

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
SUCR 2000-10975

* * * * *

COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL
DAY TWO

JASON ROBINSON

* * * * *

TRANSCRIPT OF PROCEEDINGS

BEFORE: ROUSE, J

APPEARANCES:

ROBERT TOCHKA, Esquire, Assistant
District Attorney, for the Commonwealth

MICHAEL DOOLIN, Esquire, for Defendant Robinson

TIMOTHY FLAHERTY, Esquire, for Defendant Anderson

March 20, 2002
Boston, Massachusetts

Mary M. Wrighton
Official Court Reporter

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1 (Whereupon, the proceedings were
2 reconvened at 9:20 o'clock a.m., without the
3 jury.)

4 THE COURT: Alright. Let's turn to the
5 motions that need attention. Mr. Flaherty, I'm a
6 little puzzled, sir, why you filed today motions
7 in limine after I have had several pretrial
8 conferences in this matter asking whether there
9 were any motions and, if so, that we could have
10 resolved them prior to trial and, except for the
11 amendment which you have given me pursuant to our
12 discussion yesterday, I don't understand why I'm
13 getting these for the first time.

14 MR. FLAHERTY: Well, the motion of
15 crime scene photos and autopsy photos is
16 duplicative with Mr. Tochka's -- excuse me, with
17 Mr. Doolin's so the Court need not concern itself
18 with that independently. The motion to redact
19 plea agreement is also duplicative, need not
20 concern itself with that. There was some
21 discovery provided last week and that relates to
22 the motion to exclude credit card receipts. The
23 prior bad acts, the visitation and phone records
24 from the house of correction --

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THE COURT: Sir, I don't want to catalog these. I want to know why it was you didn't give them to me earlier.

MR. FLAHERTY: Because I received the discovery after the date for the motions in limine, Your Honor.

THE COURT: Let's move on to the motions first. One concerns the photo arrays.

Mr. Tochka, is there any opposition to this, sir?

MR. TOCHKA: I'm sorry, Your Honor. Your Honor, just for the record, and I want to put it for the record, that discovery was turned over, my brother had access to the discovery way before the motions in limine.

THE COURT: There were no issues raised to me about discovery not being provided in a timely way so I'm going to move past that. The point still stands that these motions are well past the point when we could have, in due course, considered them and resolved them without taking up the jury's time. So let's move on to resolve the motions that we need to resolve at this time.

Let's begin with the motion concerning

1 photo arrays.

2 MR. TOCHKA: Your Honor, with respect
3 to the motion as to photo arrays, I suggest it's
4 an issue as to the fact that I would be
5 attempting to get the photo arrays into evidence.

6 THE COURT: Okay. These are photo
7 arrays, Mr. Tochka, which you intend to show
8 various witnesses which include the photo or
9 photos of one or both of the defendants?

10 MR. TOCHKA: Of Tanzerius Anderson.

11 THE COURT: Just of Tanzerius Anderson?

12 MR. TOCHKA: Just of Tanzerius
13 Anderson.

14 THE COURT: These are so-called mug
15 shots?

16 MR. TOCHKA: Yes, Your Honor, they are.

17 THE COURT: Fine. Alright. Thank you.
18 Mr. Flaherty?

19 MR. FLAHERTY: As to the photo arrays,
20 Your Honor, I think the testimony will be that
21 Eddie Gauthier knew Tanzerius Anderson, met him
22 on several occasions prior to the event and, with
23 respect to the witness, Eddie Gauthier, I think
24 the mug shots are irrelevant and they may

1 prejudice the jury against Mr. Anderson in that
2 it may cause them to infer some bad character of
3 Mr. Anderson when his picture appears in a mug
4 shot. There is no issue of identification, that
5 Tanzerius Anderson is Tanzerius Anderson. He's
6 known to the witnesses, Joleena Tate, Eddie
7 Gauthier, Heather Coady, and those are the
8 witnesses who select by identifying -- by
9 initialing his photograph in the mug shots, Mr.
10 Anderson's photos.

11 This is not an identification case,
12 Your Honor, and I think in those circumstances
13 that, to admit this evidence, would be
14 prejudicial against Mr. Anderson.

