

IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

1 UNITED STATES OF AMERICA, )

2 )  
3 Plaintiff, )

4 Vs. )

5 Case No. 02-CR-27-1 )

6 DWIGHT D. YORK, )  
7 a/k/a MALACHI Z. YORK, )  
8 a/k/a ISA MUHAMMAD, )  
9 a/k/a ISA ALIHAD MAHDI, )  
10 a/k/a BABA, )

11 August 13, 2004 )  
12 Macon, Georgia )

13 Defendant. )

14 10:05 a.m. )

15 MOTION FOR NEW TRIAL  
16 BEFORE THE HONORABLE C. ASHLEY ROYAL  
17 United States District Judge presiding

18 APPEARANCES:

19 For the Government:

20 MAX WOODS  
21 RICHARD MOULTRIE  
22 OFFICE OF U.S. ATTORNEY  
23 P. O. Box 1702  
24 Macon, GA 31202

25 For the Defendant:

26 JOHATHAN MARKS  
27 Attorney at Law  
28 220 Fifth Avenue  
29 3rd Floor  
30 New York, NY 10001  
31 HARRY J. CHARLES  
32 Attorney at Law  
33 P. O. Box 95  
34 Jonesboro, GA 31237

35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

Computer-Assisted Transcription

INDEX OF PROCEEDINGS

WITNESS INDEX

WITNESSES

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

For the Movant:

HABIYBAH WASHINGTON

Examination by Mr. Marks.....6

1 (IN OPEN COURT)

2 THE COURT: All right. Mr. Marks, I guess the first  
3 order of business is for you to tell me why you are late.

4 MR. MARKS: Mr. Charles, who picked me up this  
5 morning, I think felt that he was not going to run into  
6 traffic and, in fact, he did. He also had to make several  
7 stops on the way because of a medical condition, but -- he's  
8 parking the car right now, but I don't fully understand why he  
9 was late, but he said he ran into traffic. I apologize.

10 THE COURT: All right. Well, just don't let it  
11 happen again. All right?

12 MR. MARKS: All right.

13 THE COURT: Now, I think you have a motion for today,  
14 a motion for new trial; is that correct?

15 MR. MARKS: We do, Your Honor.

16 There are two motions. There's the motion that I  
17 filed on the basis of newly-discovered evidence, and I would  
18 like to go forward with that motion. There's also the motion  
19 that Adrian Patrick filed, and I wish to withdraw that motion.

20 THE COURT: You want to withdraw that motion?

21 MR. MARKS: Yes, Your Honor.

22 THE COURT: All right. Well, then the motion is  
23 withdrawn.

24 Now, as far as the motion based on newly-discovered  
25 evidence, what is your plan for that?

1 MR. MARKS: To call Habiyyah Washington, Your Honor.

2 THE COURT: All right. Is she here?

3 MR. MOULTRIE: She is, Your Honor.

4 MR. MARKS: Mr. Moultrie and I have discussed this,  
5 and I think we have a joint request and that is that Your  
6 Honor assign counsel to represent her.

7 THE COURT: All right. Well, Judge Hicks, the  
8 Magistrate Judge, has already taken care of that.

9 MR. MARKS: Fine.

10 THE COURT: And Brian Randall -- and Mr. Randall is  
11 in the courtroom -- he is available to talk to her, and so I  
12 don't know where she is, but what I'm going to do is give him  
13 the opportunity to talk to her.

14 Now, let me tell you that I am participating in the  
15 orientation of the new law school class at Mercer Law School,  
16 and I expect that they will be downstairs shortly, and as a  
17 consequence of that, what I think I'll do is probably just  
18 recess until about eleven o'clock. That will give Ms.  
19 Washington ample opportunity to talk to him, Mr. Randall, and  
20 then I should be finished with the law students by that time.

21 MR. MARKS: Very good.

22 Your Honor, after I submitted my motion, I had some  
23 conversations with Ms. Washington in which she told me that,  
24 if she were called, she would testify that the affidavits that  
25 she submitted in support of the motion were false. I just

1 want the Court to know that, but we intend to call her  
2 nevertheless.

