

1 (March 4, 1999.)

2 THE COURT: Mr. Panosh, you may proceed.

3 MR. PANOSH: Your Honor, we are before the
4 Court on the matter of Theodore Mead Kimble, the
5 remaining case is 97 CRS 39581. I believe that the first
6 matter is a motion to withdraw filed pro se by the
7 defendant.

8 Your Honor, the State has filed an Answer to
9 the motion to withdraw, and I've served counsel with a
10 copy. I did note that on page 1 when I indicated date of
11 change of counsel, I have the wrong date there. It
12 should have been December 3rd, of '98 change of counsel.
13 And I've made that correction.

14 THE COURT: Thank you. Mr. Crumpler, Mr.
15 Zimmerman, are you appearing with the defendant at this
16 time?

17 MR. CRUMPLER: Your Honor, we are appearing
18 by virtue of the nature of the motion. We have explained
19 to the defendant actually we will remain neutral because
20 we may be asked questions, and the defendant understands
21 that.

22 THE COURT: All right. Thank you. Mr.
23 Kimble, would you stand up, please?

24 (Defendant stands.)

25 THE COURT: Mr. Kimble, the court records

1 reflect that by letter bearing a date of February 24th
2 addressed to the Clerk of Superior Court, uh, signed by
3 yourself apparently that you indicated your desire to
4 withdraw a guilty plea with regard to the matters that
5 are before the Court at this time. Was that your letter,
6 Mr. Kimble?

7 MR. KIMBLE: Yes, sir.

8 THE COURT: And that was sent in an envelope
9 bearing a postmark of February 25th, and was received and
10 filed by the Clerk on February 26th, 1999. Do you wish
11 to be heard in support of that motion to withdraw your
12 guilty plea at this time, Mr. Kimble?

13 MR. KIMBLE: Yes, sir.

14 THE COURT: Do you wish to offer sworn
15 testimony in support of your motion to withdraw?

16 MR. KIMBLE: Yes, sir.

17 THE COURT: All right. Let the defendant be
18 sworn.

19 **THEODORE MEAD KIMBLE, being first duly sworn, testified**
20 **as follows:**

21 THE COURT: All right, sir, you may testify
22 from there.

23 MR. KIMBLE: Uh, Your Honor, North Carolina
24 statutes states three unusual reasons a defendant who
25 pleads guilty may get a new trial. Number two states the

1 defendant has to withdraw his plea and go to trial, but
2 was denied by the Superior Court judge. I want this
3 trial and these lawyers, not a new one.

4 Upon arrival at my last hearing I was
5 surrounded by armed guards, shotguns and revolvers
6 everywhere. I was extremely intimidated. I was told to
7 get out of the car. I was in fear for my life. I was
8 brought over to the courthouse and put into a holding
9 cell. The motion for the day was to have my trial moved
10 to Winston-Salem. Since the D.A.'s last press
11 conference, my lawyers have been pressuring me to cut a
12 deal. My lawyers seem intimidated by the D.A., and I, in
13 turn, have become intimidated by the lawyers. The
14 lawyers wanted to talk with the D.A. to see what would be
15 offered. Once the wheeling and dealing began, it was as
16 if I had agreed to everything. They told me to take the
17 deal or end up dead. I was scared to death for my life.
18 I'm not guilty. I don't want to plead guilty. If I were
19 guilty, I wouldn't be willing to die. I want my day in
20 court to tell my side, the truth.

21 My lawyers have been paid to do a job, and
22 which I ask they do. The whole purpose of getting new
23 lawyers was to have someone I felt was willing to fight
24 for me. I ask the Court to set aside my plea and set the
25 trial date. I ask a gag order to be put on the D.A. He

1 had manipulated the witnesses and myself. I ask my trial
2 be moved to Winston-Salem because of the publicity around
3 my case, mainly caused by the D.A. I'm tired of being
4 scared, used and run over by Guilford County. It's time
5 I stand up for myself and quit allowing these people to
6 abuse me. I want the truth known by all, and that's what
7 everyone is going to get when I take the stand. It's my
8 life, it should be my choice. Please, Your Honor, set
9 the plea aside and set a trial date. I don't want to
10 have to appeal the decision to get the trial I deserve.
11 This would further delay the inevitable and tie up the
12 court. I would have to get new court appointed lawyers
13 and start over. The lawyers I have were paid. Let them
14 finish what they've started. With all due respect, you
15 represent justice. I'm willing to die to prove my
16 innocence. I love my wife, and I want to tell the truth.
17 The D.A. has done nothing -- everything in his power to
18 ensure that I not receive a fair trial. Please set
19 things straight.

