

Monta Gardaw

V.
Stute, (2217)

PCR Transcript

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419, 469

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE
COURT OF COMMON PLEAS
CASE NO.: 01-CP-46-2217

MONTA LAMONT GORDON,)
PLAINTIFF,)

-vs-

STATE OF SOUTH CAROLINA,)
DEFENDANT.)

TRANSCRIPT OF RECORD

SEPTEMBER 4, 2003
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE LEE S. ALFORD, JUDGE.

A P P E A R A N C E S:

MR. LEELAND GREELEY
ATTORNEY AT LAW
ATTORNEY FOR THE PETITIONER
ROCK HILL, SOUTH CAROLINA

MS. JEANETTE VAN GINHOVEN
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE
COLUMBIA, SOUTH CAROLINA

SHANNON MCGILBERRY
COURT REPORTER

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JOSEPH D. MATLOCK				
MR. GREELEY	5			
MS. VAN GINHOVEN		27		
MR. GREELEY			33	
MONTA GORDON				
MR. GREELEY	36			
MS. VAN GINHOVEN		45		
CERTIFICATE	61			

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	LIST OF CHARGES		41

(REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE OFFICE OF THE YORK COUNTY CLERK OF COURT.)

1 MS. VAN GINHOVEN: YOUR HONOR, THIS IS THE CASE OF
 2 MONTA GORDON VERSUS THE STATE. THE CP NUMBER IS 2001-CP-46-
 3 2217. AT THIS TIME I'D JUST ASK THE APPLICANT TO LAY OUT
 4 HIS GROUNDS FOR POST-CONVICTION RELIEF.

5 MR. GREELEY: YOUR HONOR, MAY IT PLEASE THE COURT.

6 THE COURT: YES, SIR.

7 MR. GREELEY: I'M LEELAND GREELEY. I WAS APPOINTED TO
 8 REPRESENT MONTA GORDON IN THIS MATTER. HIS PETITION
 9 ESSENTIALLY LAYS OUT THREE AREAS OF RELIEF THAT HE IS
 10 SEEKING. WE ARE GOING TO PRIMARILY CONCENTRATE ON ONE OF
 11 THOSE AREAS TODAY, WHICH I WILL TELL THE COURT WHAT THAT IS.
 12 ONE OF THE AREAS THAT HE HAD REQUESTED WAS HE HAD ALLEGED IN
 13 HIS PETITION THAT AT THE TIME OF THE INCIDENT THAT HE WAS A
 14 MINOR AND THAT THE COURT DID NOT HAVE JURISDICTION OVER HIM.
 15 THROUGH MY INVESTIGATIONS, YOUR HONOR, AT THE TIME OF THE
 16 INCIDENT HE WAS SEVENTEEN YEARS OLD. HIS BROTHER IN THIS
 17 CASE WAS SIXTEEN AND THAT MAY OR MAY NOT BE AN ISSUE IN
 18 REGARDS TO HIS BROTHER, BUT IT IS NOT AN ISSUE IN REGARDS TO
 19 MONTA AND SO WE WOULD NOT BE GOING FORWARD ON THAT ISSUE.

20 THE COURT: OKAY.

21 A SECOND ALLEGATION THAT IS MADE IS THAT HE WAS NOT
 22 SPECIFICALLY ASKED WHETHER OR NOT HE WAS GUILTY DURING THE
 23 PLEA. I BELIEVE THAT THE TRANSCRIPT WILL SPEAK FOR ITSELF
 24 IN REGARDS TO THAT PARTICULAR ONE ISSUE AND SO I'M NOT GOING
 25 TO PRESENT EVIDENCE IN REGARDS TO THAT EXCEPT JUST THAT THE

1 TRANSCRIPT WOULD SPEAK TO THAT ISSUE.

2 THE COURT: ALL RIGHT, SIR.

3 MR. GREELEY: THE THIRD ISSUE, YOUR HONOR, WHICH WE
4 WILL GO FORWARD WITH AND WE'RE GOING TO PRESENT EVIDENCE AND
5 TESTIMONY THIS MORNING IS MR. GORDON'S ASSERTION IN HIS
6 PETITION THAT HIS PLEA TO THE CHARGES IN THIS CASE WERE NOT
7 KNOWINGLY MADE AND THAT ONE OF THE CAUSES OF THAT WAS DUE TO
8 INEFFECTIVE ASSISTANCE OF COUNSEL AND SO THAT IS THE ISSUE
9 THAT WE WILL BE GOING FORWARD TODAY WITH OUR TESTIMONY.

10 THE COURT: ALL RIGHT. PLEASE CALL YOUR FIRST WITNESS,
11 SIR.

12 MR. GREELEY: OKAY. YOUR HONOR, I'D CALL MR. MATLOCK
13 TO THE STAND.

14 (JOSEPH D. MATLOCK, BEING FIRST DULY SWORN, WAS
15 EXAMINED AND TESTIFIED AS FOLLOWS):

16 MR. GREELEY: YOUR HONOR, GIVEN THE ASSERTIONS OF THE
17 PETITIONER, I WOULD LIKE TO HAVE THE OPPORTUNITY AT TIMES TO
18 ASK LEADING QUESTIONS OF MR. MATLOCK IN THIS REGARD UNDER
19 THE RULES OF PROCEDURE.

20 THE COURT: ALL RIGHT, SIR.

21 MR. GREELEY: OKAY.

22 DIRECT EXAMINATION

23 JOSEPH D. MATLOCK BY MR. GREELEY:

24 Q. MR. MATLOCK, STATE YOUR FULL NAME, PLEASE, SIR.

25 A. JOSEPH D. MATLOCK.

1 Q. AND YOU ARE AN ATTORNEY IN YORK COUNTY; IS THAT
2 CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND IN 1999 YOU WERE LICENSED TO PRACTICE LAW IN THE
5 STATE OF SOUTH CAROLINA; IS THAT CORRECT?

6 A. CORRECT.

7 Q. AND WERE YOU REPRESENTING MONTA GORDON AT THAT TIME IN
8 1999?

9 A. YES, I WAS.

10 Q. AND WHAT WERE YOU REPRESENTING MR. GORDON ON?

11 A. WELL, THERE WERE MULTIPLE CHARGES. JUST FROM
12 RECOLLECTION, IT WAS MURDER, CONSPIRACY -- CAN I REFER TO MY
13 NOTES?

14 Q. YES. PLEASE DO. ANYTIME THAT YOU NEED TO DO THAT,
15 PLEASE FEEL WELCOME TO DO THAT.

16 A. THE CHARGES WERE MURDER, ATTEMPTED ARMED ROBBERY,
17 ATTEMPTED ARMED ROBBERY OF ERIC PETER KRENN, ATTEMPTED ARMED
18 ROBBERY OF CHRISTOPHER DIAZ, CONSPIRACY, FAILURE TO STOP FOR
19 BLUE LIGHTS AND THREE COUNTS OF POSSESSION OF A FIREARM
20 DURING THE COMMISSION OF A VIOLENT CRIME.

21 Q. OKAY. NOW, THIS ROSE OUT OF A SET OF FACTS THAT
22 HAPPENED A PARTICULAR EVENING; IS THAT CORRECT?

23 A. THAT'S CORRECT.

24 Q. AND I BELIEVE THAT THERE WERE THREE CO-DEFENDANTS IN
25 THIS CASE WITH MR. GORDON; IS THAT CORRECT?

- 1 A. YES.
- 2 Q. ONE WAS A MR. MCCREARY; IS THAT CORRECT?
- 3 A. YES.
- 4 Q. ALSO ANTONIO GORDON WHO WAS MR. GORDON'S BROTHER?
- 5 A. YES.
- 6 Q. YOUNGER BROTHER, IN FACT; IS THAT CORRECT?
- 7 A. YES.
- 8 Q. AND ALSO A MR. MOFFATT; IS THAT CORRECT?
- 9 A. YES, SIR.
- 10 Q. AND MR. MOFFATT, I BELIEVE, WAS REPRESENTED BY THE
- 11 PUBLIC DEFENDER'S OFFICE?
- 12 A. YES.
- 13 Q. MR. MCCREARY WAS REPRESENTED BY MR. GILLAN?
- 14 A. THAT'S CORRECT.
- 15 Q. AND ANTONIO GORDON WAS REPRESENTED BY MR. D'AGOSTINO?
- 16 A. DAN D'AGOSTINO.
- 17 Q. YES.
- 18 Q. AND YOU REPRESENTED MY CLIENT IN THAT CASE;---
- 19 A. CORRECT.
- 20 Q. ---IS THAT CORRECT?
- 21 A. UH-HUH.
- 22 Q. OKAY. NOW, THIS INVOLVED THE SHOOTING OF A YOUNG MAN
- 23 IN ROCK HILL; IS THAT CORRECT?
- 24 A. YES, SIR.
- 25 Q. ALL RIGHT. AND ACCORDING TO UNDISPUTED FACTS OF THAT

1 EVENING, THERE -- THE FOUR CO-DEFENDANTS WERE IN AN
2 AUTOMOBILE; IS THAT CORRECT?

3 A. THAT'S RIGHT.

4 Q. OKAY. AND THEY HAD A -- THEY CAME IN CONTACT WITH THE
5 DECEASED IN THIS CASE WHO WAS DRIVING THE BMW; IS THAT
6 CORRECT?

7 A. YES.

8 Q. AND AT SOME POINT IN TIME DURING THAT THERE WAS A
9 CONFRONTATION BY ONE OR MORE OF THE FOUR IN THE CAR WITH THE
10 DECEASED REGARDING HIS CAR AND/OR MONEY AND ALSO MR. DIAZ
11 WHO WAS A PASSENGER IN THAT CAR; IS THAT CORRECT?

12 A. RIGHT. THE FIRST CONFRONTATION, I BELIEVE, THEY JUST
13 BLOCKED HIM IN WITH THE VEHICLE AND THEN TWO OR SOME OF THE
14 OCCUPANTS GOT OUT AND WENT OVER TO THE CAR.

15 Q. OKAY. DO YOU RECALL WHERE YOUR CLIENT WAS SEATED IN
16 THE CAR THAT EVENING?

17 A. MY RECOLLECTION HE WAS IN THE REAR SEAT.

18 Q. OKAY. HE WAS SEATED BEHIND THE DRIVER; IS THAT
19 CORRECT?

20 A. THAT'S RIGHT.

21 Q. OKAY. AND MR. MCCREARY WAS THE DRIVER OF THE CAR?

22 A. CORRECT.

23 Q. AND WAS THERE ANY REAL DEBATE AS TO WHO THE SHOOTER WAS
24 IN THIS CASE?

25 A. NOT REALLY.

1 Q. IT WAS ANTONIO GORDON; IS THAT CORRECT?

2 A. CORRECT.

3 Q. MR. GORDON WAS SEATED IN THE FRONT SEAT PASSENGER SIDE
4 OF THE CAR; IS THAT CORRECT?

5 A. RIGHT.

6 Q. OKAY. AND THERE WAS ONE SHOT FIRED THAT EVENING; IS
7 THAT CORRECT?

8 A. THAT'S RIGHT.

9 Q. AND THE BMW DROVE AWAY FROM THE SCENE?

10 A. YES.

11 Q. LATER TO BE DETERMINED THAT THE YOUNG FELLOW HAD
12 ACTUALLY BEEN HIT BY THE SHOT AND DIED SOME BLOCKS LATER---

13 A. YES.

14 Q. ---AFTER HE HAD DRIVEN AWAY; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. NOW, DURING THE -- HOW MANY TIMES DO YOU RECALL MEETING
17 WITH MR. GORDON ON HIS CASE?

18 A. LET ME CHECK ON IT.

19 Q. HE WAS INCARCERATED FOR ABOUT A YEAR PRIOR TO THE
20 DISPOSITION OF THIS CASE; IS THAT CORRECT?

21 A. YES, SIR. THAT'S CORRECT.

22 Q. OKAY. ALL THE DEFENDANTS HAD BEEN CHARGED WITH MURDER
23 IN THIS CASE; IS THAT CORRECT?

24 A. YES.

25 Q. AND ALL HAD BEEN CHARGED WITH TWO COUNTS OF ARMED

1 ROBBERY -- ATTEMPTED ARMED ROBBERY BECAUSE THERE WERE TWO
2 OCCUPANTS OF THE BMW; IS THAT CORRECT?

3 A. RIGHT; UH-HUH.

4 Q. THE STATE SHORTLY BEFORE THE DISPOSITION OF THE CASE
5 INDICTED THE FOUR DEFENDANTS WITH CARJACKING; IS THAT
6 CORRECT?

7 A. I'M NOT AWARE OF THE CARJACKING CHARGE.

8 Q. YOU DON'T REMEMBER THE CARJACKING INDICTMENT THAT WAS
9 DISMISSED AS A RESULT OF THE ALLEGED DEAL?

10 A. THAT'S RIGHT; YES. YES, AND IT WAS DISMISSED; RIGHT.
11 UH-HUH.

12 Q. ALL RIGHT. NOW, DID YOU EVER HAVE A CONVERSATION WITH
13 YOUR CLIENT REGARDING HIM BEING EVALUATED?

14 A. EVALUATED?

15 Q. AT THE --

16 A. MENTAL -- MENTALLY?

17 Q. YEAH, STATE HOSPITAL. EITHER INTELLECTUALLY OR
18 OTHERWISE.

19 A. I WOULD IMAGINE -- THERE WAS A -- I HAVE A VAGUE
20 RECOLLECTION OF THAT BECAUSE HIS BROTHER, I THINK, WAS
21 ANALYZED AND WE TALKED ABOUT IT, BUT I BELIEVE MY GUY SAID
22 THAT HE -- HE DIDN'T FEEL HE NEEDED THAT OR WORDS TO THAT
23 EFFECT BECAUSE HE -- HE FELT HE WAS COMPLETELY LUCID,
24 MENTALLY COMPETENT AND WITH A REQUISITE IQ TO PROCEED WITH
25 THE -- WITH HIS DEFENSE.

