

IN THE SUPREME COURT OF OHIO

ORIGINAL

STATE OF OHIO, :
Appellee, : CASE NO. 2007-0755
v. : C.P. Case No. CR475400
CHARLES MAXWELL, :
Appellant. : **This is a death penalty case.**

ON APPEAL FROM THE CUYAHOGA COUNTY COURT OF COMMON PLEAS,
CASE NO. CR475400

APPENDIX TO APPELLANT CHARLES MAXWELL'S APPLICATION FOR
REOPENING PURSUANT TO S.Ct. Prac. R. 11.06

TIMOTHY J. McGINTY (0024626)
Cuyahoga County Prosecutor

SALEH AWADALLAH (0063422)
Assistant Prosecutor

ADAM CHALOUPKA (0089193)
Assistant Prosecutor

The Justice Center, 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

COUNSEL FOR APPELLEE

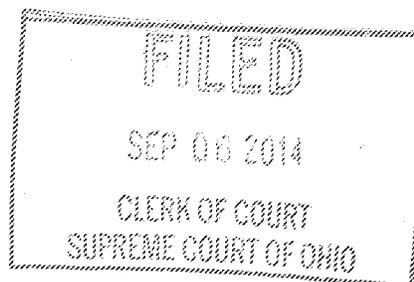
OFFICE OF THE
OHIO PUBLIC DEFENDER

RACHEL TROUTMAN (0076741)
Supervisor, Death Penalty Division
Counsel of Record

SHAWN WELCH (0085399)
Assistant State Public Defender

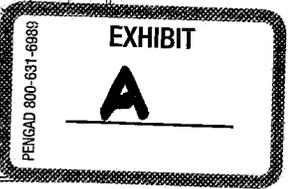
Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394 - Voice
(614) 644-0708 - Fax

COUNSEL FOR APPELLANT



LIST OF ATTACHED EXHIBITS

- A) State's Ex. 121: Phone Records
- B) March 14, 2007: Motion for New Trial
- C) April 3, 2007: Motion for New Trial



DATE	TIME	# CALLED FROM	REGISTER TO	# CALLED TO	REGISTER TO	D
11/23/05	2:42 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	
11/23/05	3:02 A.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	
11/23/05	9:04 A.M.		NICHOLE MCCORKLE SCHEDULED GRAND JURY TESTIMONY #14			
11/23/05	9:49 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	30 sec
11/23/05	9:50 A.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	2 min 55 sec
11/23/05	9:54 A.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	1 min
11/23/05	1:35 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 483-0007	WILL HUTCHINSON	7 sec
11/23/05	5:46 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 483-0007	WILL HUTCHINSON	7 sec
11/23/05	7:50 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/23/05	7:53 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/23/05	7:57 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/23/05	8:09 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/23/05	8:10 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	9 min 32 sec
11/24/05	1:23 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	1 min 30 sec
11/24/05	8:48 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	16 min 30 sec
11/24/05	11:07 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	35 sec
11/24/05	11:08 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	7 min 44 sec
11/25/05	7:01 A.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	1 min 6 sec
11/25/05	8:32 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	8 min 4 sec
11/25/05	5:30 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	11 sec
11/25/05	5:31 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	2 min 17 sec
11/25/05	6:30 P.M.	(216) 249-2630	CHARLES MAXWELL	(216) 215-3200	CHARLES MAXWELL	0 sec
11/25/05	6:34 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	7 min 14 sec
11/25/05	9:46 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/25/05	10:01 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	6 min 4 sec
11/25/05	10:17 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	0 sec
11/26/05	1:33 A.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	20 min 23 sec
11/26/05	8:52 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	9 min 52 sec
11/26/05	9:35 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	43 sec
11/26/05	3:57 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/26/05	3:57 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	11 sec

**STATES
EXHIBIT**

11/26/05	4:30 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	16 sec
11/26/05	5:51 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	13 min 41 sec
11/26/05	8:15 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	3 min 26 sec
11/26/05	8:22 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 483-0007	WILL HUTCHINSON	6 sec
11/26/05	9:48 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	1 min 16 sec
11/26/05	10:02 P.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	12 sec
11/26/05	10:18 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	18 min 46 sec
11/26/05	10:43 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/26/05	10:48 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	1 min 31 sec
11/26/05	10:52 P.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	37 min 31 sec
11/26/05	11:18 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/26/05	11:27 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/26/05	11:35 P.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/26/05	11:36 P.M.	(216) 215-3200	CHARLES MAXWELL	(216) 249-2630	NICHOLE MCCORKLE	1 min 12 sec
11/26/05	11:36 P.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/26/05	11:39 P.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	2 min 26 sec
11/27/05	2:05 A.M.	(216) 249-2630	NICHOLE MCCORKLE	(216) 215-3200	CHARLES MAXWELL	13 min 32 sec
11/27/05	2:32 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	3 sec
11/27/05	2:32 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/27/05	2:32 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	0 sec
11/27/05	2:33 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	14 sec
11/27/05	2:34 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	4 sec
11/27/05	2:35 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 249-2630	NICHOLE MCCORKLE	17 sec
11/27/05	2:36 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 323-8381	LAURETTA KENNEY	2 min
11/27/05	2:39 A.M.	(216) 323-8381	LAURETTA KENNEY	(216) 249-2630	NICHOLE MCCORKLE	55 sec
11/27/05	2:40 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 323-8381	LAURETTA KENNEY	1 min
11/27/05	2:40 A.M.	(216) 924-0026	WILL HUTCHINSON	(216) 323-8381	LAURETTA KENNEY	2 min
11/27/05	2:44 A.M.	(216) 323-8381	LAURETTA KENNEY	(216) 249-2630	NICHOLE MCCORKLE	39 sec
11/27/05	2:46 A.M.		*** NICHOLE MCCORKLE CALL TO GROOMS ***			
11/27/05	2:46 A.M.	(216) 256-4049	HEINZ KENNEY, JR.	(216) 249-2630	NICHOLE MCCORKLE	18 sec
11/27/05	2:50 A.M.	(216) 323-8381	LAURETTA KENNEY	(216) 249-2630	NICHOLE MCCORKLE	37 sec
11/27/05	2:52 A.M.		*** LAURETTA KENNEY CALL TO GROOMS ***			

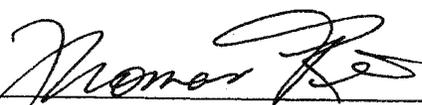
12/1/05	10:22 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	4 min 52 sec
12/1/05	10:28 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	1 min 34 sec
12/1/05	10:29 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	3 min 21 sec
12/1/05	10:33 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	26 min 6 sec
12/1/05	10:59 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	38 sec
12/1/05	11:00 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	3 sec
12/1/05	11:02 A.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	6 min 46 sec
12/1/05	12:44 P.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	1 min 17 sec
12/1/05	9:33 P.M.	(216) 554-3333	CHARLES MAXWELL	(216) 854-7935	JOHN GREGG	35 sec
12/1/05	9:36 P.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	8 in 15 sec
12/1/05	9:52 P.M.	(216) 854-7935	JOHN GREGG	(216) 554-3333	CHARLES MAXWELL	3 min 46 sec

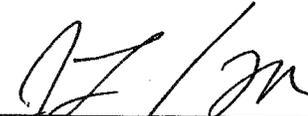
FILED
CRIMINAL DIVISION
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
2007 MAR 14 A 9:25
CRIMINAL DIVISION

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

STATE OF OHIO,) JUDGE MATIA
Plaintiff,) CASE NO. CR 475400
-vs-) MOTION FOR NEW TRIAL
CHARLES MAXWELL,) (ORAL HEARING REQUESTED)
Defendant.)

Now comes the Defendant in the above-captioned case, by and through counsel, Thomas Rein and John Lusk, and respectfully requests moves this Honorable Court pursuant to Criminal Rule 33, for an order granting Defendant Charles Maxwell a new trial because the verdict is contrary to law; the prosecutor engaged in misconduct; and new evidence material to the defense was discovered at John Gregg's sentencing which could not have been discovered with reasonable diligence and produced at the original trial. This evidence was critical and material to Charles Maxwell's defense and was never disclosed by the Prosecutor's Office to defense counsel. Therefore, Charles Maxwell respectfully requests a new trial.


THOMAS REIN, ESQ.
Attorney for Defendant


JOHN LUSKIN, ESQ.
Attorney for Defendant

0000
EXHIBIT
B
PENGAD 869-631-6886

BRIEF IN SUPPORT

The jury in this case has recommended a sentence of death for Charles Maxell. This Honorable Court has set Mr. Maxwell's sentencing for March 15, 2007. The specification that makes this case a potential death sentence case is the Retaliation specification. The only evidence which ties Appellant to this in the least bit is the testimony of John Gregg. It is quite clear that the State's witness, John Gregg, lied on the witness stand. At the 804(B)(6) forfeiture exception to the hearsay rule hearing outside the jury's presence on February 13, 2007, John Gregg testified. That hearing contained several lies on Gregg's part. John Gregg, as this Court will recall, carries a copy of his "Indictment" with him. However, he tried to tell the court that his earlier conviction in front of Judge Saffold was for two counts of grand theft. This court quickly caught the lie and indicated that Mr. Gregg was instead convicted of two counts of Arson and not grand theft.

Next, he denied lying at his earlier deposition in the civil case. This too was at the February 13, 2007 hearing.

MR. LUSKIN: You went to a deposition sir, correct?

JOHN GREGG: Yes, sir.

MR. LUSKIN: The court reporter, much like our court reporter Mary, swore you.

JOHN GREGG: Right.

MR. LUSKIN: To tell the truth.

JOHN GREGG: That's right. That's true.

MR. LUSKIN: In the course of that deposition, sir, what if anything did you do?

JOHN GREGG: Answered the questions.

MR. LUSKIN: And did you lie?

JOHN GREGG: Did I lie? No, sir.

MR. LUSKIN: You did not lie?

JOHN GREGG: No, sir.

At John Gregg's sentencing, February 28, 2007, to no one's great surprise, he sings a different tune. Mr. Gregg was unmistakably quite vehement about his "truthfulness" at the deposition at the February 13, 2007 hearing.

JOHN GREGG: I'd just like to say that I'm sorry for having taken the Court through this course for making some misleading statements in my deposition. I realized that had I answered differently, all of this could have been avoided and truthfully I am sorry about that.

...THE COURT: You fooled your lawyer, you fooled the defense attorneys, you fooled the entire criminal justice system, correct?

JOHN GREGG: Yes, sir.

John Gregg's testimony at Mr. Maxwell's trial was that this Homicide was Retaliation. However, at Mr. Gregg's sentencing, the Court asks Gregg a point blank question which elicits a different response.

THE COURT: Did he (Charles Maxwell) indicate to you why he killed her?