3 THE COURT: Okay.

4 MR. MARKS: Thank you.

5 THE COURT: All right, very good.

6 Mr. Moultrie, anything for the government?

7 MR. MOULTRIE: No, Your Honor.

8 THE COURT: All right. Well, I hope to be back by  
9 eleven o'clock. If not, as soon as I get back, we'll start  
10 with the hearing.

11 MR. MARKS: Thank you, Your Honor.

12 MR. MOULTRIE: Thank you.

13 (WHEREUPON, THE COURT RECESSED FROM 10:10 A.M. UNTIL 11:10  
14 A.M.)

15 (IN OPEN COURT)

16 THE COURT: All right. Mr. Marks, how do you wish to  
17 proceed?

18 MR. MARKS: The defense wishes to call Habiybah  
19 Washington.

20 THE COURT: All right. Is Mr. Randall in the  
21 courtroom?

22 MR. MOULTRIE: No, Your Honor. They're outside, I  
23 believe.

24 THE COURT: All right.

25 (THE WITNESS TOOK THE WITNESS STAND)

1 THE COURT: How are you, Ms. Washington?

2 THE WITNESS: I'm okay.

3 THE COURT: Have you had the opportunity to talk to  
4 counsel before you came in here this morning?

5 THE WITNESS: Yeah, I did.

6 THE COURT: You have? All right.

7 Mr. Randall, is there anything you would like to say  
8 on behalf your client at this point?

9 MR. RANDALL: No, sir.

10 THE COURT: All right. That's fine.

11 Swear the witness.

12 HABIYBAH WASHINGTON, MOVANT'S WITNESS, SWORN

13 EXAMINATION

14 BY MR. MARKS:

15 THE CLERK: State your name for the record.

16 THE WITNESS: Habiyyah Washington.

17 THE CLERK: Spell your first name, please.

18 THE WITNESS: H-A-B-I-Y-B-A-H.

19 BY MR. MARKS:

20 Q Good morning, Ms. Washington.

21 A Good morning.

22 Q You testified as a prosecution witness at the trial of  
23 Malachi York; is that right?

24 THE COURT: Mr. Marks, excuse me. I almost never  
25 interrupt counsel, but I think we ought to get her full name

1 on the record and where she resides.

2 MR. MARKS: Oh, I'm sorry; of course.

3 THE COURT: Go ahead.

4 BY MR. MARKS:

5 Q Okay. What is your name, please?

6 A Habiyyah Washington.

7 Q Okay. And, Ms. Washington, am I correct that you  
8 testified as a prosecution witness at the trial of Malachi  
9 York?

10 A Yes.

11 Q And at the trial, you testified, did you not, that you had  
12 sex with Mr. York when you were 13 years of age?

13 A Yes.

14 Q Am I correct that that is false?

15 A No.

16 Q Did you sign an affidavit which was sworn to on April  
17 23rd, 2004?

18 A Yes.

19 Q Okay. And you read the affidavit before you signed it?

20 A I did.

21 Q And you understood that you were signing it under oath?

22 A Yeah.

23 Q Okay. And in that affidavit, did you say that you first  
24 had sex with Malachi York when you were 17 years old and that  
25 you did it voluntarily?

1 A Yes.

2 THE COURT: Mr. Marks, I think you need to mark that  
3 as an exhibit --

4 MR. MARKS: I will.

5 THE COURT: -- and make that part of the record.

6 MR. MARKS: Sure.

7 THE COURT: And we call that Defense Exhibit Number  
8 1.

9 MR. MARKS: Very good.

10 THE COURT: Do you have any other documents that you  
11 are going to --

12 MR. MARKS: I do. I'll mark both of them, Your  
13 Honor.

14 THE COURT: Okay. Thank you.

15 MR. MARKS: And I'm also handing up an affidavit of  
16 Habiyyah Washington sworn to on May 9, 2004, which I'd ask to  
17 be marked as Defendant's 2.