- 1 Q. ALL RIGHT. BUT HIS BROTHER WAS EVALUATED AS WELL AS---
- 2 A. YES.
- 3 Q. ---MR. MCCREARY, I BELIEVE?
- 4 A. I BELIEVE SO.
- 5 Q. OKAY. NOW, PRIOR TO HIS PLEA THERE WAS A COUPLE OF
- 6 DAYS OF PRE-TRIAL HEARINGS; IS THAT CORRECT?
- 7 A. RIGHT; UH-HUH.
- 8 Q. IN THIS PARTICULAR CASE ALL FOUR CO-DEFENDANTS HAD
- 9 ALLEGEDLY GIVEN STATEMENTS TO THE POLICE; IS THAT CORRECT?
- 10 A. YES.
- 11 Q. OKAY. AND THERE WERE PRE-TRIAL HEARINGS TO DETERMINE
- 12 THE VOLUNTARINESS OF THOSE STATEMENTS TO THE POLICE; IS THAT
- 13 CORRECT?
- 14 A. YES.
- 15 Q. OKAY. ALSO, PRIOR TO THE STATEMENTS AND THE HEARING ON
- 16 THE STATEMENTS THERE WAS A MOTION THAT WAS MADE BY ALL
- 17 DEFENDANTS, PRIMARILY MADE BY ANTONIO GORDON THROUGH HIS
- 18 ATTORNEY, MR. --
- 19 A. D'AGOSTINO.
- 20 Q. -- MR. D'AGOSTINO FOR SEVERANCE OF THE TRIAL SO THAT
- 21 THE FOUR CO-DEFENDANTS WOULD NOT BE TRIED TOGETHER; IS THAT
- 22 CORRECT?
- 23 A. YES.
- 24 Q. AND THE PRIMARY ARGUMENT THAT WAS MADE BY ALL OF THE
- 25 DEFENDANTS DURING THAT SEVERANCE HEARING HAD TO DO WITH THE

1 REDACTION OF THE FOUR STATEMENTS THAT THE STATE WANTED TO
2 GET INTO EVIDENCE; IS THAT CORRECT?

3 A. THAT'S RIGHT.

4 Q. AND I BELIEVE THAT THE ARGUMENT FROM ALL OF THE
5 DEFENDANTS WAS THAT THE REDACTION WAS UNSUITABLE IN THAT
6 ONCE EACH STATEMENT WAS REDACTED IT SERVED ONLY TO BOLSTER
7 MR. MOFFATT'S BELIEVED TESTIMONY, WHO WAS AT THAT TIME THE
8 ONLY PERSON WHO HAD TURNED AS A STATE'S WITNESS AND WOULD DO
9 AWAY WITH THE DISCREPANCIES IN THE DIFFERENT STATEMENTS; IS
10 THAT CORRECT?

11 A. PRETTY MUCH SO. THERE WAS, OF COURSE, SOME OTHER
12 ISSUES THAT WE ARGUED AS WELL, BUT --

13 Q. AND JUDGE HAYES TOOK THAT UNDER ADVISEMENT INITIALLY
14 RIGHT AFTER THE ARGUMENTS OF THAT; IS THAT CORRECT?

15 A. YES, SIR.

16 Q. AND THEN Y'ALL PROCEEDED INTO THE -- HAVING A JACKSON
17 VERSUS DENNO HEARING ON THE DIFFERENT STATEMENTS; IS THAT
18 CORRECT?

19 A. YES.

20 Q. HAD YOU FILED A MOTION FOR MY CLIENT'S STATEMENT TO BE
21 SUPPRESSED?

22 A. I DON'T BELIEVE I DID.

23 Q. OKAY.

24 A. I DON'T RECALL THAT WE HAD A JACKSON V. DENNO ON HIM. I
25 THINK THE OTHER --

1 Q. I BELIEVE THE TRANSCRIPT REFLECTS THAT THERE WAS A
2 JACKSON VERSUS DENNO HEARING ON MCCREARY'S STATEMENT; IS
3 THAT CORRECT?

4 A. YES.

5 Q. AND THERE WAS ALSO A JACKSON VERSUS DENNO HEARING ON
6 ANTONIO GORDON'S STATEMENT; IS THAT CORRECT?

7 A. UH-HUH; UH-HUH.

8 Q. AND IT WAS DURING THE BREAK IN ONE OF THOSE HEARINGS
9 AND AFTER THE LUNCH BREAK OF ONE OF THOSE HEARINGS THAT MY
10 CLIENT ENTERED HIS PLEA BEFORE JUDGE HAYES.

11 A. RIGHT.

12 Q. IS THAT CORRECT?

13 A. UH-HUH.

14 Q. AND SO WOULD IT BE A FAIR STATEMENT TO SAY THAT AT THE
15 TIME OF THESE HEARINGS, BEFORE JUDGE HAYES COULD RULE ON THE
16 SEVERANCE ISSUE, HE WAS GOING TO NEED TO DETERMINE WHICH OF
17 THOSE STATEMENTS WERE GOING TO COME INTO EVIDENCE?

18 A. YES; UH-HUH.

19 Q. BECAUSE IF A STATEMENT WASN'T GOING TO COME INTO
20 EVIDENCE, THEN IT WOULDN'T BE AN ISSUE OF REDACTION; IS THAT
21 CORRECT?

22 A. YES, OBVIOUSLY.

23 Q. OKAY. SO AT THE TIME OF MY CLIENT'S PLEA, HE WOULD NOT
24 HAVE ISSUED A FORMAL RULING YET ON SEVERANCE THAT HAD BEEN
25 REQUESTED?

1 A. I KNOW WE ARGUED AND I ARGUED AND GILLAN ARGUED. WELL,
2 ACTUALLY, D'AGOSTINO AND I GAVE THE MAJORITY OF THE
3 ARGUMENT, THEN GILLAN JUST KIND OF PIGGY-BACKED ON US. I'M
4 NOT SURE OF THE SEQUENCE.

5 Q. OKAY.

6 A. YOU MAY BE RIGHT. I JUST DON'T RECALL.

7 Q. OKAY. BUT YOU HAD MADE A MOTION FOR SEVERANCE?

8 A. YES, SIR.

9 Q. OKAY. AND THAT WAS AN IMPORTANT ISSUE TO YOU, WAS IT
10 NOT?

11 A. UH-HUH.

12 Q. OKAY. NOW, MR. GORDON, MR. MONTA GORDON, GAVE A
13 STATEMENT TO THE POLICE THAT INDICATED THAT HE WAS IN THE
14 BACK SEAT OF THE CAR; IS THAT CORRECT?

15 A. CORRECT.

16 Q. IT ALSO INDICATED THAT HE DID NOT GET OUT OF THE BACK
17 SEAT OF THE CAR.

18 A. THE STATEMENT SAID THAT?

19 Q. HIS STATEMENT. I KNOW THERE WERE VARYING---

20 A. UH-HUH.

21 Q. ---STATEMENTS AS TO THE---

22 A. UH-HUH.

23 Q. ---WHERE'S AND WHAT-FORS OF EACH PERSON.

24 A. YEAH. I GUESS HIS STATEMENT -- THAT MAY BE TRUE. I'M
25 NOT SURE WITHOUT REFERRING BACK TO MY NOTES ON THAT.

1 Q. OKAY. AND IT APPEARS FROM THE TRANSCRIPT AND THE FACTS
2 GIVEN AT THE PLEA THAT THE ALLEGED AGREEMENT AND DECISION TO
3 ROB THIS YOUNG MAN WAS MADE PROBABLY IN LESS THAN A MINUTE.
4 IT WAS MADE VERY QUICKLY AND THE TWO PEOPLE WHO GOT OUT OF
5 THE CAR FIRST WERE ANTONIO GORDON AND MR. MCCREARY.

6 A. THAT MAY BE TRUE.

7 Q. I MEAN, DOES THAT SOUND CONSISTENT?

8 A. SOUNDS CORRECT; UH-HUH.

9 Q. OKAY. AND THAT THE WHOLE INCIDENT PROBABLY LASTED LESS
10 THAN A MINUTE.

11 A. I DON'T RECALL ANY EVIDENCE OF HOW -- THE LENGTH OF
12 TIME THAT THE INCIDENT LASTED.

13 Q. OKAY.

14 A. IT SEEMED LIKE IT WOULD HAVE TO HAVE BEEN MORE THAN A
15 MINUTE BECAUSE OF THE -- WELL, JUST FROM THE FACTS.

16 Q. OKAY. NOW, DURING -- YOU HAD A MEETING -- DID YOU HAVE
17 A MEETING WITH MR. GORDON DURING THE LUNCH BREAK PRIOR TO
18 HIS PLEA?

19 A. I DON'T RECALL ANY MEETING.

20 Q. YOU DON'T RECALL A MEETING?

21 A. JUST PRIOR -- THAT LUNCH BREAK PRIOR TO THE PLEA. I
22 KNOW THERE WAS A BREAK IN THERE, BUT --

23 Q. OKAY. PRIOR TO THE LUNCH BREAK THERE WAS A HEARING
24 ABOUT WHETHER OR NOT THE STATEMENT WAS BEING ADMISSIBLE;
25 ISN'T THAT CORRECT?

1 A. DON'T RECALL.

2 Q. YOU DON'T RECALL?

3 A. HUH-UH.

4 Q. AND THEN IMMEDIATELY AFTER THE LUNCH BREAK MR. GORDON
5 ENTERED A PLEA OF GUILTY.

6 A. OKAY.

7 Q. OKAY?

8 A. YES.

9 Q. WHEN DID YOU TALK WITH MR. GORDON ABOUT CHANGING HIS
10 PLEA TO A PLEA OF GUILTY TO MURDER, ARMED ROBBERY, ATTEMPTED
11 ARMED ROBBERY, TWO COUNTS, FAILURE TO STOP FOR A BLUE LIGHT?
12 I THINK IT'S THOSE FOUR CHARGES.

13 A. WHEN DID I TALK TO HIM?

14 Q. YES.

15 A. WELL, I TALKED TO HIM MANY, MANY TIMES ABOUT IT. I
16 ALSO HAD HIM SIGN A STATEMENT FOR ME. UNFORTUNATELY IT'S
17 UNDATED, BUT IT'S -- IT REFLECTS THAT I ADVISED HIM -- HE
18 INITIALED BESIDE ALL THE STATEMENTS HERE AND SIGNED THE
19 STATEMENT ON THE BOTTOM THAT REFLECTS THAT I ADVISED HIM OF
20 THE CHARGES, THE MURDER, ATTEMPTED ROBBERY OF ERIC KRENN,
21 ATTEMPTED ARMED ROBBERY OF CHRISTOPHER DIAZ, CONSPIRACY,
22 FAILURE TO STOP FOR BLUE LIGHTS AND THREE COUNTS POSSESSION
23 OF A FIREARM DURING A VIOLENT CRIME. HE INITIALLED BESIDE
24 THAT AND (B), THE MAXIMUM PENALTY FOR THE CHARGE OF MURDER
25 IS DEATH/LIFE WITHOUT PAROLE OR THIRTY YEARS WITHOUT PAROLE.

1 ON A DAY-TO-DAY BASIS HE INITIALLED BESIDE THAT. THE NEXT
2 ONE, PENALTY FOR ATTEMPTED ARMED ROBBERY, IS TWENTY YEARS
3 WITHOUT PAROLE. HE INITIALLED BESIDE THAT. THE MAXIMUM
4 PENALTY FOR CONSPIRACY IS FIVE YEARS. HE INITIALLED BESIDE
5 THAT. THE MAXIMUM PENALTY FOR FAILURE TO STOP FOR BLUE
6 LIGHTS IS FIVE YEARS, INITIALLED BESIDE THAT. THE MAXIMUM
7 PENALTY FOR POSSESSION OF A FIREARM DURING THE COMMISSION OF
8 A VIOLENT CRIME IS FIVE YEARS. HE INITIALLED BESIDE THAT.
9 THE STATE IS OFFERING A PLEA AGREEMENT WHEREIN THEY WOULD
10 ALLOW ME TO PLEA TO MURDER, ATTEMPTED ARMED ROBBERY, TWO
11 COUNTS, CONSPIRACY AND FAILURE TO STOP FOR BLUE LIGHTS FOR A
12 MAXIMUM PENALTY OF THIRTY YEARS WITHOUT PAROLE. HE
13 INITIALLED BESIDE THAT. IF I REFUSE THIS AGREEMENT, I COULD
14 BE TRIED FOR ALL OFFENSES AND FACE THE DEATH PENALTY, LIFE
15 WITHOUT POSSIBILITY OF PAROLE OR PUNISHMENT OF NINETY-THREE
16 YEARS CONFINEMENT IF FOUND GUILTY OF ALL OFFENSES AND
17 SENTENCING IS CONSECUTIVE RATHER THAN CONCURRENT. HE
18 INITIALLED BESIDE THAT AND HE ALSO SIGNED AT THE BOTTOM OF
19 THIS DOCUMENT.

