

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 97 CRS 39581

STATE OF NORTH CAROLINA

v.

THEODORE MEAD KIMBLE

MEMORANDUM IN SUPPORT OF
DEFENDANT'S OBJECTION TO
JOINDER OF DEFENDANTS

FACTS

Defendant, Theodore Mead Kimble, is charged with the first degree murder of his wife, Patricia Gail Kimble, and conspiracy to commit that murder. The co-defendant and alleged co-conspirator, Ronnie Lee Kimble, is the defendant's younger brother.

On 9 October 1995, between the hours of 8:00 and 8:30 p.m., Ruben Blakely, Patricia Gail Kimble's brother, received a telephone call from defendant. Defendant asked Blakely to drive to his residence and check on his wife, explaining that he had tried to contact her by telephone at the residence and received no answer. He further stated that he had tried to reach her by pager and also by calling the South Elm Street Baptist Church, but could not get in contact with her.

Ruben and his wife drove to the Kimble's residence at 2104 Brandon Station Court, Pleasant Garden, North Carolina, at which point they observed smoke coming from the house. Blakely went to the house and placed his hand on the door. Finding the door hot, he called 911 on a cellular telephone and reported the fire to the Guilford County Emergency Services.

After fire fighters arrived, they found a body in a burned out portion of the hallway. The body was laying face down in a hole created by the fire burning out a portion of the hallway floor. The body was transported to the Medical Examiner's Office in Chapel Hill where it was identified as Patricia Gail Kimble. It was further determined that the cause of death was a gunshot wound to the head.

After an investigation which exceeded more than a year, the defendant and his brother were charged with the first degree murder of Patricia Gail Kimble and later conspiracy to commit that murder. The State's theory of prosecution is that defendant attempted to procure a life insurance policy on his wife and then had her killed to obtain the proceeds. The State's theory further purports to show that defendant's brother, Ronnie Lee Kimble, actually perpetrated the murder while defendant maintained an alibi at his

place of employment.

Through the discovery process, the State has revealed that it possesses evidence that co-defendant, Ronnie Lee Kimble, has made several out-of-court statements which make reference to the defendant, but would not be admissible against him. They are alleged as follow:

He told the witness that his brother Ted had obtained a large life insurance policy on his wife and that the brother had forged his wife's name to the policy.

Ronnie Kimble told a witness he shot and killed his sister-in-law. First he told the witness that the police suspected Kimble and his brother of the murder. Much later Ronnie admitted and confessed to the murder of Kimble's sister-in-law. After he had told about the murder he began crying. He said he had in fact shot his sister-in-law and that Kimble did not know where the gun was. Ronnie said he had committed the murder purely for "greed." Kimble went on to say that Kimble had been approached by Ronnie Kimble's brother who offered Ronnie money to commit the murder.

During this same conversation, Whidden stated Ronnie Kimble explained that he was struggling with himself over use of the money. Ronnie Kimble asked her what to do with the money Kimble was to receive from his brother and asked if she could accept the money which Kimble suggested "could better be used for God's work."

Ronnie Lee Kimble told a witness that he and Ted had staged an automobile accident to obtain money from an insurance fraud. That Ronnie Lee Kimble had allowed Ted to break his nose to obtain monetary compensation for the injury.

After Ronnie Lee Kimble was moved to cell block C1 he was discussing the bible with the witness and asked the witness if he ever had problems sleeping because of the crimes the witness had committed. The witness responded and Ronnie Lee Kimble stated that he was having problems sleeping because of what he had done. He stated "it's getting to me, I didn't want to do it, my brother talked me into doing it." Ronnie Lee Kimble said that his brother was about to get out of jail. That his brother's charges were going to be dropped.

ISSUE

CAN THEODORE MEAD KIMBLE AND RONNIE LEE KIMBLE BE JOINED AS

DEFENDANTS FOR A SINGLE TRIAL?

Controlling Authorities

In *Bruton v. United States*, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), the United States Supreme Court held that the introduction of a co-defendant's confession implicating the defendant at a joint trial where the co-defendant does not testify, violates the defendant's right of cross-examination secured by the confrontation clause of the Sixth Amendment. The *Bruton* decision has been codified in North Carolina at N.C.G.S. §15A-927. The applicable statutory provision is as follows:

(c) Objection to Joinder of Charges against Multiple Defendants for Trial; Severance.

(1) When a defendant objects to joinder of charges against two or more defendants for trial because an out-of-court statement of a co-defendant makes reference to him but is not admissible against him, the court must require the prosecutor to select one of the following courses:

- a. A joint trial at which the statement is not admitted into evidence; or
- b. A joint trial at which the statement is admitted into evidence only after all references to the moving defendant have been effectively deleted so that the statement will not prejudice him; or
- c. A separate trial of the objecting defendant.

N.C.G.S. §15A-927.

Analysis

The above-stated statutory provisions require one of three courses of action in order to resolve the problem of a co-defendant's out-of-court statement which implicates the defendant at a joint trial. First, a joint trial can proceed where the statements are not admitted into evidence. Defendant has no objection to this type of disposition. Alternatively, a separate trial can be granted for the objecting defendant, which is what defendant seeks by his objection in this case. Thirdly, a joint trial may be held where the statement is admitted into evidence only after references to the moving defendant have been effectively deleted, so the statement will not prejudice him.

Due to the relationship between the victim and the two defendants, no amount of redaction can effectively avoid prejudice to defendant, and accordingly this course of action is not an option for the trial court.

Redaction

Joint trials of defendants can avoid the violation of a defendant's rights under the Sixth Amendment to the United States Constitution and N.C.G.S. §15A-927(c) if the extrajudicial statement of the co-defendant can be redacted so as to delete any reference to the defendant so the statement will not prejudice him.