15 THE COURT: For what purpose are you
16 offering them, Mr. Tochka?

17 MR. TOCHKA: Your Honor, I suggest that
18 the evidence will show that in terms of
19 identification as to Tanzerius Anderson, I would
20 suggest that it's an issue only in the sense that
21 the witnesses will testify they knew Jason
22 Robinson, they grew up with Jason Robinson. As
23 to Tanzerius Anderson, the testimony will be that
24 when the witness approached -- one of the

1 witnesses approached the detectives and had a
2 conversation, saying that Jason Robinson, who he
3 knows, was with a person by the name of Tee who
4 he did not know, he had only seen him a couple
5 times before. At this point in time the
6 detectives then did further investigation, got
7 the license plate number of Tanzerius Anderson
8 through the witness, then presented a photo array
9 and showed it to the witness. The witness had
10 only seen him approximately, I believe he said
11 three times before.

12 THE COURT: What we are going to do is
13 this, you will make the appropriate redactions
14 with respect to the photo arrays. I will give a
15 limiting instruction at the time that you are
16 intending to introduce them, Mr. Tochka.

17 MR. TOCHKA: Yes.

18 THE COURT: At the time they are
19 introduced as well as in the charge. The
20 defendant's motion concerning credit card
21 receipts, do you intend to introduce these, Mr.
22 Tochka?

23 MR. TOCHKA: No, Your Honor, I don't.

24 THE COURT: Okay. So is there any

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1 opposition to this motion, sir?

2 MR. TOCHKA: No, there is not. I'm
3 sorry.

4 THE COURT: Thank you very much.
5 Allowed without opposition. With respect to the
6 motion to exclude visitation, telephone records
7 maintained by the house of correction, do you
8 intend to introduce evidence of this, sir?

9 MR. TOCHKA: Your Honor, it all depends
10 on the witnesses. In connection with this case,
11 I provided both my brothers with visitation
12 records. I'm not sure what the witnesses are
13 going to say. There is one particular witness,
14 Heather Coady, who this Court has heard from who,
15 she now has an attorney, Mr. Freeman. Assuming
16 that she is going to testify consistently with
17 what she said in grand jury, I don't believe that
18 I would be introducing them. Assuming that she
19 begins to recant what she said in the grand jury,
20 I would be introducing them for the fact that she
21 was visiting both defendants after she testified
22 before the grand jury, particularly Jason
23 Robinson on a regular basis after she testified.

24 THE COURT: Let me make sure I

1 understand what you just said. There may not be
2 a need for you to introduce these. You will make
3 a determination in the course of the testimony of
4 Heather Coady?

5 MR. TOCHKA: Yes.

6 THE COURT: But you will make no
7 mention of it in openings?

8 MR. TOCHKA: I had no intention of it.

9 THE COURT: Thank you very much. Mr.
10 Flaherty, I'm going to reserve this, sir, until
11 it becomes an issue, if it does, and before Mr.
12 Tochka does raise the issues in this motion, we
13 will all go to side bar and I'll hear you at that
14 time.

15 MR. FLAHERTY: Thank you.

16 THE COURT: That is reserved. Alright.
17 With respect to the plea agreement, have there
18 been any stipulations or agreements among counsel
19 concerning what portions of the plea agreement
20 should be redacted?

21 MR. TOCHKA: No, Your Honor, there have
22 not. I have looked at the plea agreement, I've
23 looked over the Champa case. I'm familiar with
24 the Champa case. As a matter of fact, I had seen

1 the plea agreement in the Champa case when it was
2 drafted. At the time my recollection is that the
3 plea agreement in Champa -- unfortunately it's
4 not in the decision by the SJC, the actual plea
5 agreement, but that plea agreement spoke to the
6 witness's obligation to testify truthfully and
7 the like many more times than is referred to in
8 this particular agreement. I suggest, as Champa
9 says, the Court could give an instruction
10 explaining that this -- that the Commonwealth has
11 no way of knowing one way or the other whether
12 this witness is telling the truth or the like, or
13 the instruction that's required in Champa.