20 Q. OKAY. MAY I HAVE IT?

21 A. CERTAINLY.

22 Q. MAY I LOOK AT THAT? THANK YOU. DO YOU KNOW WHEN HE
23 SIGNED THIS?

24 A. I DON'T. UNFORTUNATELY, I DIDN'T DATE IT, BUT IT WAS
25 CERTAINLY LONG BEFORE WE EVER DECIDED ON -- LONG BEFORE THE

1 TIME OF THE GUILTY PLEA.

2 Q. WELL, WHEN DID THE STATE MAKE YOU THAT OFFER THEN?

3 A. WHEN DID THE STATE MAKE ME THE OFFER OF THE PLEA
4 AGREEMENT? THE EXACT DATE, I HAVE NO IDEA. I DON'T RECALL
5 THAT.

6 Q. WELL, WHAT -- EVIDENTLY AT THE TIME THAT YOU MADE A
7 MOTION TO SEVER HIS TRIAL, WHICH WAS DONE ABOUT THREE DAYS
8 BEFORE THE SCHEDULED TRIAL DATE,---

9 A. OKAY.

10 Q. ---YOU AND MR. GORDON HAD NOT AT THAT TIME ACCEPTED
11 THIS PLEA OFFER.

12 A. NO; I DON'T BELIEVE WE DID. WE HAD THE OFFER AND WE
13 WERE -- I HAD PRESENTED THIS TO MONTA IN CONTACT VISITS THAT
14 I'D HAD WITH HIM AND CERTAINLY WE WERE IN THE NEGOTIATION
15 STAGES, VERY, VERY, DEEP IN THE NEGOTIATION STAGES WITH
16 SOLICITOR THOMPSON AT THAT TIME AND WE WERE, I WOULD SAY,
17 NINETY PERCENT, MAYBE MORE THAN THAT, DECISION THAT WE WOULD
18 GO AHEAD AND ACCEPT THAT PLEA AGREEMENT.

19 Q. DID YOU RECOMMEND TO HIM TO ACCEPT THE PLEA AGREEMENT?

20 A. YES, I DID.

21 Q. OKAY. WOULD YOU TELL ME THE BASIS ON WHICH YOU
22 RECOMMENDED TO HIM TO ACCEPT THIS PLEA AGREEMENT?

23 A. WELL, THE BASIS WAS, IN REVIEWING ALL OF THE EVIDENCE,
24 THE STATEMENTS OF THE OTHER INDIVIDUALS INVOLVED, THE
25 EVIDENCE WAS OVERWHELMING THAT MR. MONTA GORDON WAS AT THE

1 DRIVER'S SIDE OF THE CAR BESIDE HIS BROTHER WHEN THE ACTUAL
2 SHOT WAS FIRED. THERE WAS ANOTHER WITNESS IN THE CAR, OF
3 COURSE, WHOSE STATEMENT WAS VERY COMPELLING, VERY KNOWING TO
4 THIS ISSUE AND IT JUST -- WITH THE OVERWHELMING WEIGHT OF
5 THE EVIDENCE, I FELT THAT HE WOULD BE CONVICTED OF MURDER
6 AND SENTENCED APPROPRIATELY IF WE WENT TO TRIAL.

7 Q. AND SO THERE WAS -- THERE WAS A STATEMENT YOU FELT LIKE
8 THE EVIDENCE WOULD BE THAT IT WOULD SHOW THAT MONTA GORDON
9 WAS STANDING OUTSIDE OF OR NEXT TO THE CAR?

10 A. CORRECT.

11 Q. OKAY. WOULD IT SHOW ANYTHING ELSE OTHER THAN THAT?

12 A. YEAH. THE OTHER BOY THAT WAS IN THE CAR,---

13 Q. MR. DIAZ?

14 A. ---THE PASSENGER, YES, HIS STATEMENT WAS VERY
15 INCRIMINATING, AS I RECALL IT. HE -- HE IDENTIFIED MONTA --
16 I THINK HE HAD -- IT WAS CLEAR THAT HE HAD MIXED UP THE TWO
17 BROTHERS AT THE TIME.

18 Q. OKAY. SO HE INITIALLY IDENTIFIED MONTA AS THE SHOOTER,
19 WHICH WAS INCORRECT?

20 A. THAT'S CORRECT.

21 Q. OKAY.

22 A. BUT IT WAS CERTAINLY CLEAR FROM THE REST OF THE
23 STATEMENT AND ONCE EVERYTHING WAS SORTED OUT, THAT IT WAS IN
24 FACT MONTA OR ANTONIO WHO WAS THE SHOOTER, BUT MONTA WAS
25 STANDING THERE, BASICALLY, ENCOURAGING HIM TO DO SO, NOT TO

1 SHOOT HIM, BUT TO --

2 Q. WHAT EVIDENCE -- SO THERE WAS EVIDENCE THAT MONTA WAS
3 ENCOURAGING HIM TO DO SO?

4 A. YEAH. THIS -- I BELIEVE IT WAS THE STATEMENT OF THE --

5 Q. AND YOU FELT THAT THAT'S WHY HE NEEDED TO ENTER A PLEA
6 TO MURDER AND ALL OF THESE----

7 A. YEAH. ALL OF THE STATEMENTS --

8 Q. ---CHARGES?

9 A. ALL OF THE STATEMENTS THAT I SAW INDICATED THAT HE
10 CERTAINLY WOULD BE --

11 Q. DID YOU TELL HIM ABOUT THE HAND OF ONE IS THE HAND OF
12 ALL?

13 A. YES.

14 Q. WHAT DID YOU EXPLAIN TO HIM WHAT THAT MEANS?

15 A. WELL, THAT IF YOU'RE PRESENT AND A PRINCIPAL IN THIS --
16 IN THE OFFENSE, YOU MAY BE CHARGED WITH WHATEVER CRIME IS
17 COMMITTED AT -- DURING THAT -- IN THE UNFOLDING OF THAT
18 OFFENSE, JUST AS THE ACTUAL -- WELL, IN THIS CASE AS THE
19 SHOOTER. HE COULD BE CONVICTED OF THE SAME OFFENSE, JUST AS
20 IF HE HAD SHOT HIM.

21 Q. AND WHAT WOULD CAUSE HIM TO REACH THAT LEVEL?

22 A. PARDON ME?

23 Q. WHAT WOULD CAUSE HIM TO REACH THE LEVEL?

24 A. JUST BY VIRTUE OF HIM BEING A PRINCIPAL TO THE CRIME,
25 IN OTHER WORDS, BEING THERE.

- 1 Q. SO HIS PRESENCE ALONE MAKES HIM A PRINCIPAL?
- 2 A. IF HE IS AIDING AND ABETTING IN A CRIME, WHICH HE WAS.
- 3 Q. IF HE IS ACTIVELY PARTICIPATING---
- 4 A. CORRECT; YES.
- 5 Q. ---SOMEHOW, EITHER ENCOURAGING OR---
- 6 A. YES.
- 7 Q. ---SOME OTHER AFFIRMATIVE ACT?
- 8 A. CORRECT.
- 9 Q. OKAY. AND YOU TOLD HIM THESE THINGS?
- 10 A. YES.
- 11 Q. OKAY.
- 12 A. NUMEROUS TIMES.
- 13 Q. WHAT DID YOU TELL HIM IN REGARDS TO THE ATTEMPTED ARMED
- 14 ROBBERY AS FAR AS WHAT THAT CONSTITUTED?
- 15 A. WHAT DID I TELL HIM ABOUT IT?
- 16 Q. YES.
- 17 A. I'M SURE I READ HIM THE ELEMENTS OF THE OFFENSE OF EACH
- 18 AND EVERY ONE OF THESE OFFENSES, 'CAUSE WE HAD -- AS I SAID,
- 19 WE HAD EXTENSIVE CONTACT VISITS AND CONVERSATIONS ON THE
- 20 TELEPHONE. I ALSO HAD THE INVESTIGATOR WITH ME AT SEVERAL
- 21 OF THESE TIMES -- CONTACT VISITS THAT WE HAD WITH MONTA AND
- 22 I CAN TELL YOU WHEN WE HAD THE VISITS. I CAN'T TELL YOU
- 23 WORD FOR WORD WHAT WAS SAID, BUT I KNOW WE DISCUSSED AT
- 24 LENGTH AND IN DEPTH EVERY SINGLE OFFENSE, EVERY SINGLE
- 25 OPTION, POSSIBLE CONSEQUENCES IF WE WENT FORWARD WITH A

1 TRIAL AS OPPOSED TO A GUILTY PLEA AND I'VE GOT MY -- GOT MY
2 ATTORNEY'S TIME SHEET HERE, IF YOU'D LIKE TO TAKE A LOOK AT
3 THAT, YOU CAN SEE THE NUMBER OF TIMES THAT I DID SPEAK TO
4 HIM.

5 Q. I MEAN, BUT YOU WERE CONVINCED AND YOU TOLD HIM THAT
6 YOU WERE SATISFIED WITH THE PLEA BECAUSE OF HIS ACTIVE,
7 AFFIRMATIVE INVOLVEMENT IN THIS CASE?

8 A. YES, AND -- OR -- THE TOTALITY OF THE EVIDENCE. IT
9 WASN'T ANY SPECIFIC --

10 Q. OKAY.

11 A. BUT CERTAINLY HE WAS INVOLVED.

12 Q. FOR EACH AND EVERY CHARGE THAT HE PLED TO, THE MURDER?

13 A. CORRECT.

14 Q. TWO ATTEMPTED ARMED ROBBERIES,---

15 A. UH-HUH.

16 Q. FAILURE TO STOP FOR A BLUE LIGHT?

17 A. RIGHT.

18 Q. AND CONSPIRACY?

19 A. RIGHT.

20 Q. OKAY. AND I THINK THOSE WERE ALL THAT HE PLED TO.

21 A. AS I RECALL, THAT WAS IT.

22 Q. OKAY. NOW, MR. MATLOCK, IN REGARDS TO THAT, I WOULD
23 ASK --

24 MR. GREELEY: IF YOUR HONOR WOULD GIVE ME A MINUTE.

25 THE COURT: YES, SIR.

1 MR. GREELEY: I'M LOOKING FOR A PLACE IN THE TRANSCRIPT
2 REGARDING MY CLIENT'S SENTENCING.

3 Q. HE WAS SENTENCED ON A SEPARATE DAY THAN HIS PLEA; IS
4 THAT CORRECT?

5 A. THAT'S RIGHT.

6 Q. SO JUDGE HAYES TOOK HIS PLEA AND ACCEPTED HIS PLEA ON
7 ALL OF THE CHARGES AND NOTHING WAS PRESENTED ON HIS BEHALF
8 UNTIL, I THINK, ON THE MONDAY WHEN THERE WAS SENTENCING FOR
9 THE OTHER TWO; IS THAT CORRECT?

10 A. THAT'S RIGHT; UH-HUH.

11 Q. AND -- OKAY. OKAY. YOU HAD TALKED ABOUT HOW YOU FELT
12 HE NEEDED TO PLEAD GUILTY BECAUSE OF HIS ACTIVE, AFFIRMATIVE
13 INVOLVEMENT AS A PRINCIPAL IN THIS; IS THAT CORRECT?

14 A. (NODS HEAD AFFIRMATIVELY)

15 Q. ON HIS SENTENCING ON PAGE 195 OF THE TRANSCRIPT, --

16 A. WHICH ONE WAS THAT, ONE OR TWO?

17 Q. OF THE TRANSCRIPT BEFORE JUDGE HONORABLE JOHN C. HAYES
18 OF JULY 12TH, 14TH AND 16TH, BOOK NUMBER TWO.

19 A. TWO. WHAT PAGE? 195?

20 Q. YES.

21 A. YES, SIR.

22 Q. OKAY. THEN IF YOU LOOK DOWN ON PAGE -- I MEAN, ON LINE
23 TWENTY-ONE OF 195, ---

24 A. OKAY.

25 Q. ---BASED UPON WHAT YOU SAID, WHY DID YOU REPRESENT TO

1 THE COURT IN HIS SENTENCING WHEN YOU STATED, BUT HE WAS
2 NEITHER THE ONE WHO ACTUALLY FIRED THE SHOT, NOR WAS IT HE
3 WHO ENCOURAGED OR URGED HIS BROTHER TO COMMIT THIS CRIME?

4 A. WHY DID I SAY THAT?

5 Q. YEAH. WAS THAT TRUE?

6 A. WELL, I SAID IT.

7 Q. AND WAS THAT STATEMENT TRUE?

8 A. I PRESUME IT WAS TRUE AT THE TIME.

9 Q. WAS THAT STATEMENT TRUE?

10 A. YES.

11 Q. OKAY. BUT THAT WOULDN'T MAKE HIM A PRINCIPAL, WOULD
12 IT?

13 A. WHAT'S THAT?

14 Q. THAT WOULDN'T MAKE HIM A PRINCIPAL TO MURDER IF HE HAD
15 NOT URGED OR IN ANY WAY TRIED TO GET HIS BROTHER TO COMMIT
16 THIS CRIME?

