

2008-CP-46-4951

PCR transcript
testimony of Agostino

Marta Gordon
Plea Agreement

written statement
of Marta and
Terrence

August 6, 2012
and

July 13, 2012

12-1-9 J. Alford

DANIEL D'AGOSTINO, ESQUIRE - DIRECT BY MS. KINZELER

1 THE COURT: Thank you, sir. You may stand

2 MS. KINZELER: Your Honor, the State would
3 like to call Mr. D'Agostino to the stand.

4 And this is just a copy of the subpoena that we
5 entered into evidence.

6 THE COURT: Okay.

7 DANIEL D'AGOSTINO, ESQUIRE, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. KINZELER:

10 Q. Mr. D'Agostino, could you state your name for the
11 court, please?

12 A. Daniel D'Agostino.

13 Q. And how long have you been practicing criminal law?

14 A. 1992 I was sworn in.

15 Q. Do you recall how you came involved in Mr. Gordon's
16 case?

17 A. Either myself and my brother, Richard D'Agostino, but I
18 believe it was me was appointed to represent him here in
19 York County.

20 Q. And do you recall speaking with Ms. Dixon, or
21 attempting to contact her, throughout the discussions
22 regarding this case?

23 A. I have been PCR'd previously. I pulled my file out on
24 at least several prior occasions and I believe I gave my --
25 I know I have given my file once to Mr. Gordon. I don't

1 have my file and haven't seen my file in years on this case.

2 I can't sit here and swear under oath that I spoke with
3 Ms. Dixon or my private investigator spoke with Ms. Dixon,
4 but based upon the questioning that was read into the
5 record, what I do remember about the case, what I remember
6 about the issues associated with the Jackson v. Denno
7 hearing, I feel confident that we spoke with Ms. Dixon, or
8 got that information, because the issues about the
9 voluntariness of that statement that she gave were
10 thoroughly explored in the Jackson v. Denno hearing. We
11 went through a whole day of pretrial that day. I had
12 hired --

13 And just so -- I mean, I'll cut to the chase. We hired
14 a psychologist to interview Mr. Gordon. I believe we had
15 him transported to Columbia. We could not use any type of
16 mental defect deficiency defense at all.

17 That morning when we began the pretrial, I believe it
18 was Friday before the trial was supposed to start on Monday,
19 his co-defendant -- I believe Mr. Matlock represented one of
20 the co-defendants, he pled guilty that morning at or near
21 the beginning --

22 Q. May I interrupt you for one second? Could you tell the
23 court how many days this went over? Was it one day? It all
24 happened in one day, or was it two or three days?

25 A. I believe it was all one day, on a Friday. I'm not

1 positive, but I think it was all one day. I know we started
2 that morning and went late into the day.

3 Q. Okay.

4 A. But one co-defendant, and I believe all of them -- at
5 least two of them were cousins, if not all three of the
6 co-defendants were cousins. That morning one of them pled
7 guilty. He agreed to testify against Mr. Gordon.

8 We continued on with the pretrial. The psychologist
9 testified. Judge Hayes ruled in the end that the
10 statement -- I lost the Jackson v. Denno. I lost the
11 voluntariness issues. Basically we lost everything.

12 Q. May I interrupt just for one second to ask you, did you
13 cross-examine Charles Cabiness regarding the admissibility
14 of the statement?

15 A. I did. Yes, ma'am.

16 Q. Do you recall asking him about these coerced threatened
17 statements?

18 A. Yes, ma'am.

19 Q. Do you recall what Mr. Cabiness told you?

20 A. He testified that -- I mean, from what you heard today.
21 He testified that they -- I mean, they used their standard
22 police tactics. They tried to intimidate them and get them
23 to cooperate with them.

24 Q. And I believe Mr. Cabiness actually testified during
25 your direct examination of him that he believed he told her

1 he would place her under arrest if she did not come back and
2 talk to you?

3 A. I have no doubt he told her that.

4 Q. And is there anything else that you would like to --

5 A. Well, I just want to tell that he testified -- I mean,
6 one co-defendant pled guilty. As the day went on, another
7 one pled guilty. As the day went on, the third one pled
8 guilty. All of them agreed to testify against Antonio.

