DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 97-CF-140, 97-CF-143, & 97-CF-486

JOSEPH E. PLATER, SAMUEL J. CAPIES, AND ANTHONY R. MORRISON, APPELLANTS,

v.

UNITED STATES, APPELLEE.

Appeal from the Superior Court of the
District of Columbia

(Hon. Robert I. Richter, Trial Judge)

(Argued September 21, 1999 Decided February 17, 2000)

Peter N. Mann, appointed by the court, for appellant, Joseph E. Plater.
Michael Lasley, appointed by the court, for appellant, Anthony R. Morrison.
Christopher S. Merriam, appointed by the court, for appellant, Samuel J. Capies.

Anthony Barkow, Assistant United States Attorney, with whom *Wilma A. Lewis*, United States Attorney, and *John R. Fisher*, *Thomas J. Tourish, Jr.*, and *Timothy J. Heaphy*, Assistant United States Attorneys, were on the brief, for appellee.

Before REID and WASHINGTON, *Associate Judges*, and BELSON, *Senior Judge.*

WASHINGTON, *Associate Judge*: Appellants Plater, Morrison, and Capies were indicted on charges of second-degree murder while armed,[1] and tried jointly. A jury convicted Capies and Plater of voluntary manslaughter, while armed.[2] Morrison was found guilty of voluntary manslaughter, unarmed.[3]

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[1] D.C. Code §§ 22-2403,-3202 (1996)

[2] D.C. Code §§ 22-2405,-3202 (1996)

[3] D.C. Code § 22-2405

The appeals of Plater, Morrison, and Capies were consolidated by this court. Plater, Morrison, and Capies seek reversal of their convictions based on several grounds. Appellants argue that the trial judge erred by: 1) refusing to instruct the jury on lesser-included charges of aggravated assault for Morrison and assault with a deadly weapon for Capies; 2) refusing to grant Plater's motion for a mistrial based on an improper statement by the prosecutor in his opening statement; 3) denying Plater's motion to sever his trial from non-testifying co-defendants Morrison and Grayson,[4] violating his Sixth Amendment Right to Confrontation; and 4) denying Morrison's motion to suppress his videotaped confession because it was involuntary. We affirm.

I. FACTUAL BACKGROUND

On June 27, 1996, at approximately 9:00 p.m., Thomas Davis, the decedent, was walking with Vanessa Price, Price's nine-month old granddaughter, and another eight-year-old girl in the area of 16th and East Capitol Streets, N.E. While walking on the north side of East Capitol street, returning to Price's home, Davis was stopped by Capies. Capies confronted Davis, who attempted to run before Capies struck him in the face with a bottle. Thereafter, Capies held Davis while five other men, including Plater and Morrison, began to viciously beat Davis and continued while he fell to the ground. Davis managed to raise himself off the ground and attempted to flee toward the south side of East Capitol street.

[4] Taj A. Grayson was also tried with the three appellants, but is not a party to this appeal.

The group followed Davis across the street and continued to beat him using various weapons, including a stick, a pipe, and a bat. Davis, again, fell to the ground where his head was pounded against the cement curb. The assailants fled the scene, leaving Davis on the curbside. Davis died on July 2, 1996 from brain swelling due to the grave injuries inflicted from the beating.

II. ANALYSIS

A. Lesser-Included Offenses

Capies and Morrison contend that the trial court erred in denying their requests for jury instructions on the lesser-included offenses of assault with a deadly weapon and aggravated assault, respectively. They argue essentially that their confrontation with the decedent was a separate and distinct event, or, alternatively, that they withdrew prior to the fatal blows that killed Davis. For the following reasons, their arguments are without merit.

An instruction on a lesser-included offense is justified if (1) all elements of the lesser offense are included within the offense charged, and (2) there is a sufficient evidentiary basis for the lesser charge.[5]

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[5] "The requirement of a sufficient evidentiary basis can be met by a showing that: (1) there is conflicting testimony on a factual issue, or (2) the lesser-included offense is fairly inferable from the evidence." *Price v. United States*, 602 A.2d 641, 644 (D.C. 1992). The standard requires the production of some evidence that offers a rational basis for the instruction. *See Rease*, 403 A.2d 322, 328-29 (D.C. 1979); *West v. United States*, 499 A.2d 860, 865 (D.C. 1985).

Boykin v. United States, 702 A.2d 1242, 1250 (D.C. 1997) (citations omitted); *see also Day v. United States*, 390 A.2d 957, 961 (D.C. 1978).

