

1 for a couple years, and then I sort of lost contact with
2 him until later on I bought a house and was building a
3 deck and bought some materials at Lyles from Mr. Lyles,
4 and Ted was working there when he was in high school.

5 Q. Were you some kind of advisor to him at that point
6 in time when you were---

7 THE COURT: Mr. Hagler, I'm going to have to
8 interrupt you. Excuse me, Counsel, we've got the other
9 witness coming in. Would you mind stepping down for a
10 moment, please.

11 (Witness stood aside.)

12 **GARY WAYNE DURHAM, being first duly sworn, testified as**
13 **follows during DIRECT EXAMINATION by MR. FRED CRUMPLER:**

14 Q. Mr. Durham?

15 A. Yes, sir.

16 Q. Will you tell, uh, state your full name to the
17 Court, please?

18 A. Gary Wayne Durham.

19 Q. Mr. Durham, my name is Fred Crumpler. I represent
20 -- I'm one of the two attorneys who represent Mr. Ted
21 Kimble. Now, I'm asking you first, do you know Mr.
22 Kimble?

23 A. Yes, sir.

24 Q. How long have you known him?

25 A. Ever since he's been in prison. It's been six,

1 seven, eight months.

2 Q. Are you at the Southern Correctional Institute?

3 A. Yeah. Yeah. I've known him as long as he's been
4 there.

5 Q. You met him when he came there and have known him
6 while he was there?

7 A. Yes, sir.

8 Q. Now, do you also know a man whose name is William
9 Stewart?

10 A. Yes, sir.

11 Q. How do you know him?

12 A. He was at Southern Correctional, too.

13 Q. Describe him to the Court, if you will, and I'm
14 particularly referring to his habit for telling the
15 truth, if you know that.

16 A. He doesn't -- he doesn't tell the truth. He's not
17 going to tell the truth.

18 Q. Is he known for not telling the truth?

19 A. He's habitual liar.

20 Q. Have you had any occasion to overhear
21 conversations either with yourself or with him with other
22 people where he made reference to some plan that he had
23 with Ted Kimble?

24 A. Uh, he -- what that was is basically he, uh, --
25 see, he's a homosexual. William Stewart, he's a

1 homosexual. What he'll do is he'll approach young white
2 guys and he'll try to use them for money. He'll say
3 anything and do anything and try to use them, you know,
4 for money, and he'll brag about it to other people. See,
5 like, uh, when you come to prison, if you're young and
6 you're white, they're going to prey on you. And he's one
7 of those. You know, he would say anything for some
8 money, or, you know, any kind.

9 Q. Would you tell us whether he ever made a statement
10 that he had represented himself to Ted Kimble as a hit
11 man?

12 A. Yes, sir.

13 Q. Tell us what he said in that respect?

14 A. He said he, uh, he had this this -- he was going
15 to try to get this man to pay him to kill somebody. And
16 he, you know, he's, you know, guy had like a 8 to 10
17 month sentence and he knew he was getting out soon. He
18 was trying to get some, I guess get some money together.
19 And, uh, he said he had approached Mr. Kimble. And, uh,
20 he said, you know, if he doesn't, you know, he said, you
21 know, he was going to write the D.A. He was going to
22 write the D.A. in the man's case because he knew he was
23 facing a murder trial in Guilford County. Uh, basically
24 he, uh, you know, it's, you know, you'd have to, you'd
25 have to, you know, it's different. You have to

1 understand how how how prison works. It's all a game.
2 That's all it is is a game. I mean, you know, of course
3 he's not going to kill anyone. And this man, you know,
4 never approached him, never asked him -- Mr. Kimble never
5 asked him to do anything. You know, he certainly never
6 asked him to kill anyone for him. But it's -- in there
7 it's a game that these people play with authority.
8 They'll tell on you for any reason, for extra clothes,
9 having extra food or anything to get a phone call or a
10 cigarette. That's how they -- that's how they, you know,
11 it's all a game. Now, uh, you know, he didn't, you know,
12 like I said, uh---

13 Q. What was he in prison for, do you know?

14 A. No, sir. I mean, you know, he lies so much you
15 really wouldn't, you know -- I just know, you know, he's
16 approached me, you know, and uh for cigarettes, you know.

17 Q. Did you ever ask Ted whether he said -- ever
18 intended to kill anyone or make an escape or anything of
19 that kind?

