

1 WEDNESDAY, AUGUST 19, 1998

2 (Excerpt of proceedings during redirect examination of James
3 D. Church, by Mr. Panosh.)

4 (The following proceedings were held by the Court and all
5 three counsel at the bench, out of the hearing of the jury:)

6 THE COURT: What are Exhibit Numbers 125 and 126?

7 MR. PANOSH: These are the photo identifications
8 that he was asked about on cross-examination.

9 THE COURT: Taken at Camp Lejeune?

10 MR. PANOSH: Yes.

11 MR. LLOYD: These are from the witness Tammy
12 Patton, who has not testified in this case.

13 THE COURT: Well, Mr. --

14 MR. PANOSH: Which is exactly --

15 THE COURT: -- Hatfield's already asked him about
16 them.

17 MR. PANOSH: That's what I pointed out at the
18 bench.

19 MR. HATFIELD: I just asked him if he prepared it.

20 MR. PANOSH: He asked him if he made an -- if she
21 made an identification. He said she did make an
22 identification. He asked if he communicated that
23 identification to a number of witnesses. He asked that at
24 least three times, as I recall.

25 Before they got into this, I came to the bench, I

1 said this was not the way we should be going. They've
2 opened the door. The State is now entitled to show that in
3 fact there was an identification, and that it was a valid
4 identification. Otherwise, at closing argument, they're
5 going to argue, "Well, this was some --"

6 THE COURT: The Court will allow you to introduce
7 it.

8 MR. HATFIELD: Excuse me. I'd like to be heard.

9 THE COURT: All right, sir.

10 MR. HATFIELD: My purpose in asking whether this
11 lineup was prepared was to show that as a result of its
12 preparation, he did other things, which was to communicate
13 with other witnesses. I in no way suggested that this
14 lineup was either reliable or unreliable or had been
15 utilized to provide any testimony. Now, I would hate for
16 this Court to allow a photo lineup, when the witness who
17 supposedly looked at the photo lineup has not testified in
18 the case. Therefore --

19 THE COURT: Well, you can call her.

20 MR. HATFIELD: Well, I don't have the burden of
21 proof.

22 THE COURT: I know, but you've opened the door for
23 it to come in.

24 MR. HATFIELD: I did not open the door. I asked
25 him that, as a result of the roadblock that he set up down

1 there, did he meet a certain individual, and as a result of
2 meeting that certain individual, did he communicate things
3 to other people.

4 THE COURT: The Court will allow you to ask the
5 witness whether or not the witness (sic) was in fact
6 identified.

7 MR. HATFIELD: Wait a minute. She has to testify.
8 Then it's relevant. Then it's admissible. If she doesn't
9 testify, then there can be said nothing about it.

10 MR. PANOSH: Judge --

11 MR. HATFIELD: If she testified --

12 THE COURT: Wait a minute.

13 MR. PANOSH: Your Honor, I would agree with his
14 statement of the law, except for the fact that before they
15 got into this, I came to the bench and I said, "We are not
16 going to --"

17 MR. HATFIELD: We're tired of hearing "I, I, I."

18 THE COURT: Well, just don't mention it in your
19 argument. Keep it out.

20 MR. HATFIELD: Thank you.

21 MR. PANOSH: And your ruling is that they cannot
22 refer to the --

23 THE COURT: They cannot refer to what she may have
24 identified any other person.

25 MR. PANOSH: Or to the credibility or lack of

1 credibility --

2 THE COURT: That's correct.

3 MR. PANOSH: -- of the identification?

4 THE COURT: That's correct.


5 MR. LLOYD: Okay.

6 THE COURT: Leave it out.

7 (Proceedings continued in open court.)

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Marsha M. Garlick, RPR
Official Superior Court Reporter

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