

COLLOQUY

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2 July 15, 1996 -- 10:52 a.m. - defendant present:

3 THE COURT: All right, Mr. Keenan,
4 Mr. Smith, you want to place some matters on the
5 record at this point.

6 MR. SMITH: Yes, I do, Your Honor, thank
7 you. Well, your Honor, we had a -- first thing
8 I'd like to place on the record, Your Honor, is
9 a -- I reviewed your suppression decision. The
10 decision was dated June 19th, 1996. I filed my
11 memo on May 15th, 1996, and I raised five points
12 in the memo.

13 At this point, I read your decision. I
14 don't think your decision addressed some of the
15 points. Point one was a Chapel and Bethea point,
16 Your Honor, that I raised and I don't believe the
17 decision addressed that point.

18 Point two was a right to counsel point. I
19 don't believe the decision addressed that point.

20 Point three was the suppression of search
21 and seizure issues that involved a gold chain and
22 a ring, and your decision didn't address that
23 point.

24 And point five was a omnibus motion point
25 that addressed the request that the court order

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2 some additional hearings. That connected with
3 some issues that came out of the motion argument
4 where the court denied some of the hearings that
5 I requested.

6 And point five, I made some requests that
7 the court reconsider the motion argument and
8 order additional hearings. And at this point,
9 Your Honor, I'm requesting that the court reach a
10 decision on those four points, that would be
11 point 1, 2, 3 and 5 of the legal memorandum and
12 issue a decision on those points.

13 THE COURT: Very well. The -- try to make
14 the notes here. I would summarily deny the
15 motions. First of all with regard to the issue
16 of jewelry, the testimony and the only testimony
17 established that the -- in fact the defendant at
18 the time he was discussing this jewelry with the
19 police officers virtually took the jewelry right
20 off his person and handed it or began to hand it
21 to the officers, at which point they told him,
22 well, just hold on a minute, we'll do this after
23 we finish the statement here. And subsequently
24 consent was signed, or consent was clearly given
25 by the defendant. So I see no basis to suppress

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the jewelry.

The Chapel Bethea question was raised and I thought addressed indirectly by the denial of the motion generally, and Chapel Bethea issue is when the defendant, the only testimony in the record, which I think is quite credible, is that the defendant called back that morning and said okay, I'm not going to church, I'm ready to come down, any time you want to get me c'mon and get me. And they made an arrangement, picked him up, took him downtown.

And I don't see under the circumstances at the time where this was my, there's no evidence establishing, at least to me satisfactory that, the conversations which the police were having with the defendant was a custodial interrogation or a police dominated environment. This was information that he volunteered to submit himself to present, and he followed through on that, and there was no -- this was a -- strictly with the cooperation of the defendant and I don't see under the Yukl principle where the defendant, or any person innocent of any crime, would have felt that he was under arrest or under circumstances

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2 constituting a custodial interrogation.

3 So I think it wasn't until the defendant
4 during the course of his narrative, where the
5 police, all of a sudden started picking up some
6 inconsistencies and they felt it was appropriate
7 to then give him the warnings. So I think under
8 the circumstances that that aspect of the motion
9 would be, would have to be denied.

10 The same way with the right to counsel.
11 Likewise, I think that the defendant up to the
12 time that it became appropriate to give those
13 warnings under the circumstances, the defendant
14 was fully cooperating, had not -- there was no
15 need to -- no basis or requirement under the
16 circumstances to have given the Miranda warnings
17 until they were given. And when they were given
18 the defendant at that point waived the right
19 to -- and proceeded to give the statements that
20 he had been giving to the police.

21 And the omnibus motion requiring or
22 requesting certain additional hearings likewise
23 would be denied, and inferentially -- or was
24 denied in the course of the decision, which I
25 rendered previously.