

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.
SUCR2000-10975
SUCR2000-10977

Superior Court
Department of the
Trial Court

* * * * *
COMMONWEALTH OF MASSACHUSETTS
v.
JASON ROBINSON and
TANZERIOUS ANDERSON
* * * * *

JURY TRIAL - DAY 10

APPEARANCES:

Robert Tochka, Assistant Attorney General, on
behalf of the Commonwealth.

Michael Doolin, Esq., on behalf of the Defendant
Jason Robinson.

Timothy Flaherty, Esq., on behalf of the
Defendant Tanzerius Anderson.

McCormack POCH
Courtroom 11
Boston, Massachusetts
April 2, 2002
Before: Rouse, J.

Paula Pietrella, CVR
Official Court Reporter

I N D E X

Jury deliberations (Resumed)

| <u>Witness</u> | <u>Direct</u> | <u>Cross</u> | <u>Redirect</u> | <u>Recross</u> |
|----------------|---------------|--------------|-----------------|----------------|
|----------------|---------------|--------------|-----------------|----------------|

None

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>PAGE</u> |
|------------|-----------------------|-------------|
| T for I.D. | Jury Question | 4 |
| U for I.D. | Original Verdict Slip | 6 |
| V for I.D. | Jury Question | 8 |
| W for I.D. | Jury Note | 10 |

P R O C E E D I N G S

(In court at 9:25 a.m.)

(Jury enters.)

THE COURT: Ladies and gentlemen,
I'd like to welcome you back this morning. We are going to return you to the jury room in a moment to continue your work. Again, it's my obligation to make sure that all of you complied with my instructions about the case, not talking about it, and not revisiting any of the sites that you saw on the view, and not consulting any outside source. If you have not so complied, would you raise a hand, please.

Thank you very much. The record should reflect no juror has. We will return you directly to the jury room, we'll bring in the exhibits and the transcripts that you requested yesterday. And I believe they have a machine, Mr. Parsons, today?

THE CLERK: They have a tape machine.

THE COURT: All right. Thank you very much.

(Jury resumed deliberations.)

* * * * *

(The following proceedings were
presided by Judge Gershengorn.

(Jury enters courtroom at 2:30 p.m.)

(Jury Question was
marked Exhibit T for I.D.)

THE COURT: Okay. Good afternoon,
ladies and gentlemen. You're all looking
puzzled because you figured out that I'm not
Judge Rouse. Judge Rouse was called out. She
actually will be back in about an hour, less
than an hour. And after speaking with counsel,
clients, everyone agreed that it would be fine
with them if I just covered for her for this
hour just in case the jurors had a question, and
you did. And she also told me this was a very
short jury. And so you are.

I will mark your note for
identification. It will be T for
identification, and I will read it into the
record.

1 It's dated Tuesday, 4-2-00. It is
2 timed 1:35 p.m.

3 "Dear Judge Rouse. There seems to be
4 an error with the verdict slips. We have three
5 different verdict slips for Mr. Robinson. For
6 Mr. Anderson there seems to be one verdict slip
7 missing (possession of a firearm) and one in
8 duplicate (armed robbery). Please advise.
9 Signed the foreperson."

10 Right you are. Actually, and the
11 record should reflect that as soon as I get a
12 note from the jury, I share the note with
13 counsel. All counsel agree that what happened
14 is there is a typo on that first page. Indeed,
15 it does say armed robbery. The body of it, the
16 page underneath, is possession of a firearm.

17 So with counsel's permission, we will
18 mark this, the one in error, U for
19 identification, and we are sending in a
20 corrected verdict slip, that is, one that has
21 the right front cover for you.

22 Counsel, do you need to hear me at
23 side bar?

24 MR. DOOLIN: No, your Honor.

1 MR. FLAHERTY: No objection.

2 MR. TOCHKA: That's fine, your Honor.

3 THE COURT: All right. Wonderful.

4 All right. Back to work. Please rise for the
5 jury.

6 (Original Verdict Slip
7 was marked Exhibit U for I.D.)

8
9 (Jury resumed deliberations.)

10

11 * * * * *

12 (In court at 4:15 p.m.)

13 (Judge Rouse presiding.)

