

Pierre Oldham - Direct by Mr. Unti

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Witness excused.)

MR. UNTI: Your Honor, our next witness is Pierre Pete Oldham.

CHAPIN PIERRE OLDHAM,
having been called as a witness for the Defense and being duly sworn at 11:02 a.m.m., testified as follows:

DIRECT EXAMINATION BY MR. UNTI:

Q. Good morning, Pete.

A. Good morning.

Q. The view from up there is a little bit different than it is from down here; isn't it?

A. It is.

Q. Will you please state your full name for the record.

A. My full name is Chapin Pierre Oldham, O-L-D-H-A-M.

Q. Where do you live?

A. Asheboro.

Q. What is your profession?

A. I'm an attorney.

Q. For how long have you practiced law in Randolph County?

A. I was licensed to practice in August of 1971. So that would make it about 46-and-a-half years.

Q. And are you still in practice in Asheboro?

A. At least for a couple more months.

Q. Are you in a general practice or do you have a

Pierre Oldham - Direct by Mr. Unti

1 specialty?

2 A. General practice.

3 Q. Have you in the past represented the defendant here
4 today, Scott David Allen?

5 A. I have.

6 Q. Would you tell the court what matters you have handled
7 for Mr. Allen?

8 A. The first time I saw Mr. Allen was in -- somewhere in
9 the '90s. I think it was the mid '90s. I was appointed to
10 represent him in some breaking and enterings, if I recall, of a
11 church in Randolph County, and I was subsequently appointed to
12 represent him, I guess, around 19 -- somewhere 1999 or 2000 in a
13 first degree murder case involving the death of Christopher
14 Gailey.

15 Q. Did you have co-counsel in that case?

16 A. In the murder case I did.

17 Q. And who was that?

18 A. Will Atkinson.

19 Q. Do you recall who -- I want to go back to the earlier
20 representations. Do you recall who accused Mr. Allen of
21 involvement in the church break-ins?

22 A. As I recall, there was a few witnesses. One of them
23 was a woman by the name of Vanessa Warner.

24 Q. And who was the prosecutor?

25 MR. VLAHOS: Objection. Irrelevant.

Pierre Oldham - Direct by Mr. Unti

1 MR. UNTI: Fine.

2 THE COURT: Overruled. If he remembers.

3 A. I don't recall who was the specific DA in this case.
4 It was Mr. Yates' office, either himself or somebody else in
5 that office who prosecuted the case at the time.

6 Q. Do you recall who was involved from law enforcement in
7 that case?

8 A. I remember Barry Bunting was the investigating officer
9 for the sheriff's department in Randolph County.

10 Q. Did that case go to trial?

11 A. Yes, it did.

12 Q. Can you tell me what happened?

13 A. From what I recall, we started a jury trial. It went
→ 14 on for several days. The presiding judge was Jim Davis, who was
15 from Cabarrus County. At some time during the trial, towards
16 Thursday or so, I recall Judge Davis calling me and whoever was
17 prosecuting the case to the bench and telling me that under his
18 own advisement, not the DA's office, he was going to offer a
19 deal to my client if my client was interested. And I remember
20 at that time we took a recess and I talked with Scott, and I
21 believe I talked to his father at that time, and his father had
22 attended the trial most of the week. And we came back and they
23 decided they would accept the offer. I cannot recall the
24 specifics of the offer at that time. But the trial ended with a
25 plea bargain at that time.

Pierre Oldham - Direct by Mr. Unti

1 XXX

2 (Defendant's Exhibit Number 5 marked for
3 identification.)

4 Q. Mr. Oldham, we have a document that was previously
5 marked as Defendant's Exhibit 5 in the first hearing relating to
6 these MARs and SMARs.

7 MR. UNTI: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 Q. Mr. Oldham, does that document that I handed you in
10 any way refresh your recollection of anything that occurred in
11 the course of that trial?

12 A. I remember that Mrs. Warner's statement changed, and I
13 cannot tell you at this stage who prepared this statement. I do
14 know it was in my file for that particular case, and either I
15 prepared it or it was prepared in Mr. Roose's office or prepared
16 by Danny Carter, would be my recollection.