In this case, Capies and Morrison argue, respectively, that assault with a deadly weapon and aggravated assault are lesser-included offenses of voluntary manslaughter, and that based on the evidence in the record they were entitled to have the jury instructed on those lesser-included offenses. Although aggravated assault and assault with a deadly weapon have not been explicitly recognized as lesser-included offenses of voluntary manslaughter in this jurisdiction, there is some support for this contention in dicta of prior decisions of this court. *See Day, supra,* 390 A.2d at 961-62 (citing *Logan v. United States*, 144 U.S. 263, 307 (1892) (dicta), *United States v. Hamilton*, 182 F. Supp. 548, 551 (D.D.C. 1960) (dicta)). However, we need not decide in this case whether assault is a lesser-included offense of voluntary manslaughter because we find that the evidence in the record is insufficient to support a jury instruction on the requested lesser-included offenses.

Capies and Morrison each rely on testimonial evidence to support their respective contentions that there was sufficient evidence in the record to warrant lesser-included assault instructions being given to the jury. Capies argues that Jeffrey Drummond's testimony, that he picked Capies up from the area of the assault on his way to band practice, could lead a reasonable juror to infer that Capies struck Davis in the face with a bottle and then left with Drummond before the group assault began; thus his assault was a separate event entitling him to a lesser-included instruction. Morrison relies on his own statement to the police, in which he admits to punching Davis twice with his fist while Davis was on the side of the street

opposite from that on which the decedent died.[6] In the alternative, Capies and Morrison contend their respectively proffered evidence raises an inference that they withdrew from the group assault at some point and that their withdrawal constitutes sufficient grounds for giving jurors a lesser-included assault instruction. We disagree.

Despite their assertions to the contrary, neither Drummond's testimony nor Morrison's statement raises a reasonable inference that the actions of Capies and Morrison during the assault against Davis were separate and distinct from the involvement of the other participants in the assault. The only reasonable inference that can be drawn from Drummond's testimony is that Capies did not assault Davis because he was not present during the assault.[7] Morrison's statement at most suggests that he stopped beating Davis before Davis was finally killed. However, no reasonable juror viewing this evidence could possibly conclude that Capies and Morrison were somehow involved in a separate assault. To the contrary, the overwhelming evidence indicates that they were inextricably involved in the very assault that led to Davis' death. The undisputed evidence is that Capies struck the first blow hitting Davis in the face with a bottle. Capies then held Davis while Morrison and Plater, among others, viciously beat him. After Davis was originally knocked to the ground, he attempted to flee but got no further than the other side of the street before the beating continued. The entire episode lasted no more than twenty minutes. The evidence in this case clearly and unequivocally establishes that the beating of Davis was "a continuing course of assaultive

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[6] Morrison submits that two separate assaults occurred, the first on the north side of East Capitol street and the second fatal assault on the south side of East Capitol street where the blows that killed Davis were delivered, and that his participation was limited to the first, non-fatal assault.

[7] The parties stipulated that the emergency calls reporting the beating of Davis were placed at approximately 9:00 p.m. Therefore, Drummond's testimony that he picked up Davis at 7:15 p.m., could only provide an alibi for Capies, and the trial court properly instructed the jury on this theory of defense.

conduct, rather than a succession of detached incidents," *In Re T.H.B.*, 670 A.2d 895, 900 (D.C. 1996) (citation and internal quotation marks omitted), and in this jurisdiction it is well settled that an assault that results in a death is a homicide. *See Hebron v. United States*, 625 A.2d 884 (D.C. 1993). Both Capies and Morrison participated in the assault that resulted in Davis' death and as a matter of law, they were not entitled to a jury instruction on any charge other than the homicide charge.

The alternative argument raised by Capies and Morrison that they withdrew from the assault before the decedent was killed and thus were entitled to a lesser-included assault instruction is equally without merit. Legal withdrawal has been defined as "(1) repudiation of the defendant's prior aid or (2) doing all that is possible to countermand his prior aid or counsel, and (3) doing so before the chain of events has become unstoppable." 2 LAFAVE & SCOTT, SUBSTANTIVE CRIMINAL LAW § 6.8 (d), at 162 (2d ed. 1986). In *Harris v. United States*, 377 A.2d 34, 38 (D.C. 1977), this court expressed that to withdraw from a criminal venture a defendant charged as an aider and abettor "[m]ust take affirmative action to disavow or defeat the purpose, or definite, decisive and positive steps which indicate a full and complete disassociation." (citations omitted). The defendants' fleeing of the crime scene after participating in the assault does not constitute legal withdrawal. *See* LAFAVE AND SCOTT, *supra*, § 6.8 (d) (commenting that "simple flight from the crime scene is not enough"); *Harris*, *supra*, 377 A.2d at 38. There is no evidence in this case to support a withdrawal instruction or an assault instruction, and a finding otherwise "would undertake an unwise and impermissible bizarre reconstruction of the evidence." *West*, *supra*, 499 A.2d at 865 (citing *Wood v. United States*, 472 A.2d 408, 410 (D.C. 1984)).