14 I would suggest to the Court that it's
15 kind of -- bottom line, Your Honor, that it is
16 not so repetitive in the agreement that it needs
17 to be redacted and, on occasion -- I know the
18 last trial I had, none of it was redacted. I'm
19 aware of another trial where it was redacted and
20 when you looked at the agreement, when you looked
21 at it, it didn't even make sense because, as a
22 juror looking at this agreement afterwards,
23 trying to figure out why particular words are
24 missing, it kind of makes it look kind of

1 suggestive as to what's going on.

2 THE COURT: Well, you understand that
3 the Champa case says that you are not to
4 introduce this in the course of direct
5 examination of the witness.

6 MR. TOCHKA: The agreement itself?

7 THE COURT: Yes.

8 MR. TOCHKA: Yes.

9 THE COURT: And that only after cross
10 examination and on redirect, if that's
11 appropriate and necessary, would I consider the
12 introduction of this as an exhibit.

13 MR. TOCHKA: Correct. I understand
14 that.

15 THE COURT: But it is your intention to
16 use the content of this with Joleena Tate?

17 MR. TOCHKA: Yes.

18 THE COURT: During her testimony?

19 MR. TOCHKA: Yes.

20 THE COURT: And to what extent were you
21 proposing to elicit from her portions of the plea
22 agreement?

23 MR. TOCHKA: Simply that she, in
24 references to the truthfulness, that she

1 understands her obligation under this agreement
2 to testify truthfully and that she understands if
3 she should -- if it's determined that she was not
4 truthful, then the agreement is null and void and
5 that's it. I would not repeat that a thousand
6 times over.

7 THE COURT: Alright. Mr. Flaherty?

8 MR. FLAHERTY: I think that it's
9 repeated -- Your Honor has seen the exhibit, the
10 proposed exhibit. It's repeated several times in
11 the exhibit itself. I would ask that the
12 Commonwealth be precluded from referring to it,
13 the truthfulness portion of the agreement, during
14 its questioning of Ms. Tate and, further, I would
15 request the limiting instruction that I contain
16 in my motion that appears in United States versus
17 Rollo Angiulo (phonetic spelling). That's
18 contained on page two of my motion.

19 THE COURT: Well, let's back up a
20 moment, Mr. Tochka. Because, as I understand the
21 Champa case, sir, you may, on direct examination
22 of Ms. Tate, elicit that she has entered into a
23 plea agreement with the Commonwealth and that she
24 generally understands her obligations as set

1 forth in the agreement. I do not understand the
2 Champa case to say that you are also entitled to
3 elicit expressly from Ms. Tate that her
4 obligations under the agreement are to testify
5 truthfully and, if I have misread the case in any
6 way or limited it, I would be happy to have that
7 pointed out to me.

8 MR. TOCHKA: I see the Court referring
9 to it. It's on page 264 and I do have that. I
10 understand the Court's position and the case law
11 and I would stick to what the Court has just
12 said, that the witness generally understands the
13 obligations, although I'm not sure if the opinion
14 spells it out because when you say to a witness
15 that, you understand your obligations under the
16 agreement, without the witness responding to what
17 the witness's obligations are, it really won't
18 make sense to a jury, if the Court follows what
19 I'm getting at.

20 THE COURT: I do. I do. Off the
21 record a minute.

22 (Whereupon, a discussion occurred off
23 the record.)

24 THE COURT: In other words, the point

1 is that it is not -- the case law says that the
2 witness can testify she generally understands her
3 obligations. There is no express reference here
4 that that would include a specific reference by
5 the witness that she understands her obligation
6 is to testify truthfully.

7 Now, the issue is to what extent will
8 the jury perceive your eliciting that from the
9 witness as a particular vouching for her
10 credibility and suggesting to the jury the
11 government knows something more about that than
12 they are going to be able to evaluate in the
13 courtroom. So because she is an important
14 witness, we have to be very careful about that.

15 MR. TOCHKA: Right.

16 THE COURT: So I think what we're left
17 with at this time is that you may say, get from
18 her that there is a plea agreement, that she
19 understands generally what her obligations are
20 pursuant to it, that you may have much broader
21 leeway, latitude on redirect.

