

1 A. Not at all.

2 MR. DOYLE: Thank you. Nothing
3 further.

4 THE COURT: Ms. Hartnett,
5 anything further?

6 MS. HARTNETT: No, sir.

7 THE COURT: You may step down,
8 sir. Thank you.

9 MR. DOYLE: Your Honor, we
10 would call Mr. Wilkes now.

11 Your Honor, I normally offer
12 these as I go along.

13 THE COURT: That's fine, do it
14 at the end.

15 MR. DOYLE: Okay.

16 MS. HARTNETT: Your Honor, can
17 we approach while we're waiting?

18 THE COURT: Sure.

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- - - - -

20 (A conference was held at the
21 bench off the record.)

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23 (End of conference at the bench.)

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25

JOSEPH WILKES

1 who, after being first duly sworn,
2 testified as follows:

3 THE COURT: Before we begin,
4 Mr. Wilkes, you have been convicted of
5 aggravated murder with a life
6 specification, you are presently
7 incarcerated for a life term. And I am
8 not sure what the status of your appellate
9 rights are or your appellate procedure, I
10 don't know if you have a appeal pending in
11 front of the Fifth District or if you have
12 one pending in front of the Ohio Supreme
13 Court, or whether or not you're
14 contemplating filing an appeal through the
15 Federal system.

16 But I will tell you, sir, once
17 you take the witness stand here today and
18 begin to testify, that everything that you
19 say is on record taken down under oath by
20 a court reporter and is a public record
21 and is reviewable and usable by any and
22 all parties to any type of lawsuit. So I
23 would herein advise you that once you
24 begin to testify, you are going to waive
25 your Fifth Amendment right to

1 self-incrimination if, in fact, you make
2 statements that incriminate you or can be
3 used in an argument that you are, in fact,
4 incriminating yourself. Do you understand
5 that?

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Graham is in
8 the courtroom and Mr. Graham has had an
9 opportunity, my understanding is, to speak
10 to you concerning your testifying here
11 today; is that correct?

12 THE WITNESS: Yes, he has.

13 THE COURT: And did you listen
14 to the advice that he gave to you?

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Graham, I'm
17 going to address you now, I gave a rather
18 rudimentary explanation of what Mr. Wilkes
19 is going to face if he decides to testify.
20 And I'm assuming in a conversation -- you
21 had a conversation with Mr. Wilkes earlier
22 today?

23 MR. GRAHAM: I did.

24 THE COURT: And did you advise
25 him, again probably in a better way and in

1 more detail, what risks he runs in
2 testifying today?

3 MR. GRAHAM: I have, Your
4 Honor, and, in fact, I've recommended that
5 he not testify and he exercise his right
6 to remain silent. But it's his desire,
7 very clearly, to disregard that advice and
8 testify here today.

9 THE COURT: Mr. Wilkes, you
10 have heard Mr. Graham then tell the Court
11 and again, in a sense, advise you that you
12 have an absolute right to remain silent?

13 THE WITNESS: Yes, sir.

14 THE COURT: Anything you say
15 today can and will be used against you in
16 any other proceeding, and that you are
17 knowingly and intelligently waiving your
18 right against self-incrimination, do you
19 understand that?

20 THE WITNESS: Yes, sir.

21 THE COURT: Is it still your
22 decision to testify in this matter?

23 THE WITNESS: Yes.

24 THE COURT: The Court is going
25 to find that Mr. Graham has had an

1 opportunity to talk to the Defendant, and
2 that he has explained to him his rights
3 and has explained to him that there are
4 other avenues of appeal that he may pursue
5 in the future. And that any statement he
6 makes here today can be used, if
7 appropriate, against him. I believe Mr.
8 Wilkes is also aware of that fact.

9 State of Ohio, anything you wish
10 to say?

11 MR. CALDWELL: Yes, Your Honor.
12 We would also like the witness to be
13 advised that his testimony today could
14 result in a vacation or vacating of the
15 plea agreement which he entered into, and
16 could result then in his subsequent trial
17 on the original indictment which included
18 a death penalty specification exposing Mr.
19 Wilkes to a possible death sentence, and
20 that he understands that in his decision
21 today to testify.