17 A. WELL, HE WAS PRESENT AT THE TIME. HE WAS -- HE DID
18 NOTHING TO DISCOURAGE HIS BROTHER AND THERE WAS SOME
19 STATEMENT THAT I -- THAT I RECALL OF THE OTHER PASSENGER IN
20 THE CAR AT THE TIME THAT HE WAS -- GET THE CAR, LET'S THE
21 CARS OR WORDS TO THAT EFFECT. NOW, WHETHER HE ENCOURAGED OR
22 URGED HIS BROTHER, I JUST --

23 Q. OKAY.

24 MS. VAN GINHOVEN: I WOULD JUST THAT HE READ THE REST
25 OF THAT. IT FOLLOWS ON TO THE NEXT PAGE, IT MAY REFRESH HIS

1 MEMORY A LITTLE BIT.

2 A. OKAY. HE WAS IN THE BACK SEAT OF THE CAR. HE WAS IN
3 THE BACK SEAT OF THE CAR AND WHEN HE GOT OUT AFTER HIS
4 BROTHER AT THE URGING OF THE DRIVER, GOT OUT WITH A GUN, AND
5 WENT OVER TO THE DRIVER'S SIDE OF THE CAR. YOUR HONOR, AS
6 YOU ARE WELL AWARE --

7 Q. SO BASED ON THAT STATEMENT, HE WAS PRESENT?

8 A. RIGHT.

9 Q. OKAY. DID YOU TALK TO HIM ABOUT THE DEFENSE OF MERE
10 PRESENCE REGARDING THE LAW OF PRINCIPLES?

11 A. YEAH. AS I SAID, WE WERE INVOLVED IN SO MANY MEETINGS
12 AND EXTENSIVE CONTACT VISITS, TELEPHONE CALLS, I'M SURE I
13 DISCUSSED THE HAND OF ONE IS THE HAND OF ALL AND MERE
14 PRESENCE IS NOT IN AND OF ITSELF A -- DISPOSITIVE OF THAT
15 ISSUE. HOWEVER, HIS INVOLVEMENT WAS SUCH THAT CERTAINLY HE
16 -- HE WOULD BE CHARGED -- HE COULD BE CHARGED WITH THAT AND
17 HE WAS CHARGED WITH THAT.

18 Q. ALL RIGHT. AND TO YOUR KNOWLEDGE, IN REGARDS TO THE
19 MURDER, WHAT WAS HIS INVOLVEMENT?

20 A. WHAT WAS HIS INVOLVEMENT?

21 Q. YES. IN REGARDS TO THE ACTUAL SHOOTING.

22 A. OKAY. HIS -- HE HAD GOTTEN OUT OF THE CAR.

23 Q. NOW, HIS STATEMENT DID SAY -- I'M SORRY TO INTERRUPT
24 YOU,---

25 A. THAT'S OKAY.

1 Q. ---BUT HIS STATEMENT DID SAY THAT HE STAYED IN THE CAR,
2 DIDN'T IT?

3 A. I UNDERSTAND, BUT THERE WAS OVERWHELMING EVIDENCE
4 OTHERWISE THAT HE GOT OUT OF THE CAR.

5 Q. THERE WAS OTHER EVIDENCE THAT HE GOT OUT OF THE CAR---

6 A. RIGHT.

7 Q. ---AND THAT WAS FROM MR. MOFFATT---

8 A. RIGHT.

9 Q. ---AND HIS BROTHER?

10 A. UH-HUH.

11 Q. OKAY. MR. MCCREARY DIDN'T HAVE HIM GETTING OUT OF THE
12 CAR, DID HE?

13 A. NO.

14 Q. OKAY.

15 A. AND IN MY CONFERENCES WITH MONTA HE SAID, YEAH, I DID.
16 I GOT OUT OF THE CAR. HE TOLD ME THAT.

17 Q. OKAY.

18 A. AND SO HE WAS THERE. HIS BROTHER GOT OF THE CAR, HE
19 GOT OUT OF THE CAR. THEY BOTH WENT TO THE SIDE OF THE
20 VEHICLE WHERE THE DECEASED WAS, THE DRIVER. THERE WAS
21 ANOTHER PERSON IN THE CAR THERE AND THAT OTHER PERSON
22 IMPLICATED HIM AS NOT MERELY BEING A PASSER-STANDBY PERSON,
23 BUT BEING ACTIVELY INVOLVED. NOW, I GUESS I SAID EARLIER
24 THAT HE'S -- THAT IN MY OPINION THE STATEMENT SAID URGED HIM
25 OR I MAY HAVE -- I DON'T HAVE THE STATEMENT IN FRONT OF ME

1 OBVIOUSLY, BUT HE CERTAINLY WAS NOT THERE TO TRY TO SAY,
2 LOOK, ANTONIO, WE GOT TO GET BACK IN THE CAR, STOP THIS. IT
3 WAS BASICALLY HE WAS NOT -- HE WAS A PARTICIPANT AND I THINK
4 THERE WAS LITTLE DOUBT IN THAT FROM THE STATEMENTS OF
5 EVERYONE INVOLVED AND MOST IMPORTANTLY FROM THAT PERSON IN
6 THE CAR, ALBEIT HE WAS MISTAKEN ORIGINALLY AS TO THE
7 IDENTITY, BUT THAT WAS SOMETHING THAT WAS JUST A MISTAKE
8 THAT WAS OBVIOUS AND WOULD BE CLEARED UP AT TRIAL WITHOUT
9 ANY PROBLEM WHATSOEVER.

10 Q. OKAY.

11 MR. GREELEY: YOUR HONOR, I DON'T HAVE ANY FURTHER
12 QUESTIONS OF THIS WITNESS. THANK YOU.

13 THE COURT: COUNSEL.

14 CROSS-EXAMINATION

15 JOSEPH D. MATLOCK BY MS. VAN GINHOVEN:

16 Q. MR. MATLOCK,---

17 A. OH, I'M SORRY. NOT USED TO BEING A WITNESS. YES.

18 Q. ---DID THIS COME OUT OF YOUR ATTORNEY FILE?

19 A. YES, IT DID.

20 MS. VAN GINHOVEN: OKAY. I WOULD LIKE TO MOVE THIS
21 INTO EVIDENCE. THIS IS THE LIST THAT MONTA GORDON
22 UNDERSTOOD WHAT HE DISCUSSED WITH HIS ATTORNEY.

23 MR. GREELEY: NO OBJECTION.

24 THE COURT: ADMITTED WITHOUT OBJECTION.

25 Q. AND DID YOU SAY YOU HAD A TIME SHEET TO SHOW HOW MANY

1 TIMES YOU MET WITH MR. GORDON?

2 A. YES, I DO.

3 Q. OR COULD YOU AT LEAST JUST TELL US WHEN ARE THE TIMES
4 YOU -- HOW MANY TIMES YOU MET WITH HIM?

5 A. YOU WANT ME TO JUST GO DOWN THE LIST, JUST COUNTING?

6 Q. JUST APPROXIMATELY HOW MANY TIMES YOU THINK.

7 A. OKAY. ONE, TWO, THREE -- I'M INCLUDING TELEPHONE CALL
8 CONVERSATIONS.

9 Q. OKAY.

10 A. ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE,
11 TEN, ELEVEN. I THINK I COUNTED TWELVE TIMES.

12 Q. AND THIS CASE, MONTA GORDON AND ANTONIO GORDON WERE
13 BROTHERS: IS THAT RIGHT?

14 A. YES, MA'AM.

15 Q. AND I THINK TERRENCE MCCREARY, WAS HE NOT A COUSIN OR
16 SOMEHOW RELATED TO THEM?

17 A. I THINK SO. I'M NOT SURE, BUT --

18 Q. SO THEY WERE ALL RELATED AND IT PROBABLY WASN'T VERY
19 EASY FOR ONE BROTHER TO TESTIFY AGAINST ANOTHER.

20 A. CERTAINLY.

21 Q. IS THAT PART OF THE REASON THAT THE PLEA WAS ACCEPTED
22 THEN?

23 A. I'M SORRY. I MISUNDERSTOOD YOUR QUESTION.

24 Q. WELL, MONTA GORDON -- YOU SAID -- WHEN DID THE
25 SOLICITOR MAKE YOU THE OFFER, PLEA OFFER?

1 A. YOU KNOW, IN MY RECOLLECTION, IT WAS PRETTY EARLY ON
2 AND THAT WE UNDERSTOOD THAT IN MY -- OUR CONSULTATIONS WITH
3 THE SOLICITOR -- LET'S SEE. OKAY. VERY EARLY ON. ON
4 OCTOBER 14TH I HAVE LISTED HERE A CONSULT WITH THE DEPUTY
5 SOLICITOR, THAT BEING WILLY THOMPSON AND THE ULTIMATE PLEA
6 DIDN'T OCCUR UNTIL JULY 16TH. SO, YOU KNOW, YOU'RE TALKING
7 ABOUT A PERIOD OF MANY MONTHS, YOU KNOW, PRIOR -- NOVEMBER
8 WAS WHEN I FIRST TALKED TO THE SOLICITOR. AT THAT TIME I
9 THINK EVEN BACK THEN WE WERE -- YOU KNOW, WERE STILL IN
10 SLUSHY CONCRETE AT THAT TIME, BUT WE WERE DISCUSSING
11 POSSIBILITIES IN THE CASE AND, YOU KNOW, WHAT -- JUST AS ANY
12 DEFENSE LAWYER KNOWS, WHEN YOU TALK TO A SOLICITOR THE FIRST
13 THING IS YOU SAY, WELL, WHAT ARE WE LOOKING AT HERE AND
14 THAT'S -- I THINK HE PROBABLY MENTIONED SOMETHING ABOUT THE
15 ULTIMATE PLEA AGREEMENT THEN.

16 Q. AS PART OF THE GUILTY PLEA THEY DISMISSED THE
17 CARJACKING INDICTMENT WHICH HAD BEEN DIRECTLY INDICTED;
18 CORRECT?

19 A. YEAH; THAT'S RIGHT.

20 Q. AND THEY DISMISSED THE POSSESSION OF WEAPON CHARGES OF
21 WHICH HE HAD THREE.

22 A. RIGHT.

23 Q. ONE ON THE MURDER INDICTMENT AND ONE ON EACH ATTEMPTED
24 ARMED ROBBERY INDICTMENT.

25 A. YES, MA'AM.

1 Q. AND THEY ALSO RECOMMENDED A SENTENCE OF THIRTY YEARS.

2 A. RIGHT.

3 Q. OKAY. NOW, IF THEY HAD GONE TO TRIAL, THEY WERE -- THE
4 SENTENCE WOULD HAVE BEEN LIFE WITHOUT PAROLE.

5 A. WELL, ACTUALLY, I THINK HE -- IT COULD HAVE BEEN A
6 DEATH PENALTY CASE, BUT I BELIEVE -- YOU KNOW, THEY WEREN'T
7 GOING WITH A CAPITAL CASE, SO WE KNEW THAT. THAT'S CORRECT.
8 SO, YEAH, IT WOULD HAVE BEEN LIFE WITHOUT PAROLE.

9 Q. AND, IN FACT, MONTA GORDON WAS THE FIRST ONE TO
10 ACTUALLY PLEAD GUILTY OF THE THREE? OUT OF TERRENCE---

11 A. I THINK SO; YES.

12 Q. ---AND ANTONIO, MONTA WENT FIRST?

13 A. RIGHT. BECAUSE HE WAS -- HE WAS BEING VIEWED AS A
14 POTENTIAL WITNESS FOR THE TRIAL THAT WAS SCHEDULED FOR
15 MONDAY.

16 Q. RIGHT. AND THAT WOULD HAVE BEEN -- AND BY THE END OF
17 THE DAY THE TRIAL WAS GOING TO BE, AGAIN, ANTONIO GORDON
18 BEING THE ONLY DEFENDANT LEFT WITH THE TESTIMONY OF MONTA
19 GORDON, TERRENCE MCCREARY AND GARY MOFFATT WHO WERE ALL
20 INVOLVED.

21 A. RIGHT.

22 Q. THEY WERE GOING TO TESTIFY AGAINST ANTONIO?

23 A. THAT'S CORRECT.

24 Q. AT THE LAST HOUR ANTONIO ENDED UP PLEADING GUILTY AS
25 WELL?

1 A. YES, MA'AM.

2 Q. AND HE RECEIVED LIFE WITHOUT PAROLE?

3 A. NO. I THINK IT WAS FORTY-FIVE YEARS.

4 Q. MAYBE HE DID RECEIVE THIRTY-FIVE YEARS. FORTY?

5 A. FORTY YEARS.

6 Q. BUT AS PART OF THIS -- AS PART OF THIS PLEA, HE -- HE
7 RECEIVED A THIRTY-YEAR SENTENCE?

8 A. YES.

9 Q. AND THAT WAS THE RECOMMENDATION FROM THE SOLICITOR'S
10 OFFICE?

11 A. THAT WAS -- YEAH. THAT WAS THE PLEA AGREEMENT THAT HE
12 SIGNED.

13 Q. NOW, WHOSE DECISION WAS IT TO PLEAD GUILTY?

14 A. IT WAS HIS, MONTA'S.

15 Q. AND FROM ALL THE EVIDENCE THAT WAS GATHERED, THE
16 STATEMENTS FROM THE DIFFERENT CO-DEFENDANTS, STATEMENTS FROM
17 THE VICTIMS, THE EVIDENCE WOULD SHOW THAT HE WAS---

18 A. OVERWHELMING.

19 Q. ---PARTICIPATING IN A CRIME?

20 A. YES. AND I'VE BEEN AN ATTORNEY IN THE MILITARY AND IN
21 CIVILIAN LIFE FOR PROBABLY TWENTY-FIVE YEARS, AT THAT TIME
22 TWENTY-SOME YEARS, AND I WAS EVEN A MILITARY JUDGE AND I'VE
23 SEEN AN AWFUL LOT OF CASES AND THIS WAS AS STRONG A CASE AS
24 I'D EVER SEEN AND THAT'S -- YOU KNOW, AND, OF COURSE, THAT'S
25 WHY WE -- I TALKED TO MONTA THAT I RECOMMENDED THIS BECAUSE

1 HE WAS FACING MUCH -- YOU KNOW, IF WE WENT TO TRIAL, I WOULD
2 HAVE GIVEN HIM TWO CHANCES OF WINNING AND THAT WAS ZERO AND
3 NONE.