JOHN GREGG: No, not entirely, no.

None of these facts and admitted lies by Gregg could have been discovered until John Gregg's Sentencing.

The court at Gregg's sentencing found Gregg's testimony so unbelievable that he specifically referred to Gregg, telling him, "*You are a weasel. You are a fraud. Your whole life has been about being a fraud. I find you to be one of the most despicable humans that I've seen here for a long time.*" The court continued, "*I have daughters and if I – if one of them married someone like you I think I would be doing time for manslaughter at this point.*" The court also stated, "*You testified in the case after voir diring some of your testimony indicating that I would have to look at my own birth certificate and driver's license to confirm if you told me my name was David Matia because you are that unbelievable.*" The court continued, "*I bring this up so the record can fully demonstrate what an awful human being you are and how deserving of prison you. My only regret is I'm limited to six months. I see people here on a day in and day out basis; many have redeeming qualities about them. You have gone through life, again, as a complete fraud.*" (SEE ATTACHED COPY OF TRANSCRIPT OF JOHN GREGG'S SENTENCING).

What else did we find out at John Gregg's sentencing (which occurred while the jury was deliberating and deciding Mr. Maxwell's punishment) ???

- 1) That John Gregg reached an out-of-court settlement with Reminger and Reminger where John Gregg had to pay that firm OUT OF HIS OWN POCKET \$5,000.00. (This is brand new information never disclosed to the defense). Certainly this is quite unusual since Gregg was the Plaintiff in that case.

It gets even better !!!

- 2) That John Gregg went to the Grand Jury and perhaps testified there !!!!

This Exculpatory Evidence was never disclosed to the defense. This is shocking, especially in a case where the prosecutors tried so painstakingly to admit other Grand Jury testimony. Perhaps there are other things or statements out there that occurred during the Grand Jury proceedings that just conveniently were never disclosed by the State. The very fact that he went to the Grand Jury should have been disclosed. We may never know unless this Honorable Court grants this motion.

Something else is quite disturbing in this whole scenario. The prosecutor's office provided defense counsel copies of the two written statements made by John Gregg to the Cleveland Police Department, one from November 30, 2005 and one from November 21, 2006 right before John Gregg's testimony. However, the prosecutors never disclosed anything about John Gregg's testimony to the Grand Jury or even the very fact that he was called to the Grand Jury. Criminal Rule 16 requires that the prosecutor through discovery provide any statements of a co-defendant. John Gregg was a co-defendant of Charles Maxwell's in Cuyahoga Case No. CR 476741. Assigned counsel for Charles Maxwell, Lynn Loritts, filed three motions on Mr. Maxwell's behalf on September 28, 2006. The three motions according to the docket were 1) Request for Evidence Notice 2) Motion for Discovery and to Examine and Mitigatory Material 3) Motion for Bill of Particulars. Throughout the course of these cases, undersigned counsel has been in contact with Ms. Loritts. **Nothing in the docket indicates that a written response was prepared by the prosecutors, not even to this day, over four (4) months later !!!!**

In fact, on February 6, 2007, a MOTION TO COMPEL DISCOVERY was filed. To this day, March 13, 2007, the prosecutors have not even responded to that. What will it take for the prosecutors to comply with the rules ??? If they had, they would have had to include ALL of John Gregg's statements and certainly recorded testimony before a grand jury. If there is any doubt,

Crim.R. 16(B)(1) states very clearly:

RULE 16. Discovery and Inspection

(A) Demand for discovery.

Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided.

(B) Disclosure of evidence by the prosecuting attorney.

(1) Information subject to disclosure.

(a) Statement of defendant or co-defendant. Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect the copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

(i) Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

(ii) Written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer;

(iii) Recorded testimony of the defendant or co-defendant before a grand jury.

However, the prosecutors in this case did not disclose this. This violation clearly deprived Mr. Maxwell of a fair trial under both the Ohio and U.S. Constitutions. A new trial is the only proper remedy.

CRIMINAL RULE 33. New Trial

(A) Grounds.

A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

(1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;

(2) *Misconduct of the jury, prosecuting attorney, or the witnesses for the state;*

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) *That the verdict is not sustained by sufficient evidence or is contrary to law.* If the evidence shows the defendant is not guilty of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;

(5) Error of law occurring at the trial;

(6) *When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial.* When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

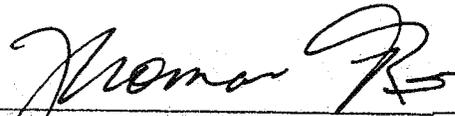
As set forth above, this Honorable Court has therefore three reasons to grant a new trial.

- 1) Crim.R. 33(A)(2) clearly applies here as the prosecuting attorney engaged in misconduct in not disclosing evidence that was both exculpatory and was required to do so as set forth in Crim.R. 16.
- 2) Crim.R. 33(A)(4) also applies here. The verdict as to the Retaliation count and specification was solely based upon the testimony of John Gregg, a liar of seemingly never ending proportion. That verdict is not sustained by sufficient evidence or is contrary to law.
- 3) Crim.R. 33(A)(6) additionally applies here. Additional evidence was discovered at John Gregg's sentencing, which was after the trial.

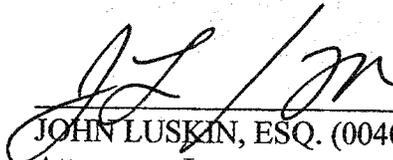
Charles Maxwell is getting close to having a death sentence imposed upon him. It appears that his rights under the U.S. Constitution and the Ohio Constitution have been trampled upon. To correct this potential injustice, a new trial is necessary.

WHEREFORE, the Defendant, by and through the undersigned counsel, respectfully requests this Honorable Court for an Order granting a New Trial for Defendant.

Respectfully submitted,



THOMAS REIN, ESQ. (0041571)
Attorney at Law
Leader Building Suite 940
526 Superior Avenue
Cleveland, Ohio 44114
(216) 687-0400



JOHN LUSKIN, ESQ. (0040158)
Attorney at Law
5815 Landerbrook Drive
P.O. Box 24237
Cleveland, Ohio 44114
(216) 781-2126

SERVICE

I hereby certify that a copy of the foregoing Motion was served upon William D. Mason, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113, by Common Pleas Clerk Hand Delivery, this 19TH day of MARCH, 2007.



THOMAS REIN, ESQ. (0041571)

1 THE STATE OF OHIO,)
2 COUNTY OF CUYAHOGA.) SS: MATIA, J.

3 IN THE COURT OF COMMON PLEAS
4 CRIMINAL DIVISION

5 THE STATE OF OHIO,)
6 Plaintiff,)
7 -v-) Case No. CR-476741
8 JOHN GREGG,)
9 Defendant.)

10 - - - -
11 DEFENDANT'S TRANSCRIPT OF PROCEEDINGS
12 - - - -

13 APPEARANCES:

14 WILLIAM D. MASON, ESQ.,
15 Prosecuting Attorney, by
16 SALEH AWADALLAH, ESQ.
Assistant County Prosecutor,
On behalf of the Plaintiff.

17 ROBERT TOBIK, ESQ.,
18 Cuyahoga County Public Defender, by
19 JOHN MARTIN, ESQ.
On behalf of the Defendant.

20
21
22
23
24 Mary E. Schuler, RMR
25 Official Court Reporter
Cuyahoga County, Ohio

000090

1 THE STATE OF OHIO,)
2 COUNTY OF CUYAHOGA.) SS: MATIA, J.

3 IN THE COURT OF COMMON PLEAS
4 CRIMINAL DIVISION

5 THE STATE OF OHIO,)
6 Plaintiff,)
7 -v-)
8 CHARLES MAXWELL,)
9 Defendant.)

) Case No. CR-475400

10 - - - -
11 DEFENDANT'S TRANSCRIPT OF PROCEEDINGS
12 - - - -

13 BE IT REMEMBERED, that at the January 2007
14 term of said Court, to-wit, commencing on Wednesday,
15 February 28, 2007, this cause came on to be heard
16 before the Honorable David Matia, in Courtroom No.
17 17-D, Courts Tower, Justice Center, Cleveland, Ohio,
18 upon the indictment filed heretofore.

21
22
23
24
25
000091

WEDNESDAY MORNING SESSION, FEBRUARY 28, 2007

SENTENCING

THE COURT: Okay. We're here on State v. John Gregg, 476741. It's the B case. Mr. Gregg pled guilty to one count of insurance fraud as amended in count two. It's a first degree misdemeanor. The Court ordered that he undergo a presentence investigation which it has received and reviewed.

Off the record.

- - - - -

(Thereupon, a discussion was had off the record.)

- - - - -

THE COURT: Okay. Back on the record. Mr. Gregg is here with his attorney, John Martin. Present also is Assistant County Prosecutor Sal Awadallah.

Mr. Martin, have you read the PSI?

MR. MARTIN: Your Honor, I have read the PSI.

THE COURT: Do you find it to be complete and accurate?

MR. MARTIN: For the most part, your Honor. There's a couple of corrections. A couple

1 times in the PSI it makes reference to this being
2 a felony or there is a block checked that would
3 have been under a felony consideration. This case
4 is not. It's a misdemeanor.

5 The other thing is that the PSI
6 accurately reports that Mr. Gregg was found in
7 contempt by Judge Timothy McGinty. It does not
8 reflect the fact that that contempt conviction was
9 reversed on appeal and therefore was vacated.

10 Other than that with those corrections,
11 your Honor, the PSI is acceptable.

12 THE COURT: Mr. Awadallah, is there
13 anything you wish to say on behalf of Mr. Gregg?

14 MR. GREGG: Your Honor, as the Court
15 knows, being involved with the State of Ohio
16 versus Charles Maxwell, what the agreement was
17 that Mr. Gregg would continue his cooperation as
18 he started out doing with the Cleveland homicide
19 department back on November 28th, or actually
20 27th, and continue his cooperation vis-a-vis State
21 of Ohio versus Charles Maxwell, the aggravated
22 murder case.

23 He was to plead to one count of a lesser
24 crime of insurance fraud which is a misdemeanor of
25 the first degree. I told him that I would not

000093

1 advocate one way or the other for Mr. Gregg with
2 regards to any sentencing he would receive, only
3 that I would be available to answer any questions
4 with regards to his making himself available and
5 his cooperation with regards to State of Ohio
6 versus Charles Maxwell, the aggravated murder
7 case.

8 And to that end, your Honor, Mr. Gregg
9 has cooperated, has been -- has been responsive to
10 subpoenas, has been here on days that I've asked
11 him to be here in anticipation of him testifying
12 on those days, and when called upon has testified
13 and, your Honor, was witness to that as well.