22 THE COURT: Counsel, approach
23 just for a quick second.

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25 (Thereupon, a side-bar discussion

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was had off the record.)

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THE COURT: Mr. Wilkes, you have heard the State of Ohio, through Mr. Caldwell, raise another issue which I had not thought about, and that is you were indicted on a capital murder offense originally. You remember that, correct?

THE WITNESS: Yes.

THE COURT: You remember that one of the potential penalties was death by lethal injection? You understand that?

THE WITNESS: Yes.

THE COURT: That you made an agreement with the State of Ohio that you would, I believe, testify truthfully in all proceedings in which you were asked to testify, and that would have included hearings, I believe, we had prior to trial, the trial itself, and any other hearings subsequent to the trial against Mr. Thorne. Do you understand that that was the agreement?

THE WITNESS: Yes, I do.

THE COURT: You understand that

1 this hearing we're having today is such a
2 hearing that it is the State's position
3 that this is the type of hearing in which
4 you are bound to tell the truth, and
5 nothing but the truth, and that if, in
6 fact, you don't tell the truth or you make
7 statements that you never have before, or
8 enhance or delete from your testimony any
9 type of act they feel breaks that
10 agreement that, in fact, they can ask the
11 Court to void that agreement, you would
12 then be facing again the charge of capital
13 murder with the potential of death by
14 lethal injection.

15 Do you understand if you make a
16 statement today that could be an argument
17 that the State presents before the Court
18 that you breached or broke the agreement?
19 Do you understand that?

20 THE WITNESS: Yes, sir, I do.

21 THE COURT: And you understand
22 you would then face the possibility of
23 death by lethal injection? Do you
24 understand that?

25 THE WITNESS: Yes, I do.

1 THE COURT: Have you talked
2 this over with Mr. Graham, this particular
3 issue with the agreement by the State of
4 Ohio?

5 THE WITNESS: Yes, sir.

6 THE COURT: And did he give you
7 similar advice that I'm giving to you now,
8 that the State could argue that you
9 breached the agreement and, therefore,
10 void it and they could try you again for
11 capital murder with a death specification?

12 THE WITNESS: Yes, sir, he has.

13 THE COURT: So you understand
14 that, correct?

15 THE WITNESS: Yes, sir.

16 THE COURT: Any questions you
17 have now before we begin? My
18 understanding is you spoke to Mr. Doyle
19 moments before coming in here, I'm not
20 going to ask what you spoke to him about,
21 but are there any questions, any
22 reservations that you wish to address to
23 me, the Court, the Judge, in this
24 particular case?

25 THE WITNESS: No, sir.

1 THE COURT: All right. State,
2 anything further?

3 MS. HARTNETT: No, Your Honor.

4 MR. CALDWELL: No.

5 THE COURT: The Court is
6 satisfied that Mr. Wilkes has had an
7 opportunity to speak to Mr. Graham, who is
8 extremely experienced and skilled in
9 criminal matters, he has spoken to him, he
10 has given his advice. The State of Ohio
11 has presented their position. Mr. Wilkes
12 is a young man that has the appropriate
13 amount of schooling, he understands the
14 English language, and I believe he's made
15 his own decision to go ahead and testify
16 here today knowing full well any
17 consequence that may follow. And I'll
18 permit him to testify at this time.