14 THE COURT: Okay. The jury has two
15 questions: (1) How late can the jurors stay
16 today and to continue our work?

17 We know that at six we all turn into
18 pumpkins.

19 (2) On the verdict slips, on page 2
20 -- they meant the indictment, but they said the
21 "verdict slips" -- the wording of the date is
22 different between Mr. Anderson and Mr. Robinson.
23 The wording for Mr. Anderson is "on March 28th."
24 For Mr. Robinson it is "on or about March 28th."

1 The question: Should the wording be
2 the same for both defendants or is the current
3 wording correct?

4 MR. TOCHKA: Your Honor, I was just
5 telling counsel that at the time when I was
6 presenting it -- I mean, the presentment that I
7 filled out said "on or about," and then I don't
8 know what happened on the other one. They're
9 both "on or about," and I'm sure I can change
10 it. But in any case, I'd just instruct them,
11 Judge, the date is not an element of the
12 offense.

13 THE COURT: It doesn't ask that,
14 sir.

15 MR. TOCHKA: But in order to
16 instruct them -- because I think that's what
17 they might be getting at. It's possible that's
18 what they might be getting at in terms of what
19 the Commonwealth has to prove.

20 THE COURT: I think the answer to
21 the first is 6 p.m. The answer to the second is
22 they should be the same, and it should be "on or
23 about."

24 MR. TOCHKA: That's fine, Judge.

1 THE COURT: And you want me to also
2 instruct it's not an element of the offense?

3 MR. TOCHKA: Yes.

4 MR. DOOLIN: Mine already says "on
5 or about," so I don't really have --

6 THE COURT: Okay.

7 MR. FLAHERTY: I think I would just
8 say the indictments before you are the
9 indictments before you.

10 THE COURT: I think I will tell them
11 it's not an element of the offense. They've
12 obviously focused on it. But that's all that
13 I'm going to say.

14 Could we have the jurors, please.

15 END OF BENCH CONFERENCE.

16 (Jury Question

17 was marked Exhibit V for I.D.)

18 (Jury enters.)

19 THE COURT: Ladies and gentlemen,
20 I've received two questions from you. The first
21 is: How late can the jury stay today to
22 continue our work?

23 The answer to that is 6 p.m. Due to
24 building and other security concerns, that is

1 when we must be out of here. So we will have to
2 adjourn before that so that we can have you out
3 the door literally by 6 o'clock.

4 Secondly, the jury asks: On the
5 verdict slips -- and I think you mean
6 indictments -- of page 2, the wording of the
7 date is different between Mr. Anderson and Mr.
8 Robinson. The wording for Mr. Anderson is "on
9 March 28th." For Mr. Robinson it is "on or
10 about March 28th."

11 Our question: Should the wording be
12 the same for both defendants or is the current
13 wording correct? Signed by the foreperson.

14 The answer is that the wording should
15 be the same, and both indictments, both sets of
16 indictments, should read "on or about March
17 28th, the year 2000." So that should be the
18 language that appears on each and every one of
19 the indictments. However, I will just add that
20 date and time is not an element that the
21 Commonwealth is required to prove.

22 Thank you very much.

23 If you would desire to stay late, Mr.
24 Foreperson, I would ask that you let the court

1 officer know that you would like to do that so
2 we can make arrangements. Thank you very much.

3 (Jury resumed deliberations.)

4
5 (Jury Note
6 was marked Exhibit W for I.D.)

7
8 (Jury enters at 4:05 p.m.)

9 THE COURT: Ladies and gentlemen,
10 I've received a communication about your desire
11 to adjourn for the evening, and we will do that,
12 and I ask that you return tomorrow at 9 o'clock
13 so that you can pick up with your work. Please
14 understand that your instructions I've given you
15 throughout the trial are still very much in
16 force and effect, not discussing the case, not
17 going back to the scene to see any of the
18 locations or physical sites that we saw on the
19 view, and not to consult any outside source of
20 any kind.

21 I want to thank you very much for
22 your continued work on the case, and we'll see
23 you tomorrow at 9 o'clock. Thank you.

24 (Hearing adjourned.)

C E R T I F I C A T E

I, Paula Pietrella, Certified Verbatim Reporter, do hereby certify that the foregoing transcript, Pages 1 through 11, inclusive, is a true and accurate transcription of my voice recording in the aforementioned matter to the best of my skill, ability and knowledge.

Paula Pietrella
Paula Pietrella, CVR
Official Court Reporter