9 Antonio, I couldn't put him on the stand. He confessed
10 to me what happened. His whole -- you know, he told me he
11 did it. There is no way to put him on the stand.

12 Putting his girlfriend on the stand wasn't going to
13 help any, because it wasn't his Fourth Amendment, Fifth
14 Amendment Rights that were violated, allegedly. So putting
15 her on the stand and the officer had already corroborated
16 what they said.

17 So you have got Antonio. You have got his three
18 co-defendants who had confessed and were going to testify
19 against him. You have got his statement that he confessed.
20 I couldn't put him on the stand because he confessed to me.
21 At the end of the day I was left standing with going to
22 trial with three co-defendants testifying against him and
23 his statement coming into evidence. He wanted to plead
24 guilty at that point because he had a chance of getting out
25 of jail before he died, because if he had gone to trial, he

1 could have gotten life.

2 Q. Right.

3 A. He got forty years instead.

4 Q. And that was a negotiated plea?

5 A. Whatever it was. I believe it was negotiated. Like I
6 said, I hadn't seen my file in years.

7 Q. I believe I have the indictment. I don't see any need
8 to admit it into evidence at this time.

9 So you were aware that Ms. Dixon existed?

10 A. Sure.

11 Q. And you were aware that there was an issue with her
12 statement that she was a juvenile, that she hadn't called
13 her mom, and all those issues you were aware of at the time?

14 A. I was aware of that.

15 I was aware that Mr. Wellborn was trying to talk to
16 Antonio Gordon. We thoroughly explored that in pretrial and
17 Judge Hayes ruled on all those issues.

18 Q. And in your professional opinion is witness
19 intimidation any kind of viable defense that you could put
20 up in a trial like this?

21 A. In this case, witness intimidation would not have gone
22 anywhere.

23 Q. All right.

24 A. I mean, you got four kids who thought they were coming
25 up to two girls in a car, to steal their BMW. His

1 testimony, if he would have testified, was he was high on
2 marijuana and he shot the boy. Now, I don't know what I
3 could have done at trial with that. I have testified once
4 before about this and that's all I got.

5 Q. I know.

6 A. He testified -- I mean, he chose to plead guilty,
7 because he could get out before he died.

8 Q. So was it your intention initially to go to trial until
9 y'all lost the Denno hearing?

10 A. I was ready to go to trial. I would have gone to trial
11 on Monday morning, if he wanted to go to trial.

12 Q. Was it ultimately the -- whose decision was it to plead
13 guilty in this case?

14 A. It was his decision.

15 Q. And at the time he pled guilty, did you advise him that
16 he was waiving certain Constitutional Rights, including the
17 ability to challenge evidence and witness statements?

18 A. I went over all those rights. I went over the fact
19 that he was pleading guilty. It was a negotiated plea and
20 this was what he was going to do, and he was going to do
21 forty years. If he got the chance to get out early on good
22 behavior, or whatever, that was up to the Department of
23 Corrections. He got forty years. He was going to do forty
24 years.

25 MS. KINZELER: I believe that's all we have, Your

1 Honor.

2 MS. BLANCHETTE: Very briefly, Your Honor.

3 THE COURT: Okay.

4 MS. BLANCHETTE: If I may provide the documents to
5 the State first.

6 CROSS EXAMINATION BY MS. BLANCHETTE:

7 Q. The transcript indicates that the hearings were
8 actually held over July 12th and 14th and 16th. Would you
9 dispute that?

10 A. Whatever the transcript shows. I know we had the
11 Jackson v. Denno when we had all the officers and everything
12 else. I thought that was on Friday beforehand.

13 Q. And then if it also shows that he was sentenced then on
14 a fourth day, July 19th, would you dispute that?

15 A. Oh, he was sentenced on a different day that he decided
16 to plead guilty. I believe the sentencing was, we had -- we
17 ended the pretrial on one day. He decided at the end of
18 that day that he was going to plead guilty and they had did
19 the sentencing either the next day or that was on a Monday.
20 But I believe we did the pretrial the week before, and then
21 we did the actual plea on that Monday, because the State had
22 to have their -- comply with -- I don't know if the victim's
23 rights were in effect then, but the state did not want to do
24 the plea at the end of the day.

