JUDGE TOLD YOU.

8 A RIGHT.

9 Q AND, NOW, LET'S TALK ABOUT THE SERVICES OF YOUR
10 ATTORNEY. DO YOU REMEMBER WHEN THE JUDGE ASKED YOU, HE
11 SAID ARE YOU SATISFIED WITH MR. GILLEN'S REPRESENTATION
12 AND WHAT YOU SAID?

13 A YES, MA'AM.

14 Q AND DO YOU REMEMBER WHAT YOU SAID?

15 A YES, MA'AM.

16 Q THAT YOU WERE SATISFIED?

17 A YES, MA'AM.

18 Q AND YOU UNDERSTOOD THAT THIS WAS A NEGOTIATED PLEA.
19 RIGHT? WHEN YOU PLED BEFORE THE JUDGE?

20 A NO.

21 Q YOU DIDN'T?

22 A (NO RESPONSE)

23 Q HERE, I'LL SHOW YOU. PAGE 174. SEE, MR. GILLEN,
24 YOUR ATTORNEY SAYS, I WAS JUST CONCERNED WHEN MR. THOMPSON
25 SAID THAT IT WAS A RECOMMENDATION. THE COURT SAYS, WELL,

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

26

1 I'M TREATING IT AS A NEGOTIATED PLEA; THAT WAS MY
2 UNDERSTANDING. AND MR. THOMPSON SAID, WE WOULD CALL IT
3 SUCH, YOUR HONOR.

4 A WELL, THAT AIN'T --- THAT AIN'T GOT NOTHING TO DO
5 WITH ME. THAT WAS BETWEEN HIM AND HIM TALKING. I HADN'T
6 NEGOTIATED WITH NOTHING.

7 Q THEY WERE TALKING ABOUT YOUR PLEA, THOUGH, YOUR
8 NEGOTIATED SENTENCE.

9 A WELL, I WANTED --- I WANTED A TRIAL. I DIDN'T WANT
10 NO PLEA.

11 Q THEN WHY DID YOU SAY YOU WERE PLEADING GUILTY?

12 A THEY --- THEY DID ALL THE TALKING, MA'AM. I DIDN'T
13 DID --- I AIN'T DID NO TALKING WITH NOBODY ABOUT NO PLEA.

14 Q DID YOU NOT --- DIDN'T YOU JUST SEE IN HERE WHEN YOU
15 SAID GUILTY ---

16 A I ANSWERED THE QUESTIONS ---

17 THE COURT - HOLD IT. THE COURT REPORTER CANNOT
18 RECORD TWO PEOPLE AT THE SAME TIME. SIR, LET HER ASK HER
19 QUESTION, THEN YOU CAN ANSWER IT. MA'AM, LET HIM ANSWER
20 THE QUESTION ONCE YOU'VE ASKED IT.

21 MR. MCCREARY - YES, SIR.

22 Q OKAY. MY ONLY QUESTION WAS, EARLIER WHEN I SHOWED
23 YOU IN HERE, AND HE ASKED YOU HOW DO YOU WANT TO PLEA, AND
24 YOU SAID GUILTY. DO YOU REMEMBER THAT?

25 A YES, MA'AM.

TERRANCE MCCREARY - RE-DIRECT BY MR. BRADFORD

27

1 Q AND THAT CONVERSATION WAS BETWEEN YOU AND THE JUDGE.

2 A MA'AM?

3 Q THAT CONVERSATION WHERE YOU TOLD THE JUDGE YOU WERE
4 GUILTY WAS A CONVERSATION BETWEEN YOU AND THE JUDGE AT
5 THAT TIME.

6 A YES, MA'AM.

7 MR. CIABATTARI - OKAY, I HAVE NO FURTHER
8 QUESTIONS.

9 RE-DIRECT EXAMINATION

10 BY MR. BRADFORD -

11 Q TERRANCE, DURING THE TIME ON FRIDAY WHEN YOU WERE
12 BEFORE JUDGE HAYES AND HE WAS ASKING YOU QUESTIONS AND YOU
13 WERE ANSWERING, ONE OF HIS QUESTIONS WAS, DO YOU WANT YOUR
14 CASE TO GO THE GRAND JURY, AND YOU HAD INDICATED YOU DID,
15 BUT THEN YOU LATER SAID YOU WANTED TO WAIVE GOING TO THE
16 GRAND JURY, BUT DURING THAT WHOLE SEQUENCE WHEN THE JUDGE
17 WAS ASKING YOU ABOUT THE REPRESENTATION OF YOUR LAWYER,
18 ABOUT THE CHARGES OF ACCESSORY BEFORE AND AFTER THE FACT,
19 IF YOU UNDERSTOOD THEM, THE POTENTIAL PENALTIES AND SO
20 FORTH, WHAT DID YOU THINK YOU WERE PARTICIPATING IN?