18 THE COURT: I assume the government doesn't have any  
19 objection to these; is that correct?

20 MR. MOULTRIE: That's correct.

21 THE COURT: All right. Well, then they'll be  
22 admitted.

23 (DEFENDANT'S EXHIBITS NUMBERED 1 AND 2 ADMITTED INTO  
24 EVIDENCE WITHOUT OBJECTION)

25 THE COURT: Ms. Washington, let me just tell you that



1 if at any time you would like to read that, or either one of  
2 those affidavits, then you certainly will be given the  
3 opportunity to do that. All right?

4 THE WITNESS: Uh-huh (affirmatively).

5 BY MR. MARKS:

6 Q You testified at the trial that Mr. York had sex with  
7 children, yes?

8 A Yes.

9 Q That he molested children?

10 A Uh-huh (affirmatively).

11 Q You have to answer yes or no.

12 A Oh. Yes.

13 Q And in your affidavit, which you swore to on April 23rd,  
14 2004, did you say, quote, "I do not know of anyone he has ever  
15 molested," end quote?

16 A Yes.

17 Q Did you say, "I do not know of any children he has ever  
18 had sex with"? Did you say that?

19 A Yes.

20 Q You also testified at the trial that you took children to  
21 his house for the purpose of his having sex with them; is that  
22 right?

23 A Yes.

24 Q In your affidavit, did you say, quote, "I never took any  
25 children to him for the purpose of sex"?

1 A Yes.

2 Q Did you also say, "I did take children to his house to  
3 watch movies in his movie theaters and to play"?

4 A Yeah.

5 Q You said, "He would have picnics with his children so he  
6 could spend time with them." Did you say that?

7 A Yes.

8 Q And did you also say under oath, "I do not know if he has  
9 ever been involved in structuring deposits or if he ever knew  
10 that we were doing it"?

11 A Yes.

12 Q And that's contrary to your trial testimony in which you  
13 said that he did have some knowledge of structuring deposits;  
14 is that right?

15 A I believe so.

16 Q Okay. Now, am I correct that the first affidavit that you  
17 signed you signed in DeKalb County, Georgia?

18 A Yes.

19 Q And that was at the office of a lawyer by the name of  
20 Dwight Johnson who was then representing you?

21 A Yes.

22 Q This affidavit you -- you prepared this affidavit with the  
23 assistance of a lawyer over a period of a few hours?

24 A Yes.

25 Q And you gave that lawyer certain information and then he

1 wrote it down?

2 A He was typing it in, yes.

3 Q Right. He typed it, and then he'd show you a draft of the  
4 affidavit after he typed it?

5 A Yes.

6 Q And then after that, you made some corrections?

7 A Yes.

8 Q And he then made the corrections on the draft?

9 A Yes.

10 Q And then after he had done that, you read the affidavit  
11 carefully to yourself?

12 A Yes.

13 Q And having done that, you then signed it knowing that you  
14 were doing so under oath?

15 A Yes.

16 Q In the affidavit, you said that no-one had threatened you  
17 or coerced you to make it, correct?

18 A Yes.

19 Q You said that nobody had offered you anything of value in  
20 return for making the affidavit, correct?

21 A Yes.

22 Q You said that you knew that you were making the affidavit  
23 -- withdrawn.

24 You said that you knew that by making the affidavit  
25 you were subjecting yourself to the possibility of being

1 prosecuted for perjury?

2 A Yes.

3 Q And you also said that in spite of the risk that you were  
4 putting yourself in, you were prepared to make the affidavit  
5 in order to make up for your previous perjury; isn't that what  
6 you said?

7 A Say that again?

8 Q Sure. Take a look if you would please at Defendant's 1.  
9 I'm going to hand this up to you.

10 (HANDING)

11 Q And I direct your attention to the last sentence of  
12 paragraph 1. Does that refresh your recollection that you  
13 said that you prepared -- that you were prepared to make the  
14 affidavit in order to make up for your previous perjury?

