

IN THE CIRCUIT COURT, 9th JUDICIAL
CIRCUIT, CRIMINAL JUSTICE DIVISION
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

PLAINTIFF,

VS.

CASE NO. CR 90-5351
VOLUME III

SCOTTY MERSON,

DEFENDANT.

FILED IN OFFICE
CRIMINAL DIVISION
91 MAR 26 PM 4:10
FRANK CARLTON
CLERK OF CIRCUIT COURT
ORANGE COUNTY, FL

JURY TRIAL PROCEEDINGS

BEFORE

THE HONORABLE GEORGE A. SPRINKEL, IV

ORANGE COUNTY COURTHOUSE
COURTROOM C, THIRD FLOOR
ORLANDO, FLORIDA 32801
WEDNESDAY, OCTOBER 17, 1990
COMMENCING AT 10:15 A.M.

A P P E A R A N C E S:

MARK C. BENDER, ESQUIRE
ASSISTANT STATE ATTORNEY
250 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
APPEARING FOR THE PLAINTIFF

ERIC R. EIDE, ESQUIRE
ASSISTANT PUBLIC DEFENDER
ONE NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32801
APPEARING FOR THE DEFENDANT

I N D E X

VOL. III

OCTOBER 17, 1990
MORNING SESSION

STATE WITNESSES (CONTINUING):

TESTIMONY OF CATHY [REDACTED]

DIRECT EXAMINATION BY MR. BENDER	289
CROSS-EXAMINATION BY MR. EIDE	301
REDIRECT EXAMINATION BY MR. BENDER	305

TESTIMONY OF FRANCIS P. ROACH

DIRECT EXAMINATION BY MR. BENDER	307
CROSS-EXAMINATION BY MR. EIDE	321
REDIRECT EXAMINATION BY MR. BENDER	327

STATE RESTS 331

DEFENSE MOTION FOR JUDGMENT OF ACQUITTAL	332
MOTION DENIED	336

OCTOBER 17, 1990
AFTERNOON SESSION

STATE WITNESS (CONTINUING):

TESTIMONY OF FRANCIS P. ROACH

FURTHER REDIRECT EXAMINATION	338
------------------------------	-----

STATE RESTS 339

RENEWED MOTION FOR JUDGMENT OF ACQUITTAL	339
MOTION DENIED	340

DEFENSE WITNESSES:

TESTIMONY OF CHRISTI MOORE

DIRECT EXAMINATION BY MR. EIDE	340
CROSS-EXAMINATION BY MR. BENDER	345

I N D E X (CONTINUING)

TESTIMONY OF SHAWN P. WILLEY	
DIRECT EXAMINATION BY MR. EIDE	350
CROSS-EXAMINATION BY MR. BENDER	354
REDIRECT EXAMINATION BY MR. EIDE	359
DEFENSE MOTION IN LIMINE RE:	
PRIOR CONVICTIONS	360
TESTIMONY OF MICHAEL S. HYLAND	
DIRECT EXAMINATION BY MR. EIDE	362
ARGUMENT RE: MOTION IN LIMINE	365
RICHARDSON HEARING RE: J AND S'S	
DEFENSE MOTION TO EXCLUDE GRANTED	391
TESTIMONY OF MICHAEL S. HYLAND	
DIRECT EXAMINATION (CONTINUING)	398
CROSS-EXAMINATION BY MR. BENDER	402
REDIRECT EXAMINATION BY MR. EIDE	413
CERTIFICATE	415
* * * * *	
E-X-H-I-B-I-T-S	
STATE'S EXHIBIT NO. 1 IN EVIDENCE	315
* * * * *	

1 OCTOBER 17, 1990

2 10:15 O'CLOCK A.M.

3 P R O C E E D I N G S

4 MR. EIDE: YOUR HONOR, I WOULD LIKE TO OBJECT
5 THAT MY CLIENT, MR. MERSON, IS COMING TO COURT THIS
6 MORNING DRESSED AS HE IS, AND I OBJECT TO HIS
7 APPEARANCE.

8 I DON'T HAVE THE CASE LAW WITH ME, BECAUSE
9 I DIDN'T EXPECT HIM TO BE PROVIDED IN SUCH A MANNER.
10 BUT THERE IS CASE LAW THAT SAYS IT'S THE STATE'S
11 BURDEN TO PROPERLY CLOTH AND DRESS OUT A CLIENT.

12 MR. MERSON IS UNDER THE STATE'S CONTROL.
13 HE'S AT THE MERCY OF THE STATE, AS FAR AS WHAT IS OR
14 IS NOT DONE TO HIM.

15 I SPECIFICALLY ASKED MONDAY, WHEN I WAS
16 OUT TO THE C.O., THAT THEY ALLOW HIM TO SHOWER AND
17 THAT THEY ALLOW HIM TO SHAVE. HE HAD REQUESTED,
18 HIMSELF, MANY TIMES. THEY HAD NOT ALLOWED HIM.

19 THE C.O. ON THE FIFTH FLOOR PROMISED ME
20 THEY WOULD ALLOW HIM TO. HE CAME IN YESTERDAY.
21 HE HAD BEEN SHAVEN.

22 HE COMES IN THIS MORNING. HE HAS NOT BEEN
23 ALLOWED TO SHAVE OR BATHE SINCE YESTERDAY. AND HE IS
24 ON TRIAL FOR TWO SEXUAL BATTERIES; ONE, PUNISHABLE
25 BY LIFE.

1 AND, SECONDLY, I OBJECT; HE CAME IN TODAY
2 WEARING THE SAME TIE HE WORE YESTERDAY. I WENT OUT
3 AND PROVIDED A TIE TO THEM YESTERDAY. I HAVE THE
4 RECEIPT, AND AT THIS TIME I'M GOING TO MOVE THIS INTO
5 EVIDENCE FOR THE RECORD.

