

1 THE COURT: Thank you.

2 (Witness stood aside.)

3 MR. PANOSH: Your Honor, that would be all
4 the evidence. We'd ask the Court permission to introduce
5 the FAX when it arrives.

6 THE COURT: That will be allowed. Do you
7 want to be heard in opposition to this defendant's
8 motions, counsel?

9 MR. PANOSH: Your Honor, we would submit on
10 the Answer that we filed in reference to the medication,
11 we would submit that the records show the defendant was
12 taking exactly the medication that he was taking at the
13 time that Your Honor saw him on that date. You've had a
14 chance to evaluate his person, his appearance, his
15 demeanor. And based upon his questions, based upon your
16 observations, you made a finding that those prescription
17 medications were not affecting him, and there's been no
18 evidence to the contrary. Also, I point out that he was
19 seen by Dr. Tyson as recently as February 22nd. Again,
20 he was on the same medication. Again, Dr. Tyson didn't
21 feel that that was affecting his ability to answer the
22 questions and give reliable information based upon the
23 statements here in court.

24 Your Honor, I think that the defendant's
25 letter when he says he was threatened is not born out by

1 the evidence. And his testimony here simply says that he
2 was advised of the potential that if he went to trial
3 that he could receive capital punishment, and that there
4 is no evidence that he was threatened by any individual.
5 He says at this time he said then that he was satisfied
6 with counsel. He says that he was coerced, but I think
7 the most important part of his testimony is that he went
8 over the transcript of plea in a room alone with his two
9 counsel and signed that transcript of plea. And there's
10 no indication whatsoever that anyone was present
11 threatening him or coercing him at that time. We'd ask
12 you to take into consideration the legal precedent we
13 cited in our Answer, and deny the motion to withdraw.

14 THE COURT: All right, thank you.

15 MR. KIMBLE: May I be heard, Your Honor?

16 THE COURT: Yes, sir. Go ahead, please.

17 MR. KIMBLE: Uh, I'd like to first of all
18 point out that environment -- that environment
19 uncontrolled versus controlled has a great impact, and
20 even the doctor himself pointed that out. I might also
21 further add that I had been mentally taunted by inmates
22 due to the press conference called---

23 MR. PANOSH: We object to any allegations
24 that haven't been previously presented in evidence.

25 THE COURT: All right, that will be

1 sustained. You need to restrict yourself to matters that
2 you have previously presented to the Court, Mr. Kimble,
3 during this hearing.

4 MR. KIMBLE: Yes, sir, Your Honor. I might
5 further add that jailers were, uh, the SBI or either the
6 detectives were handing me my medication---

7 MR. PANOSH: We object. There's been no
8 evidence of that. That hasn't been previously presented.

9 THE COURT: Again, Mr. Kimble, at this point
10 you may present your contentions supported by evidence
11 that you've already offered to the Court.

12 MR. KIMBLE: Okay. She agreed that she did
13 not ask -- the young lady agreed that she never asked her
14 employees whether or not they were administering
15 medication to me.

16 I might also point out that in the discovery
17 here that they pointed out that I was on 50mg a day, I'm
18 on 150mg a day. I get it three times a day, twice just
19 before going to bed---

20 MR. PANOSH: We again, we object to him
21 testifying. There's no evidence to support this.

22 MR. KIMBLE: He didn't bring it forward.

23 THE COURT: That is sustained. You'll need
24 to restrict yourself to matters that were in evidence
25 prior to your statement at this time.

1 MR. KIMBLE: To the facts presented already
2 is what you're saying?

3 THE COURT: Yes, sir.

4 MR. KIMBLE: Even though they were not
5 presented?

6 THE COURT: You had a full opportunity to
7 present evidence, Mr. Kimble.

8 MR. KIMBLE: May I be sworn to testify, Your
9 Honor?

10 THE COURT: Go ahead. You're still under
11 oath. Go ahead.

12 MR. KIMBLE: Stand here?

13 THE BAILIFF: Yes.

14 MR. KIMBLE: Here?

15 THE COURT: Yeah.

16 MR. KIMBLE: Your Honor, I'd like to testify
17 to being on medication three times a day, 50mg each of
18 Vistaril, which I get 50mg at dinner and 50mg at bedtime.
19 Therefore, it induces me in the mornings to somewhat of a
20 morning sickness, and sometimes a weary feeling. I also
21 take the medication in the morning upon waking up.
22 Therefore, it induces sometimes an intoxicated effect.
23 Uh, I'm also on Paxil, 20mg a day, which was pointed out
24 I took on that particular day.