4 Q. WELL, AND GOING BACK TO THE MOTION FOR SEVERANCE, LET'S
5 SAY JUDGE -- IF JUDGE HAYES HAD RULED THAT HE WAS GOING TO
6 SEVER THE CASES, ---

7 A. UH-HUH.

8 Q. ---WOULD YOU THINK IT LIKELY THAT MR. MONTA GORDON
9 WOULD HAVE SUCCEEDED AT TRIAL?

10 A. NO. NO, BUT YOU -- AS YOU WELL KNOW, MA'AM, WHEN
11 YOU'RE MAKING -- GOING THROUGH THE MOTIONS PORTION OF A
12 TRIAL YOU HAVE TO GO WITH EVERY EVENTUALITY AND PURSUE EVERY
13 AVENUE THAT WOULD BE BENEFICIAL FOR YOUR -- FOR YOUR CLIENT,
14 BECAUSE IT IS ULTIMATELY HIS DECISION. IF HE WANTED TO GO
15 TO TRIAL, THEN CERTAINLY I WOULD HAVE GONE FORWARD AND MADE
16 MY BEST EFFORT, BUT IT WAS -- IT WOULD HAVE BEEN STRONGLY
17 AGAINST MY LEGAL OPINION AND ASSESSMENT OF HIS CHANCES.

18 Q. OKAY. IS THERE ANYTHING ELSE YOU'D LIKE TO SAY TO THE
19 COURT REGARDING THIS CASE?

20 A. THE EXTENSIVE CONVERSATIONS WE HAD WITH MONTA WITH THE
21 INVESTIGATOR PRESENT ON MANY OF THOSE, I CAN'T RECALL
22 EXACTLY EVERYTHING WE SAID BECAUSE THERE WERE HOURS AND
23 HOURS AND HOURS OF CONTACT VISITS AND TELEPHONE CALLS AND SO
24 ON, BUT I FELT CERTAINLY SECURE IN MY MIND THAT MONTA
25 UNDERSTOOD EVERYTHING WITH REGARD TO THE CHARGES, THAT THERE

1 WAS NO QUESTION IN HIS MIND, THAT HE UNDERSTOOD THE
2 CONSEQUENCES, THAT HE KNOWINGLY AND INTELLIGENTLY -- 'CAUSE
3 HE'S A VERY INTELLIGENT YOUNG MAN -- KNOWING AND
4 INTELLIGENTLY MADE THIS DECISION AND I CONCURRED IN IT.

5 Q. AND IF THERE HAD BEEN ANY ISSUES CONCERNING HIS
6 COMPETENCY, WOULD YOU HAVE REQUESTED A COMPETENCY HEARING---

7 A. ABSOLUTELY AND THERE WASN'T.

8 Q. ---OR AN EVALUATION?

9 A. THERE REALLY WASN'T. AS A MATTER OF FACT, I -- HE
10 JOKED AROUND ABOUT HIS BROTHER SAYING THAT HE, YOU KNOW, HE
11 WAS KIND OF A -- I DON'T WANT TO PUT WORDS IN HIS MOUTH, BUT
12 HE WAS SORT OF BONE HEAD OR SOMETHING LIKE THAT, YOU KNOW,
13 AND HE WAS -- HE WAS FINE. I MEAN, THERE'S NO QUESTION IN
14 MY MIND HE WAS COMPETENT.

15 MS. VAN GINHOVEN: OKAY. I HAVE NO FURTHER QUESTIONS.

16 MR. GREELEY: IF I MAY, YOUR HONOR.

17 THE COURT: YES, SIR.

18 RE-DIRECT EXAMINATION

19 JOSEPH D. MATLOCK BY MR. GREELEY:

20 Q. HE JOKED AROUND ABOUT HIS BROTHER BEING A BONE HEAD?

21 A. WORDS TO THAT EFFECT REALLY. THAT IS A LOOSE
22 INTERPRETATION, BUT FOR SOME REASON I HAVE A RECOLLECTION OF
23 THAT.

24 Q. WELL, HE TALKED TO YOU ABOUT HOW HIS BROTHER WAS KIND
25 OF -- WOULD FLY OFF THE HANDLE,---

1 A. YEAH.

2 Q. ---DIDN'T HE?

3 A. I BELIEVE HE DID.

4 Q. RIGHT. THE -- MAY I SEE YOUR TIME SHEET?

5 A. SURE.

6 Q. OKAY. AND THIS WAS THE TIME SHEET THAT YOU SUBMITTED
7 TO THE OFFICE OF INDIGENT DEFENSE; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. OKAY. SO THE SEVERANCE HEARING WAS IMPORTANT TO YOU?

10 A. SURE.

11 Q. YOU SPENT SEVEN HOURS ON THAT---

12 A. RIGHT.

13 Q. ---PREPARING AND RESEARCHING FOR THAT?

14 A. YES, SIR.

15 Q. AND YOU BELIEVE THAT THE OFFER WAS MADE WAY BACK IN
16 ABOUT OCTOBER?

17 A. YOU KNOW, IF YOU LOOK ON THERE, THE FIRST CONFERENCE I
18 HAD WITH THE SOLICITOR, I THINK, WAS NOVEMBER OR SOMETHING.
19 UP TOP SIDE HERE. I THINK IT'S LIKE THE FIFTH ENTRY OR
20 FOURTH ENTRY OR SOMETHING LIKE THAT.

21 Q. YES. OCTOBER THE 14TH.

22 A. OKAY. YES. AT THAT TIME I -- MY RECOLLECTION IS THAT
23 WE -- WE DISCUSSED IT. I MEAN, IT WASN'T -- OF COURSE, IT
24 WASN'T FIRMED UP. I AS SAID, IT WAS SLUSHY CONCRETE AT THAT
25 TIME, BUT IT WAS JUST A -- JUST WANTED TO GET A FEEL FOR

1 WHAT HIS THINKING WAS AND I'M FAIRLY CERTAIN THAT THAT'S
2 WHEN HE SAID THE THIRTY YEARS.

3 Q. OKAY. THANK YOU.

4 A. SURE.

5 MR. GREELEY: THAT'S ALL I HAVE, YOUR HONOR.

6 MS. VAN GINHOVEN: I HAVE NO FURTHER QUESTIONS.

7 THE COURT: LET ME ASK YOU TO CLARIFY THIS AND PERHAPS
8 FOR ME. ON PAGE 197 OF THE SECOND TRANSCRIPT, TRANSCRIPT
9 NUMBER 2,---

10 MR. MATLOCK: YES, SIR.

11 THE COURT: ---IT APPEARS MR. THOMPSON, HE WAS ONLY
12 SEVENTEEN AT THE TIME THE OFFENSE OCCURRED, AS I UNDERSTAND,
13 AND THAT'S WHAT COUNSEL IS REPRESENTING TODAY. DID HE HAVE
14 A RATHER EXTENSIVE RECORD, JUVENILE RECORD, AND HAD SOME
15 ADULT RECORD?

16 MR. MATLOCK: YES, SIR.

17 THE COURT: AND WAS ON PROBATION AT THAT TIME FOR A
18 POSSESSION OF CRACK COCAINE CHARGE ACCORDING TO THIS; IS
19 THAT YOUR RECOLLECTION?

20 MR. MATLOCK: YES, SIR.

21 THE COURT: AND THAT PROBATION WAS REVOKED AND WHAT
22 HAPPENED WITH THAT SENTENCE? DO YOU KNOW?

23 MR. MATLOCK: I DON'T KNOW.

24 THE COURT: BUT THAT WAS DONE AT THE SAME TIME AS THE
25 GUILTY PLEA; IS THAT CORRECT?

1 MR. MATLOCK: YES, SIR.

2 THE COURT: PROBATION REVOCATION MATTER AND REVOCATION.

3 ALL RIGHT. ANY QUESTIONS RELATED TO THE QUESTION THAT I

4 JUST ASKED, COUNSEL?

5 MR. GREELEY: NO, YOUR HONOR.

6 MS. VAN GINHOVEN: NO, YOUR HONOR.

7 THE COURT: THANK YOU, SIR. YOU MAY STAND DOWN, SIR.

8 MR. MATLOCK: THANK YOU.

9 MR. GREELEY: YOUR HONOR, I CALL MONTA GORDON. MR.

10 GORDON, IF YOU'LL COME AROUND, PLEASE. PLACE YOUR LEFT HAND

11 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

12 (MONTA GORDON, BEING FIRST DULY SWORN, WAS EXAMINED AND
13 TESTIFIED AS FOLLOWS):

14 DIRECT EXAMINATION

15 MONTA GORDON BY MR. GREELEY:

16 Q. MR. GORDON, PLEASE STATE YOUR NAME FOR THE RECORD?

17 A. MONTA GORDON.

18 Q. OKAY. NOW, HOW OLD ARE YOU NOW?

19 A. TWENTY-THREE.

20 Q. TWENTY-THREE? AND I BELIEVE THAT YOU WERE EIGHTEEN
21 WHEN YOU APPEARED BEFORE JUDGE HAYES IN THIS PLEA; IS THAT
22 CORRECT?

23 A. YES, SIR.

24 Q. AND TELL ME ABOUT YOUR MEETINGS WITH MR. MATLOCK. WHEN
25 DID YOU MEET WITH HIM?

1 A. THE FIRST TIME I MET WITH HIM WAS IN OCTOBER.

2 Q. OKAY.

3 A. MY WHOLE CONCERN WAS, BASICALLY, WAS TRYING TO GET A
4 BOND SET. DISCUSSING THIS PLEA AGREEMENT AND ALL THAT, I
5 DON'T RECALL THAT.

6 Q. ALL RIGHT. SO YOU DON'T RECALL HIM TALKING TO YOU
7 ABOUT A PLEA OFFER IN OCTOBER?

8 A. NO, SIR.

9 Q. YOU JUST TALKED WITH HIM ABOUT THE POSSIBILITY OF BOND?

10 A. YES, SIR.

11 Q. OKAY. WHEN WAS THE NEXT TIME THAT YOU RECALL SPEAKING
12 WITH HIM?

13 A. IT WAS LIKE THE BEGINNING OF THE -- BEGINNING OF THE
14 FOLLOWING YEAR.

15 Q. OKAY. WHERE WAS THAT?

16 A. IN '99, BEGINNING OF '99.

17 Q. OKAY. WHERE?

18 A. I WAS IN LOCK UP.

19 Q. AT THE JUSTICE MOSS CENTER?

20 A. UH-HUH.

21 Q. OKAY. IF YOU'LL ANSWER ORALLY SO THAT THE COURT
22 REPORTER DOESN'T---

23 A. YES, SIR.

24 Q. ---HAVE ANY AMBIGUITY ABOUT YOUR RESPONSES. AND WHAT
25 -- DO YOU RECALL WHAT YOU DISCUSSED THEN?

1 A. THE SAME THING, BUT WE HAD MADE A PLEA TO THIRTY YEARS,
2 BUT MY WHOLE CONCERN WAS, BASICALLY, GETTING A BOND SIGNED.

3 Q. SO HE CAME BACK AND PRESENTED YOU AGAIN WITH AN OFFER?

4 A. FOR THIRTY YEARS.

5 Q. OKAY. AND WERE YOU INTERESTED IN TALKING WITH HIM
6 ABOUT THAT AT THAT TIME?

7 A. NO, SIR.

8 Q. OKAY. IS THAT ALL THAT YOU TALKED ABOUT DURING THAT
9 MEETING?

10 A. YES, SIR.

11 Q. OKAY. BEFORE I GET TO THE NEXT MEETING, DID YOU GIVE A
12 STATEMENT TO THE POLICE?

13 A. YES, SIR, I DID.

14 Q. AND WHAT DID YOU TELL THE POLICE IN YOUR STATEMENT?

15 A. IN JULY THE 23RD OF '98 THAT ME, MY BROTHER, TERRENCE
16 MCCREARY AND GARY MOFFATT WAS OUT RIDING AROUND AROUND 1:27
17 THAT MORNING AND THAT WE WAS COMING OFF, I THINK IT WAS
18 WALNUT STREET GOING INTO SOUTH JONES. I TELL MCCREARY THAT
19 IT WAS A CAR COMING DOWN THE ROAD DRIVING A FAST WITH NO
20 LIGHTS ON. SO I TOLD HIM --

21 Q. THE CAR WAS COMING DOWN RATHER FAST AND HAD NO LIGHTS
22 ON; IS THAT RIGHT?

23 A. YES, SIR.

24 Q. OKAY.

25 A. SO WE WAS AT THE STOP SIGN AND I TELL MCCREARY TO BLINK

1 HIS LIGHTS ON AND OFF AND LET THE DRIVER OF THE OTHER CAR
2 KNOW TO CUT HIS LIGHTS ON AND SO THE DRIVER OF THE BMW
3 PULLED UP IN THE DRIVEWAY.

4 Q. AFTER YOU FLASHED YOUR LIGHTS?

5 A. YES, SIR.

6 Q. AND AT THAT TIME MY BROTHER YELLED OUT THE WINDOW CUT
7 YOUR LIGHTS ON. SO AFTER THAT WE STARTED TO PULL OFF A
8 LITTLE BIT, BUT MCCREARY ASKED MY BROTHER TO ASK THE TWO
9 LITTLE WHITE DUDES DO THEY SMOKE REEFER. THE WHITE DUDE
10 SAID YEAH AND THAT HE AIN'T GOT NONE RIGHT NOW. SO I LEFT
11 IT AT THAT, BUT MCCREARY DIDN'T. HE TELL MY BROTHER, WELL,
12 JUST GET HIS CAR, YOU KNOW, SO BY THAT TIME MY BROTHER
13 ALREADY HAD DONE GOT THE PISTOL FROM MCCREARY AND JUMPED OUT
14 OF THE CAR. BY THE TIME I JUMPED OUT OF THE CAR TO GO STOP
15 HIM, LIKE I SAY, I WAS ALREADY, YOU KNOW, ON TWENTY YEARS
16 SUSPENDED THREE YEARS PROBATION, SO I WASN'T OUT LOOKING FOR
17 ANY TROUBLE. WHEN I JUMPED OUT, I JUMPED OUT TO STOP MY
18 BROTHER, BUT IT WAS TOO LATE.