6 THE COURT: WHO WAS THE CORRECTIONS OFFICER THAT
7 DENIED YOU THE RIGHT TO SHAVE MR. MERSON?

8 THE DEFENDANT: I DON'T KNOW, SIR. I'M NOT SURE
9 WHO IT WAS.

10 THE COURT: YOU REQUESTED?

11 THE DEFENDANT: YES, I DID AND TO TAKE A SHOWER.

12 THE COURT: YOU'RE NOT PERMITTED TO TAKE A SHOWER
13 EVERY DAY, NORMALLY?

14 THE DEFENDANT: ONLY THREE TIMES A WEEK.

15 MR. EIDE: YOUR HONOR, I WOULD LIKE TO HAVE
16 THIS, RECEIPT WHICH I'VE JUST GIVEN THE CLERK AND I'VE
17 SHOWN TO THE STATE, I WOULD LIKE TO HAVE THAT MARKED AS
18 DEFENSE EXHIBIT NUMBER ONE, FOR PURPOSES OF THIS MOTION
19 TO HAVE MR. MERSON PROPERLY ATTIRED.

20 THE COURT: I DON'T DOUBT WHAT YOU'RE SAYING.

21 MR. EIDE: I WANTED THIS FOR THE RECORD, TOO.

22 YOUR HONOR, THE REASON I BROUGHT THE RED
23 TIE OUT LAST NIGHT, BECAUSE THERE'S A POLICY OUT AT
24 33RD STREET THAT THEY WILL NOT ACCEPT CLOTHES FOR
25 TRIAL EXCEPT THE NIGHT BEFORE.

1 AND I WENT OUT AND BROUGHT THE CLOTHES
2 TO HIM MONDAY. BECAUSE HIS UNCLE HAD TRIED, AND THEY
3 WOULDN'T ACCEPT IT PRIOR TO THE NIGHT BEFORE TRIAL.

4 I WENT OUT THERE AND TALKED AND CAJOLED
5 THEM TO ACCEPT TWO SHIRTS AT THE TIME.

6 THE COURT: WELL, ARE THERE TOILET OR BATHROOM
7 FACILITIES NEXT DOOR, AT THE HOLDING CELL?

8 THE COURT DEPUTY: NO.

9 THE COURT: IS THERE ANY REASON WHY HE CAN'T USE
10 THE SINK IN HERE AND SHAVE IN THE BATHROOM IN HERE?

11 THE COURT DEPUTY: I DON'T SEE ANY REASON WHY
12 NOT. WE DON'T HAVE ANY RAZORS, OR ANYTHING.

13 THE COURT: NO. WE NEED TO GET HIM A RAZOR.
14 WE'LL RECESS THE CASE. GO OVER TO THE 7-ELEVEN AND
15 GET A RAZOR AND SOME SHAVING CREAM, OR WHATEVER,
16 MR. EIDE OVER HERE AT THE 7-ELEVEN. DO YOU KNOW
17 WHERE I'M TALKING ABOUT?

18 MR. EIDE: YES, YOUR HONOR.

19 THE COURT: AT THE CORNER OF CENTRAL AND MAGNOLIA.
20 AND BRING IT BACK, OR SEND SOMEBODY TO DO IT. I DON'T
21 CARE HOWEVER YOU DO IT.

22 HE CAN SHAVE. AS FAR AS THE TIE IS
23 CONCERNED, IF YOU'VE GOT A TIE FROM ANOTHER COLLEAGUE,
24 THAT YOU WANT TO LONE HIM OR SOMETHING, YOU CAN DO
25 THAT. BUT WE DON'T HAVE THE TIME TO GO GET A TIE

1 FROM 33RD STREET, IF THAT'S WHERE IT IS.

2 MR. EIDE: I MAY BE ABLE TO PULL A TIE FROM OUR
3 OFFICE. I WOULD HAVE TO GO OVER AND CHECK ON THAT.

4 THE COURT: WELL, WE NEED TO GO NOW. SO I'M
5 GOING TO RECESS UNTIL THAT'S DONE. I TRUST WE CAN
6 DO IT IN ABOUT 15 MINUTES AT THE VERY MOST.

7 MR. EIDE: I'LL MOVE WITH ALL DUE SPEED, YOUR
8 HONOR.

9 (THEREUPON, COURT RECESSED AT 10:24 A.M., TO
10 RECONVENE AT 10:55 A.M., AFTER WHICH THE FOLLOWING
11 PROCEEDINGS TRANSPIRED:)

12 THE COURT: COUNSEL, APPROACH THE BENCH.

13 (THEREUPON, COUNSEL APPROACHED THE BENCH, AND THE
14 PROCEEDINGS WERE HAD OUTSIDE THE HEARING OF THE JURY,
15 AND OFF THE RECORD.)

16 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
17 WELCOME BACK AFTER, I HOPE, A GOOD NIGHT'S REST LAST
18 NIGHT. WE TRIED TO START AT TEN. THERE WERE MATTERS
19 THAT WERE UNAVOIDABLE. I CAN ASSURE YOU WE WOULD
20 HAVE STARTED AT TEN HAD WE BEEN ABLE TO DO THAT.

21 SO WE ARE NOW READY TO PROCEED. I BELIEVE
22 THE STATE HAS SOME MORE WITNESSES THEY WISH TO CALL.

23 THE STATE MAY PROCEED.

24 MR. BENDER: YES, YOUR HONOR. WE WOULD CALL
25 CATHY ██████.