25 Q. So it didn't all occur in one day, as you stated on

1 direct?

2 A. No, I think I said on direct that we had the pretrial
3 and pretrial motions. I thought the pretrial motions with
4 the psychologists and the police officers were one day. If
5 it wasn't, I stand corrected.

6 But the sentencing itself -- I mean, I do know that you
7 had one person plead -- decide to plead that morning and
8 took a deal. As the day went on, the second one went down.
9 The third one went down, if I remember right. And then
10 the -- and then Antonio went down, because I remember they
11 took him in lockup. And by the time we came back for
12 sentencing, they already were telling me he was saying that
13 I sold him out, not the fact that his three cousins agreed
14 to testify against him under oath and say that he was the
15 shooter.

16 Q. And if you could just identify these documents?

17 A. This is the order authorizing payment of my fees.

18 This is a petition for approval for the payment of my
19 fees.

20 And this is some of the time that I spent on the case.

21 Q. And if you could just in briefly looking over those, on
22 your time sheet there, does it indicate that you spoke with
23 Ms. Dixon, or did you report any time in speaking to Ms.
24 Dixon on that?

25 A. If it's not, I mean, I'll take your word for it. If

1 you want me to read the whole thing, I'll do it. Like I
2 said, I had a private investigator as well.

3 I can't sit here and tell you I spoke with Ms. Dixon.
4 I don't know. But I know, based upon the questions that
5 were in the record today, that I knew about the issue of
6 coercion and I questioned the officers about it, based upon
7 my experience in dealing with law enforcement and how they
8 investigate crimes and how they deal with witnesses. I'm
9 not saying they didn't do anything wrong, but I have been
10 doing this for eighteen years. At that time it was nine
11 years.

12 Q. And just on that document there, you wouldn't dispute
13 if it doesn't reflect you spoke with Ms. Dixon?

14 A. I'm not going to refute it, but I also tell you, and
15 you can ask anybody that I don't keep good track of all my
16 time and I rarely record everything that I do.

17 MS. BLANCHETTE: Your Honor, may I have just one
18 moment?

19 (Off the record)

20 (Back on the record)

21 BY MS. BLANCHETTE:

22 Q. And just to summarize, do you think it would have had
23 an impact in the case if you would have called Ms. Dixon to
24 the stand during the Jackson v. Denno hearing?

25 A. It would have had no impact at all. Her Constitutional

1 Rights could not be asserted by Mr. Gordon.

2 Mr. Gordon chose to plead guilty at the end of the day
3 based upon the fact that not only the Jackson v. Denno was
4 denied and it wouldn't change that result, but his three
5 co-defendants were going to testify against him. That's why
6 he pled.

7 MS. BLANCHETTE: Thank you, Your Honor. I have
8 nothing further.

9 A. And he was guilty.

10 BY MS. BLANCHETTE:

11 Q. I'm sorry, were you finished?

12 A. I am now. And he said he was guilty.

13 MS. BLANCHETTE: I have no further questions, Your
14 Honor.

15 MS. KINZELER: Just briefly, Your Honor.

16 REDIRECT EXAMINATION BY MS. KINZELER:

17 Q. I know that counsel showed you documents where you
18 indicated a number of things that you did to prepare for Mr.
19 Gordon's case. I believe some of that probably said that
20 you have met with Mr. Wellborn and your private
21 investigator.

22 If anyone were to have spoken with Ms. Dixon, would
23 that have been you or could your investigator have spoken
24 with her?

25 A. My investigator could have spoken with him. Chris

1 Wellborn may have told me about it.

2 Q. Is it primarily your practice that your investigator
3 interview witnesses? Is that why you have him?

4 A. When I have a case that's this magnitude, I hire a
5 private investigator. In years past I have always used Ed
6 Fewell. He and I have a very good working relationship.

