UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

3:90-CV-00104-DU 3:75-CR-26-F

UNITED STATES OF AMERICA

V.

JEFFREY R. MacDONALD

RESPONSE OF THE UNITED STATES TO THE ISSUANCE OF AN ORDER AUTHORIZING THE DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA TO CONSIDER SUCCESSIVE APPLICATION FOR RELIEF UNDER 28 U.S.C. § 2255

APPENDIX OF THE UNITED STATES

VOLUME IV

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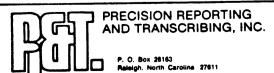


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THIS CAUSE came on for further
trial before The Honorable Franklin
T. Dupree, Jr., United States Chief
District Judge, and a jury, on
Monday, July 20, 1979, at Raleigh,
North Carolina.

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Good morning, ladies and

Let me see Counsel at the Bench briefly.

BENCH CONFERENCE

THE COURT: Since court adjourned on Friday afternoon, I have spent a substantial portion of my waking hours researching and deciding the rather interesting evidentiary question which was posed, the question being whether statements tending to be against the penal interests of the witness Stoeckley should be admissible through other witnesses—statements made outside of court in far distant times.

In that connection, I have studied the transcript of the witnesses' testimony--Stoeckley's and the

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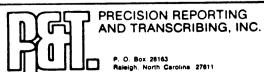
six witnesses whose out-of-court statements are pro-

posed to be offered--the briefs of both sides, and all of the case law--relevant case law--that I could find, which includes the Advance Sheet of the Federal Second, which came Sunday and which, oddly enough, contained a case involving 804(b)(3), but unhappily not directly in point.

I will rule that these proposed statements do not comply with the trustworthy requisites of 804(b)(3) or (b)(5); that far from being clearly corroborated and trustworthy, that they are about as unclearly trustworthy—or clearly untrustworthy, let me say—as any statements that I have ever seen or heard.

Chambers v. Mississippi, of course, is a far cry from this. There we had an absolute confession by a person who was in his right mind, and various other distinguishing features. On the question of impeachment, of course the prerequisite for a prior inconsistent statement is one that is, in fact, inconsistent.

Weinstein has said that any statement is inconsistent if, under any rational theory it might lead to any relevant conclusion different from any other relevant conclusion resulting from anything the witness has said. This witness, in her examination here in court—and cross—examination—has been, to use the Government Counsel's terminology, "all over the lot."



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court were "all over the lot," so it can't really be said that the hearing of those statements would lead to any different conclusion than what the jurors got while she was here in open court.

The statements which she has made out of

The case most nearly like this one that I was able to find and not cited by either side is <u>United</u>

States v. Satterfield in the 500 F.2d 687, cert. denied

99 Supreme Court 128. That is a Ninth Circuit case from

1978. That case, as many others do, including cases that were cited—such as <u>Thomas</u> and <u>Barrett</u> and others—states that this matter of determining trustworthiness is committed in the first instance to discretion of the Court. In that case there was a finding of untrustworthiness by the District Court, although there were some factors in evidence which tended to substantiate the statements or lend credibility to them, and statements which were pointed in the opposite direction.

As I stated, this testimony, I think, has no trustworthiness at all. Here you have a girl who, when she made the statements, was in most instances heavily drugged, if not hallucinating. And she has told us all that herself. She has stated that in person.

But I would get over the unavailability question. I would get past that and, in some aspects of it,



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Case 3:75-cr-00026-F Document 131-2 I think they could have been held to be against her

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penal interests. But on the question of trustworthiness, I just can't see it.

Now, on the question of impeachment, as I stated, I don't think it is admissible on that theory for the reason that I don't think it is impeaching.' There are other reasons which I won't elaborate on right now.

Finally, I think that this evidence ought to be excluded as a matter of discretion by the Court under Rule 403, because its probative value is substantially outweighed by the danger of unfair prejudice. It would tend to confuse the issues, mislead the jury. It would cause undue delay and a waste of time.

I am thinking now that I took a day of this jury's time and gave it to Counsel, most of which was taken by Counsel for the Defendant to interview Ms. Stoeckley, and to have her apparently interviewed in company with several of these six witnesses. And anything that would come in by this way now would still be cumulative.

She has told everything--she told this jury everything that you proposed to show by these witnesses that she told them. So I think in the interest of time-having devoted two days to this subject -- that that is enough; and for the additional reason that it ought to be



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excluded under 403, I will hold that it is not admissible.

Now I have a different subject, and one that is frankly very, very disturbing to me. And I want to ask Counsel for the Defendant now, were the members of this jury panel, prior to the convening of this Court on the 16th of July, 1979, contacted by anyone by or on behalf of the Defendant and interrogated on any subject whatever?

MR. SEGAL: Not knowingly, Your Honor. In no way did we make any attempt to contact the jury panel.

THE COURT: Did you have someone employed at Duke University?