19 Mr. Doyle.

20 MR. DOYLE: Thank you, Judge.

21 - - - - -

22 DIRECT EXAMINATION

23 BY MR. DOYLE:

24 Q. Sir, for the record, will you tell us your
25 full name?

1 A. Joseph Isaac Wilkes.

2 Q. And will you spell your last name for the
3 record?

4 A. W-I-L-K-E-S.

5 Q. Mr. Wilkes, you are presently
6 incarcerated?

7 A. Yes, sir.

8 Q. And where are you now being housed?

9 A. Mansfield Correctional Institution.

10 Q. You pled guilty to aggravated murder in
11 the case now before this Court; is that
12 correct?

13 A. Yes, sir.

14 Q. Mr. Wilkes, did David Thorne have anything
15 to do with the homicide in this case?

16 A. No, he did not.

17 Q. Did you in fact kill this woman?

18 A. No, I did not.

19 Q. You were interviewed by the Alliance
20 Police in July of 1999; is that correct?

21 A. Yes, sir, it is.

22 Q. At that time you were asked questions
23 about what happened on the evening of
24 March the 31st of 1999; is that correct?

25 A. It is.

1 Q. Did you receive any information concerning
2 Mr. Thorne and what he was doing? Did the
3 police communicate any information to you?

4 A. Yes, sir.

5 Q. And what was it that you learned?

6 A. They said that he was found for immunity
7 in order to testify against me and that it
8 would set him free, he wouldn't have any
9 charges as far as self-incriminating
10 himself.

11 Q. Did you think that Mr. Thorne was going to
12 testify and in some way find a way to hurt
13 you?

14 A. Yes, sir.

15 Q. What, if anything, did you do after you
16 learned that?

17 A. I don't know. I was confused.

18 Q. Did you continue to talk to the police?

19 A. Yes.

20 Q. What else did they tell you?

21 A. They told me they had some other
22 statements from some other witnesses, and
23 they told me everything that happened at
24 the crime scene.

25 Q. And they told you what?

1 A. Everything that happened at the crime
2 scene.

3 Q. Were you told what type of penalty you
4 were facing?

5 A. Yes, sir.

6 Q. And what was that?

7 A. They told me that I was facing death row,
8 possible chair.

9 Q. And were you told that if you gave a
10 statement the penalty might be
11 significantly different?

12 A. Yes, sir.

13 Q. And what were you told?

14 A. I was told that if I gave a statement,
15 they -- my chances of getting death row
16 were very less, that I would more likely
17 receive life without chance of parole, or
18 less than that.

19 Q. Was there ever any number talked about
20 under the life without parole that the
21 detectives talked about, any number of
22 years?

23 A. Fifteen. It was 15 to life, I think.

24 Q. And did they give you any indication as to
25 when it was thought that you might be able

- 1 or -- be able to be released?
- 2 A. My first time up to the parole board.
- 3 Q. Because of your cooperation?
- 4 A. Yes.
- 5 Q. You then entered a plea of guilty in this
- 6 case?
- 7 A. Yes, sir.
- 8 Q. And you implicated David?
- 9 A. Yes.
- 10 Q. When you were going to testify in the
- 11 courtroom, did you have any communications
- 12 with a person by the name of Vicki?
- 13 A. Yes, sir.
- 14 Q. And who was that?
- 15 A. She's a -- she was a lady at the church I
- 16 used to go to, real good friend of mine.
- 17 Q. And she would visit you in jail?
- 18 A. Yes, sir.
- 19 Q. And do you know what Vicki's last name is?
- 20 A. Rhodes, R-H-O-D-E-S.
- 21 Q. Did you have occasion -- did you talk to
- 22 her --
- 23 A. Yes.
- 24 Q. -- before you testified --
- 25 A. Yes.

1 Q. -- in the trial?

2 A. Yes, sir.

3 Q. And what did you tell her?

4 A. I told her that I had to do what I had to
5 do. That I was scared, that I was facing
6 the death row, that they were going to
7 kill me.

8 Q. Did you say anything to her about the
9 truthfulness or nontruthfulness of your
10 testimony?

11 A. Yes. I told her I had to do what I had to
12 do. And she told me -- she advised me to
13 tell the truth. And I just told her,
14 again, I have to do what I have to do.