17 Q. Is it your recollection that Vanessa Warner recanted
18 her original accusation of Scott Allen?

19 A. It's my recollection that she changed her story from
20 what she had originally told Mr. Bunting and gave some
21 explanations as to why she was changing her story.

22 Q. But you can't authenticate that document that I've
23 just placed before you?

24 A. I can only say that it was when you were investigating
25 Mr. Allen, at some point you became aware that I had represented

Pierre Oldham - Direct by Mr. Unti

1 him in an earlier stage. My office personnel pulled his file
2 and that was in that particular file for that particular case.

3 MR. UNTI: Based on that, your Honor, I would move to
4 have Defendant's Exhibit Number 5 admitted into evidence.

5 MR. VLAHOS: The State objects, your Honor, because it
6 has not been authenticated properly at this time.

7 MR. UNTI: Well, I think, your Honor, that he's
8 established that it is a business record that came out --
9 pardon me?

10 THE COURT: I said, yes. I thought that's where we
11 were going. We know at least it came out of his file. I don't
12 know what weight we should put on it, but we know at least it
13 came from his file.

14 Let the record reflect that the court will admit
15 Defendant's 5 as a business record, as Oldham has identified
16 this document as being part of a file that he regularly kept in
17 the course of his employment as an attorney and representing the
18 defendant, Scott Allen, on a previous charge involving,
19 Mr. Oldham had stated earlier, he believed breaking and entering
20 of church or churches. The weight to be assigned to the
21 document will be determined at a later time by the court.

22 Go ahead, please. Yes.

23 MR. UNTI: Thank you, your Honor.

24 (Defendant's Exhibit Number 5 entered into
25 evidence.)

Pierre Oldham - Direct by Mr. Unti

1 Q. (By Mr. Unti) : Was the Chris Gailey murder then the
2 next time that you represented Scott Allen?

3 A. It was.

4 Q. Do you recall who the district attorney was at that
5 time?

6 A. I do not recall specifically who prosecuted the case.
7 It's my recollection that Mr. Yates was in the courtroom with
8 one or more of his assistants at that time.

9 Q. Do you know who was involved from law enforcement?

10 A. This was -- in the Gailey murder case, it was a
11 Montgomery County case, because I recall the body of Mr. Gailey
12 had been found and there was some questions as to whether or not
13 the body was found within the geographical boundaries of
14 Montgomery or Randolph County, and I recall going to the scene,
15 and I think it even got to the point where surveyor services
16 were retained by the State of someone to determine if the body
17 was located within the geographical boundaries of Montgomery
18 County. I don't recall the specific officers down here in
19 Montgomery County who were investigating the case.

20 I can remember going to the sheriff's department, as was my
21 custom, to review the physical evidence, and doing that, as I
22 recall, on a Friday afternoon, but I can't recall what date that
23 was.

24 Q. Did there ever come a time when you had any contact
25 with or discussion with Lieutenant Barry Bunting about the

Pierre Oldham - Direct by Mr. Unti

1 outcome of the church break-in case?

2 A. Well, I recall after the murder trial was over he saw
3 me in the sheriff's department in Randolph County and he was
→ 4 rather upset because he blamed me for the subsequent homicide of
5 Mr. Gailey because of my representation of Mr. Allen in the
6 first case.

7 Q. Focusing again now on the Chris Gailey murder case.
8 What do you recall about the facts of that case?

9 A. I recall that when I was initially appointed, I came
10 to Montgomery County and saw Mr. Allen in the room to my right
11 outside the courtroom here and we talked because it was always
12 my practice to say, do not make any statements henceforth to
13 anybody except to me about this particular case. And the next
14 thing I remember about the case was trying to get discovery, and
15 I think the very first thing I did, which was my practice in all
16 the cases in which I represent somebody charged with murder, was
17 to file motion to request funds for the services of Danny
18 Carter, private investigator.

19 Q. Do you recall who accused Mr. Allen of involvement in
20 the shooting of Chris Gailey?

21 A. The person who allegedly was with Mr. Allen at the
22 time this particular instance was supposed to have occurred was
→ 23 Vanessa Smith, who was previously Vanessa Warner.