14 That is the extent of what I could add,
15 your Honor, to these proceedings, I believe.
16 Thank you.

17 THE COURT: Do you have any idea what
18 the defense costs were from the underlying civil
19 case that this fraud grew out of?

20 MR. MARTIN: Your Honor, we addressed
21 that with Judge McGinty. The defense in that
22 case -- when I say that we addressed it with Judge
23 McGinty, what I mean is this, the defense,
24 Reminger and Reminger, filed seeking attorney's
25 fees in that case. We reached an out-of-court

1 settlement with Reminger with respect to that
2 motion back in that underlying civil case.

3 THE COURT: Did he pay?

4 MR. MARTIN: Mr. Gregg paid \$5,000.

5 THE COURT: Was that paid in full?

6 MR. MARTIN: Yes, it was paid in full.

7 And I want the record to reflect that that was a
8 confidential settlement agreement and I received
9 permission from Robert Yelich last evening to be
10 able to disclose that to the Court today.

11 THE COURT: What else would you like
12 me to know?

13 MR. MARTIN: Well, your Honor, a
14 couple of things. Number one, in addition to the
15 sentencing memorandum that I filed with the Court
16 and you received a courtesy copy and there was an
17 Exhibit A attached to that, I would submit at this
18 point Exhibit B which is a letter from Mr. Ken
19 Haddan. I've already provided the Court with a
20 courtesy copy. The prosecutor has a copy so I
21 would just ask that this one be included in the
22 record if I may approach.

23 Secondly, your Honor, I think one of the
24 issues in this case concerning John's cooperation
25 is the timeliness of it. He made the 911 call

000095

1 anonymously as soon as he found out about the
2 murder. Within about two days he was in talking
3 to the police. He gave the police a
4 statement. He didn't sign that statement. He was
5 helping the police though trying to lure Charles
6 Maxwell.

7 THE COURT: Explain why he didn't
8 sign the statement.

9 MR. MARTIN: Your Honor, he didn't
10 sign the statement at that time because quite
11 frankly he was afraid of Charles Maxwell. Charles
12 Maxwell had just killed a woman because she had
13 cooperated with authorities in prosecuting him for
14 felonious assault. Here's John Gregg cooperating
15 with the authorities in Charles Maxwell's having
16 murdered that same woman.

17 In fact John had an exchange with the
18 detective at one point where he said, How do I
19 know I'm safe? And the detective said, I never
20 had anybody get killed in all my time. And John
21 said, Well, would you say that to Nichole, or
22 words to that effect, if she were here?

23 He was afraid. Within a short time he
24 was called before the Grand Jury to continue to
25 cooperate and that's where I got involved and

000096

1 bulloxed up the whole mess I suppose.

2 I, having represented John in the
3 contempt case, went to the Grand Jury found and
4 out that John was not only being asked to be a
5 witness in this case but was also being a target
6 for this fraud investigation and for a fraud
7 indictment that was coming down the road that
8 involved Charles Maxwell.

9 I could not in good conscience say to him
10 go ahead and cooperate with the Grand Jury, go
11 ahead and give a signed statement and/or anything
12 else until I had a plea agreement. So, quite
13 frankly, John went to the Grand Jury and on my
14 advice took the Fifth Amendment and John refused
15 to make any kind of statement until we reached a
16 deal. Once we reached a deal cooperation was full
17 and complete.

18 Your Honor, maybe it's too many years in
19 the federal system of dotting too many I's and
20 crossing too many T's, but I was going to play
21 that one completely down the line; no agreement
22 until I had cooperation.

23 Meanwhile, I had a client who wanted to
24 cooperate in that murder case. We reached a point
25 during plea negotiations at one point where John

000097

1 said, Mr. Martin, even if I go to trial, can I
2 cooperate against the State, or even if we --
3 there was that kind of an exchange, I don't want
4 to be too specific, like he said if I went to
5 trial and lost, could I still cooperate. He felt
6 that what happened to Nichole was wrong, your
7 Honor.

8 THE COURT: Really? Okay.

9 MR. MARTIN: And, your Honor,
10 obviously it was wrong and he took the steps he
11 could to do something to make that right. Your
12 Honor, this is a misdemeanor case. It is a case
13 in which -- it was a triable case as insurance
14 fraud case and that's from my perspective as a
15 lawyer but John knew that he had misled people in
16 his deposition. He was wrong. He's willing to
17 take responsibility for that. All of that
18 happened before Charles Maxwell ever killed this
19 young woman.

20 John, at the time that he was
21 cooperating, had that contempt conviction already
22 reversed and didn't know what was -- what if
23 anything was coming next. I don't think he
24 thought anything was coming next. I would have
25 been telling him, no, you're going to have another

000098

1 contempt matter.

2 But the fact is he just went forward and
3 he did the stuff without any assurances and he
4 came forward and he revealed stuff and he has gone
5 through -- trust me, he deserves to have gone
6 through a lot, but he's gone through a lot.

7 He had his face all over the paper when
8 Judge McGinty finds plaintiff guilty of contempt;
9 he thought he was going to get money, now he gets
10 jail instead, and that gets spread out over the
11 newspaper, and his then wife sees that and it was
12 probably the final straw in his marriage. He goes
13 to jail until we can get him out on bond, until we
14 can -- and it was reversed on appeal for
15 procedural reasons that are readily apparent.

16 He comes forward. He does this
17 stuff. He pays \$5,000. There's no question this
18 man was actually injured. He paid \$16,000 of his
19 own medical bills for this slip and fall that is
20 the subject of this insurance fraud today, plus
21 \$5,000 as a settlement with respect to Reminger.

22 He's a different person though than he
23 was in 2004. He's a person -- and I want -- if I
24 could, I would like Bart Caterino to address the
25 Court if he could. While a lawyer, Mr. Caterino

1 is also his father-in-law at this time until the
2 divorce goes through, and he can give a unique
3 perspective on John.

4 But, the John Gregg who played fast and
5 loose with his answers at the deposition isn't the
6 same one who's here today. He's learned from
7 this. He's got employment ready to go. James
8 Brothers is here and James Brothers runs a cement
9 company. He is ready to hire John Gregg and keep
10 him on above-board, W-2 type employment because
11 John's talented when it comes to this construction
12 stuff. If this Court gives work release as part
13 of a jail sentence, John would be able to do
14 that.

15 John's trying to put his life together.
16 He's moved on from his marriage. He's got a new
17 relationship. He has been an active member of his
18 church. The victims have been made whole as I've
19 said before.

20 At the end of day, your Honor, for a
21 misdemeanor insurance fraud, he's suffered a
22 lot. Community-control sanctions keeps him under
23 your control. Community-control sanctions would
24 also give him an opportunity or an obligation to
25 pay back through community service. There are

000100

1 good reasons why incarceration is not the
2 appropriate sentence in this case, And with your
3 Honor's permission if Mr. Caterino could address
4 the Court.

5 THE COURT: Hold on a moment.
6 Mr. Caterino, good morning.

7 MR. CATERINO: Good morning, your
8 Honor. First of all I apologize for disrupting
9 the Court earlier.

10 THE COURT: That's fine.

11 MR. CATERINO: And I appreciate your
12 courtesy in allowing me to speak.

13 THE COURT: Frankly I'm perplexed
14 that you wish to speak on behalf of Mr. Gregg,
15 your current son-in-law, who has already moved on
16 with his next love interest.

17 MR. CATERINO: Well, if I may speak
18 about --

19 THE COURT: Let the record reflect you
20 and I know each other. We're in the Justinian
21 Forum at St. Dominic Church and I met you first
22 when I was campaigning for Judge in 1998 so we go
23 back.

24 MR. CATERINO: Exactly right, your
25 Honor.

000101

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

THE COURT: Tell me what you would like to say on behalf of this individual.

MR. CATERINO: I've known John Gregg for about ten years. I met him when he was going with my oldest daughter. I did not approve of John Gregg from day one. I did not approve of John Gregg for my daughter. But they ran away and got married and there's nothing that I could do about it. They were married. They moved back to Cleveland and I took them under my wing and tried to guide them along, but I cannot chronicle the number of problems that he has caused me and my family and all the members of my family.

Somewhere along the way several years ago I had a long talk with John. I said, John, you have got to turn your life around. If you're going to continue to be married -- I don't want you around if you're going to act the way you have been. He did two things. He continued to keep a relationship with me and the second he took instructions in the Catholic faith at St. Dominic's under Fr. Tom Fanta.

He has been going to church and I see him in church. John has caused a great deal of suffering to me and my family, but he has suffered

1 a great deal. All of the things that have
2 occurred in the trial, the past trial, the current
3 trial, are before his redemption and I would ask
4 you to look with some sympathy and some courtesy
5 in order to help John to turn his life around
6 which I think he has begun to do that.

7 Thank you, your Honor.

8 THE COURT: Mr. Caterino, thank you.

9 Mr. Gregg, what would you like me to know
10 before I announce my sentence?

11 THE DEFENDANT: I'd just like to say
12 that I'm sorry for having taken the Court through
13 this course for making some misleading statements
14 in my deposition. I realize that had I answered
15 differently, all of this could have been avoided
16 and truthfully I am sorry about that.

17 THE COURT: And what was that
18 misleading statement?

19 THE DEFENDANT: When I described
20 Anthony as a man I answered it very vague hoping
21 that --

22 THE COURT: You didn't let them know
23 that he was your best friend?

24 THE DEFENDANT: No.

25 THE COURT: You didn't let them know

000103

1 that you talked to him every day. You didn't let
2 them know that you worked with him?

3 THE DEFENDANT: No, I did not.

4 THE COURT: You made Anthony Maxwell
5 sound like he was just some stranger who just
6 happened to be at McDonald's that day, correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You fooled your lawyer,
9 you fooled the defense attorneys, you fooled the
10 entire criminal justice system, correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What else would you like
13 me to know?

14 THE DEFENDANT: Just that I'm really
15 sorry about that.

16 THE COURT: Anything else from anyone
17 else?

18 MR. MARTIN: Your Honor, in sum,
19 you've got a crime, but you've got a person who
20 since the time of that criminal activity has done
21 a lot of mitigating factors; has done a lot of
22 things to start to make things right.

23 I ask you to keep him under your control
24 with community-control sanctions; if he screws up,
25 he knows exactly what the consequences will be.

000104

1 THE COURT: Thank you, Mr. Martin.

2 One of the things I like to do with my
3 kids is to go to the Zoo. I took my kids to the
4 zoo the other day. There's a little furry mammal
5 exhibit, the weasel exhibit. We saw a new species
6 of weasel there called weasel gregorious. Looked
7 really a lot like you, Mr. Gregg. You are a
8 weasel. You are a fraud. Your whole life has
9 been about being a fraud. I find you to be one of
10 the most despicable humans that I've seen here for
11 a long time.