B. Denial of Motion for a Mistrial

Plater argues that the trial judge erred by denying his motion for a mistrial based on an improper comment by the prosecutor in his opening statement. Specifically, the prosecutor indicated that the statements of Grayson and Morrison could be used as evidence against all four defendants in the crime.[8]

As an initial matter, "we emphasize that although appellant['s] complaint is primarily with the prosecutor, it is our function to review the record for legal error or abuse of discretion by the trial judge, not by counsel." *Irick v. United States*, 565 A.2d 26, 33 (D.C. 1989) (citation omitted). The decision to order a mistrial is subject to the broad discretion of the trial court and our standard of review is deferential. *Wright v. United States*, 637 A.2d 95, 100 (D.C. 1994). This court is only inclined to reverse "in extreme situations threatening a miscarriage of justice." *Id.* (citing *Goins v. United States*, 617 A.2d 956, 958 (D.C. 1992).

When analyzing claims of prejudicial prosecutorial conduct, it is first necessary to "determine whether the prosecutor's actions were improper." *Diaz v. United States*, 716 A.2d 173, 179 (D.C. 1998) (citation omitted). In this case, we will assume that the prosecutor's actions were improper given

[8] Plater also argues on appeal that the prosecutor's comments regarding the use of the extrajudicial statement against all four defendants violated his Sixth Amendment right to confrontation under *Bruton v. United States*, 391 U.S. 123 (1968). This issue will be discussed in Section C, *infra*.

that he was reprimanded by the trial judge for his comments.

Then, we must determine if the comments caused substantial prejudice to the defendant that warrants reversal. *Diaz, supra,* 716 A.2d at 181. "The applicable test to determine whether [improper prosecutorial comments] caused substantial prejudice is whether we can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error." *Id.* This court weighs four specific factors when considering the impact of a prosecutor's conduct: 1) the gravity of the impropriety; 2) the direct relationship to the issue of guilt; 3) the effect of corrective instructions by the trial court; and 4) the strength of the government's case. *Id.* (citing *Hammill v. United States*, 498 A.2d 551, 554 (D.C. 1985)).

Even assuming the prosecutor improperly commented that the statements by Morrison and Grayson could be used as evidence against all four defendants, Plater has failed to demonstrate that he suffered substantial prejudice. During jury selection the court had explained that evidence against one defendant could not be used against another, and in its preliminary instructions to the jury the court had further explained that opening statements are not evidence in the case. Additionally, the trial judge offered three separate curative instructions to the jury, clarifying that the extrajudicial confession could only be used for the limited purpose of determining the guilt of the defendant offering the statement. The first curative instruction was offered after the government's opening statement, in response to counsel's timely objection. The second instruction was given by the court after Grayson's and Morrison's statements were introduced by Detective Jeffrey Williams. Again, in the final jury instructions, the judge offered a third curative

instruction to the jury. Therefore, the gravity of the prosecutor's comment was counterbalanced by the judge's official instructions to the jury, and we trust the "almost invariable assumption of the law that jurors follow their instructions." *Wright, supra,* 37 A.2d at 97 (citing *Richardson v. Marsh,* 481 U.S. 200, 206 (1987)).

Finally, although the prosecutor's comments were directly related to the issue of Plater's guilt, the government's probative evidence in this case was very strong. The government's case included the testimony of several eyewitnesses to the events of June 27, 1996. In particular, three eyewitnesses, Vanessa Price, Eugene Kenny Allen, and Xavier Green, positively identified Plater's presence and active participation in the assault. In this case we are convinced that "the trial judge, proceeded very cautiously, [and] made full use of alternative measures to alleviate any prejudice that might have occurred." *Wesley, supra,* 547 A.2d at 1029. Thus, the prosecutor's improper comments, though worthy of admonishment, do not constitute reversible error.