7 I always get the discovery. You will notice there is a
8 motion on there associated with discovery.

9 Q. And just so we are all clear today, if you had known
10 anything else about Ms. Dixon's statement, whether or not
11 you or your investigator had spoken with her, do you believe
12 that the State had enough evidence against Mr. Gordon to
13 find him guilty beyond a reasonable doubt and that pleading
14 guilty was the best option?

15 A. In my opinion, he has a chance of getting out before he
16 dies. Yes, pleading guilty was his best option. He would
17 have been found guilty, in my opinion.

18 Q. Regardless of Ms. Dixon's testimony?

19 A. Regardless of Ms. Dixon's testimony. He said he did
20 it.

21 MS. KINZELER: I believe that's all, Your Honor.

22 MS. BLANCHETTE: Your Honor, just briefly.

23 RE-CROSS EXAMINATION BY MS. BLANCHETTE:

24 Q. Could you say the name of your investigator again?

25 A. Ed Fewell.

1 Q. And Mike Green was not the investigator that worked on
2 this case?

3 A. It might have been Mike Green. Ed -- if that shows
4 Mike Green, that means Ed was working for somebody else on
5 that case then.

6 MS. BLANCHETTE: Your Honor, if I may approach the
7 witness?

8 BY MS. BLANCHETTE:

9 Q. If you could just identify that?

10 A. Yeah, you are right. Mike Green is a private
11 investigator. He now works for the Family Court as -- he
12 was a former sheriff's deputies, if I remember right. He got
13 into private. He was working with Ed Fewell for awhile. Ed
14 was actually working for one of the other co-defendant's
15 attorneys at that time and could not use Ed. Ed referred me
16 to Mike. Mike has since stop doing private investigative
17 work. He's back working with the Family Court locating
18 fathers or mothers who are behind on their child support.

19 Let's see if this says anything about him.

20 Q. And could you identify what that appears to be?

21 A. That appears to be a summary of some of Mr. Green's
22 time associated with this case.

23 That's right, I hired Don Girndt for the fingerprints.
24 I forgot about him.

25 Q. So if you could just let me know if you see anywhere

1 where he indicates he spoke with Ms. Dixon?

2 A. Located two witnesses, Chyneca Dixon and Fontella
3 Feeley. Served subpoena on Dixon, Feeley in the hospital,
4 on July 14th, 1999, between the hours of four p.m. and seven
5 p.m., and he charged 25 miles on that trip and charged three
6 hours for doing that work.

7 I also note on here that we had a meeting with all the
8 defense attorneys and private investigators involved in
9 defending the case on July 1st, 1999, between the hours of
10 10:30 and 12:30. And it may have been we got some
11 information about Chyneca at that time as well, so
12 apparently we did locate her.

13 Other than that -- did you want to make this an
14 exhibit?

15 MS. BLANCHETTE: Your Honor, after I show it to
16 the State, I would like to move this as Applicant's No. 1.

17 (Investigator's Notes marked and admitted into
18 evidence as Applicant's Exhibit No. 1)

19 MS. BLANCHETTE: Your Honor, I have no further
20 questions.

21 MS. KINZELER: Nothing from the State, Your Honor.

22 THE COURT: Thank you, sir.

23 MS. KINZELER: Your Honor, at this time I believe
24 the State rests the newly-discovered evidence issue,
25 although we would like to reiterate -- we could address the

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

State of South Carolina

v.

Monta L. Gordon,
Defendant.

FILED-RECEIVED

JUL 16 1 12 PM '99

SIXTEENTH JUDICIAL CIRCUIT

DAVID HAMILTON
C.O.C.P. & S.
YORK COUNTY

PLEA AGREEMENT

98-GS-46-2853, 2854, 2855, 2856, 2857,
2858, 2859

AGREEMENT made this 16TH day of July, 1999 between and among the State of South Carolina, as represented by Thomas E. Pope, Solicitor, Sixteenth Judicial Circuit; the Defendant, Monta L. Gordon, and Defendant's attorney, Joseph Matlock.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. The Defendant, Monta L. Gordon, agrees to plead guilty to the following indictments: murder of Eric Peter Krenn for a sentence of thirty years without parole, attempted armed robbery of Eric Peter Krenn for twenty years without parole, attempted armed robbery of Christopher Diaz for a sentence of twenty years without parole, conspiracy for a sentence of five year, and failure to stop for a blue light for a sentence of three years with a recommendation of concurrent sentencing. Both the State and the Defense remain free to be heard concerning sentencing.
2. In exchange for this plea the State agrees to dismiss the charge of carjacking, three counts of possession of a firearm during the commission of a violent crime, and driving under suspension.
3. The Defendant agrees to provide complete and thorough cooperation to both the Sixteenth Circuit Solicitor's Offices and all involved law enforcement agencies including a truthful and forthright statement