15 Q. Joe, since that time you have been in the
16 prison system, in the Ohio State prison
17 system, correct?

18 A. Yes, sir.

19 Q. And this same woman has come to visit you?

20 A. Yes, sir.

21 Q. And are those visits to talk about
22 spiritual things?

23 A. Yes, sir.

24 Q. Okay. And what is it that Vicki has
25 continually told you to do?

1 A. Her favorite saying, the truth will set
2 you free. To tell the truth, to get the
3 truth out so it will be known.

4 Q. And that's what you're doing here today?

5 A. Yes, sir, I am.

6 Q. I want to show you -- this is out of
7 order, Chryssa.

8 (Thereupon, a discussion
9 was had off the record.)

10 MR. DOYLE: Your Honor, I'm
11 showing him handwriting.

12 BY MR. DOYLE:

13 Q. I want to show you what has been
14 previously marked as Defendant's Exhibit
15 5. And pointing to some writings on the
16 bottom of this page, do you recognize that
17 writing?

18 A. Yes, sir.

19 Q. Okay. And whose writing is that?

20 A. It's mine.

21 Q. Okay. And that's the handwriting you
22 normally use; is that correct?

23 A. Yes, sir.

24 Q. And that would be under Exhibit C?

25 A. Yes, sir, it is.

1 MR. DOYLE: Thank you, Your
2 Honor. No further questions.

3 THE COURT: State of Ohio.

4 - - - - -
5 CROSS-EXAMINATION

6 BY MS. HARTNETT:

7 Q. Good afternoon, Joe.

8 A. Good afternoon, ma'am.

9 Q. I'm Chryssa Hartnett, you remember me?

10 A. Yes, I do.

11 Q. You pled guilty to aggravated murder with
12 a capital specification that that crime
13 was committed for hire back in September,
14 September 27th, 1999; didn't you?

15 A. Yes, ma'am.

16 Q. Okay. At that hearing you were obviously
17 there, the Judge was there, I was there,
18 do you remember that?

19 A. Yes, ma'am.

20 Q. You apologized, you apologized to Yvonne's
21 family, all those folks sitting right back
22 there today, you apologized to them and
23 you sobbed; didn't you?

24 A. Yes, ma'am.

25 Q. You told them that you wished you could

1 take it back; didn't you?

2 A. Yes, ma'am.

3 Q. And you met with me and Mr. Baumoel
4 several times in the months that followed
5 that leading up to the trial; didn't you?

6 A. Yes.

7 Q. Now, you talked to police several times,
8 even before you met with Mr. Baumoel and
9 me, correct?

10 A. Yes.

11 Q. And you gave details to them in your
12 statements and you gave details to us in
13 your statements; didn't you?

14 A. Yes.

15 Q. You talked about where you stayed, how
16 much money you had been paid, where you
17 bought things; didn't you?

18 A. Yes.

19 Q. Okay. All the details you could remember.
20 Talked about what drugs you had done on
21 that day, right?

22 A. Yes.

23 Q. And you even took the police, after you
24 talked to them, to the sewer or to the
25 ditch area or the drainage area where you

1 said you threw the knife, right?

2 A. Yes.

3 Q. Okay. And they found the knife there?

4 A. Yes. They found two of them.

5 Q. They found two knives in that ditch is
6 your testimony?

7 A. Yes, ma'am.

8 Q. Okay. And you took them to the woods
9 where you say you dumped your pants,
10 right?

11 A. Yes.

12 Q. And you told them about the Enochs, about
13 Karen, about Summer, about Brent, right?

14 A. Yes.

15 Q. And you hadn't been living with the Enochs
16 for several months by this time that you
17 talked to police, right?

18 A. Yes.

19 Q. They had already kicked you out? And so
20 the corroborating evidence that the Enochs
21 provided, the things that were found, the
22 receipts and whatnot, these are all just a
23 coincidence because you didn't commit this
24 crime, that's your testimony today; is
25 that right?

1 A. Yes.

2 Q. And you say that you told them these
3 things because they told you that David
4 Thorne had asked for immunity and that
5 that's why you talked, right?

6 A. Yes.

7 Q. Okay. Are you aware that he had, in fact,
8 asked for immunity through an attorney at
9 the time the police talked to you?

10 A. I was aware that the lawyer had said it,
11 but he never told the lawyer nothing like
12 that. That's what I was told.