15 A Yes.

16 Q And your previous perjury was a reference to your  
17 testimony at trial?

18 A Yes.

19 Q On May 9, 2004, did you sign another affidavit?

20 A Yes.

21 Q And that was at a lawyer's office in New York?

22 A Yes.

23 Q You spent several hours with that lawyer?

24 A Yes.

25 Q And in the course of those several hours, you gave the

1 lawyer certain information and then he typed it up?

2 A Yes.

3 Q And he prepared an affidavit based on the information that  
4 you had given him?

5 A Yes.

6 Q And after he had done that, you read the affidavit?

7 A Yes.

8 Q And you made any corrections that were necessary to make  
9 sure that it was 100 percent accurate?

10 A Yes.

11 Q And having done that, you then signed the affidavit  
12 knowing that you were doing so under oath?

13 A Yes.

14 Q I show you what has been marked as Defendant's 2.

15 (HANDING)

16 Q Is that the affidavit that you signed under oath at the  
17 lawyer's office in New York?

18 A Yes.

19 MR. MARKS: Are these deemed admitted, Your Honor?

20 THE COURT: Yes.

21 MR. MARKS: Thank you.

22 THE COURT: They're admitted.

23 BY MR. MARKS:

24 Q Nobody threatened you to make that affidavit?

25 A No.

1 Q Nobody coerced you in any way?

2 A No..

3 Q You did it voluntarily?

4 A Yes.

5 Q Nobody offered you anything of value in return for making  
6 the affidavit?

7 A No.

8 Q And when you swore to the affidavit, you swore that it was  
9 accurate to the best of your knowledge?

10 A Yes.

11 Q And it was accurate to the best of your knowledge?

12 A No.

13 Q Well, in what way was it not accurate? We're now talking  
14 about Defendant's 2, which is the affidavit you swore to on  
15 May 9th, 2004, in New York.

16 A What do you mean in what way it wasn't --

17 Q Well, you just told us that it was not accurate.

18 A Well, it wasn't the truth.

19 Q Well, in what way was it not -- what was not truthful?

20 A Everything in it.

21 Q Well, let's go through it.

22 At the time that you signed the affidavit, you were  
23 28 years old?

24 A Yes.

25 Q And you were residing in Brooklyn, New York?

1 A Yes.

2 Q And that's what the affidavit says, and that was true,  
3 correct?

4 A Yes.

5 Q And then you said that you made the affidavit of your own  
6 free will. That was true?

7 A Yes.

8 Q And you said that no-one threatened or coerced you to make  
9 it. That was true?

10 A Yes.

11 Q You also said that nobody offered you anything of value in  
12 return for making the affidavit. Was that true?

13 A Yes.

14 Q And you testified that at the trial of Malachi York you  
15 and other witnesses against him gave false incriminating  
16 testimony. Wasn't that true?

17 A No.

18 Q In what way was that not true?

19 A We didn't give false testimony.

20 Q Well, can you tell us then why it is that you said in this  
21 affidavit that you did give false testimony?

22 A Because I thought it would help him.

23 Q You previous -- withdrawn.

24 Before you made these affidavits, you went up to New  
25 York and you made a videotape?

1 A Yes.

2 Q Did anybody coerce you to make the videotape?

3 A No.

4 Q Whose idea was it to make the videotape?

5 A My lawyer told me that that's what you wanted.

6 Q Okay. And that was after you told your lawyer, in  
7 substance, that you had lied at the trial?

8 A Yes.

9 Q And he suggested to you that you make a videotape  
10 documenting the fact that you had lied?

11 A Yes.

12 Q And you did that voluntarily?

13 A Yes.

14 Q Was the videotape true or not?

15 A No.

16 Q Now, getting back to the Defendant's Exhibit 2, in May of  
17 2001, did you have a conversation with Jacob York at his house  
18 before you left on vacation to Florida?

