

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:

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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23 withdrawn.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           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?


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

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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