19 Q. OKAY. AT WHAT POINT DID YOU TALK WITH MR. MATLOCK
20 ABOUT ENTERING A PLEA IN THIS CASE?

21 A. I REALLY DIDN'T WANT TO TALK ABOUT NO PLEA BECAUSE THE
22 WHOLE TIME WHEN WE WAS MEETING I WAS TELLING HIM I DIDN'T
23 HAVE NO INVOLVEMENT IN IT SO I'M NOT GOING TO PLEA TO NO
24 THIRTY YEARS.

25 Q. WOULD YOU SAY IT AGAIN? I'M SORRY.

1 A. I SAID THE TIME THAT HE CAME WITH THE INITIAL THIRTY-
2 YEAR PLEA, I TELL HIM I'M NOT GOING TO PLEAD TO IT BECAUSE I
3 DIDN'T HAVE NO INVOLVEMENT IN THE THING, SO I AIN'T WANTING
4 TO PLEA TO NO THIRTY YEARS FOR SOMETHING I DIDN'T DO.

5 Q. OKAY. SO YOU DIDN'T WANT TO PLEAD TO SOMETHING THAT
6 YOU DIDN'T DO; CORRECT?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND YOU MAINTAINED THAT POSITION UP UNTIL
9 ALMOST TRIAL; IS THAT CORRECT?

10 A. YES, SIR, I DID.

11 Q. LET ME ASK YOU THIS: WHEN YOU--ALL LEFT THE SCENE THAT
12 NIGHT, DID THE BMW DRIVE OFF?

13 A. YES, SIR. HE PULLED OFF LIKE THERE WASN'T NOTHING
14 WRONG WITH HIM.

15 Q. OKAY. DID YOU HAVE ANY -- YOU KNEW THAT A GUN HAD BEEN
16 FIRED?

17 A. YES, SIR.

18 Q. DID YOU KNOW THAT ANYONE HAD BEEN SHOT?

19 A. NO, SIR, I DIDN'T.

20 Q. DID YOU ASK YOUR BROTHER?

21 A. YES, SIR.

22 Q. WHAT DID HE SAY?

23 A. HE SAID HE SHOT THE CAR.

24 Q. OKAY. NOW, THE -- SO YOU GET UP ON THE EVE OF TRIAL
25 AND YOU'RE HAVING THESE MOTION HEARINGS.

1 A. YES, SIR.

2 Q. AT SOME POINT DURING THAT WEEK -- WAS IT THAT WEEK THAT
3 YOU CHANGED YOUR MIND TO ENTER A PLEA?

4 A. NO, SIR. IT WAS THAT FRIDAY, THE DAY I PLEADED.

5 Q. OKAY. SO YOU CHANGED YOUR MIND THAT DAY THAT YOU
6 ENTERED THE PLEA?

7 A. YES, SIR.

8 Q. WHEN DID YOU TALK WITH MR. MATLOCK ABOUT THAT?

9 A. THAT MORNING, LIKE, 10:55, ELEVEN O'CLOCK, BEFORE LUNCH
10 BREAK.

11 Q. OKAY. AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
12 STATE'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE THAT?

13 A. YES, SIR.

14 Q. IS THAT YOUR SIGNATURE?

15 A. YES, SIR.

16 Q. AND ARE THOSE YOUR INITIALS THAT YOU INITIALLED?

17 A. YES, SIR.

18 Q. DO YOU RECALL WHEN THAT WAS SIGNED?

19 A. NO, SIR.

20 Q. OKAY. WAS IT PRIOR TO YOUR PLEA?

21 A. IF IT WAS, HE DIDN'T NEVER TELL ME.

22 Q. OKAY. YOU DON'T REMEMBER WHEN YOU SIGNED IT?

23 A. NO, SIR.

24 Q. LEAVE THAT RIGHT THERE. THAT'S GOOD. DID MR. MATLOCK
25 EXPLAIN TO YOU ABOUT THE HAND OF ONE IS THE HAND OF ALL?

1 A. YES, SIR.

2 Q. WHAT DID HE TELL YOU ABOUT THAT?

3 A. HE KEPT GIVING ME THE EXAMPLE THAT, LIKE, IF SOMETHING
4 HAPPENED AND I HAPPEN TO BE THERE THAT AND IT'S MORE THAN
5 TWO PEOPLE, EVERYBODY GET CHARGED WITH EVERYTHING, WITH THE
6 SAME CHARGE.

7 Q. AND IS THAT THE WAY HE EXPLAINED IT TO YOU?

8 A. YES, SIR.

9 Q. DID HE TALK TO YOU AT ALL ABOUT MERE PRESENCE OF
10 SOMEONE---

11 A. NO, SIR.

12 Q. ---AT A CRIME?

13 A. NO, SIR.

14 Q. DID YOU EVER HEAR HIM MENTION THAT?

15 A. NO, SIR.

16 Q. AND SO WAS THAT YOUR UNDERSTANDING AS TO THE HAND OF
17 ONE IS THE HAND OF ALL?

18 A. YES, SIR.

19 Q. DID YOU HAVE ANY OTHER UNDERSTANDING?

20 A. NO, SIR.

21 Q. DID HE TELL YOU ANYTHING ELSE ABOUT IT?

22 A. NO, SIR.

23 Q. DID HE EXPLAIN TO YOU THE ELEMENTS, THE NECESSARY
24 ELEMENTS OF MURDER?

25 A. YES, SIR.

- 1 Q. OKAY. WHAT DID HE TELL YOU?
- 2 A. THAT IT'S A CAPITAL OFFENSE, THAT IT CAN CARRY LIFE
3 WITHOUT PAROLE OR --
- 4 Q. OKAY. SO HE TOLD YOU THE PENALTIES?
- 5 A. UH-HUH.
- 6 Q. IS THAT CORRECT?
- 7 A. YES, SIR.
- 8 Q. ALL RIGHT. BUT DID HE EXPLAIN TO YOU THE NECESSARY
9 CRUCIAL ELEMENTS----
- 10 A. NO, SIR.
- 11 Q. ----OF MURDER?
- 12 A. NO, SIR.
- 13 Q. HE DID NOT?
- 14 A. NO, SIR.
- 15 Q. DID HE EXPLAIN TO YOU WHAT WOULD HAVE BE PROVED BY THE
16 STATE FOR THAT?
- 17 A. NO, SIR.
- 18 Q. DID HE EXPLAIN TO YOU THE CRUCIAL ELEMENTS FOR
19 ATTEMPTED ARMED ROBBERY?
- 20 A. NO, SIR.
- 21 Q. DID HE EXPLAIN TO YOU THE ELEMENTS OF WHAT ATTEMPT IS?
- 22 A. NO, SIR.
- 23 Q. OR HOW ABOUT ARMED ROBBERY AND WHAT THE STATE WOULD
24 HAVE TO PROVE BEYOND A REASONABLE DOUBT AS TO YOU?
- 25 A. NO, SIR.

1 Q. DID HE EXPLAIN TO YOU THE ELEMENTS OF FAILURE TO STOP
2 FOR A BLUE LIGHT?

3 A. NO, SIR.

4 Q. DID HE EXPLAIN TO YOU WHAT THE STATE WOULD HAVE TO
5 PROVE BEYOND A REASONABLE DOUBT AS TO THOSE ELEMENTS BEFORE
6 YOU COULD BE CONVICTED OF THAT?

7 A. NO, SIR.

8 Q. DID HE EXPLAIN TO YOU WHAT CRUCIAL ELEMENTS OF
9 CONSPIRACY WAS?

10 A. NO, SIR.

11 Q. AND WHAT -- AND THAT THE STATE WOULD HAVE TO PROVE EACH
12 OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT BEFORE YOU COULD
13 BE FOUND GUILTY?

14 A. NO, SIR.

15 Q. DO YOU REMEMBER ANY CONVERSATION WITH HIM AS TO THE
16 CRUCIAL ELEMENTS OF THE OFFENSES TO WHICH YOU ENTERED A PLEA
17 OF GUILTY THAT DAY?

18 A. NO, SIR.

19 Q. AND DID HE EVER MENTION TO YOU MERE PRESENCE?

20 A. NO, SIR.

21 Q. AND HOW THAT WOULD PLAY OR WOULD NOT PLAY INTO THIS
22 CASE?

23 A. NO, SIR, HE DIDN'T.

24 MR. GREELEY: ANSWER ANY QUESTIONS THE ATTORNEY GENERAL
25 MIGHT HAVE, MR. GORDON.

1 THE WITNESS: YES, SIR.

2 CROSS-EXAMINATION

3 MONTA GORDON BY MS. VAN GINHOVEN:

4 Q. MR. GORDON, DID YOUR ATTORNEY EVER GO OVER THE
5 INDICTMENTS WITH YOU?

6 A. NO, MA'AM.

7 Q. YOU NEVER SAW YOUR INDICTMENTS?

8 A. NO, MA'AM, NOT UNTIL THE MORNING OF MY PLEA.

9 Q. BUT YOU DID SEE THEM THE MORNING OF YOUR PLEA?

10 A. THAT WAS THE FIRST TIME.

11 Q. DID YOU LOOK AT THEM?

12 A. YEAH. I DIDN'T UNDERSTAND THEM.

13 Q. YOU DIDN'T READ THEM?

14 A. I READ THE BACK OF IT AND WHAT'S -- WHAT THEY GOT ME
15 CHARGED WITH.

16 Q. YOU READ THAT?

17 A. YES, MA'AM.

18 Q. DO YOU REMEMBER WHEN THE JUDGE READ OUT THE INDICTMENTS
19 DURING YOUR PLEA, READ WHAT YOU WERE CHARGED WITH?

20 A. WHEN HE READ THEM OUT?

21 Q. UH-HUH.

22 A. YES, MA'AM.

23 Q. AND HE ADVISED YOU OF THE POTENTIAL SENTENCES, DIDN'T
24 HE?

25 A. HE GIVE ME THE -- WELL, I SEEN THE PUNISHMENT FOR EACH

1 CHARGE WAS.

2 Q. RIGHT. DO YOU REMEMBER WHEN HE ASKED YOU IF YOU WERE
3 SATISFIED WITH YOUR ATTORNEY?

4 A. YES, MA'AM.

5 Q. DO YOU REMEMBER SAYING YES?

6 A. YES, MA'AM.

7 Q. ARE YOU SAYING YOU'D RATHER GO BACK TO SQUARE ONE AND
8 FACE THE CARJACKING CHARGES AS WELL AS POSSESSION OF WEAPON
9 CHARGES?

10 A. YES, MA'AM.

11 Q. YOU WOULD RATHER FACE ALL THAT AND GO TO TRIAL THAN
12 PLEAD GUILTY?

13 A. I MEAN, 'CAUSE I HAD A -- AT THE POINT I THINK I HAD A
14 BETTER CHANCE, 'CAUSE I DIDN'T KNOW NOTHING ABOUT THE
15 CARJACKING CHARGE UNTIL THAT MORNING. I NEVER SEEN A
16 WARRANT, ARREST WARRANT, FOR NO CARJACKING CHARGE.

17 Q. DO YOU REMEMBER WHEN THE SOLICITOR WENT OVER ALL THE
18 FACTS DURING THE GUILTY PLEA?

19 A. THE FACTS OF WHAT? ABOUT WHAT?

20 Q. WHAT?

21 A. THE FACTS ABOUT WHAT?

22 Q. ALL THE CHARGES, WHAT OCCURRED THAT NIGHT. THE
23 SOLICITOR TOLD THE JUDGE EVERYTHING THAT OCCURRED THAT NIGHT
24 OR WHAT THE STATE WOULD TRY TO PROVE AGAINST YOU.

25 A. YES, MA'AM.

- 1 Q. DO YOU REMEMBER THE SOLICITOR DOING THAT?
- 2 A. YES, MA'AM.
- 3 Q. DO YOU HAVE A COPY OF THE TRANSCRIPT WITH YOU?
- 4 A. YES, MA'AM. IT'S IN THE HOLDING CELL.
- 5 Q. AND DO YOU REMEMBER WHEN YOU AGREED WITH THE FACTS AS
- 6 THE SOLICITOR HAD STATED?
- 7 A. YES, MA'AM.
- 8 Q. SO YOU DON'T DISPUTE WHAT HAPPENED THAT NIGHT, DO YOU?
- 9 A. NO, 'CAUSE I KNOW WHAT HAPPENED.
- 10 Q. AND DO YOU REMEMBER BEING THE FIRST ONE TO PLEAD
- 11 GUILTY?
- 12 A. YES, MA'AM.
- 13 Q. AND YOU PLED GUILTY KNOWING YOU WERE GOING TO HAVE TO
- 14 TESTIFY AGAINST YOUR BROTHER AND YOUR COUSIN; RIGHT?
- 15 A. YES, MA'AM.
- 16 Q. AND YOU REMEMBER SIGNING A PLEA AGREEMENT, DON'T YOU?
- 17 A. YES, MA'AM, THAT MORNING.
- 18 Q. UH-HUH.
- 19 A. FRIDAY MORNING.
- 20 Q. AND YOU REMEMBER SIGNING THIS STATEMENT RIGHT HERE,
- 21 DON'T YOU?
- 22 A. YES, MA'AM.
- 23 Q. AND AS THE JUDGE POINTED OUT, YOU'VE BEEN IN COURT
- 24 BEFORE, HAVEN'T YOU?
- 25 A. YES, MA'AM. LIKE, THREE MONTHS BEFORE THIS INCIDENT

1 HAPPENED.

2 Q. AND ARE YOU SAYING TODAY THAT YOU WEREN'T COMPETENT TO
3 GO THROUGH WITH YOUR GUILTY PLEA?

4 A. CAN YOU EXPLAIN THAT?

5 Q. DO YOU THINK YOU'RE MENTALLY INCOMPETENT?

6 A. YEAH.

7 Q. YOU THINK YOU ARE?

8 A. YEAH.

9 Q. HAVE YOU EVER HAD PROBLEMS BEFORE?

10 A. NO.

11 Q. DO YOU REMEMBER WHEN THE JUDGE ASKED YOU IF YOU HAD
12 BEEN UNDER THE INFLUENCE OF ANY DRUGS OR ANYTHING DURING THE
13 PLEA?