... it is necessary to exclude extrajudicial confessions unless all portions which implicate defendants other than the declarant can be deleted without prejudice either to the State or the declarant. If such deletion is not possible, the State must choose between relinquishing the confession or trying the defendants separately.

State v. Fox, 274 N.C. 277, 163 S.E.2d 492 (1968).

The question presented by the instant case is whether any amount of redaction of the statements by Ronnie Lee Kimble can effectively avoid an implication of Theodore Mead Kimble. This case presents a peculiar set of facts and circumstances in that there is a close family relationship existing not only between the co-defendants, but one that extends to the victim as well. The undersigned counsel has found no prior precedent for the extremely unusual and unique circumstances of this case.

Regardless of any evidence presented at trial, the jury will know that Ronnie Lee Kimble is defendant's brother and the victim, his wife. The jury will also know that the brothers are not only charged with the murder, but also as co-conspirators in that murder. Accordingly, any admission of guilt by Ronnie Lee Kimble will in and of itself necessarily implicate the defendant due to the nature of the relationship between he and his brother and that of the victim.

Admission of any extrajudicial confession by Ronnie Lee Kimble at a joint trial would in fact violate N.C.G.S. §15A-927(c)(1)b in that removing references to defendant from the statement itself would not shield him from the prejudice by implication due to the relationship between the parties.

Redaction additionally will not prevent a violation of defendant's rights under the confrontation clause under both the Sixth Amendment to the United States Constitution and Article I, Section 23 of the Constitution of North Carolina. In *Richardson v. Marsh*, 481 U.S. 200, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987), the

United States Supreme Court held that the admission of a non-testifying co-defendant's statement with a limiting instruction did not violate the confrontation clause, when "the confession was redacted to eliminate not only the defendant's name but any reference to his or her existence." 481 U.S. at 212, 107 S.Ct. at 1709, 95 L.Ed.2d at 188. Once again the problem presented by the facts and circumstances of this case are that due to the relationship between the parties and the fact that the brothers are charged as co-conspirators, no amount of redaction can eliminate any reference to defendant's existence. Accordingly, a joint trial at which any statement or admission by Ronnie Lee Kimble is admitted would violate not only N.C.G.S. §15A-927(c)(1)b, but would also violate defendant's constitutional rights to confront and cross-examine witnesses as guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 23 of the North Carolina Constitution.

The trial court's decision as to whether to grant a motion for severance is an exercise of discretion and its ruling will not be disturbed on appeal unless the defendant demonstrates an abuse of discretion. *State v. Lake*, 305 N.C. 143, 286 S.E.2d 541 (1982). However, the North Carolina Supreme Court has found an abuse of discretion in the joint trial of a capital case not unlike the instant case. In *State v. Hucks*, 323 N.C. 574, 374 S.E.2d 240 (1988), the trial court allowed a joint trial of capital defendants where one of the defendants pled guilty.

The trial court attempted to overcome any prejudice to Hucks arising from Miller's guilty plea by giving the following instruction to the jury:

Members of the jury, you will not allow the development in the case of State versus General Sam Miller to affect you in any way in your deliberation and your determination of the case between the State and Kenneth Odell Hucks.

Given the unique situation involved, however, the trial court's instruction was inadequate to guarantee that Hucks would receive a fair determination of his guilty or innocence by an unbiased and adequately attentive jury.

An instruction similar to that given by the trial court is appropriate in a non-capital joint criminal trial when one defendant pleads guilty. Under those circumstances, however, the case against the co-defendant pleading guilty will be entirely removed from the consideration of the jury without informing the jury of the guilty plea, since the jury has no function in sentencing in non-capital cases. See N.C.P.I., Criminal, 101.41 (1979). Here, however, two defendants were being jointly tried


for their lives for the same murder, and the jury was told at the outset that Hucks' co-defendant had entered a plea of guilty. The jury was then required to determine whether one admittedly guilty co-defendant should live or die and, on the same evidence, simultaneously determine the guilt or innocence of the other. Such a [323 N.C. 584] proceeding was hopelessly tainted against Hucks who had entered a plea of not guilty and maintained his innocence.

Hucks at 583, 246.

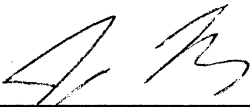
Hucks is analogous to the instant case in that the co-defendant's plea of guilty has the same effect as Ronnie Lee Kimble's extrajudicial statement of admission in terms of inflicting prejudice on the defendant. In fact, the prejudice in the instant case is more so because there was no fundamental relationship between the parties in *Hucks* as in the instant case which necessarily implicates the defendant in any admission or confession tendered by the State by Ronnie Lee Kimble regardless of redaction.

Accordingly, to proceed in a joint trial while introducing the admissions by Ronnie Lee Kimble would not comply with N.C.G.S. §15A-927 and would violate defendant's constitutional rights to confrontation of witnesses under both the Sixth Amendment to the United States Constitution and Article I, Section 23 of the North Carolina Constitution. Therefore, the Court should require separate trials, or allow a joint trial to proceed without the introduction of any admission or confession by Ronnie Lee Kimble.

Respectfully submitted the 7 day of MAY, 1998.



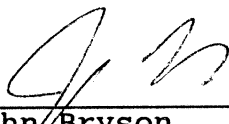
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CERTIFICATE OF SERVICE

The undersigned counsel for the aforementioned defendant hereby certifies that a copy of this Memorandum in Support of Defendant's Objection to Joinder of Defendants was delivered to the Office of the District Attorney, Eighteenth Judicial District, Courthouse Building, Greensboro, North Carolina, on the 7 day of MAY, 1998.



John Bryson
Attorney for Defendant