20 A. Yes, sir. I've asked him, you know, several
21 times.

22 Q. And what did he say?

23 A. No.

24 MR. PANOSH: Objection, please.

25 THE COURT: Overruled.

1 MR. PANOSH: Is he going to testify?

2 THE WITNESS: Sir?

3 MR. CRUMPLER: Your Honor, I would submit at
4 the sentencing hearing the rules of evidence---

5 THE COURT: We will not strictly observe the
6 rules of evidence at this hearing.

7 MR. PANOSH: Yes, sir.

8 Q. Go ahead and answer my question, please.

9 A. No, sir. May I make a statement? I got pretty
10 close to Ted, you know, the whole time I was at Southern
11 Correctional. He comes from a christian background. Lot
12 of time he goes to church and he's invited me to church a
13 lot of times, you know. I'm not a christian, you know,
14 and a lot of times -- every time I've ever been around
15 Ted Kimble he's always tried to, you know, to get me to
16 get saved, dedicate my life to the Lord, things of that
17 nature there. I felt that we had become pretty close,
18 you know. And I feel, honestly feel, if he wanted to
19 kill somebody, he wanted to plot an escape or something
20 like that, he would have definitely told me because I was
21 one of the closest people to him period. And he's never
22 ever made any statement like that.

23 MR. CRUMPLER: I have no further questions.

24 **CROSS EXAMINATION by MR. RICHARD PANOSH:**

25 Q. Mr. Kimble ever asked you to get him a gun?

1 A. No, sir.

2 Q. Ever take \$500 from him?

3 A. No, sir.

4 Q. You say Mr. Stewart is a homosexual?

5 A. Yes, sir.

6 Q. And did you know anything about Mr. Stewart
7 breaking into Mr. Kimble's locker?

8 A. Yes, sir.

9 Q. When did that happen?

10 A. This happened on several different occasions.
11 He's, uh -- that was of the main reason he was run up by
12 the block. You had like seven or eight guys that got
13 stuff missing, and he was a known thief. He was a known
14 thief.

15 Q. So, he was a good friend of Mr. Kimble's and
16 playing up to him, but he still broke into his locker?

17 A. Yes, sir. That happens every day in there.
18 That's like I said, you know, everything is not what it
19 seems, you know. I can look at you and be your best
20 friend one minute and be plotting to rob you or steal
21 from you the next. That's just -- you have to understand
22 the type of -- you're dealing with the worst scum on
23 earth. You know, they're in prison.

24 Q. People who do breaking and entries and assault
25 people?

- 1 A. Yes, sir.
- 2 Q. What have you been convicted of, sir?
- 3 A. Many things.
- 4 Q. Would you tell the Court, please?
- 5 A. I've been on this sentence maybe nine and a half,
6 ten years. I been, uh, -- in fact, I've been sentenced
7 by the Honorable Judge Mr. McHugh on several different
8 occasions as a juvenile. Uh, currently I'm serving time
9 for second degree kidnapping.
- 10 Q. You've also been convicted of assault with a
11 deadly weapon?
- 12 A. Yes, sir. That was in prison.
- 13 Q. In prison?
- 14 A. Yes, sir.
- 15 Q. How many times you been convicted of breaking and
16 entering?
- 17 A. Several.
- 18 Q. How about burglary?
- 19 A. I don't -- I don't -- maybe it might have been
20 broke down to breaking and entering.
- 21 Q. First degree burglary in Wentworth?
- 22 A. Yes, sir. I believe that was with Mr. McHugh
23 here. I believe he sentenced me on that.
- 24 Q. Ever been convicted of larceny?
- 25 A. Yes, sir.

1 Q. How about escape?

2 A. Yes, sir. That's misdemeanor escape from uh,
3 uh,---

4 Q. Well, in order to be convicted of misdemeanor
5 escape, you still have to escape.

6 A. Yeah. I pled guilty. I pled guilty. Was gone
7 less than six hours.

8 Q. Stealing cars?

9 A. Yes, sir.

10 Q. Breaking into cars?

11 A. Yes, sir.

12 Q. Assault on a female?

13 A. Yes, sir.

14 MR. PANOSH: No further questions.

15 THE WITNESS: May I make a statement, Your
16 Honor?

17 THE COURT: No. Just answer his questions.

18 MR. CRUMPLER: No, Your Honor. Excuse me.

19 THE COURT: Come down.

20 (Witness stood aside.)

21 MR. ZIMMERMAN: Have Mr. Hagler back up.
22 Remind you you're still under oath, sir. If it please
23 the Court?

24 THE COURT: Yes, sir.

25 **JOE HAGLER, being previously duly sworn, testified as**