19 A Yes.

20 Q And were Nuh and Rashid present?

21 A Yes, they were.

22 Q Did Jacob tell you that there were rumors going around  
23 that some people were speaking to the FBI?

24 A Yes, he did.

25 Q Did he tell you that the FBI had your name?



1 A Yes.

2 Q And did he tell you that the FBI knew that you had been in  
3 charge of the land for some period of time?

4 A Yes.

5 Q And did he suggest to you that you go to the FBI before  
6 the FBI went to you?

7 A Yes.

8 Q Did you tell him that you did not want to talk to the FBI?

9 A Yes, I told him that.

10 Q And that you didn't have any reason to talk to them?

11 A Yes.

12 Q Did you tell Jacob that you did not have any knowledge  
13 that anything was going on?

14 A Yes.

15 THE COURT: Excuse me, Mr. Marks. Is this part of  
16 trial testimony? Is this part of the cross examination of  
17 this witness?

18 MR. MARKS: It is, Your Honor.

19 MR. MOULTRIE: Actually, Your Honor, it's not, and  
20 it's also -- I just made a decision not to interrupt. Mr.  
21 Marks is asking Ms. Washington to testify about hearsay  
22 statements made allegedly by Jacob York. Jacob York did not  
23 testify at the trial. Even if he had, any questions that he  
24 put to Ms. Washington would be hearsay. I was wondering where  
25 he was going with this, and I'm still not sure, but I would

1 make an objection that he not ask her any further questions  
2 based on any hearsay statements of some other witness.

3 THE COURT: Well, hearsay isn't admissible unless  
4 there's an exception. You understand that rule. I thought  
5 that I had perhaps heard some of this before during the course  
6 of the trial. This hearing is about newly-discovered  
7 evidence, so -- but anyway, go ahead.

8 MR. MARKS: Okay. Thank you, Your Honor.

9 What I'm doing is actually asking the witness whether  
10 the statements contained in her affidavit -- or whether these  
11 statements which are contained in her affidavit are true,  
12 because she testified previously that --

13 THE COURT: Is that about Jacob York in the  
14 affidavit?

15 MR. MARKS: Yes, yes.

16 THE COURT: Oh, I see. Well, that's fine.

17 MR. MARKS: Exactly. It's all in the affidavit, Your  
18 Honor.

19 THE COURT: All right. Okay. Go right ahead.

20 MR. MARKS: Thank you.

21 BY MR. MARKS:

22 Q Did you tell Jacob that nothing was happening to the kids  
23 on the land?

24 A Yes.

25 Q And that was true?

1 A No.

2 Q So what you're saying is that you lied to Jacob?

3 A Yes.

4 Q When you made the affidavit in New York, was it your  
5 understanding that by doing so, you were subjecting yourself  
6 to the possibility of being prosecuted for perjury?

7 A Yes.

8 Q And was it also your understanding that you faced a prison  
9 sentence of no more than 2 years for that?

10 A Yes.

11 Q And then did there come a time when somebody told you that  
12 you could be prosecuted for other things besides the perjury?

13 A I believe so.

14 Q And who told you that?

15 A My attorney at the time.

16 Q Dwight Johnson?

17 A Johnson, yeah.

18 Q I see. And did anybody in law enforcement tell you that?

19 A No.

20 Q In the course of the investigation leading up to trial,  
21 you met with the FBI on a number of occasions?

22 A Yes.

23 Q And you became aware that other people were meeting with  
24 the FBI?

25 A Yes.

1 Q Such as Amala?

2 A Uh-huh (affirmatively).

3 Q And Nicole?

4 A Yes.

5 Q And Nicole Harden?

6 A Yes.

7 Q And Krystal?

8 A Yes.

9 Q And Sakina Parham?

10 A Yes.

11 Q And Minyrah?

12 A Yes.

13 Q And Jamiyla Ellis?

14 A Yeah.

15 Q And also Alichea Chester?

16 A Yes.

17 Q And am I correct that you would compare notes with them so

18 that after you were interviewed by the FBI, you would tell  
19 them what the FBI had asked you and what you told them, right?

20 A Yeah, we did some printouts.

21 Q Right.

22 And then after they were interviewed by the FBI, they  
23 would call you and tell you what they had said?

24 A We talked about what we were questioned about, yeah.

25 Q Right.

1           And the purpose for that was so that you could get  
2 your story straight so that you would be telling consistent  
3 stories to the FBI?