C. Sixth Amendment Right to Confrontation[9]

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[9] A copy of Morrison's and Grayson's redacted statements are attached as an appendix. Specifically, Plater objects to the portions of Morrison's statement in which he narrates the group beating of Davis and uses the pronoun "we":

> We was all around "A" Street. And the guy Boo [Davis] was walking down the street. That mean he coming around here so that means that he giving us a cue that he was gonna kill us. We walked around the corner and jumped in. All of us jumped in it.

Plater contends that the trial court's refusal to further redact the statements of his co-defendants, exclude the statements of his co-defendants, or sever his trial from his co-defendants violated his confrontation rights under the Sixth Amendment. Plater argues that the statements of his co-defendants when read in conjunction with the improper opening statement by the prosecutor, and viewed in the context of the other evidence submitted by the government, expressly or at least inferentially, incriminates him and thus runs afoul of the United States Supreme Court's decision in *Bruton, supra* note 8, and its progeny.

The use of a statement by a non-testifying co-defendant that expressly implicates the defendant violates the defendant's Sixth Amendment right to confront the witness testifying against him. *See Bruton, supra* note 8, 391 U.S. at 126. This rule was further refined in *Richardson, supra*, 481 U.S. at 211 (1987), where the United States Supreme Court rejected the "contextual implication" doctrine used by the Sixth Circuit Court of Appeals to determine whether a *Bruton* issue existed, *id.* at 209, and held that where a defendant's name and any reference to the defendant's existence are eliminated from the co-defendant's extrajudicial statement, the statement is properly admitted, with limiting instructions, regardless of any inference of the defendant's guilt that arises when the statement is linked with other evidence presented at trial. Soon thereafter, this court in *Foster v. United States,* 548 A.2d 1370 (D.C. 1980), was faced with a circumstance where the redacted statement did not eliminate any and all references to a defendant, but instead substituted a neutral reference for the defendant's name.[10] In *Foster,* while finding a denial of the

[10] In *Richardson, supra,* 481 U.S. at 211 n.5, the Court expressly reserved judgment on (continued...)

right of confrontation in light of the evidence adduced at trial, this court held that a redacted statement that does not eliminate all references to the existence of a defendant, but substitutes a neutral pronoun in place of an individual's name may be properly admitted at trial, along with limiting instructions, without violating a defendant's right to confrontation, unless a substantial risk exists that the jury will consider the statement when determining the defendant's guilt. After we issued our decision in *Foster*, the United States Supreme Court revisited the issue of the admissibility of co-defendant statements in *Gray v. Maryland*, 118 S. Ct. 1151 (1998). In *Gray*, the redacted extrajudicial statement the government sought to introduce into evidence had not eliminated any and all references to the existence of other defendants, but had merely substituted the word "deleted" for the names of the individuals involved. The United States Supreme Court held that the use of a redacted statement that reads "[m]e, deleted, deleted, and a few other guys," was unconstitutional because the use of "obvious indications of alteration" facially incriminated the defendant because its reference to his identity could be inferred from the statement itself. *Gray, supra*, 118 S. Ct. at 1156-57.[11] The Court further clarified its holding in *Gray*, suggesting that the statement, "[m]e and a

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[10](...continued)
extrajudicial statements that replace a defendant's name with a symbol or neutral pronoun.

[11] In *Foster*, *supra*, 548 A.2d at 1378, we held that it was appropriate to use "contextual analysis" (a term not used by the Supreme Court in *Gray*) in order to determine whether there was a substantial risk that the jury would consider the nontestifying co-defendant's statement in deciding the guilt of the defendant. To make that determination, we stated, the trial court must "consider the degree of inference" the jury must make to connect the defendant to the statement, and that such an "assessment will require consideration of other evidence to determine whether the redaction is effective, when taken in context, to avoid linkage with the defendant." *Id.* at 137. The *Foster* court then went on to consider testimony of five government witnesses as well as other evidence in determining that the risk was so substantial that the statements of the non-testifying co-defendant should not be admitted. The Supreme Court, interpreting *Richardson* in its recent *Gray* opinion, essentially ruled out the consideration of other evidence when determining whether a statement inferentially incriminates a defendant: "We concede
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few other guys," would have passed constitutional muster. In reaching its decision, the Court in *Gray* reaffirmed its rationale in *Richardson* that an inference based on other evidence introduced at trial to determine whether an extrajudicial statement is incriminating can be inappropriate.[12]