MR. SEGAL: Let me say there were two jury studies going on in this area at the same time. We accidentally learned that there was another homicide case here that was being tried in Superior Court, that persons were calling various persons at random.

Let me just tell you what we did, Your Honor. The jury study that we did took a random sample from the telephone book. No record was ever made of the name, because it was not important to us. It was done by a mechanical method of taking from column one on page 20, the 12th name; column two on page 15, the tenth name; and a



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Nobody was ever asked a name, no name was ever recorded, and nobody ever indicated--first of all, no one ever indicated they had been summoned as a juror. If they did, it would have been discontinued immediately. We made no effort to investigate any person on the jury panel or make any contact with them directly.

If such a thing ever happened that way, it would have been accidental that a person was a sheer random choice, that someone's name would have been picked up. However, if you tell me the date on which this happened, it may not even be the date we are talking about, Your Honor.

MR. SMITH: Let me make a more precise answer to your question. At no time did anyone ever take a list of the prospective jurors of the pool and contact them; no. If that ever happened once--one time--it would be the most outrageous act I have ever heard of. That never happened.

We never said to anybody, "Here is the list of jurors. Call them up and see how they feel. Here is a list of jurors. Contact them in any way." I got a list of the jurors from the Clerk's Office and I passed that list around to lawyers I know and said, "Do you know any of these people--ever met them?" I checked them out



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THE COURT:

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let me interrupt you to say this: I did not reach this decision lightly. I spent roughly seven hours on this thing on Saturday. I spent the entire day Sunday until 11:30 last night, wrestling with this thing myself. And I have done this—and I do this routinely in criminal cases—I lean over backwards to make sure that no criminal defendant is ever deprived of a defense.

(Interposing)

In evidentiary rulings, if there is the slightest question in the world, I will go with the defendant every time. After all, as I have said many times, there is not enough time to try the case one time, and God knows, we don't want to have to try it twice.

But I am thoroughly convinced in my own mind that your position is without merit with respect to this particular evidence. I have ruled on it, and as I say, I did not reach that lightly--because I am risking a terrible lot of judge time and juror time down the road if I make an error and it has to be retried.

But I am confident of my position on that one. Let me say further that I will reduce all these-I have just given sketchily my opinion--but I will reduce it to writing, so that you and the appellate court, should it reach that--of course, if your man goes free, then we are all home free. But I will do that, because

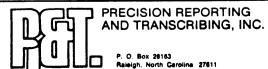
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Mr. Segal



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MR. MURTAGH:

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MR. SMITH: Judge, two of those six witnesses, Beasley--and there is one who is not one of the original six, as you might say--and a Mr. Gowen will testify not as to statements made by this young lady but

to show where she was soon after this occurred.

I would assume that Your Honor will find that admissible; that is, that we can put witnesses on to show where Helena Stoeckley was, what she was doing, who she was with, what she looked like, and what happened to her.

MR. MURTAGH:

That is uncontested.

MR. SMITH:

It doesn't make any

difference if it is uncontested. We submit the jury is entitled to hear it whether it is uncontested or not.

MR. BLACKBURN: Excuse me. Gowen was not one of the six.

MR. SMITH: No, Gowen is a new witness.

Gowen will put her at a trailer park in Fayetteville at a place where Beasley, our officer, saw her. Gowen is not one of the original six but will put her at a specific location in Fayetteville soon after this event occurred.

When?

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THE COURT:

(Interposing) She has

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testified to that and given the reason for it.

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MR. SEGAL: I think we are clearly entitled to show first of all additional evidence that she discarded it. Actually, this evidence is contrary to her statement in the regard as to how frequently she wore it, and we also believe that we are entitled to the inconsistent explanation; that is, not—her explanation

His explanation for it is different and, for that purposes, we have a right to show that she did it. Secondly, Your Honor, we intend to show--impeach her further--where she--without a transcript I can't recall whether she admitted--I'll have to ask Mr. Posey about that.

is different. She says people were harassing her.

We would show her arrival at home at the time which is consistent with the crime--the time that she came home. We would show the vehicle which she was in which we think we can show through other circumstantial evidence is relevant to this case.

So, I want to make clear that that is what we intend to offer Mr. Posey. Secondly (sic), in a different regard, we have admissions that were made in the last 72 hours to Mr. Posey by Ms. Stoeckley and at that time she was not under the influence of any drugs.

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contrary to her statements on the stand here as to what she said when she saw the crime scene photographs. We think Mr. Posey, Ms. Zillioux and Mr. Beasley may testify as to those current admissions which impeach her statements when I examined her at the very end of the direct examination as to whether or not she did not agree to recognizing the hobby horse, whether or not she did not admit to recognizing the scene in the living room, and stated at that time that she has a recollection of standing over the body.

There are other statements that she has made as to recognizing that are different than her in-court testimony, and I do intend to offer that in place of any prior statements that we have had these witnesses testify to on the voir dire on Friday.

Mr. Smith has already made the Offer of Proof in the regard to Beasley's testimony. We think that we ought to lay that out at this juncture while we are still at the Bench.