14 A. YES, MA'AM; I REMEMBER THAT.

15 Q. DO YOU REMEMBER WHEN THE JUDGE ASKED YOU HOW YOU WISH
16 TO PLEAD?

17 A. YES, MA'AM.

18 Q. WHAT DID YOU SAY?

19 A. GUILTY.

20 Q. WELL, WHY DID YOU PLEAD GUILTY TO SOMETHING YOU DIDN'T
21 KNOW WHAT YOU WERE PLEADING GUILTY TO?

22 A. 'CAUSE THE WHOLE TIME MR. MATLOCK WAS SAYING THAT WOULD
23 BE A BETTER WAY TO GO ABOUT IT INSTEAD OF TAKING A TRIAL AND
24 BEING THAT HE WAS MY ATTORNEY, I'M GOING TO GO WITH WHAT HE
25 SAY.

1 Q. DO YOU KNOW WHY HE TOLD YOU THAT?

2 A. NO, MA'AM.

3 Q. YOU DON'T THINK IT'S 'CAUSE OF ALL THE EVIDENCE THAT
4 THE STATE HAD AGAINST YOU?

5 A. WELL, BEFORE THAT FRIDAY I PLEADED, HE WAS TELLING ME
6 THAT I HAVE A GOOD CHANCE AT TRIAL. THAT WHAT THE WHOLE
7 TIME HE WAS SAYING WHEN HE WAS COMING TO VISIT ME, BUT THAT
8 MONDAY BEFORE THAT FRIDAY HE COME AND SAW ME AND HE LET ME
9 KNOW THAT EVERYTHING WAS LOOKING GOOD. HE CAME AGAIN THAT
10 FOLLOWING WEDNESDAY, THAT WEDNESDAY, SAME WEEK OF THE
11 WEDNESDAY OF THAT PLEA, THAT'S WHEN HE TELL ME THINGS WAS
12 LOOKING BAD. SO FRIDAY I PLED.

13 Q. YOU UNDERSTAND THAT THE PASSENGER IN THE CAR WAS GOING
14 TO TESTIFY AGAINST YOU; RIGHT?

15 A. YES, MA'AM.

16 Q. AND THAT THE STATEMENTS THAT YOUR CO-DEFENDANTS HAD
17 MADE, ALTHOUGH THEY MAY NOT HAVE ALL BEEN THE SAME THING,
18 BUT SOME OF THEM IMPLICATED YOU; CORRECT?

19 A. YES, MA'AM.

20 Q. AND SO, AGAIN, YOU WANT TO GO BACK TO THE VERY
21 BEGINNING AND FACE ALL THESE CHARGES. IS THAT WHAT YOU WANT
22 FROM THIS COURT TODAY?

23 A. FACE ALL THE CHARGES. ALL WHAT CHARGES?

24 Q. IF YOU -- IF THE COURT GRANTED YOU YOUR PCR TODAY, YOU
25 COULD GO BACK AND IT WOULD BE AT SQUARE ONE. YOU'D BE

1 FACING MURDER, ATTEMPTED ARMED ROBBERY, THE CONSPIRACY
2 CHARGES, THE CARJACKING CHARGES, THE DRIVING UNDER
3 SUSPENSION CHARGES. YOU'D BE FACING THE SAME CHARGES THAT
4 YOU PLED GUILTY TO AND THE ONES THAT WERE DISMISSED AS PART
5 OF YOUR PLEA. DO YOU UNDERSTAND THAT?

6 A. YES, MA'AM.

7 Q. AND YOU UNDERSTAND THAT THEY DON'T HAVE TO MAKE ANY
8 TYPE OF RECOMMENDATION FOR SENTENCING? YOU UNDERSTAND THAT?

9 A. YES, MA'AM.

10 Q. AND YOU'D RATHER DO THAT?

11 A. THAT'S A TOUGH QUESTION THERE. NO, MA'AM. NO, MA'AM.
12 NO, MA'AM.

13 Q. YOU DON'T WANT TO DO THAT?

14 A. NO, MA'AM.

15 Q. WELL, WHAT DO YOU WANT THIS COURT TO DO, REDUCE YOUR
16 TIME?

17 A. NO. IT'S NOT ABOUT THE TIME. I'M NOT WORRIED ABOUT
18 THE TIME. THE TIME AIN'T WHAT'S GETTING TO ME. WHAT'S
19 GETTING TO ME IS KNOWING THAT I'M LOCKED UP FOR SOMETHING I
20 KNOW I DIDN'T DO.

21 Q. DID YOU TRY TO STOP ANTONIO FROM SHOOTING THE GUN INTO
22 THE CAR?

23 A. THAT'S MY BABY BROTHER. YOU WOULD THINK I WOULD STOP
24 HIM. I JUST DID THREE YEARS BEFORE THAT EVEN HAPPENED, SO I
25 KNEW HOW IT FEELS TO BE LOCKED UP.

1 Q. WERE PEOPLE GOING TO TESTIFY TO THAT?

2 A. YEAH.

3 Q. WHO WAS GOING TO TESTIFY TO THAT?

4 A. MY BROTHER. MY BROTHER TOLD THEM FROM DAY ONE THAT I
5 DIDN'T HAVE NOTHING TO DO WITH IT, THAT I WAS TRYING TO STOP
6 HIM. HE MIGHT HAVE STATED THAT I WAS STANDING OUTSIDE THE
7 CAR WITH HIM, BUT HE TOLD THEM THAT I WAS TRYING TO STOP
8 HIM, THAT I DIDN'T WANT HIM TO DO THAT.

9 Q. BUT YOU WERE GOING TO TESTIFY AGAINST ANTONIO, IS THAT
10 NOT RIGHT, HAD ANTONIO GONE TO TRIAL?

11 A. I --

12 Q. THAT WAS THE OFFER TO PLEAD GUILTY; RIGHT?

13 A. YES, MA'AM.

14 Q. AND YOU WERE GOING TO TESTIFY THAT HE WAS THE SHOOTER?

15 A. I WASN'T GOING TO DO THAT.

16 Q. YOU WERE GOING TO DO THAT AS PART OF YOUR PLEA
17 AGREEMENT?

18 A. I WASN'T GOING TO DO THAT.

19 Q. SO YOU WERE GOING TO BREAK YOUR PLEA AGREEMENT. HAD
20 THEY -- IF YOU HAD -- IF ANTONIO HAD GONE TO TRIAL, YOU
21 WEREN'T GOING TO TESTIFY TRUTHFULLY THAT HE WAS THE SHOOTER?
22 IS THAT WHAT YOU'RE TESTIFYING TO?

23 A. IF IT HAD CAME DOWN TO IT.

24 Q. YOU WOULDN'T HAVE DONE IT? YOU WOULD HAVE SIGNED THIS
25 AGREEMENT AND THEN LIED?

1 A. NO.

2 Q. SO ANTONIO NEVER SHOT THE GUN?

3 A. YES.

4 Q. DO YOU REMEMBER MAKING A STATEMENT IN COURT SAYING THAT
5 YOU WERE SORRY FOR WHAT HAD HAPPENED?

6 A. YES, MA'AM.

7 MS. VAN GINHOVEN: OKAY. I HAVE NO FURTHER QUESTIONS.

8 MR. GREELEY: BRIEFLY. YOUR HONOR, I WOULD JUST -- THE
9 SOLICITOR BROUGHT UP THE -- HAD MENTIONED ABOUT MY CLIENT
10 LISTENING TO THE FACTS AS PRESENTED DURING THE PLEA. THOSE
11 ARE ON BOOK TWO, PAGE 189, LINE EIGHTEEN THROUGH 190 --
12 ABOUT 191, LINE EIGHTEEN. AND I WOULD JUST POINT OUT FOR
13 THE COURT THAT IN REGARDS TO ALL OF THOSE FACTS THAT ARE
14 LISTED, THE ONLY MENTION ABOUT MR. GORDON IS WHEN IT TALKS
15 ABOUT -- IT SAYS BEGINNING LINE TWENTY-FOUR ON PAGE 190,
16 ANTONIO GORDON HOPPED OUT AFTER GETTING THE GUN, WHICH
17 TERRENCE MCCREARY HAD ACQUIRED EARLIER THAT NIGHT. HE
18 HOPPED OUT WITH THE GUN AT THAT POINT. SHORTLY AFTERWARDS
19 MR. GORDON, MY CLIENT, GOT OUT OF THE CAR AND STOOD NEXT TO
20 THE CAR AND THE VICTIM AND THAT WAS THE EXTENT OF THE
21 FACTUAL CIRCUMSTANCES THAT WERE GIVEN IN REGARDS TO -- IN
22 REGARDS TO THE MURDER AND THE ATTEMPTED ARMED ROBBERY FOR MY
23 CLIENT. THAT'S ALL I HAVE. I DON'T HAVE ANY FURTHER
24 QUESTIONS OF MY CLIENT, YOUR HONOR.

25 THE COURT: ALL RIGHT. JUST A MINUTE. MR. GORDON,---

1 MR. GORDON: YES, SIR.

2 THE COURT: ---ON PAGE 185 OF THE -- PART ONE OF THE
3 TRANSCRIPT DURING YOUR SENTENCING PLEA THE JUDGE -- TRIAL
4 JUDGE ASKED YOU, HAS ANYONE MADE ANY KIND OF THREATS OR USED
5 PRESSURE OR COERCION TO CAUSE YOU TO ENTER YOUR GUILTY --
6 YOUR PLEA OF GUILTY AND YOU ANSWERED NO; IS THAT CORRECT?

7 MR. GORDON: YES, SIR.

8 THE COURT: THE COURT ASKED YOU, ARE YOU AT THIS TIME
9 UNDER THE INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
10 INTOXICATED AND YOUR ANSWER WAS, NO, SIR; IS THAT CORRECT?

11 MR. GORDON: YES, SIR.

12 THE COURT: THE COURT ASKED YOU, HAVE YOU EVER BEEN
13 TREATED FOR ANY MENTAL OR EMOTIONAL DISABILITY AND YOU
14 ANSWERED, NO, SIR; IS THAT CORRECT?

15 MR. GORDON: YES, SIR.

16 THE COURT: YOU WERE ASKED, YOU HAVE A RIGHT TO TRIAL
17 BY JURY. ARE YOU ENTERING YOUR PLEA FREELY AND VOLUNTARILY
18 TO EACH OF THESE CHARGES AND YOU ANSWERED, YES, SIR; IS THAT
19 CORRECT?

20 MR. GORDON: YES, SIR.

21 THE COURT: YOU WERE ADVISED YOU HAVE A RIGHT TO A
22 TRIAL BY JURY ON EACH OF THESE CHARGES. THEY CAN BE TRIED
23 TOGETHER BECAUSE THEY OCCURRED IN ONE CONTINUAL EVENT.
24 YOU'D BE ELIGIBLE TO BE TRIED BY TWELVE MEMBERS OF THE
25 COMMUNITY, TWELVE OF YOUR PEERS, AND THAT TRIAL IS SCHEDULED

1 MONDAY. YOU HAVE THE RIGHT TO REMAIN -- WELL, AS TO THAT
2 TRIAL, YOU'RE PRESUMED INNOCENT. YOU DO NOT HAVE TO PROVE
3 YOUR INNOCENCE AT THAT TRIAL. THE STATE, HOWEVER, MUST
4 PROVE YOUR GUILT BEYOND A REASONABLE DOUBT BEFORE THAT JURY
5 COULD CONVICT YOU. DO YOU UNDERSTAND THAT?

6 MR. GORDON: YES, SIR.

7 THE COURT: AND YOUR ANSWER WAS, YES, SIR; IS THAT
8 CORRECT?

9 MR. GORDON: YES, SIR.

10 THE COURT: THE COURT ADVISED YOU FURTHER, YOU HAVE THE
11 RIGHT TO REMAIN SILENT, THAT IS, NO ONE CAN MAKE YOU TESTIFY
12 OR GIVE ANY STATEMENT ABOUT THIS TO ANYONE. YOU HAVE THE
13 RIGHT TO CONFRONT THE WITNESSES AGAINST YOU. YOU OR YOUR
14 ATTORNEY HAVE THE RIGHT TO SEE, HEAR, QUESTION AND CROSS-
15 EXAMINE THE WITNESSES. YOU HAVE THE RIGHT TO SEE AND HEAR
16 THEM AND EITHER YOU OR YOUR ATTORNEY CROSS-EXAMINE. YOU
17 HAVE THE RIGHT TO REQUIRE THE STATE TO ISSUE A SUBPOENA TO
18 BRING INTO COURT WITNESSES WHO YOU THINK WILL TESTIFY ON
19 YOUR BEHALF. DO YOU UNDERSTAND ALL THAT? AND YOUR ANSWER
20 WAS, YES, SIR; IS THAT CORRECT?