12 You are here before me for a misdemeanor,
13 attempted insurance fraud. My heart goes out to
14 Mr. Caterino to have a person like you as a
15 son-in-law. I have daughters and if I -- if one
16 of them married someone like you I think I would
17 be doing time for manslaughter at this point.

18 Just so the record can support what kind
19 of person you are, you got a plea deal in this
20 case because of your testimony in the capital
21 murder case of State v. Charles Maxwell,
22 Mr. Maxwell being your partner in crime in this
23 insurance fraud case. Mr. Maxwell killed his
24 girlfriend, Nichole McCorkle.

25 As I sentence you right now, the jury is

000105

1 deliberating as to whether Mr. Maxwell should
2 receive the death penalty or not.

3 You testified in the case and I went on
4 the record in that case after voir diring some of
5 your testimony indicating that I would have to
6 look at my own birth certificate and driver's
7 license to confirm if you told me my name was
8 David Matia because you are that unbelievable.

9 You gave a statement in that case. You
10 finally signed it a year after the murder. You
11 were about to give a statement three days after
12 the initial murder, on November 30th, but you
13 refused.

14 I remember you testifying in this case
15 that you just wanted to do the right thing. I
16 don't see how refusing to cooperate at the time
17 was doing the right thing.

18 Now, here's your statement in that
19 case. Page three, Question, During the time
20 Maxwell and Nichole were together, did he ever
21 talk about killing her?

22 Answer, Yes. On several occasions he
23 would say things like, quote, that bitch is going
24 to make me kill her. He would say things like
25 that after an argument with her. Sometimes the

000106

1 argument would be over her thinking that he was
2 cheating on her or him being out late with me, or
3 money. They even argued over him eating dinner at
4 his mother's house too often.

5 Sometime after the felonious assault,
6 which occurred in October of 2005 on Nichole, but
7 before she testified before the Grand Jury, Ant
8 and I were talking on the phone. I asked Ant, who
9 is Charles Maxwell, how Nichole was, and he said
10 she was okay, just four or five stitches in her
11 head. But he told me he was worried because he
12 saw on TV that some guy who had a felonious
13 assault got eight years in prison. Charles
14 Maxwell did not want to go to prison again. He
15 said he needed to get a gun and, quote, take care
16 of the bitch. He asked if I knew where to get a
17 gun. I, being you, Mr. Gregg, told him, no, but
18 that if he was serious, he should do it smart and
19 use a rifle so that he could be far away.

20 I bring this up so the record can fully
21 demonstrate what an awful human being you are and
22 how deserving of prison you are. My only regret
23 is I'm limited to six months. I see people here
24 on a day in and day out basis; many have redeeming
25 qualities about them. You have gone through life,

000107

1 again, as a complete fraud. You got on the stand
2 and you couldn't even remember that you were
3 convicted and pled guilty to arson in 2001.

4 How could you forget that?

5 THE DEFENDANT: I thought it was the
6

7 THE COURT: That wasn't a question I
8 really needed you to answer, Mr. Gregg.

9 Mr. Gregg, I'm done with you. You're
10 going to be sentenced to six months in the
11 Cuyahoga County Jail with whatever credit for time
12 served you might deserve. You will be fined a
13 full thousand dollars and you will be ordered to
14 pay the court costs. You are ordered
15 remanded. Good luck.

16 MR. MARTIN: Thank you, your Honor.

17 Your Honor, can we have an order with
18 regard to separation between John Gregg and
19 Charles Maxwell?

20 THE COURT: You can put something and
21 I'll consider it.

22 MR. MARTIN: Thank you, your Honor.
23

24 (Thereupon, Court was adjourned.)
25

000108

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

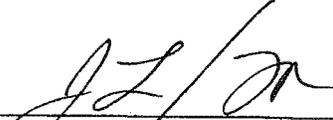
FILED
CRIMINAL DIVISION
2007 APR -3 A 11: 27

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

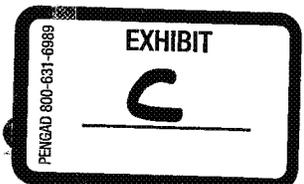
STATE OF OHIO,) JUDGE MATIA
Plaintiff,) CASE NO. CR 475400
-vs-) SECOND MOTION FOR NEW TRIAL
CHARLES MAXWELL,) (ORAL HEARING REQUESTED)
Defendant.)

Now comes the Defendant in the above-captioned case, by and through counsel, Thomas Rein and John Luskin, and respectfully requests moves this Honorable Court pursuant to Criminal Rule 33, for an order granting Defendant Charles Maxwell a new trial because in addition to the reasons and arguments set forth in the Motion for New Trial filed March 14, 2007, incorporated herein which the court summarily denied without holding a hearing after the court announced its sentence, also asserts that there were 1) irregularity in the grand jury proceedings in this case; 2) irregularity in the order or ruling of the court ; 3) misconduct by the prosecutors dealing with this case; 4) the verdict is not sustained by sufficient evidence and/or is contrary to law; 5) an error of law occurring at trial, and 6) new evidence material to the defense was discovered which could not have been discovered with reasonable diligence and produced at the original trial. This evidence was critical and material to Charles Maxwell's defense and was never disclosed by the Prosecutor's Office to defense counsel. Therefore, Charles Maxwell respectfully requests a new trial.


THOMAS REIN, ESQ.
Attorney for Defendant


JOHN LUSKIN, ESQ.
Attorney for Defendant

00



BRIEF IN SUPPORT

The jury in this case has recommended a sentence of death for Charles Maxwell and the court ordered that sentence. However, a new trial should be granted. Additionally, Mr. Maxwell's rights under the U.S. Constitution, including but not limited to, as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments were violated as set forth in the following arguments.

CRIMINAL RULE 33. New Trial

(A) Grounds.

A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:

(1) *Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a fair trial;*

(2) *Misconduct of the jury, prosecuting attorney, or the witnesses for the state;*

(3) *Accident or surprise which ordinary prudence could not have guarded against;*

(4) *That the verdict is not sustained by sufficient evidence or is contrary to law.* If the evidence shows the defendant is not guilty of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;

(5) *Error of law occurring at the trial;*

(6) *When new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial.* When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as is reasonable under all the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.

I. IRREGULARITY IN THE GRAND JURY PROCEEDINGS IN THIS CASE PREVENTED DEFENDANT CHARLES MAXWELL FROM HAVING A FAIR TRIAL.

On March 22, 2007, the sentencing hearing by the court began. Right before the sentencing the two defense attorneys assigned were permitted to view the actual Grand Jury testimony from this case relating to one John Gregg (SEE ATTACHED COPY). John Gregg. The prosecutor's office at no time ever disclosed the fact that John Gregg testified in front of the grand jury to the defense. Defense counsel happened to attend John Gregg's sentencing hearing at which time they discovered that John Gregg had testified at the Grand Jury. It was not until defense counsel filed its motion to inspect John Gregg's testimony which the court granted that it saw the actual transcript of Gregg's testimony. Gregg testified in front of the Grand Jury on December 21, 2005. For the most part, Gregg refused to answer any questions, stating that his answers may incriminate him (Grand Jury Testimony of John Gregg, 12-21-05, T. 4). Gregg left the Grand Jury room on four occasions to consult with his attorney, Assistant Public Defender John Martin (T. 3, 4, 6). During those proceedings the following exchange took place:

MR. GREGG: On the advice of counsel, I refuse to answer these questions on the ground they may incriminate me.

PROSECUTOR WEINTRAUB: So you are invoking your Fifth Amendment right?

MR. GREGG: Yes, ma'am.

PROSECUTOR WEINTRAUB: Further, did you have an opportunity to speak with Charles Maxwell?

MR. GREGG: Again, I have to take the same thing.

PROSECUTOR WEINTRAUB: And you are invoking your Fifth Amendment right at this time?

MR. GREGG: Yes.

PROSECUTOR WEINTRAUB: And did you give a written statement to, it looks like, Detective Sowa from the Homicide Unit? Did you give a written statement to him?

MR. GREGG: Can I talk to my attorney one more time?

PROSECUTOR WEINTRAUB: Sure, you can talk to him.

(Thereupon, Mr. Gregg left the Grand Jury room momentarily.)

The following then takes place outside the presence of the witness Gregg. Prosecutor Weintraub literally becomes a WITNESS when she states:

PROSECUTOR WEINTRAUB: He refused to sign a statement, and now we have to put it on the record first, the defendant's confession to him that he shot a woman. And now he doesn't want to talk to us about it.

And he gave a written statement outlining the whole thing, and he didn't want to sign it. So now, under oath, we have to get him to keep taking the Fifth Amendment as to basic questions.

So now I am about to find – it's just that these are basic questions.

(Thereupon, Mr. Gregg returns to the Grand Jury room, and the following proceedings were had.)

It stands to reason that a Grand Jury is to act independently when making its decision whether probable cause exists to issue a true bill; i.e. an Indictment. How is there any independent decision

making when the Grand Jury Prosecutor is testifying and outright tells the Grand Jurors what Gregg said in a previous unsigned statement? What about the authenticity requirement? It is also apparent that Assistant Prosecutor Sal Awadallah who was the lead prosecutor in the actual trial, was also present for this proceeding.

On November 23, 2005, Cleveland police Detective Alberto Sardon testified at the Cuyahoga County Grand Jury, which resulted in the Felonious Assault indictment against Charles Maxwell in Case No. CR 473919. (SEE ATTACHED COPY). The prosecutor allows Detective Sardon to give his opinion about the alleged victim's apparent previous testimony.

DETECTIVE SARDON: Yes. She seems to be trying to remove some of the charges, in my opinion, because looking at her statement what I'm seeing is she is stating specifically seeing a gun and cell phone separately (T. 5).

This type of star chamber like-activity continues throughout the whole process.

II. IRREGULARITY IN THE ORDER OR RULING OF THE COURT WHEN IT CONSIDERED STATEMENTS NOT IN EVIDENCE IN ORDERING A DEATH SENTENCE PREVENTED DEFENDANT CHARLES MAXWELL FROM HAVING A FAIR TRIAL AND BY CONSIDERING THOSE STATEMENTS, THE COURT ABUSED ITS DISCRETION.

At the sentencing hearing before the judge alone, the trial judge is required to consider "the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the [pre-sentence] reports" prior to making his or her own determination of whether the aggravating circumstances outweigh the mitigating factors beyond a reasonable doubt. R.C. 2929.03(D)(3).

The trial court when it ordered indicated that it considered both John Gregg's signed and unsigned statement when making its decision. **However, those statements to which the court is referring, were never introduced into evidence !!!**

Thus, this Honorable Court relied upon statements not introduced into evidence in imposing a death sentence, especially in light of the fact that this court had earlier made some choice findings with regard to Gregg's credibility and character.