4 A    I wouldn't say that was our motive. We were just  
5 discussing what we were interviewed about.

6 Q    So I take it then that it is your testimony that when you  
7 swore to the truth of the affidavit that was prepared in  
8 DeKalb County, Georgia, on April 23rd, 2004, that that was  
9 false; the affidavit was untrue?

10 A    Yes.

11 Q    And it is your testimony that you also perjured yourself  
12 on May 9th, 2004, when you swore to the affidavit you signed  
13 in New York?

14 A    Yes.

15 Q    Now, tell us what your thought processes were, if you  
16 wouldn't mind. Why was it that you made these false  
17 affidavits?

18 A    I couldn't handle his sentence. I mean, I don't know. I  
19 didn't think that I could live with myself with him being in  
20 jail. I didn't think that testifying against him in trial  
21 would have a big effect on me like it did. I didn't think  
22 that it was fair for me to judge him, you know, to -- I think  
23 everybody deserves a second chance, even if they do something  
24 wrong, and I don't know. I thought that, you know, the only  
25 way that I can feel good is, you know, if I try to take it

1 back. I didn't think he deserved it.

2 MR. MARKS: Excuse me.

3 (PAUSE)

4 MR. MARKS: I have no further questions.

5 THE COURT: Mr. Moultrie?

6 (PAUSE)

7 MR. MOULTRIE: Your Honor, having heard the  
8 testimony, I don't think there's any questions for us to ask.

9 THE COURT: All right. Anything further, Mr. Marks?

10 MR. MARKS: No, Your Honor.

11 THE COURT: Can we excuse the witness?

12 MR. MARKS: Yes.

13 THE COURT: All right. Thank you, you are excused,  
14 Ms. Washington.

15 (THE WITNESS WITHDREW FROM THE STAND)

16 THE COURT: You are excused and we appreciate your  
17 help. Thank you very much for being available.

18 (WHEREUPON, THE WITNESS AND HER COUNSEL WITHDREW FROM THE  
19 COURTROOM)

20 THE COURT: All right. Mr. Marks, anything further?

21 MR. MARKS: No, Your Honor. But in light of the  
22 testimony of Habiyyah Washington, we withdraw our motion.

23 THE COURT: All right. I think there may have been a  
24 motion for judgment for acquittal. Did you file that? What's  
25 the status of that?

1 MR. MOULTRIE: That was actually filed as an  
2 accompanying motion with Mr. Patrick's motion.

3 THE COURT: Oh, I see. Okay.

4 MR. MOULTRIE: And I believe that that motion -- both  
5 of those motions have been withdrawn by Mr. Marks, I believe.

6 THE COURT: Okay. Mr. Marks?

7 MR. MARKS: Yes, sir. Did you hear what I said?  
8 There's a motion for judgment of acquittal that apparently was  
9 filed by Mr. Patrick. I know you've withdrawn his motion for  
10 new trial. I assume you're withdrawing that one too, but I  
11 mean I'm --

12 MR. MARKS: Yes, Your Honor. But with respect to the  
13 current motion, after having conferred with Mr. York, I'd like  
14 to withdraw my statement that I'm withdrawing the motion for  
15 new trial based on newly-discovered evidence. So I request  
16 that the Court rule on that motion.

17 THE COURT: I'll do it.

18 MR. MARKS: Thank you.

19 THE COURT: All right. Is there anything further,  
20 Mr. Marks?

21 MR. MARKS: No, Your Honor. Thank you.

22 THE COURT: Mr. Moultrie?

23 MR. MOULTRIE: No, Your Honor.

24 THE COURT: Does that conclude the business of the  
25 Court for today?


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

All right. We're adjourned. Thank you.  
(WHEREUPON, THE COURT RECESSED AT 11:35 A.M.)

\*\*\*\*\*

CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

  
\_\_\_\_\_  
W. Craig DeLoach  
Official U. S. Court Reporter

  
\_\_\_\_\_  
Date