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YORK COUNTY

concerning his involvement in the pending charges, and to further cooperate by giving true and honest testimony at any appropriate judicial proceeding. Further, if deemed appropriate by the prosecution, this Agreement is contingent upon Monta L. Gordon passing a lie detector test to the satisfaction of the prosecution.

4. The State further agrees that this agreement remains enforceable in the event that the case against the co-defendants is resolved in such a way as to not require the testimony of the Defendant, provided, that all other conditions of cooperation have been performed by the Defendant.
5. The State agrees that any self-incriminating information provided by the Defendant as a result of his cooperation provided by the terms of this Agreement will not be used against the Defendant in the event that the Defendant withdraws his plea.
6. In the event that the Defendant withdraws his plea the State will proceed with a trial and will seek the maximum penalty allowed by law.
7. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties and this Agreement may be modified only in writing, signed by all parties.

York, South Carolina

Willy Thompson, Assistant Deputy Solicitor
Thomas E. Pope, Solicitor
Sixteenth Judicial Circuit

Monta Gordon
Monta L. Gordon
Defendant

Joseph Matlock
Joseph Matlock
Attorney for Defendant

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

COUNTY OF LANCASTER 2012 NOV 21 PM 1:31

STATEMENT OF

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Terrence E. McCreary

I, Terrence McCreary, HAVING BEEN DULY SWORN DEPOSE

AND SAY THAT I AM A RESIDENT OF SCDC - Kenshaw Ct., COUNTY.

I am not represented by Counsel At This Time.
I am doing Time in SCDC For A Murder That
Occurred in July 1998 in York County.

At The Time of The Murder I was Driving
Antonio Gordon's Car. When we first Encountered
The Victims, Monte + Antonio got Out of The Car.
Monte Had A Gun, Antonio did not. The
Incident Occurred Behind Me So I did not
See what Happened. I heard One or Two Shots.
Monte + Antonio Returned To The Car, Monte
Still had The Pistol. They got in The Car.
While in The York County Jail Monte + I
discussed Blaming Antonio For The Shooting Since
He was A Juvenile.

At No Time That Night did I See Antonio
With A Gun. Antonio has NEVER Told Me He did the

THIS STATEMENT IS HONEST AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE. IT ^{Shooting}
IS MADE FREELY AND VOLUNTARILY WITHOUT COERSION OR COMPENSATION.

I HAVE RECEIVED A COPY OF THIS 1 PAGE STATEMENT.

SWORN TO BEFORE ME THIS

13th DAY OF July 2012

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 12/15/18

TERRENCE MCCREARY

AFFIANT

CERTIFIED TRUE COPY

2012 NOV 21 PM 1:31

State of South Carolina

Lee County

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Statement of Monta Gordon

I, Monta Gordon, having been duly sworn, depose and say that my brother Antonio "Tonio" Gordon and two other was together in July of 1998. I am the person who fired the shot that killed the man who died. I was the only person with a gun. My brother Tonio did not have a gun nor did he fire any gun that night. I alone am the only one who killed the victim. I told police Tonio fired the shot because he was a juvenile and I was an adult. I was on probation. As a juvenile I figured Tonio would get a lesser sentence. I never discussed robbing or killing anybody with Tonio. I was the only person with a gun that night and I fired the only shot that night.

This statement is honest and truthful. I have received a copy of this one (1) page statement.

Sworn to before me this 6th day of August ~~July~~ 2012.

Maice L. Melton
Notary Public for South Carolina
My Commission expires: 4-26-2014

Monta Gordon
Monta Gordon