21 MR. GORDON: YES, SIR.

22 THE COURT: DO YOU -- THE COURT ASKED, DO YOU NEED ME
23 TO FURTHER EXPLAIN, AND YOUR ANSWER WAS, NO, SIR; IS THAT
24 CORRECT?

25 MR. GORDON: YES, SIR.

1 THE COURT: AND THE COURT ASKED, DO YOU HAVE ANY
2 QUESTIONS ABOUT THOSE RIGHTS AND YOU ANSWERED, NO, SIR; IS
3 THAT CORRECT?

4 MR. GORDON: YES, SIR.

5 THE COURT: THE COURT ASKED YOU FURTHER, IF YOU'VE
6 GIVEN A STATEMENT IN REGARD TO THESE EVENTS, YOU HAVE THE
7 RIGHT AND YOU'VE SAT IN AND I'VE ALREADY DONE THAT THIS
8 MORNING ON ANOTHER STATEMENT, ONE GIVEN MY MR. MCCREARY, YOU
9 HAVE THE RIGHT TO HAVE THE STATE PROVE TO ME AND A RULING
10 MADE BY ME THAT THAT STATEMENT WAS GIVEN FREELY, VOLUNTARILY
11 AND UNDERSTANDING YOUR CONSTITUTIONAL RIGHTS. YOU
12 UNDERSTAND THAT? AND YOUR ANSWER IS, YES, SIR; IS THAT
13 CORRECT?

14 MR. GORDON: YES, SIR.

15 THE COURT: THE COURT ADVISED YOU FURTHER THAT WHEN YOU
16 ENTER A PLEA OF GUILTY YOU GIVE UP ALL THESE RIGHTS. YOU
17 GIVE UP YOUR RIGHT TO A JURY TRIAL, YOUR PRESUMPTION OF
18 INNOCENCE, YOUR RIGHT TO REMAIN SILENT, YOUR RIGHT TO
19 CONFRONT THE WITNESSES AGAINST YOU, THE RIGHT TO HAVE YOUR
20 WITNESSES COME TO COURT. YOU GIVE UP DEFENSE THAT YOU MAY
21 HAVE AND THE RIGHT TO HAVE YOUR STATEMENT REVIEWED BY A
22 COURT. DO YOU UNDERSTAND ALL OF THAT? AND YOUR ANSWER WAS,
23 YES, SIR; IS THAT CORRECT?

24 MR. GORDON: YES, SIR.

25 THE COURT: THEN THE COURT ASKED YOU, KNOWING ALL THESE

1 THINGS, I ASK AGAIN HOW DO YOU PLEAD TO MURDER INVOLVING THE
2 DEATH OF ERIC PETER KRENN, AND YOUR ANSWER WAS GUILTY; IS
3 THAT CORRECT?

4 MR. GORDON: YES, SIR.

5 THE COURT: AND, OF COURSE, HE GOES THROUGH EACH OF THE
6 CHARGES. NOW, HE ASKED YOU QUESTIONS ABOUT THE -- IN THE
7 INDICTMENTS AND WHAT IS ALLEGED TO HAVE OCCURRED AND YOU
8 AGREED WITH ALL OF THAT, THAT YOU UNDERSTOOD ALL THAT; IS
9 THAT CORRECT?

10 MR. GORDON: YES, SIR.

11 THE COURT: THAT'S ALL I HAVE. ANY QUESTIONS EITHER
12 WANT TO ASK AS A FOLLOW UP TO WHAT I JUST ASKED?

13 MR. GREELEY: NO, YOUR HONOR.

14 MS. VAN GINHOVEN: I HAVE NOTHING; NO.

15 THE COURT: THANK YOU. YOU MAY STAND DOWN, SIR.

16 MR. GREELEY: YOUR HONOR, THAT WOULD BE THE CASE OF THE
17 PETITIONER AND I WOULD LIKE TO SPEAK ON A SHORT MATTER.

18 THE COURT: ALL RIGHT. ANYTHING FROM -- ANYTHING ELSE
19 FROM THE STATE?

20 MS. VAN GINHOVEN: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU MAY BE SEATED, SIR. YES,
22 SIR. I'LL HEAR YOU BRIEFLY.

23 MR. GREELEY: YOUR HONOR, I'M GOING TO MAKE MY ARGUMENT
24 DOWN TO A VERY NARROW ISSUE IN THIS CASE. I AM CITING AND
25 IT'S JUST FOR GENERAL CITE PURPOSES, NOT PARTICULAR ON A

1 CASE, ON-POINT CASE, BUT PITTMAN VERSUS STATE AND, OF
2 COURSE, THERE ARE SEVERAL REQUIREMENTS BEFORE A PERSON CAN
3 BE FOUND TO HAVE ENTERED A KNOWING PLEA AND THAT IS THE
4 ISSUE THAT I AM ADDRESSING HERE.

5 THERE ARE CERTAIN CONSTITUTIONAL RIGHTS THAT HAVE TO
6 EXPLAINED TO THAT PERSON. IN THIS PARTICULAR GUILTY PLEA,
7 IT APPEARS THAT THOSE WERE TOUCHED ON AND THOSE WERE
8 EXPLAINED, AS THE COURT HAS JUST READ OUT, UNDER BOYKIN. A
9 PERSON ALSO NEEDS TO BE TOLD THE MAXIMUM PENALTIES. IN THIS
10 PARTICULAR CASE THOSE WERE DONE AND HE WAS EXPLAINED THAT.
11 HOWEVER, YOUR HONOR, IT SAYS THAT IN ADDITION TO THE
12 REQUIREMENTS OF BOYKIN, A DEFENDANT ENTERING A GUILTY PLEA
13 MUST BE AWARE OF THE NATURE AND CRUCIAL ELEMENTS OF THE
14 OFFENSE.

15 IN THIS PARTICULAR SITUATION WE HAVE FIVE OFFENSES TO
16 WHICH HE PLED GUILTY. I WOULD SUBMIT TO THE COURT, IN
17 LOOKING THROUGH THE TRANSCRIPT AND THE LITANY OF THE GUILTY
18 PLEA, THE CRUCIAL ELEMENTS OF THE OFFENSE WERE NOT EXPLAINED
19 TO THE CLIENT, WERE NOT EXPLAINED TO THE DEFENDANT. THE
20 JUDGE DID READ THE INDICTMENT. I ADMIT THAT. IT IS IN
21 THERE. BUT AT NO TIME WERE THE CRUCIAL ELEMENTS OF EACH
22 OFFENSE EXPLAINED TO HIM, NOR WAS HE TOLD THAT A JURY WOULD
23 BE REQUIRED TO FIND EACH OF THOSE ELEMENTS -- HIM GUILTY OF
24 EACH OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT. THIS
25 WOULD ESPECIALLY PLAY TRUE IN THIS CASE TO WHERE WE HAVE A

1 SITUATION OF A PERSON ENTERING A PLEA TO MURDER THAT IS
2 GOING TO BRING IN THE AGENCY OF PRINCIPAL WHEN HE IS NOT --
3 IT'S ADMITTED THAT HE IS NOT THE SHOOTER AS FAR AS HIS NEED
4 TO BE AN ACCESSORY.

5 I WOULD SUBMIT TO THE COURT THAT THE FACTS THAT WERE
6 GIVEN DURING HIS PLEA ARE VERY LEAN IN REGARDS TO HIM BEING
7 HELD CULPABLE AS A MURDERER, BECAUSE IT ONLY MENTIONS THAT
8 HE GOT OUT OF THE CAR AND STOOD BESIDE THE CAR. THAT'S ALL
9 HE -- ALL THE FACTS THAT ARE GIVEN IN REGARDS TO MY CLIENT
10 UNDER HIS PLEA OF MURDER IN THIS CASE. AND SO, YOUR HONOR,
11 I WOULD SUBMIT THAT THE EVIDENCE THAT'S BEEN SHOWN IN THIS
12 CASE AND IN THE TRANSCRIPT, HE WAS NOT PROPERLY APPRISED OF
13 THE NATURE AND UNDERSTANDING OF THE CRUCIAL ELEMENTS OF EACH
14 OF THE OFFENSE. HE WAS NOT APPRISED THAT EACH OF THOSE
15 WOULD HAVE TO BE PROVED BEYOND A REASONABLE DOUBT AND THERE
16 WAS NO LITANY OR ADEQUATE EXPLANATION TO HIM AS TO WHAT A
17 PRINCIPAL IS AND I WOULD POINT ALSO TO THE TRANSCRIPT TO
18 WHERE EVEN HIS DEFENSE ATTORNEY IN SENTENCING SEEMED TO TAKE
19 HIM OUT OF THE REALM OF PRINCIPAL IN ASKING FOR THE COURT TO
20 GO ALONG WITH THE SENTENCE AND THAT HE DID NOT URGE OR
21 CONTRIBUTE TO THIS CRIME OF HIS BROTHER.

22 THE COURT: ALL RIGHT. THANK YOU, SIR.

23 MS. VAN GINHOVEN: YOUR HONOR, THE STATE DISPUTES THE
24 APPLICANT'S ALLEGATIONS. WE'VE HAD TESTIMONY FROM MR.
25 MATLOCK THAT HE DID EXPLAIN ALL THE ELEMENTS OF THE CRIME OR

1 ESPECIALLY OF MURDER, THAT THEY DISCUSSED HAND OF ONE IS THE
2 HAND OF ALL. THEY MAY HAVE DISCUSSED MERE PRESENCE. THE
3 STATE WOULD JUST SUBMIT THAT THE APPLICANT DID ENTER A
4 VOLUNTARY GUILTY PLEA AND WAS QUESTIONED CLEARLY BY THE
5 JUDGE AND THAT ALTHOUGH THE SOLICITOR STATED A BRIEF
6 RECITATION OF THE FACTS, HAD THE CASE GONE TO TRIAL, MANY
7 OTHER FACTS WOULD HAVE COME OUT INCLUDING STATEMENTS FROM
8 THE PASSENGER OF THE CAR WHERE THE VICTIM WAS KILLED AND
9 ALSO THE CO-DEFENDANT THAT WOULD HAVE IMPLICATED MR. GORDON
10 IN MORE THAN JUST STANDING BESIDE THE CAR. SO ALTHOUGH THE
11 SOLICITOR JUST STATED A BRIEF SET OF FACTS, HAD THIS CASE
12 GONE TO TRIAL, HIS CULPABILITY WOULD HAVE BEEN SHOWN THROUGH
13 OTHER TESTIMONY.

14 THE COURT: ALL RIGHT. AND I WOULD SAY THAT, YOU KNOW,
15 THE COURT IS REQUIRED NOT TO LOOK AT JUST WHAT THE TRIAL
16 JUDGE OR PLEA JUDGE ADVISED THE DEFENDANT, BUT ALSO THE
17 COURT CONSIDERS IN ADDITION TO THAT, OF COURSE, WHAT
18 INFORMATION HE RECEIVED FROM HIS DEFENSE COUNSEL. ALL OF
19 THOSE ARE TAKEN IN CONSIDERATION IN DETERMINING WHETHER HE
20 UNDERSTOOD ALL OF THIS RIGHTS OR NOT OR WHETHER THE ELEMENTS
21 OF THE OFFENSE WERE EXPLAINED TO HIM, WHETHER HE UNDERSTOOD
22 THAT AND UNDERSTOOD THE PENALTIES AND WHAT CONSTITUTIONAL
23 RIGHTS HE WAS WAIVING, GIVING UP IN ENTERING A PLEA AND LOOK
24 NOT JUST TO THE TRIAL JUDGE'S COLLOQUY WITH THE DEFENDANT AT
25 THE PLEA HEARING, BUT ALSO AS TO WHAT ADVICE WAS GIVEN HIM

1 BY THE ATTORNEY AND ALL OF THAT IS CONSIDERED IN MAKING THAT
2 DETERMINATION. THAT'S WHAT THE CASES SAY. SO THAT'S WHAT
3 THE COURT HAS TO LOOK AT.

4 I'LL TAKE THE MATTER UNDER ADVISEMENT AND I'LL RULE
5 JUST AS SOON AS I HAVE AN OPPORTUNITY TO LOOK AT IT FURTHER.
6 THANK YOU.

7 (CONCLUSION WAS REQUESTED TRANSCRIPT)

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Defense

STATE OF SOUTH CAROLINA
IN THE CIRCUIT COURT

Case No. 2001-CP-46-2217

MONTA LAMONT GORDON,

Applicant,

v.

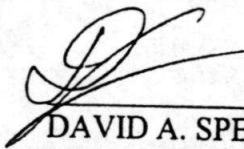
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Return of the Respondent been served upon opposing counsel, Leland Greeley, by mailing one (1) copy in an envelope properly addressed with postage prepaid this 22nd day of April, 2002, to the below address:

Leland B. Greeley, Esquire
LELAND B. GREELEY, P.A.
Post Office Box 2981
Rock Hill, South Carolina 29732



DAVID A. SPENCER
ATTORNEY FOR RESPONDENT

803-984-1203

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK) C E R T I F I C A T E

I, THE UNDERSIGNED SHANNON E. MCGILBERRY, OFFICIAL COURT REPORTER FOR THE SIXTEENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE POST-CONVICTION RELIEF HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF SEPTEMBER, 2003.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 22ND DAY OF SEPTEMBER, 2004.

Shannon E. McGilberry

 SHANNON E. MCGILBERRY

MY COMMISSION EXPIRES:

MAY 7, 2007