The court at Gregg's sentencing found Gregg's testimony so unbelievable that he specifically referred to Gregg, telling him, "*You are a weasel. You are a fraud. Your whole life has been about being a fraud. I find you to be one of the most despicable humans that I've seen here for a long time.*" The court continued, "*I have daughters and if I – if one of them married someone like you I think I would be doing time for manslaughter at this point.*" The court also stated, "*You testified in the case after voir diring some of your testimony indicating that I would have to look at my own birth certificate and driver's license to confirm if you told me my name was David Matia because you are that unbelievable.*" The court continued, "*I bring this up so the record can fully demonstrate what an awful human being you are and how deserving of prison you. My only regret is I'm limited to six months. I see people here on a day in and day out basis; many have redeeming qualities about them. You have gone through life, again, as a complete fraud.*" (SEE ATTACHED COPY OF TRANSCRIPT OF JOHN GREGG'S SENTENCING).

III. THE VERDICT IS NOT SUSTAINED BY SUFFICIENT EVIDENCE OR IS CONTRARY TO LAW.

Crim.R. 33(A)(4) also applies here. The verdict as to the Retaliation count and specification

was solely based upon the testimony of John Gregg, a liar of seemingly never ending proportion. That verdict is not sustained by sufficient evidence or is contrary to law and certainly the imposition of death cannot depend upon someone like Gregg.

IV. THERE WAS AN ERROR OF LAW OCCURRING AT THE TRIAL.

This is essentially the same argument as set forth in *II* as the court committed an error of law when it considered written statements (including one unsigned) which were not admitted into evidence.

V. THE GRAND JURY TESTIMONY OF JOHN GREGG WAS NEW EVIDENCE MATERIAL TO THE DEFENSE WAS DISCOVERED WHICH COULD NOT HAVE BEEN DISCOVERED WITH REASONABLE DILIGENCE AND PRODUCED AT THE ORIGINAL TRIAL AND THE PROSECUTOR NEVER INFORMED DEFENSE COUNSEL THAT JOHN GREGG RECEIVED IMMUNITY FROM CONSPIRACY TO COMMIT AGGRAVATED MURDER IN EXCHANGE FOR HIS TESTIMONY AGAINST CHARLES MAXWELL.

This Exculpatory Evidence was never disclosed to the defense. This is shocking, especially in a case where the prosecutors tried so painstakingly to admit other Grand Jury testimony. Perhaps there are other things or statements out there that occurred during the Grand Jury proceedings that just conveniently were never disclosed by the State. The very fact that he went to the Grand Jury should have been disclosed. Something else is quite disturbing in this whole scenario. The prosecutor's office provided defense counsel copies of the two written statements made by John Gregg to the Cleveland Police Department, one from November 30, 2005 and one from November 21, 2006 right before John Gregg's testimony. However, the prosecutors never disclosed anything about John

Gregg's testimony to the Grand Jury or even the very fact that he was called to the Grand Jury. Criminal Rule 16 requires that the prosecutor through discovery provide any statements of a co-defendant. John Gregg was a co-defendant of Charles Maxwell's in Cuyahoga Case No. CR 476741. Assigned counsel for Charles Maxwell, Lynn Loritts, filed three motions on Mr. Maxwell's behalf on September 28, 2006. The three motions according to the docket were 1) Request for Evidence Notice 2) Motion for Discovery and to Examine and Mitigatory Material 3) Motion for Bill of Particulars. Throughout the course of these cases, undersigned counsel has been in contact with Ms. Loritts. **Nothing in the docket indicates that a written response was prepared by the prosecutors, not even to this day !!!!**

In fact, on February 6, 2007, a MOTION TO COMPEL DISCOVERY was filed. To this day, the prosecutors have not even responded to that. What will it take for the prosecutors to comply with the rules ??? If they had, they would have had to include ALL of John Gregg's statements and certainly recorded testimony before a grand jury. If there is any doubt, Crim.R. 16(B)(1) states very clearly:

RULE 16. Discovery and Inspection

(A) Demand for discovery.

Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided.

(B) Disclosure of evidence by the prosecuting attorney.

(1) Information subject to disclosure.

(a) Statement of defendant or co-defendant. Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect the copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

(i) Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

(ii) Written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer;

(iii) Recorded testimony of the defendant or co-defendant before a grand jury.

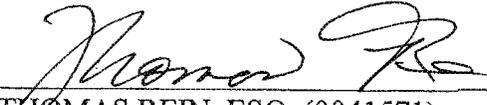
However, the prosecutors in this case did not disclose this. This violation clearly deprived Mr. Maxwell of a fair trial under both the Ohio and U.S. Constitutions. A new trial is the only proper remedy. ***As a footnote, the Cuyahoga County Prosecutor's Office has since dismissed two other cases against Charles Maxwell, CR 473919 and CR 476741. It is also quite interesting that the "entries" as per the dockets were both taken by Judge Nancy McDonnell, although the cases were assigned to Judge David Matia.

Moreover, the prosecutors never disclosed the fact that Gregg was given immunity in exchange for his testimony against Charles Maxwell. That immunity apparently included Conspiracy to Commit Aggravated Murder.

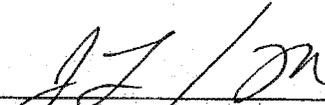
Charles Maxwell now has a death sentence imposed upon him. It appears that his rights under the U.S. Constitution and the Ohio Constitution have been trampled upon. To correct this potential injustice, a new trial is necessary.

WHEREFORE, the Defendant, by and through the undersigned counsel, respectfully requests this Honorable Court for an Order granting a New Trial for Defendant.

Respectfully submitted,



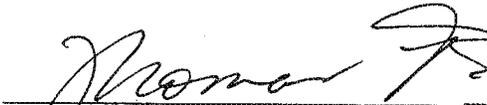
THOMAS REIN, ESQ. (0041571)
Attorney at Law
Leader Building Suite 940
526 Superior Avenue
Cleveland, Ohio 44114
(216) 687-0400



JOHN LUSKIN, ESQ. (0040158)
Attorney at Law
5815 Landerbrook Drive
P.O. Box 24237
Cleveland, Ohio 44114
(216) 781-2126

SERVICE

I hereby certify that a copy of the foregoing Motion was served upon William D. Mason, Cuyahoga County Prosecutor, 1200 Ontario Street, Cleveland, Ohio 44113, by Common Pleas Clerk Hand Delivery, this 3rd day of APRIL, 2007.



THOMAS REIN, ESQ. (0041571)

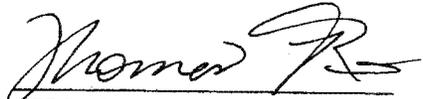
AFFIDAVIT IN SUPPORT

STATE OF OHIO)
)
 VS.) Affidavit of Thomas Rein
)
 CHARLES MAXWELL) CR 475400

NOW COMES THOMAS REIN, being first duly sworn according to law, deposes and states the following:

1. I, along with John Luskin, were appointed counsel of record in the case of State of Ohio v. Charles Maxwell, Case No. CR 475400.
2. I was not informed by any members of the Cuyahoga County Prosecutors Office, including Saleh Awadallah, that John Gregg was ever summoned to the Grand Jury to give testimony.
3. The first time that I learned that John Gregg had been summoned or had given testimony to the Grand Jury was when I attended John Gregg's sentencing hearing in Judge David Matia's courtroom on February 28, 2007, Case No. CR 476741, and I heard John Martin, Gregg's attorney say it. This occurred at the same time while the jury was deliberating during the trial phase in the case of State of Ohio v. Charles Maxwell, Case No. CR 475400.
4. John Luskin was with me at John Gregg's sentencing hearing and we looked at each other and at the prosecutor's table, where Sal Awadallah and Brian McDonough were seated, in disbelief.
5. I spoke with John Luskin and he also told me that it was never disclosed to him that John Gregg was ever summoned to the Grand Jury to give testimony.
6. John Luskin and I spoke with Attorney Lynn Loritts, Charles Maxwell's assigned counsel in case nos. CR 473919 and CR 476741, and she indicated that the prosecutors never told her that John Gregg was ever summoned to the Grand Jury to give testimony.
7. The first time that I learned that John Gregg received immunity for Conspiracy to Commit Aggravated Murder charges in connection with this case was when John Gregg testified at the 804(B)(6) hearing.
8. The above information was material to Charles Maxwell's defense and the failure by the prosecutors to disclose that violated Mr. Maxwell's rights under the Ohio Constitution and the U.S. Constitution.

FURTHER AFFIANT SAYETH NAUGHT.


THOMAS REIN

SWORN AND SUBSCRIBED in my presence this 30 day of
March, 2007.



NOTARY PUBLIC



CHRISTINE LITVIN
Notary Public
State of Ohio
Recorded in Cuyahoga Cty.
My Comm. Exp. 8/13/08

1 THE STATE OF OHIO,)
2) SS:
3 COUNTY OF CUYAHOGA.)

4 IN THE COURT OF COMMON PLEAS
5 (CRIMINAL BRANCH)

6 TRANSCRIPT OF PROCEEDINGS

7 BEFORE THE GRAND JURY

8 TESTIMONY OF JOHN GREGG

9 On Wednesday, December 21, 2005

10 The Justice Center, 3rd Floor
11 Cleveland, Ohio

12 - - -
13
14 APPEARANCES:

15 On behalf of the State of Ohio:

16 William D. Mason, Esq. Prosecuting Attorney, by
17 Saleh Awadallah, Assistant Prosecuting Attorney;
18 Julianné Weintraub, Assistant Prosecuting Attorney.

19
20
21
22
23 Richard O. Althoff, RMR
24 Official Court Reporter
25 Cuyahoga County, Ohio.

000293

1 WEDNESDAY AFTERNOON SESSION, DECEMBER 21, 2005

2
3 (Thereupon, JOHN GREGG, was duly sworn to
4 present testimony before the Cuyahoga County
5 Grand Jury as follows:)

6
7 MS. WEINTRAUB: Finally, this is
8 going to be an add on, number 13.

9 It's going to be in your file here, Sal?

10 MR. AWADALLAH: Yes, it is.

11 MS. WEINTRAUB: It's add-on number two,
12 265197, Charles, C-h-a-r-l-e-s, Maxwell, charged with
13 aggravated murder.

14 Okay. Does everybody have it added to their list?

15 THE GRAND JURY: Yes.

16 MS. WEINTRAUB: Good afternoon, sir.
17 My name is Julianne Weintaub, and this is the Grand Jury
18 of Cuyahoga County -- one of the Cuyahoga County Grand
19 Juries.

