

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 97CRS-39580

Aq

STATE OF NORTH CAROLINA)	
)	
)	
VS.)	<u>MOTION IN LIMINE</u>
)	<u>RE: TED KIMBLE</u>
)	
RONNIE LEE KIMBLE,)	
DEFENDANT.)	

NOW COMES the defendant, above-named, through counsel, and moves the court pursuant to Article I, Sections 19, 23, and 24 and the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and the General Statutes of North Carolina to bar evidence concerning alleged statements Ted Kimble has given to witnesses which tend to incriminate Ronnie Kimble. In support of this motion the defendant shows the court the following:

1. In discovery materials furnished by the prosecution, Ted Kimble is alleged to have made a number of statements to witnesses which implicate his brother and codefendant, Ronnie Kimble.

2. Patricia Kimble died on October 9, 1995. Representative of these statements are the following:
Dominic Harris: Sometime after April of 1997, Harris shared a jail cell with Ted Kimble and Ted kimble allegedly told

him, "I didn't do it and they are fixing to go and get my brother and they'll find out who killed my wife."

3. Patrick Pardee: Sometime in February of 1997 Pardee alleges Ted Kimble told him that he had gotten a part time job to have an alibi for Patricia Kimble's death. But in answer to the question did he kill his wife, he answered, "No, Ronnie did it." Pardee was charged with a number of felonies including breaking and entering and larceny along with Rob Nichols and Ted Kimble. He has agreed to testify for the State pursuant to a written agreement in exchange for a probationary sentence.

4. Robert Nichols: Sometime after October of 1996, more than a year after Patricia Kimble's death, Nichols alleges that after repeatedly asking Ted Kimble if he had anything to do with his wife's death and being told that he (Ted) had an alibi and his brother Ronnie also had an alibi, Ted told Nichols that he did have something to do with his wife's death and not to ask him about it any more. Nichols is testifying pursuant to a written agreement in exchange for a probationary sentence.

5. The law is clear:

Pursuant to N.C.G.S. 8C-1(d)(E), a hearsay statement of a defendant's coconspirator is admissible as an exception to the hearsay rule if the statement was made during the course and in furtherance of the conspiracy. In order for the statements or acts of a coconspirator to be admissible, there must be a showing that a conspiracy existed and that the acts or declarations were made by a party to it and in

pursuance of its objectives while the conspiracy was active, that is after it was formed and before it ended. *State v. Tilley*, 292 N.C. 132, 138, 232 S.E.2d 433, 438 (1977).

State v. Williams, 345 N.C. 137, 141 (1996) (emphasis added). The courts have also required the State to make a *Prima facie* case of conspiracy without relying on the declarations sought to be admitted. *Id.*

6. While counsel is not in a position to make a prediction on whether the state can meet its *prima facie* burden, it is clear that none of these statements were made during the course of the conspiracy and certainly not in furtherance of the conspiracy. See *State v. Marlow*, 334 N.C. 273, 282 (1993) (holding that the conspiracy had ended on the conclusion of the murder and burglary when the objective was accomplished and the statements were not made during its course nor in furtherance of the conspiracy).

7. Here according to the state's own theory, the objective of the conspiracy to kill Patricia Kimble had long since been accomplished. It is even more difficult to conceive what any of these statements had to do with the furtherance of the conspiracy.

8. These and all similar statements are inadmissible and the court should so order.

9. In regard to the testimony of Nichols and Pardee and anyone else the state calls who is testifying pursuant to any agreement with the state in consideration for their testimony, such is a violation of federal law and this Court

can not countenance such violation and allow the state to present testimony in violation of federal law. See *U.S. v. Singleton*, 1998 WL 35007 (10th Cir. Court of Appeals) (now pending *en banc* hearing before the entire 10th Cir. Court of Appeals). The *Singleton* Court ruled in an exhaustive opinion that despite the widespread and common practice of giving defendants leniency in exchange for testimony, the practice was barred by federal law:

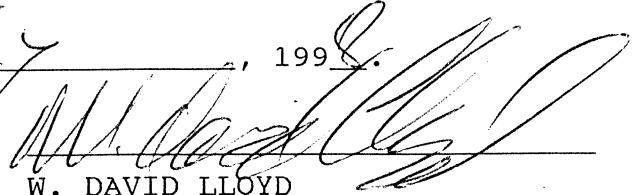
Section 201(c)(2) could not be more clear. It says: Whoever ... directly or indirectly, gives, offers or promises anything of value to any person, for or because of the testimony under oath or affirmation give or to be given by such person as a witness upon a trial, hearing, or other proceeding, before any court ... authorized by the laws of the United States to hear evidence or take testimony ... shall be fined under this title or imprisoned for not more than two years, or both.

Id. at page 3. This court can do no less.

WHEREFORE, the defendant prays the court not allow any

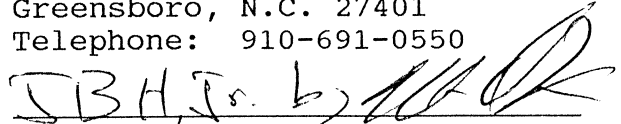
of the above statements or similar statements or the testimony of Robert Nichols and Patrick Pardee to come into evidence.

This the 24 day of July, 1998.



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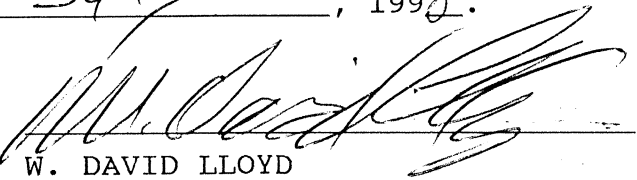
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned attorney served a copy of the motions listed below or the attached motion on the State of North Carolina by handing ()mailing the same to:

MOTION IN LIMINE RE: TED KIMBLE
MOTION IN LIMINE RE: STATEMENTS OF THE DECEASED

HORACE KIMEL (or representative)
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THIS the 29 day of July, 1998.


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