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[11](...continued)
Richardson places outside the scope of *Bruton's* rule those statements that incriminate inferentially. We also concede that the jury must use inference to connect the statement in this redacted confession with the defendant. But inference pure and simple cannot make the critical difference . . . ." *Gray, supra,* 118 S. Ct. at 1156 (citation omitted). "*Richardson* must depend in significant part on the *kind* of, not the simple *fact* of, inference." *Id*. at 1157. The simple deletions or omissions of names at issue in *Gray* "obviously refer directly to someone, often obviously the defendant," and the inferences from them were ones "a jury ordinarily could make immediately, even were the confession the very first item introduced at trial." *Id.* The government urges in this case that if we conclude that a *Foster* contextual analysis demands exclusion of the co-defendant's statements, we should reconsider *Foster's* vitality in light of *Gray.* As we are satisfied that application of *Foster's* holding would not require exclusion, we need not make a holding regarding *Foster's* vitality, but note the evolution and clarification of *Bruton* principles by the Supreme Court after *Foster* in the course of holding that, in this case, there was no violation of the Confrontation Clause. If the trial court should face a situation in which the application of *Foster's* approach would lead to a different result than application of *Gray,* the court of course should follow Supreme Court precedent.

[12] Since the United States Supreme Court decision in *Gray*, several circuit courts have interpreted *Bruton-Richardson* as modified by *Gray*, and determined that a court should only look to the face of extrajudicial statements by non-testifying co-defendant in discerning if the statement is expressly or inferentially incriminating. *See*, *e.g.*, *United States v. Akinkoye*, 174 F.3d 451, 457 (4th Cir. 1999) (finding no *Bruton* violation where the use of neutral phrases "another person" and "another individual" did not facially implicate the defendant); *United States v. Vejar-Urias*, 165 F.3d 337, 340 (5th Cir. 1999) (holding that "[w]here a defendant's name is replaced with a neutral pronoun, as long as identification of the defendant is clear or inculpatory only by reference to evidence other than the redacted confession, and a limiting instruction is given to the jury, there is no *Bruton* violation"); *United States v. Verduzco-Martinez*, 186 F.3d 1208, 1215 (10th Cir. 1999) (holding that "[t]he fact that [a] [] redacted statement may have inferentially incriminated [] [the defendant] when read in context with other evidence does not create a *Bruton* violation"); *United States v. Peterson*, 140 F.3d 819, 822 (11th Cir. 1998) (expressing that the Court in *Gray* noted "that redactions which do not lead to the inference that a specific person was named and the identity of that person [is] protected through redaction may be appropriate"); *United States v. Wilson*, 160 F.3d 732, 740 n.5 (D.C. Cir. 1998) (commenting that the Court in *Gray* revisited *Bruton* and *Richardson* to clarify the curtailed use of inference in a *Bruton* analysis). *See also* Richard F. Dzubin, *Casenote: The Extension of the Bruton Rule at the Expense of Judicial Efficiency in Gray v. Maryland*, 33 U. RICH. L. REV. 227, 240 (1999), where the author posits that "[t]he *Gray* decision
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The admission of the extrajudicial statements in this case did not violate Plater's Sixth Amendment Confrontation right under *Bruton* as interpreted by *Richardson* and *Gray*. Nor does it violate Plater's right to confrontation if we consider inferences based upon all of the evidence, as this court suggested in *Foster*. In the instant case, similar to the factual scenario in *Richardson*, there was no reference to Plater's existence or participation in the offense because the statements did not introduce the names or descriptions of individual participants. The use of the plural neutral pronoun, "we," when referring to the group who attacked the decedent, in no way specifically linked Plater to the crime because there was no dispute that the incident was a group assault. Thus, the use of "we" was not prejudicial because the term "we" does not connote a particular number of people or single out any individual person. Furthermore, there was no symmetry between the number of alleged perpetrators and the number of defendants on trial; therefore, it was wholly questionable whether any of the defendants, other than the defendant who gave the statement, were involved in the offense. Finally, the use of the neutral plural pronoun "we" comports with the proposed redaction, "[m]e and a few other friends," that the Court in *Gray* found constitutionally permissible under *Bruton*. Given the above analysis, the trial judge's decision not to sever the trial was appropriate and consistent with the presumption in this jurisdiction that two or more persons charged with jointly committing a criminal offense are to be tried jointly. *See Christian v. United States*, 394 A.2d 1, 20 (D.C. 1978).

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[12](...continued)
effectively asserts that the Court is following a clear precedent of looking only to inferences that may be drawn from the confession itself."