25 Uh, I'd also like to further state that for

1 the record that I had been mentally taunted by other
2 inmates saying that Mr. Panosh was going to fry me, was
3 going to kill me, prior to coming to court that day.

4 MR. PANOSH: This evidence is not supportive
5 of any allegations before Your Honor.

6 MR. KIMBLE: Due to his press conferences and
7 volunteering information to the press making it public
8 knowledge to other inmates, and which in Troy is the
9 primary newspaper is the *Greensboro News and Record*. My
10 case is common knowledge among the inmates. Inmates
11 reading everything that Mr. Panosh had put in the
12 newspaper invoked them to retaliate against me. Prior to
13 coming to court I felt my life was threatened. Coming to
14 court, being involved with law enforcement with everyone
15 toting guns around me and staring me down, telling me to
16 get out of the car, come this way, go that way, being put
17 into a cell, and then further information from my lawyers
18 saying take this deal or die, I felt my life was beyond
19 threatened, my safety, primarily from Mr. Panosh.

20 Uh, I'd also like -- like I said, the
21 environment condition. It's easy to sit in a room one on
22 one with a physician where my nerves are calm and I'm
23 relaxed versus coming in here where I'm extremely nervous
24 and I feel like I'm being stepped on. I'm not a very
25 outspoken person. I may be today, but many times I'm

1 very down and depressed. And my medication has different
2 effects at different days. Just like I may go and be
3 evaluated by the Department of Corrections psychologist
4 one day, she asked me where I rate from 1 to 10, I have
5 to give her a 1 to 10 answer; 1 being the best and 10
6 being the worst. On any day it's liable to be anywhere
7 on that chart. Under the uncontrolled environment which
8 I was placed last time being extremely intimidated, all
9 facts correlated together, I felt that I was being
10 threatened upon death, not necessarily from the death
11 penalty as much as from Mr. Panosh.

12 Any cross-examination?

13 THE COURT: Are you finished?

14 MR. KIMBLE: Yes, sir.

15 THE COURT: You wish to cross-examine?

16 MR. PANOSH: No, Your Honor.

17 THE COURT: All right, thank you. Anything
18 further at this time?

19 MR. PANOSH: We have documents. I'll submit
20 them, if you want to review them. If you gentlemen want
21 to see them?

22 (Documents handed to Mr. Zimmerman and Mr. Crumpler.)

23 MR. PANOSH: Your Honor, I'll hand those up.
24 State's #1 is seven pages.

25 MR. KIMBLE: Your Honor, I'd like to be heard

1 on the document.

2 THE COURT: All right, sir.

3 MR. KIMBLE: Uh, I've had no time to review
4 the document. No prior knowledge to it. I'd also like
5 to move -- upon sitting here reviewing it, it was filled
6 out when they didn't give me the medication. How could
7 they have known when I got it and when I didn't. If
8 you'll note on the 25th, I was in court that day and they
9 filled it out as though they had administered it to me.
10 So, I object---

11 THE COURT: All right, thank you.

12 MR. KIMBLE: ---to the introduction of the
13 information.

14 THE COURT: Objection is overruled.

15 (Pause.)

16 THE COURT: At this time is there anything
17 further for the defendant or for the respondent State?

18 MR. PANOSH: No, Your Honor.

19 THE COURT: All right, thank you. Enter this
20 order. This matter is before the Court upon the
21 defendant's motion submitted pro se to the Court that he
22 be allowed to withdraw a plea of guilty, which the
23 defendant entered before the Court on January 28th, 1999
24 before the undersigned presiding judge. Upon the
25 defendant's appearance in court on January 28th, 1999,