21 A FOR GOING TO THE JURY TRIAL, MA'AM --- SIR.

22 Q WELL, YOU KNEW YOU WEREN'T IN A JURY TRIAL. IS THAT
23 RIGHT?

24 A RIGHT. I WAS PREPARING TO GO TO A JURY TRIAL.
25 THAT'S WHAT I WAS THINKING.

TERRANCE MCCREARY - RE-DIRECT BY MR. BRADFORD

28

1 Q SO YOU THOUGHT THAT WHAT YOU WERE GOING THROUGH WAS
2 SOME SORT OF PRELIMINARY STAGE BEFORE THE JURY TRIAL?

3 A RIGHT.

4 Q AND DID YOU EVER TELL YOUR LAWYER THAT YOU WANTED TO
5 ACCEPT THE GUILTY PLEA TO ACCESSORY BEFORE AND AFTER THE
6 FACT OF MURDER FOR 30 AND 15 YEARS?

7 A NO, SIR.

8 Q WHEN DID IT DAWN ON YOU THAT THOSE PROCEEDINGS WERE
9 NOT A PRELIMINARY BUT WERE, IN FACT, PART OF A GUILTY
10 PLEA?

11 A WHEN THE JUDGE SENTENCED ME, SIR.

12 Q WHEN --- SAY THAT AGAIN. REPEAT THAT.

13 A WHEN THE JUDGE SENTENCED ME.

14 Q AND AS SOON AS YOU REALIZED THAT, WHAT DID YOU DO?

15 A I DIDN'T DO NOTHING. I WENT TO --- I DIDN'T KNOW
16 WHAT TO DO.

17 Q BUT --- AND DID YOU SAY ANYTHING TO YOUR LAWYER AFTER
18 THAT PROCESS IN REALIZATION THAT, YOU KNOW, I'M IN --- I
19 GOT A PROBLEM?

20 A HE DIDN'T COME BACK TO TALK TO ME AFTER THE HEARING.

21 Q SO YOU'D INDICATED THAT YOU HAD SAID I WANT A --- I
22 WANT AN APPEAL.

23 A I SAID THAT IN COURT.

24 Q TO YOUR LAWYER.

25 A WELL, HE SUPPOSED TO HAVE CAME IN THE BACK AND TALK

MICHAEL GILLEN - DIRECT BY MS. CIABATTARI

29

1 WITH ME; HE NEVER DID. THE LAST TIME WE TALKED WAS ON
2 PAPER, THROUGH A MAIL.

3 MR. BRADFORD - THANK YOU.

4 MS. CIABATTARI - I HAVE NO FURTHER QUESTIONS.

5 THE COURT - THANK YOU, SIR. YOU MAY STAND DOWN,
6 SIR.

7 MR. BRADFORD - YOUR HONOR, PETITIONER REST.

8 MS. CIABATTARI - YOUR HONOR, THE STATE WOULD
9 CALL MR. GILLEN.

10 MICHAEL GILLEN, AFTER BEING FIRST DULY SWORN,
11 TESTIFIES AS FOLLOWS:

12 DIRECT EXAMINATION -

13 BY MS. CIABATTARI -

14 Q MR. GILLEN, DID YOU DISCUSS WITH MR. MCCREARY ALL THE
15 ELEMENTS OF THESE CHARGES, AS WELL AS THE POTENTIAL
16 SENTENCES HE WAS FACING?

17 A YES.

18 Q AND WERE YOU, IN FACT, PREPARING FOR TRIAL?

19 A YES, WE'D ACTUALLY STARTED THE TRIAL.

20 Q CAN YOU TELL US HOW THE PLEA SITUATION --- WELL, THE
21 PLEA DEAL DEVELOPED?

22 A FROM THE BEGINNING MR. MOFFITT HAD AGREED TO TESTIFY
23 AGAINST THE OTHER THREE CO-DEFENDANTS. UP UNTIL THAT
24 POINT THE OTHER THREE CO-DEFENDANTS, INCLUDING MR.
25 MCCREARY, DID NOT WANT TO PLEAD GUILTY, AND, IN FACT, AT