22 MR. TOCHKA: That's fine.

23 THE COURT: Because I know there's
24 going to be vigorous cross examination.

1 MR. TOCHKA: That's fine, Your Honor.
2 I understand the Court.

3 THE COURT: So I think that is the
4 confines that we should probably stay within.

5 MR. TOCHKA: That's fine.

6 THE COURT: Alright. With respect to
7 redaction, there is no issue of the admission of
8 this at this time and there may never be an issue
9 of this. It would arise only upon the conclusion
10 of direct examination, upon redirect examination
11 at which time I will make the decision about
12 which portions are to be redacted if counsel
13 cannot agree and I will hear you further at that
14 time, if necessary.

15 Mr. Flaherty, are you requesting a
16 limiting instruction at the time Ms. Tate
17 testifies or did you make reference to one in the
18 course of the charge?

19 MR. FLAHERTY: I'd actually request it
20 at the time Ms. Tate testifies and also in the
21 final charge, Your Honor. I would contain an
22 instruction in my proposed jury instructions for
23 the Court, but I would also request one at the
24 time Ms. Tate testifies because of, you know, the

1 issue of vouching.

2 THE COURT: Mr. Tochka, did you have
3 any -- is she your first witness, sir?

4 MR. TOCHKA: No, she's not.

5 THE COURT: She won't be on today?

6 MR. TOCHKA: I don't believe that she
7 will be.

8 THE COURT: Rather than take more time,
9 if you have any amendments to the limiting
10 instruction or anything else you want me to say,
11 you can give that to me tomorrow morning.

12 MR. TOCHKA: That's fine.

13 THE COURT: Okay. Thank you. Alright.
14 Defendant's motion to require the prosecution to
15 elect theory of case prior to trial. Mr. Tochka
16 has said that he is proceeding on all three
17 theories of first degree murder, Mr. Flaherty.

18 MR. FLAHERTY: Your Honor, as to that,
19 I just identified it and ask the Court to
20 consider it. I understand Mr. Tochka's theory, I
21 understand the case law in this area. I think
22 it's most appropriate for the government to elect
23 a theory, if there is a specific theory that the
24 government is moving on. I understand they have

1 a right to move on separate theories.

2 I would just ask the Court, in its
3 discretion, that at the close of the government's
4 case to allow the defendants to test the weight
5 of that evidence under the Lattimore standard as
6 to both deliberate premeditation and extreme
7 atrocity and cruelty. My understanding of the
8 evidence as it exists right now is that there is
9 a single wound which causes death and as to the
10 deliberately premeditated malice aforethought, I
11 think it's a real question for the Court to
12 decide, but --

13 THE COURT: Well, certainly that can be
14 part of your argument on a motion for required
15 finding at the conclusion of the prosecution's
16 case. I'm not requiring -- they have a right to
17 proceed on one, two or three theories of first
18 degree murder at this time and we'll see whether
19 there's any issues in that regard to be resolved
20 at the conclusion of the plaintiff's case.

21 Defendant's motion regarding the crime
22 scene and autopsy photographs. I had viewed the
23 autopsy photographs last week. Mr. Tochka told
24 me, I think, at that time that he may not use

1 them all. Have you made an election at this
2 time, sir?

3 MR. TOCHKA: I have, Your Honor, and
4 rather than take the Court's time while we're
5 going on the view, while we go on the view, I'll
6 talk with counsel and show them the photographs
7 and then we can deal with it that way.

8 THE COURT: Is that agreeable, counsel?

9 MR. DOOLIN: Yes, Your Honor.

10 MR. FLAHERTY: Yes, it is, Your Honor.

11 THE COURT: Alright. Defendant's
12 motion concerning the use of a three fifty-seven
13 magnum as a chalk. Mr. Tochka, what's your
14 intention with respect to that, sir?

15 MR. TOCHKA: Yes, Your Honor. I
16 alerted both counsel that the particular weapon
17 that was used in the case has not been located.
18 It's a three fifty-seven with a four inch barrel
19 that was stolen from Joleena Tate, the witness we
20 previously spoke of, her father's house about
21 forty-eight hours or so or seventy-two hours
22 before the particular murder in the case.

