

VIDEO TAPE OF INTERVIEW

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1 sir. That was on the tape, yes, sir.

2 MR. OLDHAM: I don't know that the tattoos have
3 any connection with that but --

4 THE COURT: All right. I understand.

5 MR. OLDHAM: And I think that's set forth in
6 the Motion that was filed, Your Honor. And that's the
7 argument. I think the acid test is whether it was an
8 unequivocal assertion of his right. I think that's what
9 the law is, that I can find.

10 THE COURT: Well, let's assume someone makes an
11 unequivocal assertion of their right and then they keep
12 talking.

13 MR. OLDHAM: Then I think the Court may have to
14 look at the totality of the circumstances to determine
15 what occurred there. The gist of what I saw in the tape
16 was that when Mr. Allen attempted to invoke his right
17 against self-incrimination that the officer, I would
18 assume, then continued to interrogate him and brings him
19 back to what he perceives as the way to keep Mr. Allen
20 talking by talking in reference to charges that might be
21 pending against his mother.

22 THE COURT: Well, let me ask you this. Tell
23 me, in that video tape, what did he say that was
24 incriminating? Perhaps that's a question that I can ask
25 -- I mean you've got a Fifth Amendment right not to

1 incriminate yourself, but I'm trying to find out what's
2 incriminating about. Mr. Greene, do you want to tell me
3 that, because if it's not incriminating then why would
4 you guys use it? If it's not incriminating then it
5 doesn't violate the Fifth Amendment right.

6 MR. GREENE: Well, Your Honor, it's not
7 incriminating in the sense that he never actually
8 confessed to committing the murder, but he denied that
9 steadfastly all through the interview.

10 THE COURT: Right.

11 MR. GREENE: And it's certainly not
12 incriminating in that sense.

13 THE COURT: Well, in what sense is it
14 incriminating, because it looks to me like it's being
15 used by the State just to say let's see how cagey this
16 guy looks whenever someone's asking questions, because
17 he's not going to take the stand, so let's just everybody
18 look at his body language.

19 MR. GREENE: No. The -- And I would
20 respectfully disagree with Your Honor about that
21 characterization that the State's using it to say --

22 THE COURT: Well, we're just an argument here,
23 you know, it will move us from one point to the other.
24 It doesn't necessarily -- You don't have to think I'm
25 agreeing with it, but I got to get to the point, and

1 that's the bottom line, so --

2 MR. GREENE: Yes, sir.

3 THE COURT: You're the star here.

4 MR. GREENE: The State contends that there were
5 several inconsistencies in his statement to the detective
6 during the course of the interview that would tend to
7 impeach his credibility in itself, and that's the reason
8 the State believes the jury should see the entire
9 interview. Or any portion of the interview that the
10 Court deems appropriate for viewing by the jurors.

11 THE COURT: Well, let me put it to you this way
12 then. To impeach his credibility. What credibility?

13 MR. GREENE: Well, normally the State would not
14 be able to impeach his credibility unless he took the
15 stand.

16 THE COURT: Right.

17 MR. GREENE: But where the defendant has given
18 a statement wherein that statement he gives inconsistent
19 statements, the State thinks that's probative to the jury
20 on that issue.

21 THE COURT: Maybe it's because I'm from Stokes
22 County, so help me out. Probative of what issue?

23 MR. GREENE: Well, it helps the jury -- I think
24 it assists the jury in determining whether or not the
25 defendant was truthful in the statement that he did give.

1 I mean it's the only statement the defendant gave. And
2 the State contends that we're entitled to put that
3 statement on and let the jury make the determination of
4 whether or not the defendant was truthful in that
5 statement.

6 THE COURT: Well, I guess the argument is it's
7 the best we've got, so therefore we ought to be able to
8 use it.

9 MR. GREENE: Well, Judge, in a sense, yes, sir.
10 But it is a statement, you know, made by the defendant,
11 and the State contends that the jury can hear the
12 statement, even though he actually did not confess to the
13 crime itself, he did indicate in the statement that he
14 knew a lot of things about what happened, and the State
15 contends that his statement and his responses to the
16 questions and the inconsistencies that are in it put him
17 at the scene. And in that sense, I guess it would be
18 incriminating.

19 THE COURT: Well, let me ask you this. I don't
20 know what the case has got going on here, but have you
21 got fingerprints on the bag that belonged to this
22 gentleman?

23 MR. GREENE: Your Honor, I don't --

24 THE COURT: Anybody going to present that?
25 Have you got any DNA evidence from the well? Did you

1 recover a shot -- a sawed-off shotgun? Were there
2 fingerprints on a knife found on a rock? How about the
3 \$1,900.00 that you found on the body that he was told
4 that he stole from the guy? I mean tell me about this
5 trace evidence, tell me about all this other DNA
6 evidence. Tell me some of this stuff so I can figure it
7 all out.

8 MR. GREENE: Well, Your Honor, I'm not familiar
9 with his --

10 THE COURT: Well, somebody else is, and they
11 have a chance they can tell me, because I am waiting
12 patiently.

13 MR. GREENE: Yes, sir.

14 THE COURT: I know you didn't come here
15 prepared to talk about all those things, so right now
16 you're certainly capable of holding your own. Yes,
17 ma'am?

18 MS. ALLEN: Your Honor, the detective indicates
19 that that is an interview technique that he commonly uses
20 to make statements such as that to the person that he is
21 interviewing, and then oftentimes the person that's being
22 interviewed will correct his statements.

23 THE COURT: All right.

24 MS. ALLEN: But that is an interviewing
25 technique that he commonly uses.

1 THE COURT: Well, the interviewing technique
2 that the defendant was utilizing was much similar, so
3 maybe they both took the same book. Who's interviewing
4 who in this statement here? I'm not going to -- I'm not
5 the one trying to -- Well, I am the one trying the case,
6 but I'm not the one out there lawyering it. But it looks
7 to me like this whole thing here is better for the
8 defendant than it is for the State. He puts in his
9 defenses.

10 MR. GREENE: Yes, sir.

11 THE COURT: And they don't want it in and you
12 guys do. This is really interesting. And it's all right
13 for you to tell the jury over there because they're going
14 to go back there because you're not going to bring in
15 fingerprints on a bag, you're not going to bring in a
16 weapon that was recovered, there's no fingerprints on a
17 knife found on a rock, we don't have any DNA from the
18 well, so we bring that in, they never see it, so now the
19 jury goes back there deliberating, they say hey, what
20 about the rock and the DNA evidence. Oh, gosh, I mean
21 this is -- It looks like a joke. I mean I'm just being
22 honest here with you, perhaps too honest.

23 MR. GREENE: No, sir, not at all.

24 THE COURT: Because you know, I mean it's **Davis**
25 **versus United States** and the Fifth Amendment, **State**