24 Q. So it's the same woman who had previously accused him
25 and then changed her story, according to your testimony?

Pierre Oldham - Direct by Mr. Unti

1 A. That's correct.

2 Q. After receiving the discovery, did there come a time
3 when you and Mr. Atkinson decided upon a defense strategy in the
4 murder case?

5 A. Well, it appeared to me that, having seen
6 Mrs. Warner's testimony previously that -- and she was
7 supposedly the only person who was present other than my client
8 when this incident was supposed to have occurred, that the case
9 was going to turn upon her credibility.

10 Q. Do you recall whether she claimed to have been an
11 eyewitness to the shooting?

12 A. She did.

13 Q. Do you recall where that shooting allegedly happened?

14 A. As I indicated earlier, it was in the, as I recall,
15 the northern part of this county in such close proximity there
16 was a real question which county it occurred. I remember going
17 to the scene. I remember Mr. Carter, which we always made that
18 a practice of walking the scene, and I remember it was, as I
19 recall, a cabin very far back near the national forest because
20 we walked into that area and walked back out. And it was, I
21 don't recall how long, but it was not a short distance.

22 Q. What was your overall strategy in the penalty phase of
23 the trial?

24 A. Well, I don't -- I remember we had hired the services
25 of a psychologist. I believe it was Gary Hoover, who was an

Pierre Oldham - Direct by Mr. Unti

1 instructor at UNCG Greensboro. I did not recall that until you
2 and the representative from the attorney general's office was
3 asking me about it that Gary had died.

4 I remember going to Mr. Hoover's funeral with Mr. Megerian,
5 who is another attorney in Asheboro, and with Danny Carter. It
6 was in Greensboro. And so that would have been something we had
7 done early on was hired his services. I don't recall
8 specifically what he did or said after that.

9 Q. Did you subsequently find somebody else to act as a
10 consulting mental health expert?

11 A. That is my recollection yes, that a different
12 psychiatrist was supposed to be for him. I believe Gary Hoover
13 might have been just a psychologist then. I'm not sure if the
14 next guy -- I think he was a psychiatrist; either psychiatrist
15 or psychologist, Dr. Warren.

16 Q. Dr. John Warren?

17 A. Yes.

18 Q. Did you at the time you were preparing for the case
19 know anything about the relationship between Mr. Allen and
20 Vanessa Warner Smith, what their relationship had been?

21 A. I gathered at some point it had developed into
22 something more than just acquaintances, because I recall that it
23 seemed like at some subsequent point Mr. Allen was working on
24 work release at Capel's Outlet, which is across the road from
25 the courthouse here, and it seems like to me Mrs. Warner,

Denise St. Clair, RPR, CRR, CRC
Official Court Reporter

Pierre Oldham - Direct by Mr. Unti

1 Mrs. Smith, whatever she was known at that time, had been the
2 person who had picked him up from that place and he did not
3 return.

4 Q. Do you recall whether they were boyfriend and
5 girlfriend?

6 A. That was my impression that it developed into that at
7 some point in time.

8 Q. Do you recall whether by the time of the trial whether
9 they were still boyfriend and girlfriend?

10 A. I don't think so. At that time at the trial Mr. Allen
11 had been arrested, I don't recall which date, but he was in the
12 western part of the United States and he was brought back to
13 this area and she was here at the time. At some point she was
14 in the Montgomery County jail down here. I recall that.

15 Q. Do you know what prompted his arrest while he was out
16 west?

17 A. I can't positively say. I don't remember specifics of
18 that. I think it had something to do with statements. I know
19 she at some point had told law enforcement officers that had
20 more or less taken a position she was going to testify against
21 Mr. Allen.

22 Q. She was going accuse him of shooting Chris Gailey; is
23 that correct?

24 A. Yes. Because my recollection is these people were all
25 friends, including Mr. Gailey, and at some point she accused

Pierre Oldham - Direct by Mr. Unti

1 Mr. Allen, and she was the primary witness against him.

2 Q. Let me ask you this. Did your earlier experience with
3 Vanessa Warner Smith in the church break-in case play a role in
4 your decision to choose a defense strategy based on her
5 credibility?