20 Everything has been explained to you already
21 generally (by your attorney?

22 MR. GREGG: Yeah.

23 MS. WEINTRAUB: Okay. Could you
24 please state your name, and spell your last name, for
25 the record.

000294

1 MR. GREGG: Yeah. It's John
2 G-r-e-g-g.

3 MS. WEINTRABU: You need to speak up
4 a little.

5 MR. GREGG: I'm sorry. It's
6 John Gregg, G-r-e-g-g.

7 MS. WEINTRAUB: Okay. And, Mr. Gregg,
8 could you please tell us what you know about Charles --
9 about the murder case involving Charles Maxwell.

10 MR. GREGG: Actually I would
11 like to talk to my attorney.

12 MS. WEINTRAUB: You want to talk to
13 your attorney?

14 MR. GREGG: Yes.

15 MS. WEINTRAUB: Okay. Go ahead.

16 MR. GREGG: Okay. Thanks.

17 - - -
18 (Thereupon, Mr. Gregg left the Grand Jury
19 room momentarily.)

20 MS. WEINTRAUB: Sir, did you have an
21 opportunity to confer with your attorney?

22 MR. GREGG: Yes, ma'am.

23 MS. WEINTRAUB: Okay. And after that --
24 that -- let me go about this another way.

25 Do you know a Charles Maxwell?

000295

1 MR. GREGG: On the advice of
2 counsel, I refuse to answer these questions on the
3 ground they may incriminate me.

4 MS. WEINTRAUB: So you are
5 invoking your Fifth Amendment right?

6 MR. GREGG: Yes, ma'am.

7 MS. WEINTRAUB: Further, did you
8 have an opportunity to speak with Charles Maxwell?

9 MR. GREGG: Again, I have to
10 take the same thing.

11 MS. WEINTRAUB: And you are invoking
12 your Fifth Amendment right at this time?

13 MR. GREGG: Yes.

14 MR. WEINTRAUB: And did you give a
15 written statement to, it looks like, Detective Sowa
16 from the Homicide Unit?

17 Did you give a written statement to him?

18 MR. GREGG: Can I talk to my
19 attorney one more time?

20 MS. WEINTRAUB: Sure, you can talk
21 to him.

22 - - -

23 (Thereupon, Mr. Gregg left the Grand Jury
24 room momentarily.)

25 000296

1 MS. WEINTRAUB: He refused to sign
2 a statement, and now we have to put it on the record
3 first, the defendant's confession to him that he shot
4 a woman. And now he doesn't want to talk to us about it.

5 And he gave a written statement outlining the
6 whole thing, and he didn't want to sign it. So now,
7 under oath, we have to get him to keep taking the
8 Fifth Amendment as to basic questions.

9 So now I am about to find -- it's just that these
10 are basic questions.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MS. WEINTRAUB: Okay. Did you have
an opportunity to confer with your attorney?

MR. GREGG: Yes, ma'am.

MS. WEINTRAUB: And did you give a
written statement to the detectives involved in this
case as to, let's see, November 30, 2005, as to the
investigation of Charles Maxwell?

MR. GREGG: Actually I have to
take the Fifth on that.

MS. WEINTRAUB: You are going to take
the Fifth Amendment on that also?

000297

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

MR. GREGG: Yes.

MS. WEINTRAUB: One moment.

Sir, do you know a woman by the name of McCorkle?

MR. GREGG: Actually it's the same. I need to speak to my attorney one more time.

- - -

(Thereupon, Mr. Gregg left the Grand Jury room momentarily.)

- - -

MR. GREGG: He said to do the same, take the Fifth on that as well.

MS. WEINTRAUB: You have to take the Fifth on that one also?

MR. GREGG: Yes.

MS. WEINTRAUB: Do you know her sister, Michelle McCorkle?

MR. GREGG: I have to go see him.

MS. WEINTRAUB: Okay.

- - -

(Thereupn, Mr. Gregg left the Grand Jury room momentarily.)

- - -

MS. WEINTRAUB: Go ahead.

MR. GREGG: I would take the

Fifth.

000298

1 MS. WEINTRAUB: Okay. Anything
2 further, Sal?

3 MR. AWADALLAH: No. That is it.

4 No further questions at this time, sir. Thank you
5 for coming in and speaking to us.

6 Say hi to John for me.

7 MS. WEINTRAUB: At this time please
8 mark number 13 as continued. Lynn is going to bring
9 that in for your vote on Wednesday.

10 MR. GREGG: You forgot to say
11 thanks for all of the information.

12 MS. WEINTRAUB: I said thanks
13 quietly.

14 MR. AWADALLAH: Thanks for
15 pleading the Fifth.

16 - - -
17 (Proceedings closed.)

18 - - -

19
20
21
22
23
24
25

000299

C E R T I F I C A T E

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

I, Richard O. Althoff, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that, as such reporter, I took down in Stenotypy all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form as appears in the foregoing Transcript of Proceedings; that said transcript is a complete transcript of the proceedings had in said cause, and constitutes a true and correct Transcript of Proceedings had therein.

Richard O. Althoff
Richard O. Althoff, RMR
Official Court Reporter
Cuyahoga County, Ohio.

* * *

FORM SEL-711 REPORTERS PAPER & MFG. CO. 800-626-6313

THE STATE OF OHIO,)
)SS:
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION

---oOo---

On Wednesday, November 23, 2005
The Justice Center, 3rd Floor
Cleveland, Ohio

---oOo---

**TRANSCRIPT OF PROCEEDINGS BEFORE THE GRAND JURY
TESTIMONY OF ALBERTO SARDON**

---oOo---

APPEARANCES:

On behalf of the State of Ohio:

William D. Mason, County Prosecutor, by:
Brian Mooney, Asst. County Prosecutor.

The Foreman: **Bruce Felder**

Craig T. Stewart
Official Court Reporter
Cuyahoga County, Ohio

000301

2

WEDNESDAY MORNING SESSION, NOVEMBER 23, 2005

1
2 MR. MOONEY: Ten is Charles
3 Maxwell. This is the lady we heard from
4 earlier that was -- she gave a statement that
5 it was a gun, then she surmised that maybe it
6 might have been a cell phone.

7 Detective, I'm looking and trying to
8 think of charges. What I saw is a felonious
9 assault times two; one causing serious
10 physical harm, the stitches, and the other one
11 using something as a deadly weapon, I guess,
12 to wit: her cell phone, and a domestic
13 violence and an abduction.

14 DETECTIVE SARDON: Cell phone as a
15 weapon?

16 MR. MOONEY: That is what she
17 testified, yeah. She thinks she was hit with
18 a cell phone.

19 DETECTIVE SARDON: I really doubt
20 that.

21 A JUROR: She didn't say
22 that. She said she had no idea.

23 MR. MOONEY: No idea.

24 DETECTIVE SARDON: With the degree of
25 injuries something like a cell phone? I

000302

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

really don't think so.

MR. MOONEY: She didn't say.

She said she didn't know, but she surmised that the last thing she saw was a shiny cell phone.

A JUROR: She originally stated she thought it was a gun. But now that she has cleared her head, she realizes it wasn't a gun. It might have been a cell phone.

MR. MOONEY: Right.

A JUROR: Never said what she got hit with.

MR. MOONEY: Exactly. First thing, are you aware of a previous conviction for domestic violence?

DETECTIVE SARDON: Did she mention one? I thought she mentioned one.

MR. MOONEY: I saw something in the CCH. I didn't see anything in our system.

DETECTIVE SARDON: Okay.

MR. MOONEY: I saw an arrest in February of '03 for domestic violence, but is there a way to determine?

DETECTIVE SARDON: I know I already

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

did that because when there is a conviction, I will turn in a journal entry. If there is no conviction, I just turn in the CCH.

MR. MOONEY: Okay. I'm trying to think of the charges here.

A JUROR: Did we get her medical records?

MR. MOONEY: I'll take a look at those.

THE FOREMAN: Could you review? You may have heard this before. How does she get from the house to the hospital?

DETECTIVE SARDON: Okay. Someone took her. In her statement the name was left. Tanya Kindall (sic).

MR. MOONEY: That was her sister.

DETECTIVE SARDON: She said it was a friend. I don't have any idea how she was notified, or whatever.

THE FOREMAN: You have no specific information as to how the head injuries were caused?

DETECTIVE SARDON: Other than beaten with a blunt object. I doubt a cell phone.

1 But a hard blunt object.

2 MR. MOONEY: We can't have a
3 deadly weapon if we don't know what it is. We
4 have a felonious assault. I was reading
5 through the meds.

6 It says she had sutures in two
7 different places; two sutures in one location,
8 three in the other.

9 DETECTIVE SARDON: Yes.

10 MR. MOONEY: The meds also say
11 she wasn't able to indicate how she suffered
12 the blunt trauma.

13 DETECTIVE SARDON: Well, looking at
14 her statement, what I'm seeing is --

15 MR. MOONEY: I'm looking at the
16 meds. Actually she told the police she was
17 assaulted by unknown male in her home. She
18 was choked from behind and lost consciousness.

19 Did you see that?

20 DETECTIVE SARDON: Yes. She seems to
21 be trying to remove some of the charges, in my
22 opinion, because looking at her statement what
23 I'm seeing is she is stating specifically
24 seeing a gun and cell phone separately.

25 A JUROR: Did the police go

1 back to her house, the original house, and go
2 like into her bedroom where she supposedly had
3 this attack?

4 DETECTIVE SARDON: Not to my
5 knowledge. In looking at her statement the
6 child is taking the cell phone back-- child is
7 playing with the cell phone -- off the charger
8 into his back pocket and taking it out, and
9 the gun was a separate entity in the whole
10 thing.

11 A JUROR: Did you ever find a
12 gun?

13 DETECTIVE SARDON: No, he left.
14 Assuming he left with the gun.

15 MR. MOONEY: No witnesses to
16 this?

17 DETECTIVE SARDON: There are
18 witnesses. When she was in my office for an
19 interview, I was in the process of trying to
20 obtain that information, and she said she was
21 sick and wanted to leave. So she left.

22 I told her our interview is not
23 complete. I asked her to come back.

24 MR. MOONEY: So you don't know
25 who the witnesses are?

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

DETECTIVE SARDON: I have a name, but I don't have all the information I had asked her to come back and give.

MR. MOONEY: Well -- but the only witnesses possibly to the gun is the defendant's sister.

I see a domestic violence here, an obstruction for restraining her, a felonious assault for causing serious physical harm.

How do we possibly make anything with a handgun now that she recanted? No gun was recovered. No witnesses.

I don't know if you have a good answer or not. I'm just asking.

DETECTIVE SARDON: The actual thing seems to be a hard blunt object.

A JUROR: The medical records said it was unknown.

DETECTIVE SARDON: She is giving a different statement.

A JUROR: How soon after was this?

DETECTIVE SARDON: This is after the hospital.

A JUROR: For four days she

1 was mentally foggy, she is saying?