20 I might add, Your Honor, being intimidated,
21 last time I left I was somewhat abused. I was shackled
22 so tight it left bruises on my wrists and nearly broke
23 the skin on my ankles, and the driver was running 97 mph
24 down 220, blowing his horn, flashing his lights at people
25 to get out of his way. By the time I got back to my

1 cell, I was sitting here asking myself, "What just
2 happened to me?" I was extremely intimidated and scared
3 to death. You know, the medication I might add also that
4 I'm on, I have my good days and my bad days. You know,
5 the day I was showed up, I really felt like giving up.
6 Here all these people around me are scaring me to death.
7 You know, asking me if the medication had an effect on me
8 would be like a highway patrolman asking a drunk driver
9 just before writing a DWI if he's intoxicated. Uh, you
10 know, I'm on a reasonable amount of medication, and
11 needless to say it won't happen again, but I'm not giving
12 up. I'm not guilty, and I want to plead my case. I want
13 to prove myself innocent. You know, I have been
14 railroaded in every way possible. And, you know, I
15 should not allow these lawyers to give up so quickly. I
16 want my day in court. You know, like I said, I was in
17 fear for my life. You know, I'm tired of being walked
18 over, and I'm ready to stand up for myself and tell what
19 happened.

20 Do you have any questions?

21 THE COURT: I don't have any questions.

22 Thank you.

23 Mr. Panosh, do you wish to cross-examine the
24 defendant on his testimony?

25 MR. PANOSH: Yes, please.

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

2 Q. Who was it that threatened you, please?

3 A. I was told by counsel that if I didn't take your
4 deal I would end dead.

5 Q. By end up dead were they referring to the death
6 penalty?

7 A. Uh, yes, sir.

8 THE COURT: What was the answer, Mr. Kimble?

9 MR. KIMBLE: Yes, sir.

10 Q. Other than telling you the possible outcome of
11 your trial, did they say anything that you considered to
12 be a threat?

13 A. They didn't tell me anything that would be a
14 possible threat as much as the guards around me with
15 shotguns and revolvers. I was extremely intimidated. I
16 mean I was looking out the window and wondering if
17 S.W.A.T. was on team going to blow my head off. On the
18 building going to shoot me.

19 Q. Did anyone threaten to shoot you?

20 A. No, sir. But when you got 20 SBI agents and
21 guards staring you down, they in there with shotguns and
22 pistols, it's a little intimidating.

23 Q. When you came into contact with these law
24 enforcement agents, did any of them say anything to you
25 to induce you to plead guilty?

1 A. Uh, no, sir. It was more of a silent threat.

2 Q. How long after you changed counsel did you begin
3 to discuss with your attorneys the chance or possibility
4 of pleading guilty?

5 A. I did not. They came back to me and recommended
6 after your press conference intimidating witnesses and
7 others.

8 Q. When they spoke to you and told you of their
9 recommendation, did you agree?

10 A. No, I did not.

11 Q. When did you agree to plead guilty?

12 A. On the spur of the moment when they looked at me
13 and told me my life was in danger.

14 Q. What date was that?

15 A. Uh, my last court appearance, the day in which I
16 was so intimidated by law enforcement.

17 Q. You had not agreed to plead guilty prior to your
18 court appearance?

19 A. No, I had not.

20 Q. Had your attorneys presented you with documents to
21 sign or to review prior to your court appearance?

22 A. Uh, yes, sir. They said none of this was final,
23 and that it was only on the drawing board, and that it
24 was only in works, that nothing would be final until I
25 stood before the judge. It was just a preliminary type

1 motion that would allow them to speak with you. But only
2 until I was put up here on the spur of the moment and
3 being extremely intimidated did I plead.

4 Q. When did you sign the transcript of plea?

5 A. I cannot recall.

6 Q. Was it in court or prior to court?

7 A. Prior to court.

8 Q. When you signed the transcript of plea, who was
9 present?

10 A. Uh, my attorneys.

11 Q. Was anyone other than your attorneys present when
12 you went over and signed the transcript of plea?

13 A. No, sir.

14 Q. At the time that you signed the transcript of
15 plea, did anyone threaten you?

16 A. No, sir.

17 MR. PANOSH: No further questions.

18 THE COURT: All right, thank you, sir. You
19 can be seated.

20 (Defendant sits.)

21 THE COURT: Is there any further evidence for
22 the defendant on this motion at this time, either through
23 counsel or pro se? Through counsel?

24 MR. ZIMMERMAN: Not through counsel.

25 THE COURT: Any other evidence, Mr. Kimble,

1 for you? Do you have any other evidence in support of
2 your motion?

3 MR. KIMBLE: No, sir.

4 THE COURT: Is there evidence for the State
5 at this time?

6 MR. PANOSH: Your Honor, we seek to introduce
7 into evidence the transcript of his prior plea of guilty.
8 Do you have a copy? May I approach?
9 (Transcript handed to the judge.)

10 MR. PANOSH: I've provided counsel with a
11 copy.

12 THE COURT: All right, Mr. Panosh, I've
13 reviewed the transcript. Do you have further evidence?

14 MR. PANOSH: Your Honor, the allegation that
15 defendant has just submitted that he was on some sort of
16 medication that was affecting his ability to think is a
17 new allegation, and we're not prepared for that. I know
18 Your Honor covered it in the transcript of plea. I
19 believe there would also be evidence of what, if any,
20 medication was given at the jail. And I think to make
21 the record complete we should have an opportunity to look
22 into that. I don't know if you want to take a recess at
23 this time or if you want to handle that later.

24 It also may become necessary to consult with
25 his physicians or whoever was prescribing medication for