6 A. I think my early experience would have told me to
7 question her credibility, whether she was being truthful about
8 everything.

9 Q. Were you aware at that time whether or not Vanessa
10 Warner Smith had a substance abuse problem?

11 A. There was substance abuse throughout case, from what I
12 remember, on her part, Mr. Gailey's part, just about everybody
13 involved in the case.

14 Q. Do you recall at any point in time seeking out medical
15 and mental health records of Vanessa, Vanessa Warner Smith?

16 MR. VLAHOS: Objection, your Honor, to its relevance
17 to the sentencing hearing.

18 MR. UNTI: Your Honor, I think, as we mentioned during
19 the opening statement, based on the instructions that Judge
20 Cromer gave to the jury, anything that goes to the circumstances
21 of this crime and that would tend to mitigate the evidence
22 against him or raise residual doubt is relevant in sentencing
23 and is relevant in this hearing.

24 THE COURT: Okay. Well, we're not going back through
25 medical records that we've already plowed through. I guess

Pierre Oldham - Direct by Mr. Unti

1 there's additional questions that can be asked about her
2 substance abuse, and I think there were questions, as I recall,
3 to the evidence synopsis that I've read and the different
4 motions and different testimony, trial transcripts have been
5 presented to me, they were allowed to do some of that, but I'm
6 not going to try to steal anybody's thunder here. We're not
7 going to go back and retry issues that we've already decided
8 concerning the evidence that Judge Cromer would not allow to be
9 presented to the jury. But I'll let you go ahead and pursue it
10 thinking there might be other questions or other evidence that
11 might have been presented.

12 MR. UNTI: Your Honor, I do not intend to ask
13 Mr. Oldham to go through those records or testify to them.
14 Mr. Oldham has, in fact, never seen them, because they were not
15 turned over to him and to Mr. Atkinson at the trial.

16 THE COURT: That's my recollection as well. Thank
17 you.

18 I interrupted you or Mr. Vlahos correctly objected.
19 If you want to ask the last question again, I'll allow it.

20 (Previous question read back as follows:

21 "QUESTION: Do you recall at any point in time seeking
22 out medical and mental health records of Vanessa, Vanessa Warner
23 Smith?"

24 MR. VLAHOS: Objection to preserve, your Honor.

25 THE COURT: Let the record reflect the State continues

Pierre Oldham - Direct by Mr. Unti

1 to object. Objection overruled. Go ahead, please.

2 A. My recollection is she did have a problem and we did
3 file a request to have those records presented to us. There was
4 an in-camera hearing conducted. The presiding judge advised us
5 he did not feel like, after consulting with counsel that had
6 been appointed to represent her, there would be anything of
7 benefit to us for the trial of the case and we were not allowed
8 to see it.

9 Q. All right. Thank you Mr. Oldham.

10 Did you consider calling a mental health professional
11 as a defense witness during either phase of Mr. Allen's trial?

12 A. As I recall, we had filed a request to have him
13 examined by Gary Hoover. Subsequently someone replaced
14 Mr. Hoover after Mr. Hoover's untimely death. My recollection
15 was if we would have called him, it would have been during the
16 penalty phase, if it got to be that far.

17 Q. Do you have any recollection of having made a
18 strategic decision not to call a mental health professional
19 during the penalty phase of the trial?

20 A. I do not have any recollection of making a strategic
21 decision at that point in time.

22 Q. Do you know why a mental health professional was not
23 called?

24 A. I can't tell you at this point who was called and who
25 was not called at the penalty phase. So I don't remember any

Pierre Oldham - Direct by Mr. Unti

1 strategic decision made not to call anyone.

2 Q. Do you recall obtaining any mental health records from
3 Mr. Allen's childhood and adolescence in the course of your
4 investigation in the case?

5 A. My recollection is at some point I had determined, and
6 I don't know when this occurred, about him having been seen in
7 Abemarle possibly, and I remember that was one of the things I
8 think Detective Carter obtained for us. And I can't recall
9 specifically, but it would be my practice to turn those over to
10 the psychologist or psychiatrist who was examining him at that
11 time.