2 MR. MOONEY: Your statement was
3 four days later on the tenth?

4 DETECTIVE SARDON: Right.

5 A JUROR: She was still
6 saying she was unclear?

7 DETECTIVE SARDON: No. She was clear,
8 very clear on it being a gun and a cell phone
9 being handled separate from the gun. Very
10 explicit about the two items.

11 A JUROR: No one ever spoke
12 with Maxwell?

13 DETECTIVE SARDON: No. Haven't found
14 him.

15 A JUROR: Missing or around
16 somewhere?

17 DETECTIVE SARDON: On the run.

18 A JUROR: I keep getting this
19 vision she was in a room and he chokes her
20 while she is going unconscious, or anything
21 like that. She could have fallen against a
22 chair and hit her head. Maybe that could have
23 caused the two cuts.

24 MR. MOONEY: Could be like the
25 original statement, four days later he had a

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

gun and knowing he'll get in real trouble with a gun.

DETECTIVE SARDON: Hit her on the top of the head and the side.

MR. MOONEY: I think I'll ask for a felonious assault times one with serious physical harm, the domestic violence and abduction.

If you guys want to come back with something with a gun, that is your prerogative. Anybody else have any questions or any commentary, or anything?

A JUROR: Were the police notified the day of the incident?

MR. MOONEY: She was discharged overnight.

DETECTIVE SARDON: Reported on the eighth.

MR. MOONEY: She was there on the seventh and discharged on the eighth.

A JUROR: How was it reported? Did the hospital do it?

DETECTIVE SARDON: She made the report. That was from the hospital.

MR. MOONEY: Who took photos?

1 At the end of the report it says I observed
2 redness and contusion and photos were taken.

3 DETECTIVE SARDON: Yes. I have
4 photos.

5 MR. MOONEY: You took photos?

6 DETECTIVE SARDON: Yeah. Nothing you
7 can see. I think she was at the hospital with
8 that.

9 MR. MOONEY: Any other
10 questions? Okay.

11 So felonious assault, domestic
12 violence, abduction.

13

14

15

16

17

18

19

20

21

22

23

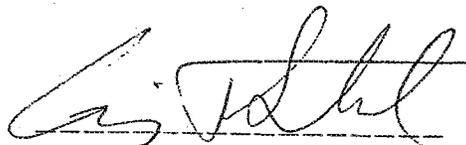
24

25

000310

C E R T I F I C A T E

1
2
3 I, Craig T. Stewart, Official Court
4 Reporter for the Court of Common Pleas,
5 Cuyahoga County, Ohio, do hereby certify
6 that as such reporter I took down in
7 stenotypy all of the proceedings had in
8 said Court of Common Pleas in the above-
9 entitled cause; that I have transcribed
10 my said Stenotype notes into typewritten
11 form as appears in the foregoing
12 Transcript of Proceedings; and that said
13 transcript is a complete record of the
14 proceedings, and constitutes a true and
15 correct transcript of the proceedings had
16 therein.
17
18
19
20
21
22
23
24
25



Craig T. Stewart
Official Court Reporter
Cuyahoga County, Ohio

1 THE STATE OF OHIO,)
2) SS: MATIA, J.
3 COUNTY OF CUYAHOGA.)

4 IN THE COURT OF COMMON PLEAS
5 CRIMINAL DIVISION

6 THE STATE OF OHIO,)
7)
8 Plaintiff,)
9 -v-) Case No. CR-476741
10)
11 JOHN GREGG,)
12)
13 Defendant.)

14 DEFENDANT'S TRANSCRIPT OF PROCEEDINGS

15 APPEARANCES:

16 WILLIAM D. MASON, ESQ.,
17 Prosecuting Attorney, by
18 SALEH AWADALLAH, ESQ.
19 Assistant County Prosecutor,

20 On behalf of the Plaintiff.

21 ROBERT TOBIK, ESQ.,
22 Cuyahoga County Public Defender, by
23 JOHN MARTIN, ESQ.

24 On behalf of the Defendant.

25 Mary E. Schuler, RMR
Official Court Reporter
Cuyahoga County, Ohio

WEDNESDAY MORNING SESSION, FEBRUARY 28, 2007

SENTENCING

1 THE COURT: Okay. We're here on
 2 State v. John Gregg, 476741. It's the B case.
 3 Mr. Gregg pled guilty to one count of insurance
 4 fraud as amended in count two. It's a first
 5 degree misdemeanor. The Court ordered that he
 6 undergo a presentence investigation which it has
 7 received and reviewed.
 8

9 Off the record.

10
 11 - - - - -
 12 (Thereupon, a discussion was had off the
 13 record.)
 14

15 THE COURT: Okay. Back on the
 16 record. Mr. Gregg is here with his attorney, John
 17 Martin. Present also is Assistant County
 18 Prosecutor Sal Awadallah.

19 Mr. Martin, have you read the PSI?

20 MR. MARTIN: Your Honor, I have read
 21 the PSI.

22 THE COURT: Do you find it to be
 23 complete and accurate?

24 MR. MARTIN: For the most part, your
 25 Honor. There's a couple of corrections. A couple

1 times in the PSI it makes reference to this being
2 a felony or there is a block checked that would
3 have been under a felony consideration. This case
4 is not. It's a misdemeanor.

5 The other thing is that the PSI
6 accurately reports that Mr. Gregg was found in
7 contempt by Judge Timothy McGinty. It does not
8 reflect the fact that that contempt conviction was
9 reversed on appeal and therefore was vacated.

10 Other than that with those corrections,
11 your Honor, the PSI is acceptable.

12 THE COURT: Mr. Awadallah, is there
13 anything you wish to say on behalf of Mr. Gregg?

14 MR. GREGG: Your Honor, as the Court
15 knows, being involved with the State of Ohio
16 versus Charles Maxwell, what the agreement was
17 that Mr. Gregg would continue his cooperation as
18 he started out doing with the Cleveland homicide
19 department back on November 28th, or actually
20 27th, and continue his cooperation vis-a-vis State
21 of Ohio versus Charles Maxwell, the aggravated
22 murder case.

23 He was to plead to one count of a lesser
24 crime of insurance fraud which is a misdemeanor of
25 the first degree. I told him that I would not

1 advocate one way or the other for Mr. Gregg with
2 regards to any sentencing he would receive, only
3 that I would be available to answer any questions
4 with regards to his making himself available and
5 his cooperation with regards to State of Ohio
6 versus Charles Maxwell, the aggravated murder
7 case.

8 And to that end, your Honor, Mr. Gregg
9 has cooperated, has been -- has been responsive to
10 subpoenas, has been here on days that I've asked
11 him to be here in anticipation of him testifying
12 on those days, and when called upon has testified
13 and, your Honor, was witness to that as well.

14 That is the extent of what I could add,
15 your Honor, to these proceedings, I believe.
16 Thank you.

17 THE COURT: Do you have any idea what
18 the defense costs were from the underlying civil
19 case that this fraud grew out of?

20 MR. MARTIN: Your Honor, we addressed
21 that with Judge McGinty. The defense in that
22 case -- when I say that we addressed it with Judge
23 McGinty, what I mean is this, the defense,
24 Reminger and Reminger, filed seeking attorney's
25 fees in that case. We reached an out-of-court

1 settlement with Reminger with respect to that
2 motion back in that underlying civil case.

3 THE COURT: Did he pay?

4 MR. MARTIN: Mr. Gregg paid \$5,000.

5 THE COURT: Was that paid in full?

6 MR. MARTIN: Yes, it was paid in full.

7 And I want the record to reflect that that was a
8 confidential settlement agreement and I received
9 permission from Robert Yelich last evening to be
10 able to disclose that to the Court today.

11 THE COURT: What else would you like
12 me to know?

13 MR. MARTIN: Well, your Honor, a
14 couple of things. Number one, in addition to the
15 sentencing memorandum that I filed with the Court
16 and you received a courtesy copy and there was an
17 Exhibit A attached to that, I would submit at this
18 point Exhibit B which is a letter from Mr. Ken
19 Haddan. I've already provided the Court with a
20 courtesy copy. The prosecutor has a copy so I
21 would just ask that this one be included in the
22 record if I may approach.

23 Secondly, your Honor, I think one of the
24 issues in this case concerning John's cooperation
25 is the timeliness of it. He made the 911 call

1 anonymously as soon as he found out about the
2 murder. Within about two days he was in talking
3 to the police. He gave the police a
4 statement. He didn't sign that statement. He was
5 helping the police though trying to lure Charles
6 Maxwell.

7 THE COURT: Explain why he didn't
8 sign the statement.

9 MR. MARTIN: Your Honor, he didn't
10 sign the statement at that time because quite
11 frankly he was afraid of Charles Maxwell. Charles
12 Maxwell had just killed a woman because she had
13 cooperated with authorities in prosecuting him for
14 felonious assault. Here's John Gregg cooperating
15 with the authorities in Charles Maxwell's having
16 murdered that same woman.

17 In fact John had an exchange with the
18 detective at one point where he said, How do I
19 know I'm safe? And the detective said, I never
20 had anybody get killed in all my time. And John
21 said, Well, would you say that to Nichole, or
22 words to that effect, if she were here?

23 He was afraid. Within a short time he
24 was called before the Grand Jury to continue to
25 cooperate and that's where I got involved and

1 bulloxed up the whole mess I suppose.

2 I, having represented John in the
3 contempt case, went to the Grand Jury found and
4 out that John was not only being asked to be a
5 witness in this case but was also being a target
6 for this fraud investigation and for a fraud
7 indictment that was coming down the road that
8 involved Charles Maxwell.

9 I could not in good conscience say to him
10 go ahead and cooperate with the Grand Jury, go
11 ahead and give a signed statement and/or anything
12 else until I had a plea agreement. So, quite
13 frankly, John went to the Grand Jury and on my
14 advice took the Fifth Amendment and John refused
15 to make any kind of statement until we reached a
16 deal. Once we reached a deal cooperation was full
17 and complete.

18 Your Honor, maybe it's too many years in
19 the federal system of dotting too many I's and
20 crossing too many T's, but I was going to play
21 that one completely down the line; no agreement
22 until I had cooperation.

23 Meanwhile, I had a client who wanted to
24 cooperate in that murder case. We reached a point
25 during plea negotiations at one point where John

1 said, Mr. Martin, even if I go to trial, can I
2 cooperate against the State, or even if we --
3 there was that kind of an exchange, I don't want
4 to be too specific, like he said if I went to
5 trial and lost, could I still cooperate. He felt
6 that what happened to Nichole was wrong, your
7 Honor.