Even assuming *arguendo* that the statements were improperly introduced at trial, the error was harmless beyond a reasonable doubt, *Chapman v. California*, 386 U.S. 18 (1967), and reversal of the convictions is not required because there was overwhelming independent evidence of Plater's guilt. *Reynolds v. United States*, 587 A.2d 1080, 1083-84 (D.C. 1991).

D. Suppression of Confession

At the hearing on Morrison's motion to suppress, appellant argued that after being informed of his *Miranda*[13] rights, he signed a PD-47 card on two occasions, indicating that he would not answer questions without an attorney. Subsequently, Morrison waived his *Miranda* rights and gave a videotaped statement to the police. Morrison contends that his subsequent waiver was involuntary because he was coerced by the actions of the police continuously harassing him, telling him he was lying, questioning him about his two statements, the length of time he was interviewed, and the physical barriers imposed on him.

The factual findings of a trial judge's denial of a suppression motion will not be disturbed unless they are without substantial support in the evidence. *Hebron*, 625 A.2d at 885 (citations omitted). A statement by a defendant is inadmissible if it was involuntary, even if the police satisfy all the requirements of *Miranda*, *supra* note 13; *see also United States v. Bernett*, 116 U.S. App. D.C. 363, 495 F.2d 943, 948-50 (1974). "[T]he test [for voluntariness] is whether, under the totality of the circumstances, the will of

[13] *Miranda v. Arizona*, 384 U.S. 36 (1966).

[appellant] was 'overborne in such a way as to render his confession the product of coercion.'" *United States v. Thomas*, 595 A.2d 980, 982 (citing *Arizona v. Fulminante*, 111 S. Ct. 1246, 1253 (1991)).

The trial judge made findings of fact that Morrison's confession was voluntary after a suppression hearing where appellant testified on his own behalf. The judge concluded that the officers informed Morrison of his *Miranda* rights and that he voluntarily waived them without coercion. The trial judge found, after viewing the videotaped confession, that Morrison expressed that he was not threatened and that he was not forced to give his statement. Additionally, Morrison articulated that he voluntarily changed his mind and did not want a lawyer present. The trial judge further observed that Morrison's disposition appeared comfortable on the videotape. On the record before us, we cannot conclude that the findings of the trial judge are without substantial support in the evidence.

Accordingly, the judgment of the trial court is hereby

Affirmed.

A P P E N D I C E S

STATEMENT OF TAJ GRAYSON

Q. Mr. TAJ GRAYSON, the Homicide Branch is investigating the beating death of Thomas Davis also known as BOO which occurred on Thursday, July 25, 1995 in the area of 16th and East Capitol Street, S.E.. Can you tell me in your own words what you know about his death?

A. I got home from work and I went around 16th and A Street, Northeast and I saw BOO walking down the street. I saw BOO left up his shirt as if he had a weapon on him and then BOO walked across Eastern High School parking lot and sat there. And then we were contemplating what we were going to do. And then BOO left and went up 17th Street towards East Capitol Street. And we followed and we started hitting BOO. BOO tried to run across the street and he fell. So we hit him again and I kicked him in the chest. And then we said come lets go. And we left and went home.

Q. Did you hit Boo with any type of weapon?
A. No.

Q. Did you have any type of weapon on you at any time doing or after the assault on Boo?
A. No.

Q. Did you see anyone else besides yourself kicking Boo?
A. No.

Q. Did Boo have any type of weapon on him?
A. Not that I know of, no.

Q. Did Boo say anything to any of you as he was being assaulted?
A. No.

Q. Was there any plans being made on who was going to do what? Or how you'll were going to approach Boo?
A. No, we just said that we were going to go around there.

Q. Do you have anything else to add to your statement?
A. No, I don't

Q. Can you read and write?
A. Yes.

Q. What is the highest grade you completed in school?
A. Sophomore year in college.

Q. Did we discuss the fact that you may be later charged in the beating death of Boo?
A. Yes, you did.

Q. Did I explain to you that this statement made be used against you at a later time in court?
A. Yes.

Q. Do you understand what that means?
A. Yes.

Q. Did I also explain to you that you were not under arrest and that I will take you back home after this statement is finished?
A. Yes.

Q. Did you give this statement voluntarily and of your own free will?
A. Yes.

Q. At the beginning of this statement I read you your Miranda Rights and explained these rights to you?
A. Yes.

Q. At anytime of this interview did you ask for a lawyer?
A. No.

Q. Did anyone promise you anything in return for your statement?
A. No.

Q. Has anyone threatened you in any way in return for your statement?
A. No.

Q. How have you been treated since you been in this office?
A. Fair.