12 Q. In that case, that would be Dr. John Warren after
13 Dr. Hoover's death?

14 A. It might have been Dr. Hoover's initial and then
15 Dr. Warren later on.

16 Q. Do you recall -- other than listening to them this
17 morning, do you recall a potential witness named Tina Fowler?

18 A. I recall that at some point it came to my attention
19 she could be a potential alibi witness, and I recall that Danny
20 Carter and I got into a vehicle and rode out at the Denton area
21 at one time looking for her. I don't recall seeing her on that
22 occasion. I recall seeing a gentleman who was either her father
23 or her grandfather and he -- we explained to him why we were
24 looking for her and asked him to get back in touch with her.

25 My next recollection is at some point Mr. Carter may

Pierre Oldham - Direct by Mr. Unti

1 have located her at a later date, and at that point in my
2 conversations with Mr. Atkinson, at some point there was a
3 meeting arranged for him and her at the IHOP restaurant in
4 Asheboro. And as I recall, Mr. Atkinson, although he did not
5 remember her name, he finally said, I think that's the lady who
6 worked out at the club where he was a member, and he suggested
7 that since he had had some interaction with her it might be more
8 appropriate if he goes to speak with her at IHOP, so I did not
9 accompany him on that.

10 Q. So it's your recollection that Tina Fowler Chamberlain
11 was acquainted with Mr. Atkinson at some point?

12 A. It was my recollection, yes, they were acquainted with
13 each other. I'm not saying the -- I'm just thinking he
14 remembered her working at the club where he was a member and
15 suggested that because of that relationship he wanted to
16 interview her.

17 Q. Did you ever interview or contact a man named Joe
18 Laughlin? *JOE LOFLIN*

19 A. I cannot recall that name. I do not know if I did or
20 not. I don't recall specifically. And I remember Mrs. Fowler
21 because I remember riding with Mr. Carter on that occasion.
22 Some occasions I would go with him, on other occasions he would
23 go on his own and he would come back and make reports to me.

24 Q. So there were some people, as I understand your
25 testimony, that Danny Carter would have interviewed and there

Pierre Oldham - Direct by Mr. Unti

1 would be no lawyer present?

2 A. That would be correct. Yes.

3 Q. Do you recall that Mr. Allen had a close friend and
4 girlfriend named Kelly Racobs?

5 A. What I recall is that she was possibly in whatever
6 state he was located in subsequently. I don't recall much more
7 about her specifically.

8 Q. Do you know whether she came here for the trial of
9 Mr. Allen in 2004?

10 A. I cannot recollect that.

11 Q. Do you recall interviewing her?

12 A. I do not recollect that.

13 Q. To the best of your knowledge, did you ask her to come
14 to this area to be a witness in this case?

15 A. To the best of my knowledge, I do not recollect
16 whether I did or not.

17 Q. I may be able to think of three or four other ways to
18 ask that question, but I'll let them go then.

19 A. Okay.

20 Q. Do you recall the photographs or videos from ATM
21 machines in this case?

22 A. I don't recall the specifics. I remember there was
23 something allegedly taken. It might have been a card, a debit
24 or credit card, taken from Mr. Gailey that was used at
25 someplace. And it seems like, but I can't say for sure, I do

Pierre Oldham - Direct by Mr. Unti

1 not recall Mr. Allen being -- showing up in that.

2 Q. Do you recall other people showing up in those ATM
3 photographs?

4 A. I could not tell you who they were at this point, but
5 I just remember I didn't think it was our client.

6 Q. Did there come a time that you or Mr. Atkinson, to
7 your knowledge, sat down with Mr. Allen and reviewed the ATM
8 videos and photographs?

9 A. I don't recall the specifics about that particular
10 facet of the case.

11 Q. Do you recall any efforts that Mr. Carter or you or
12 Mr. Atkinson made to identify the people in those photographs?

13 A. Not now I do not.

14 Q. One further question on that. Do you have any
15 recollection of a point in time when you and Mr. Atkinson were
16 reviewing the tape and the tape appeared to be broken or
17 damaged?