8 THE COURT: Really? Okay.

9 MR. MARTIN: And, your Honor,
10 obviously it was wrong and he took the steps he
11 could to do something to make that right. Your
12 Honor, this is a misdemeanor case. It is a case
13 in which -- it was a triable case as insurance
14 fraud case and that's from my perspective as a
15 lawyer but John knew that he had misled people in
16 his deposition. He was wrong. He's willing to
17 take responsibility for that. All of that
18 happened before Charles Maxwell ever killed this
19 young woman.

20 John, at the time that he was
21 cooperating, had that contempt conviction already
22 reversed and didn't know what was -- what if
23 anything was coming next. I don't think he
24 thought anything was coming next. I would have
25 been telling him, no, you're going to have another

1 contempt matter.

2 But the fact is he just went forward and
3 he did the stuff without any assurances and he
4 came forward and he revealed stuff and he has gone
5 through -- trust me, he deserves to have gone
6 through a lot, but he's gone through a lot.

7 He had his face all over the paper when
8 Judge McGinty finds plaintiff guilty of contempt;
9 he thought he was going to get money, now he gets
10 jail instead, and that gets spread out over the
11 newspaper, and his then wife sees that and it was
12 probably the final straw in his marriage. He goes
13 to jail until we can get him out on bond, until we
14 can -- and it was reversed on appeal for
15 procedural reasons that are readily apparent.

16 He comes forward. He does this
17 stuff. He pays \$5,000. There's no question this
18 man was actually injured. He paid \$16,000 of his
19 own medical bills for this slip and fall that is
20 the subject of this insurance fraud today, plus
21 \$5,000 as a settlement with respect to Reminger.

22 He's a different person though than he
23 was in 2004. He's a person -- and I want -- if I
24 could, I would like Bart Caterino to address the
25 Court if he could. While a lawyer, Mr. Caterino

1 is also his father-in-law at this time until the
2 divorce goes through, and he can give a unique
3 perspective on John.

4 But, the John Gregg who played fast and
5 loose with his answers at the deposition isn't the
6 same one who's here today. He's learned from
7 this. He's got employment ready to go. James
8 Brothers is here and James Brothers runs a cement
9 company. He is ready to hire John Gregg and keep
10 him on above-board, W-2 type employment because
11 John's talented when it comes to this construction
12 stuff. If this Court gives work release as part
13 of a jail sentence, John would be able to do
14 that.

15 John's trying to put his life together.
16 He's moved on from his marriage. He's got a new
17 relationship. He has been an active member of his
18 church. The victims have been made whole as I've
19 said before.

20 At the end of day, your Honor, for a
21 misdemeanor insurance fraud, he's suffered a
22 lot. Community-control sanctions keeps him under
23 your control. Community-control sanctions would
24 also give him an opportunity or an obligation to
25 pay back through community service. There are

1 good reasons why incarceration is not the
2 appropriate sentence in this case, And with your
3 Honor's permission if Mr. Caterino could address
4 the Court.

5 THE COURT: Hold on a moment.
6 Mr. Caterino, good morning.

7 MR. CATERINO: Good morning, your
8 Honor. First of all I apologize for disrupting
9 the Court earlier.

10 THE COURT: That's fine.

11 MR. CATERINO: And I appreciate your
12 courtesy in allowing me to speak.

13 THE COURT: Frankly I'm perplexed
14 that you wish to speak on behalf of Mr. Gregg,
15 your current son-in-law, who has already moved on
16 with his next love interest.

17 MR. CATERINO: Well, if I may speak
18 about --

19 THE COURT: Let the record reflect you
20 and I know each other. We're in the Justinian
21 Forum at St. Dominic Church and I met you first
22 when I was campaigning for Judge in 1998 so we go
23 back.

24 MR. CATERINO: Exactly right, your
25 Honor.

1 THE COURT: Tell me what you would
2 like to say on behalf of this individual.

3 MR. CATERINO: I've known John Gregg
4 for about ten years. I met him when he was going
5 with my oldest daughter. I did not approve of
6 John Gregg from day one. I did not approve of
7 John Gregg for my daughter. But they ran away and
8 got married and there's nothing that I could do
9 about it. They were married. They moved back to
10 Cleveland and I took them under my wing and tried
11 to guide them along, but I cannot chronicle the
12 number of problems that he has caused me and my
13 family and all the members of my family.

14 Somewhere along the way several years ago
15 I had a long talk with John. I said, John, you
16 have got to turn your life around. If you're
17 going to continue to be married -- I don't want
18 you around if you're going to act the way you have
19 been. He did two things. He continued to keep a
20 relationship with me and the second he took
21 instructions in the Catholic faith at
22 St. Dominic's under Fr. Tom Fanta.

23 He has been going to church and I see him
24 in church. John has caused a great deal of
25 suffering to me and my family, but he has suffered

1 a great deal. All of the things that have
2 occurred in the trial, the past trial, the current
3 trial, are before his redemption and I would ask
4 you to look with some sympathy and some courtesy
5 in order to help John to turn his life around
6 which I think he has begun to do that.

7 Thank you, your Honor.

8 THE COURT: Mr. Caterino, thank you.
9 Mr. Gregg, what would you like me to know
10 before I announce my sentence?

11 THE DEFENDANT: I'd just like to say
12 that I'm sorry for having taken the Court through
13 this course for making some misleading statements
14 in my deposition. I realize that had I answered
15 differently, all of this could have been avoided
16 and truthfully I am sorry about that.

17 THE COURT: And what was that
18 misleading statement?

19 THE DEFENDANT: When I described
20 Anthony as a man I answered it very vague hoping
21 that --

22 THE COURT: You didn't let them know
23 that he was your best friend?

24 THE DEFENDANT: No.

25 THE COURT: You didn't let them know

1 that you talked to him every day. You didn't let
2 them know that you worked with him?

3 THE DEFENDANT: No, I did not.

4 THE COURT: You made Anthony Maxwell
5 sound like he was just some stranger who just
6 happened to be at McDonald's that day, correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You fooled your lawyer,
9 you fooled the defense attorneys, you fooled the
10 entire criminal justice system, correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What else would you like
13 me to know?

14 THE DEFENDANT: Just that I'm really
15 sorry about that.

16 THE COURT: Anything else from anyone
17 else?

18 MR. MARTIN: Your Honor, in sum,
19 you've got a crime, but you've got a person who
20 since the time of that criminal activity has done
21 a lot of mitigating factors; has done a lot of
22 things to start to make things right.

23 I ask you to keep him under your control
24 with community-control sanctions; if he screws up,
25 he knows exactly what the consequences will be.

1 THE COURT: Thank you, Mr. Martin.

2 One of the things I like to do with my
3 kids is to go to the Zoo. I took my kids to the
4 zoo the other day. There's a little furry mammal
5 exhibit, the weasel exhibit. We saw a new species
6 of weasel there called weasel gregorious. Looked
7 really a lot like you, Mr. Gregg. You are a
8 weasel. You are a fraud. Your whole life has
9 been about being a fraud. I find you to be one of
10 the most despicable humans that I've seen here for
11 a long time.

12 You are here before me for a misdemeanor,
13 attempted insurance fraud. My heart goes out to
14 Mr. Caterino to have a person like you as a
15 son-in-law. I have daughters and if I -- if one
16 of them married someone like you I think I would
17 be doing time for manslaughter at this point.

18 Just so the record can support what kind
19 of person you are, you got a plea deal in this
20 case because of your testimony in the capital
21 murder case of State v. Charles Maxwell,
22 Mr. Maxwell being your partner in crime in this
23 insurance fraud case. Mr. Maxwell killed his
24 girlfriend, Nichole McCorkle.

25 As I sentence you right now, the jury is

000327

1 deliberating as to whether Mr. Maxwell should
2 receive the death penalty or not.

3 You testified in the case and I went on
4 the record in that case after voir diring some of
5 your testimony indicating that I would have to
6 look at my own birth certificate and driver's
7 license to confirm if you told me my name was
8 David Matia because you are that unbelievable.

9 You gave a statement in that case. You
10 finally signed it a year after the murder. You
11 were about to give a statement three days after
12 the initial murder, on November 30th, but you
13 refused.

14 I remember you testifying in this case
15 that you just wanted to do the right thing. I
16 don't see how refusing to cooperate at the time
17 was doing the right thing.

18 Now, here's your statement in that
19 case. Page three, Question, During the time
20 Maxwell and Nichole were together, did he ever
21 talk about killing her?

22 Answer, Yes. On several occasions he
23 would say things like, quote, that bitch is going
24 to make me kill her. He would say things like
25 that after an argument with her. Sometimes the

1 argument would be over her thinking that he was
2 cheating on her or him being out late with me, or
3 money. They even argued over him eating dinner at
4 his mother's house too often.

5 Sometime after the felonious assault,
6 which occurred in October of 2005 on Nichole, but
7 before she testified before the Grand Jury, Ant
8 and I were talking on the phone. I asked Ant, who
9 is Charles Maxwell, how Nichole was, and he said
10 she was okay, just four or five stitches in her
11 head. But he told me he was worried because he
12 saw on TV that some guy who had a felonious
13 assault got eight years in prison. Charles
14 Maxwell did not want to go to prison again. He
15 said he needed to get a gun and, quote, take care
16 of the bitch. He asked if I knew where to get a
17 gun. I, being you, Mr. Gregg, told him, no, but
18 that if he was serious, he should do it smart and
19 use a rifle so that he could be far away.

20 I bring this up so the record can fully
21 demonstrate what an awful human being you are and
22 how deserving of prison you are. My only regret
23 is I'm limited to six months. I see people here
24 on a day in and day out basis; many have redeeming
25 qualities about them. You have gone through life,

1 again, as a complete fraud. You got on the stand
2 and you couldn't even remember that you were
3 convicted and pled guilty to arson in 2001.

4 How could you forget that?

5 THE DEFENDANT: I thought it was the
6 --

7 THE COURT: That wasn't a question I
8 really needed you to answer, Mr. Gregg.

9 Mr. Gregg, I'm done with you. You're
10 going to be sentenced to six months in the
11 Cuyahoga County Jail with whatever credit for time
12 served you might deserve. You will be fined a
13 full thousand dollars and you will be ordered to
14 pay the court costs. You are ordered
15 remanded. Good luck.

16 MR. MARTIN: Thank you, your Honor.

17 Your Honor, can we have an order with
18 regard to separation between John Gregg and
19 Charles Maxwell?

20 THE COURT: You can put something and
21 I'll consider it.

22 MR. MARTIN: Thank you, your Honor.

23 -----
24 (Thereupon, Court was adjourned.)
25 -----

000330

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

C E R T I F I C A T E

I, Mary E. Schuler, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a complete record of the proceedings had in the trial of said cause and constitutes a true and correct Transcript of Proceedings had therein.



Mary E. Schuler, RMR
Official Court Reporter
Cuyahoga County, Ohio

000331