23 I would submit it's relevant in terms
24 of, for the jurors in this particular case,

1 because one of the things the Commonwealth has to
2 prove is the barrel length and the like of a
3 particular gun, and I'd suggest that by showing
4 them a similar gun, that would be evidence for
5 the jury in order to make a decision in the case.
6 Particularly, there's questions in terms of the
7 defendant, how he had the gun, how he used the
8 gun, how he positioned the gun and the like, and
9 the expert in the case, Sergeant Vickers, it
10 would assist him when he testifies as an expert
11 ballisticsian in explaining to the jurors this
12 particular weapon, how it fires, the trigger
13 pattern on the weapon, the revolver aspect of the
14 weapon, and a number of other things. It would
15 assist in his explanation to the jurors.

16 THE COURT: He is the only one that's
17 going to be handling it?

18 MR. TOCHKA: Yes.

19 THE COURT: Okay. Thank you.

20 MR. FLAHERTY: Your Honor, the
21 defendants strenuously object to the use of a
22 three fifty-seven magnum as a chalk in the case.
23 There has been, as Mr. Tochka correctly pointed
24 out, no discovery of any weapon in the homicide.

1 Secondly, the ballistics evidence recovered at
2 the scene of 89 Faneuil Street and also at
3 autopsy of Mr. Yazbek cannot be identified or
4 linked to a three fifty-seven magnum.

5 Thirdly, the cooperating witness for
6 the government, this Joleena Tate, in my review
7 of her prior statements and testimony before the
8 grand jury, the best that she gives the
9 government is that she believes possibly the
10 weapon used was a three fifty-seven magnum
11 stolen, allegedly stolen from New Hampshire
12 sometime earlier, prior to the homicide.

13 There is absolutely no connection
14 between the homicide and a three fifty-seven
15 magnum. The pathologist will not be able to
16 testify, I expect, and has not rendered an
17 opinion based upon his observations of the
18 injuries to Mr. Yazbek at autopsy, that these
19 injuries are consistent with having been caused
20 by a three fifty-seven magnum, using three fifty-
21 seven ammunition. In light of all of that
22 evidence, Your Honor, or, I should say, lack of
23 evidence, I think it's improper, prejudicial and
24 highly suggestive to allow the government to use

1 a firearm, a three fifty-seven firearm, to
2 suggest that this is the murder weapon.

3 Number one, it's prejudicial and
4 inflammatory to the defendant and, number two, I
5 think that this argument links also with my
6 motion in limine to exclude prior bad acts
7 related to the burglary or the alleged burglary
8 that took place in New Hampshire. Part of the
9 government's theory in the case, they're trying
10 to suggest or they will attempt to suggest
11 through the cooperating witness that sometime
12 prior to the homicide she and Tanzerius Anderson
13 went to New Hampshire, while in New Hampshire
14 they broke into her father's condominium, and
15 during that break, stole a three fifty-seven
16 magnum.

17 My understanding of the crime scene at
18 the condominium in Conway, New Hampshire was that
19 there were fingerprint prints and footprint
20 impressions recovered. None could be linked to
21 Mr. Anderson. I would suggest that the evidence
22 of the break is unconnected to the homicide, the
23 evidence of an alleged theft of the three fifty-
24 seven magnum. Without any evidence connecting it

1 to the homicide, both of those events should be
2 excluded in and of themselves and then the use of
3 a three fifty-seven magnum as a demonstrative
4 chalk before the jury is so overwhelmingly
5 prejudicial to the defendant and lacks any
6 probative value because really the lack of any
7 connection between a three fifty-seven and the
8 homicide, that I would ask this Court to preclude
9 the government from the use of that during the
10 trial of these indictments.

11 THE COURT: Thank you. Will there be a
12 foundation laid, Mr. Tochka, concerning or
13 through expert opinion that the three fifty-seven
14 magnum was used in the murder of Mr. Yazbek?

15 MR. TOCHKA: Through an expert opinion.
16 the expert opinion, the best an expert opinion
17 would be able to say is that it's a high powered
18 type of weapon that would have been used. In
19 terms of the three fifty-seven magnum, it's
20 seventy-two hours before, Tanzerius Anderson and
21 Joleena Tate go to New Hampshire, about two miles
22 away from the condominium of Joleena Tate's
23 father, on that weekend that gun is stolen,
24 Tanzerius Anderson checks into a hotel under his

1 own name, the gun is stolen at that weekend, and
2 Joleena Tate will testify that she went up with
3 Tanzerius Anderson, stole the gun with Tanzerius
4 Anderson, and Tanzerius Anderson had possession
5 of the gun.