MR. MURTAGH: Your Honor, may I respond?

Your Honor, on Friday at a bench conference, Mr. Segal,
by way of a representation of counsel, said that these
witnesses would testify to these latter statements. No
such statements ever came out on voir dire. I think we

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Page 20 of 39 Document 131-2 Filed 03/30/2006 Case 3:75-cr-00026-F are--assuming for the sake of argument that such 1 statements were later made to these various witnesses. 2 What we understand happened is that Ms. Stoeckley was in 3 the counsel room and these various witnesses were paraded in to her and, in effect, "Don't you recall, 5 Helena, saying this to me?" You know--the Jane Zillioux 6 business, the episode with hepatitis and the blood on 7 her hands. 8 I think it gets back to the same thing, Your 9 It goes back to the untrustworthiness of her 10 original statements and this is simply an attempt to go 11 in the back door after the Court has ruled otherwise. 12 As to this new witness, we have had no voir dire on him. 13 As to Mr. Posey's explanation of why she 14 disposed of this stuff--if, in fact, she disposed of it--15 he is not competent to testify as to an explanation. 16 can say what he saw and that is uncontroverted. 17 come home that morning. She apparently came home most 18 mornings at this time. 19 I think, Your Honor, if these witnesses do 20 get on the stand, we are going to get right back into 21 the area in which the Court has already ruled, and we 22 would object to it. 23 What you are suggesting is THE COURT: 24

that the Defendant now proposes to be permitted to show



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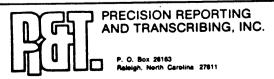
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(Bench conference terminated.)



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1	THE COURT: Any further evidence
2	for the Defendant?
3	MR. SMITH: Yes, sir, Your Honor.
4	THE COURT: Call your witness.
5	MR. SMITH: The Defense calls
6	P. E. Beasley to the stand.
7	THE CLERK: Mr. Beasley, you have
8	previously been sworn, so if you will go on and take
9	the stand.
10	MR. SMITH: Your Honor, may I consult
11	with this witness just a moment?
12	THE COURT: Yes.
13	(Pause.)
14	(Whereupon,
15	P. E. BEASLEY
16	was recalled as a witness, and having been previously
17	sworn, was examined and testified further as follows:)
18	DIRECT EXAMINATION 10:30 a.m.
19	
20	BY MR. SMITH:
21	Q State your name, please, sir?
22	A P. E. Beasley.
23	Q Mr. Beasley, where do you live?
24	A Fayetteville.
25	Q How long have you lived in Fayetteville?



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in '68, '69, and '70?

Yes, sir. Q

Would you state whether or not Helena Α Stoeckley ever became an informant for you?

> She did. Α

About what year? 0

'68. Α

And how long did Helena serve as an informant for you?

Until about 1970, the latter part of 1970.



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Q In your work as a narcotics agent, and especially working with Helena, would you state whether or not you ever had any information about cults in Fayetteville?

A Yes, sir, I did. Yes, sir.

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Q What information did you have about cults?

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A We had received information that these type of people had moved into the Fayetteville area, and we were trying to locate them; and I asked her if she knew of any and she said she did.

And she said, in fact, she was almost a member of a group that they called the Black Cult, I believe she stated they were. And I asked her to explain what she meant by that, because we didn't really know.

And she said it was a group of these people--would go to a certain location that they--they would have the rooms painted probably black--strobelights going--flashing lights.

And they would all get to dropping LSD, and they would get into a frenzy that they got into, and chanting and going on—this type thing; and that they would string a black cat up among these people after they had formed a circle—by the lower part of the body with his head hanging down, and cut his throat.

And the blood would come down into the

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Mostly, it would be what we used to call--it was in the Haymont Section of Fayetteville. place where the hippies hang out, mostly. It was the Goody's Shop, I believe they called it.

What was sold at the Goody's Shop, if you know?

Well, it was malts and cokes and things like Α that. I don't recall whether beer was being sold there or not.

Did you know whether the blond hair that



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A Yes, sir; I told my supervisor then that I knew somebody that fit the description—that I would get dressed and come to the office and go to work and try to locate her.

Q What did you do?

A I dressed and went down to the office. I had information that had been given to me prior to this--about two days prior to this incident--and I had information on this trailer, that there were drugs there. And I knew that she lived there with these people.

Q Now, where was the trailer? What trailer park in what part of Fayetteville?

A It was Hickory Trailer Park, I believe, out near Fort Bragg.

Q What information did you have about drugs?

A Well, she had told me that they had a large amount of drugs there. She described all kinds. If she told me, I knew it was true, because everything she told me was.

Q Did she give you enough information for you to obtain a search warrant, if you wanted it?

A Yes, sir; I went down and drew the search warrant on this information.

Q What did you do?



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A It was around 3:30 or 4:00 o'clock--somewhere in there. The files on this case that I had has been misplaced and I can't find them.



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