13 Q. When did you find that part out, that
14 he --

15 A. After all this was over.

16 Q. After the trial and everything?

17 A. Yes.

18 Q. Okay. But the police told you that he had
19 made a request for immunity?

20 A. Yes.

21 Q. You know Samantha Pegg; don't you?

22 A. Yes.

23 Q. You told her in June, weeks before you
24 talked to the police, about having killed
25 Yvonne; didn't you?

1 A. That's what she says.

2 Q. Well, I'm asking you, did you tell her?

3 A. No.

4 Q. Oh, you didn't? So she just made that up?
5 Another big coincidence?

6 A. Yes.

7 Q. And you would agree with me that the
8 attorneys who represented David Thorne
9 cross-examined you for -- it was almost a
10 couple hours when you were up on that
11 witness stand during the trial; isn't that
12 right?

13 A. Yes.

14 Q. And you acknowledged several times in your
15 testimony that you were telling the truth?

16 A. Yes.

17 Q. You also acknowledged during your
18 testimony, didn't you, that the police
19 never told you what the penalties were,
20 that it was only when you were discussing
21 it with your attorneys, as to whether to
22 enter your plea, that's when you found out
23 what the possible penalties were?

24 A. I'm not exactly sure what I said.

25 Q. Well, if I showed you a transcript of your

1 testimony, would that refresh your memory?

2 A. It sure would, ma'am.

3 Q. This is Page 1288, Your Honor, from the
4 trial testimony. This is during
5 cross-examination.

6 Right here. There's a question,
7 you can read that to yourself if you want,
8 beginning with that question: Well, did
9 they talk to you about. So you were asked
10 a question: Did they talk to you about
11 possible penalties for what they were
12 accusing you of? And you told them what?

13 A. I told them that I wasn't.

14 Q. That you wasn't, that you hadn't been? So
15 they never told me what could happen,
16 that's what you said, right?

17 A. Yes.

18 Q. Yet in your affidavit you swear that they
19 told you that you would be given 30 years?

20 A. Yes.

21 Q. Okay. And today you testified that you
22 were told that it was 15, correct? That's
23 what you said a few minutes ago?

24 A. I was told -- I was told by the detectives
25 that I would go up in half time, and then

1 in 15 years most likely get out. Half
2 time.

3 Q. But you acknowledge at trial, though, that
4 you said they never even talked to you
5 about what you would be facing?

6 A. Yes.

7 Q. You've been in prison for three years now,
8 a little over, right?

9 A. Yes.

10 Q. Don't like it, do you?

11 A. Of course not.

12 Q. This affidavit that you signed, this is
13 your signature down here?

14 A. Yes, ma'am.

15 Q. Okay. You didn't write this, somebody
16 typed it for you, right?

17 A. Yes.

18 Q. They sent it to you and asked you to read
19 it and sign it, right?

20 A. Yes.

21 Q. What did they promise you?

22 A. Nothing.

23 Q. Nothing?

24 A. Nothing.

25 Q. And you've been advised by your attorney

1 about the possibilities of being charged
2 with perjury, and things of that nature,
3 right?

4 A. Yes.

5 Q. Who in David's family have you talked to
6 over these last three and a half years?

7 A. No one.

8 Q. No one?

9 A. No one.

10 Q. You weren't real friendly with them at the
11 time you were testifying, right, I mean
12 back three years ago?

13 A. No.

14 Q. Smiled and nodded at his grandparents when
15 you walked in here; didn't you? But you
16 haven't had any contact with them
17 directly?

18 A. No, I haven't.

19 Q. What about any family or friends of
20 David's?

21 A. No.

22 Q. Who sent you the affidavit? How did you
23 get it?

24 A. Victoria Rhodes sent it to me.

25 Q. Oh, Victoria Rhodes, this person who you

1 talked about earlier?