6 Then what she'll testify is seventy-two
7 hours later at the time of the homicide, when
8 Tanzerius Anderson gets into the car after having
9 shot Yazbek, Iman Yazbek, and boasting about what
10 he had just done, took a handgun out of his
11 pocket which she'll testify is the handgun.
12 Obviously, she can't testify it's the identical
13 handgun but common sense would tell you it's the
14 three fifty-seven that they had just stolen
15 seventy-two hours before from her father's house.
16 He takes the handgun out, hands it to Jason
17 Robinson in the back seat. She'll testify that's
18 the handgun that they had stolen from her
19 father's house, that's the handgun used in the
20 homicide. So I would suggest there is a clear
21 connection.

22 THE COURT: Were you intending to
23 reference this in your opening statement?

24 MR. TOCHKA: In terms of that they

1 would have a similar handgun, yes, Your Honor, I
2 would, and just for the record, I would not
3 attempt to have the handgun admitted into
4 evidence or to go to the jurors in terms of
5 deliberations. It would only be a demonstration
6 by the detective.

7 THE COURT: Well, I'll reserve this,
8 but you may reference in your opening statement.
9 and I will, prior to Detective Vickers taking the
10 stand, give you a final ruling as to whether it
11 can be displayed. Alright?

12 MR. TOCHKA: That's fine, Your Honor.

13 THE COURT: Alright. Prior bad acts.

14 MR. FLAHERTY: This is the motion, Your
15 Honor, that's directed to the burglary and
16 alleged theft of the firearm that occurred in
17 Conway, New Hampshire. I would suggest that,
18 number one, there's serious issues of credibility
19 as to the cooperating witness that Mr. Anderson
20 was present, had anything to do with it, or, in
21 fact, that it had occurred or did occur at the
22 time the Commonwealth suggests it occurred.

23 Beyond that, I would suggest that the
24 admission of this type of evidence falls into the

1 category of prior bad act evidence and cannot be
2 admitted for the purpose, under the Massachusetts
3 rules of evidence and the Commonwealth case law,
4 to show pattern of conduct, motive, absence of
5 mistake, intent or the like. This is a separate
6 criminal event that occurs in a separate
7 jurisdiction that allegedly involves the theft of
8 a firearm that, as I mentioned in my earlier
9 argument, Your Honor, cannot be connected to the
10 homicide in Boston.

11 I would suggest that this type of
12 criminal conduct should not be admitted. It is
13 highly prejudicial to the defendant. It will
14 impeach his character, prejudice him in the eyes
15 of the jury. There is no nexus between that and
16 the events alleged in the indictment on March 27,
17 28, 2000 that involve the homicide, armed
18 robbery, and then later intimidation of a witness
19 and this is the type of evidence that should be
20 excluded at this trial.

21 Now, the Commonwealth's theory of the
22 case is that Tanzerius Anderson and Jason
23 Robinson acted in concert and committed an armed
24 robbery and, through the course of that armed

1 robbery, committed a felony murder of Mr. Yazbek.
2 To allow Joleena Tate to testify to this
3 unconnected criminal conduct would, in a number
4 of ways, only prejudice the defendant and impeach
5 his character. It would contrast significantly
6 with his statements made to the police during an
7 interview that he subjected himself to, and is so
8 overwhelmingly prejudicial that I would ask the
9 Court to exclude it in light of its lack of
10 connection and lack of probative value to the
11 indictments which are the issues before this
12 jury.

13 THE COURT: Anything, Mr. Tochka? I'm
14 sorry, Mr. Doolin. Any time you want to add
15 anything --

16 MR. DOOLIN: Well, respectfully, Judge,
17 I join in Mr. Flaherty's motions that he's
18 brought before the Court today. I don't want to
19 go back over his argument and I'll just rest on
20 what Mr. Flaherty has said.

21 THE COURT: Alright. Thank you. Mr.
22 Tochka?

23 MR. TOCHKA: Thank you, Your Honor.
24 Your Honor, the Commonwealth would suggest it's

1 part and parcel, the New Hampshire incident, with
2 the homicide. Even as Mr. Flaherty suggests, the
3 defendant, when he's questioned by the police,
4 initially tells the police that he had not been
5 to New Hampshire in the area of North Conway, New
6 Hampshire, never been up there before,
7 contradicted by the fact that his name is on a
8 receipt up there.