18 A. I don't have any recollection of that.

19 THE COURT: Is this a bank tape?

20 MR. UNTI: Yes. Bank ATM where Mr. Gailey's debit
21 card was being used.

22 THE COURT: Thank you, sir.

23 MR. UNTI: Your Honor, I don't have any further
24 questions for this witness at this time.

25 THE COURT: Thank you, sir. Yes, sir.

Pierre Oldham - Redirect by Mr. Unti

1 Any redirect?

2 MR. UNTI: Yes, sir.

3 REDIRECT EXAMINATION BY MR. UNTI:

4 Q. Mr. Oldham, did you file a motion for a continuance
5 following the illness and subsequent death of Dr. Gary Hoover?

6 A. I did not recall. It's like these documents, I could
7 not -- they were in the file. I haven't seen many of these
8 things in years.

9 Q. Well, do you recall filing a continuance as a result
10 of Dr. Warren informing you that he was not ready to testify?

11 A. I do not recall that specifically.

12 Q. One other thing. This is just a clarification of some
13 of your earlier testimony. You mentioned that following the
14 break-in, the church break-in case in approximately 1994 and
15 subsequent to that Lieutenant Bunting had, I guess you
16 characterized it as an angry conversation blaming you for
17 Chris Gailey's death; is that an accurate summary of your
18 testimony?

19 A. I recall a statement he made in the presence of other
20 people at the sheriff's department that I was responsible
21 because of my actions in the first case.

22 Q. And what were the actions he was complaining about?

23 A. My recollection is he was complaining about whatever
24 Judge Davis had offered and that bringing the first case to a
25 conclusion because there had been no plea offers before that

Pierre Oldham - Recross by mr. Vlahos

1 time.

2 Q. Was that the result of the recantation of the
3 statement of Vanessa Smith?

4 A. Can I tell you what was in Judge Davis' mind? I can
5 just say that he called me to the bench and said, This is not
6 coming from the DA's office, this is from me, you talk to your
7 client, here's what I'm willing to do. And I talked to
8 Mr. Allen and his father about that.

9 Q. And it was as a result of that that Lieutenant Bunting
10 blamed you for Chris Gailey's death?

11 A. I think he was -- this was a case, a church case, and
12 there was lot of heat, I think, because for some such reason no
13 offer was ever made and he felt like he came too easy on that
14 case and he would not have been out otherwise.

15 Q. He, being Scott Allen, got out -- came out too easy --

16 A. That's what --

17 Q. -- following that case?

18 A. That's what he felt, yes.

19 MR. UNTI: Your Honor, that's all I have.

20 THE COURT: Thank you.

21 RE-CROSS-EXAMINATION BY MR. VLAHOS:

22 Q. You're not stating it's your belief that the prior
23 breaking and entering case had anything to do with this capital
24 murder case; is it?

25 A. No. I was simply stating that the prior case had

Pierre Oldham - Recross by mr. Vlahos

1 only to do with this in regards to the fact that the witness
2 against Mr. Allen in that case was the same witness who
3 placed him as the person who pulled trigger in Mr. Gailey's
4 murder.

5 Q. You are not trying to make any statement of any
6 kind that you have vindictive or wrongful prosecution; are
7 you?

8 A. Oh, no. I'm not saying that. I'm just stating what
9 he -- I was sort of taken aback when he sort of came at me in
10 this direction. Okay?

11 Q. Yes, sir. Thank you.

12 MR. VLAHOS: No further questions.

13 MR. UNTI: No further questions.

14 THE COURT: Okay. Let's take a break and get started
15 back about -- let's have him back here about 2:25 so we can
16 start back at 2:30.

17 Court will stand adjourned until 2:30.

18 (Lunch recess at 1:02 p.m.)

19 AFTERNOON SESSION

20 (Proceedings resumed at 2:28 p.m.)

21 THE COURT: Please let the record reflect the
22 defendant and all counsel are again in the courtroom.

23 Are you guys ready to roll?

24 MR. UNTI: Yes, your Honor.

25 THE COURT: Very good.

Denise St. Clair, RPR, CRR, CRC
Official Court Reporter