2 A. Yes.

3 Q. She's the one who provided you with the
4 affidavit?

5 A. I was told it was given to her, but she
6 sent it to me, yes.

7 Q. Okay. Mr. Doyle asked you about this
8 handwriting?

9 A. Yes.

10 Q. That phone number there, that number
11 there, that 890-8941, do you recognize
12 that? If I told you that was your pager
13 number back in 1999, does that ring a
14 bell?

15 A. No, ma'am. I'm sure it was.

16 MS. HARTNETT: Can I have just
17 a second?

18 I have nothing further, Your
19 Honor.

20 THE COURT: Mr. Doyle, anything
21 further?

22 MR. DOYLE: Yes, Your Honor.

23 - - - - -

24 REDIRECT EXAMINATION

25 BY MR. DOYLE:

1 Q. Mr. Wilkes, you were asked some questions
2 about the details of this incident. Do
3 you recall those questions by the
4 Prosecutor?

5 A. Yes.

6 Q. And how did you learn the details?

7 A. I'm not understanding your question.

8 Q. Well, when you were talking to the police,
9 was there ever any discussion about how
10 this happened or in what way it happened?

11 A. Yes. Detective Sampson told me what had
12 happened, when it happened, how it
13 happened. They told me pretty much
14 everything. They told me there was a
15 little kid under the table, told me there
16 was a little dog in the house barking.

17 Q. And that came from the police?

18 A. Yes.

19 Q. Which police, do you recall?

20 A. Detective Bud Sampson and two other ones,
21 I'm not sure of their name.

22 Q. Detective Sampson?

23 A. Sampson.

24 Q. And so that's how you learned some of the
25 specific information about what happened?

1 A. Yes, sir.

2 Q. Now, you were asked questions by the
3 Prosecutor about somebody by the name of
4 Samantha Pegg?

5 A. Yes.

6 Q. Do you recall those questions?

7 A. Yes.

8 Q. Did Samantha Pegg ever send you a letter
9 saying how she was being harassed by the
10 police?

11 A. Yes, she did. She sent me a letter
12 apologizing and told me that she was
13 not -- she would not make a statement if
14 the police were not harassing her. And
15 she told me that they had said something
16 to her, and she never said exact words of
17 what they said to her, but they would --
18 something about leaving her alone if she
19 would make -- give a statement towards me.

20 Q. So the letter that she sent to you was
21 that she was being harassed by the police?

22 A. Yes.

23 Q. And she made a statement to them because
24 why?

25 A. Because -- so they would leave her alone.

1 Q. Did she indicate to you whether it was
2 true or not, the statement?

3 A. She told me in the letter that it was not
4 true. And she apologized.

5 Q. Do you know that that woman ever testified
6 at the trial, if you know?

7 A. I do not know.

8 MR. DOYLE: Thank you.

9 THE COURT: Ms. Hartnett,
10 anything further?

11 MS. HARTNETT: Very briefly,
12 Your Honor.

13 - - - - -

14 RECROSS-EXAMINATION

15 BY MS. HARTNETT:

16 Q. Sir, you're the one who told the police
17 about Samantha Pegg; isn't that right?

18 A. Yes.

19 Q. They didn't know who she was until they
20 talked to you?

21 A. Exactly.

22 MS. HARTNETT: Nothing further,
23 Your Honor.

24 THE COURT: Mr. Doyle?

25 MR. DOYLE: Nothing further,

1 Your Honor.

2 THE COURT: Thank you, sir, you
3 may step down.

4 -----
5 MICHAEL L. ROBERTSON

6 who, after being first duly sworn,
7 testified as follows:

8 -----
9 (Defendant's Exhibit
10 6 was marked for
11 identification.)
12 -----

13 THE COURT: Mr. Graham,
14 anything further from you?

15 MR. GRAHAM: No, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. PEDERSON:

18 Q. I believe we're ready now.

19 Would you state your name for the
20 record please?

21 A. Michael L. Robertson, R-O-B-E-R-T-S-O-N.

22 Q. And where do you live, Mr. Robertson?

23 A. In North Canton, Ohio.

24 Q. North Canton, Ohio? And what type of work
25 do you do?