9 In terms of having a connection to the
10 homicide, it's seventy-two hours before the
11 robbery and the murder. It's also part and
12 parcel because it also goes to in terms of how he
13 came into possession of the gun, how she knows he
14 came into possession of the gun, how she assisted
15 him in getting that particular weapon, and then
16 how that's connected then with this particular
17 homicide. It also all goes to access, how he
18 obtained the gun in the case. I suggest the
19 question goes to the credibility of Joleena Tate
20 before this jury and the jury should hear the
21 whole transaction.

22 THE COURT: So you're offering this on
23 identity, motive, knowledge?

24 MR. TOCHKA: Yes, exactly.

1 THE COURT: What's the difference, Mr.
2 Flaherty, between your first motion and the
3 second motion, sir?

4 MR. FLAHERTY: The second motion to
5 exclude prior bad acts, Your Honor, relates to
6 statements attributed to Tanzerius Anderson from
7 Joleena Tate. She says that on one occasion
8 several weeks, apparently, prior to this alleged
9 house break and theft of a firearm, that she and
10 Mr. Anderson were having a conversation in an
11 automobile somewhere in Newton and Mr. Anderson
12 made certain statements to her that he wanted to
13 form some type of a criminal enterprise that she
14 says he referred to as being called the
15 commission, that in the course of whatever
16 criminal activity that this group, the commission
17 that she says he called it, would engage itself
18 in, they would use females as bait. I think that
19 that's the first set of statements.

20 The second set of statements that Ms.
21 Tate attributes to Mr. Anderson apparently
22 occurred during a ride home apparently from New
23 Hampshire when Mr. Anderson told her that he had
24 been involved in other criminal conduct such as

1 kidnapping and locking people in the trunk of an
2 automobile. I would suggest that this evidence
3 is highly irrelevant, overwhelmingly prejudicial,
4 lacks any probative value whatsoever, will
5 absolutely prejudice the defendant in the eyes of
6 the jury, is improper character and prior bad act
7 evidence, and really is just, you know, it's
8 piling on that need not come into the case, that
9 has no basis in relevance and/or probative value
10 to the issues in the incident before this jury,
11 and I would ask, most respectfully, that the
12 Court exclude any reference to those two
13 conversations that Joleena Tate says she had with
14 Tanzerius Anderson.

15 THE COURT: Thank you. Mr. Tochka?

16 MR. TOCHKA: Your Honor, I suggest that
17 it's highly relevant, goes to the whole
18 motivation as to why everyone is in the courtroom
19 on this particular case, because it explains why,
20 basically to explain to a jury why a sixteen-
21 year-old girl, associated with a nineteen-year-
22 old male, all of a sudden on a Monday night says
23 to the male, how about doing a robbery tonight.
24 It has no explanation as to why a sixteen-year-

1 old girl would say that to a nineteen-year-old
2 man who she is dating at this point in time other
3 than put in context the reason why she says that
4 is because the defendant had made statements to
5 her that he intended to start up a group called
6 the commission and in order to do that he
7 intended to do various things in terms of
8 obtaining guns and the like.

9 She then, therefore, in order to curry
10 favor with him, then suggested or there was a
11 suggestion about how her father had guns. As a
12 result of that, then it led to the motivation in
13 terms of him talking about women can be used for
14 bait, she is then saying on that particular
15 night, how about doing a robbery. Without
16 explaining why she's saying on that particular
17 night, how about doing a robbery, the reason for
18 that is because of the conversations she's had
19 with him in the past about doing robberies,
20 setting up individuals for robberies as a part of
21 this group that he intended to form, it has no
22 explanation.

23 And, Judge, you've heard repeatedly
24 this morning, Joleena Tate's credibility, it's a

1 huge issue in this particular matter and to
2 explain why a sixteen-year-old girl is saying
3 that to a nineteen-year-old male, you have to put
4 it in context. The only context is what she'll
5 tell you, the context is because of the
6 conversations she had with him that then resulted
7 in her saying to him, how about doing a robbery
8 tonight.

9 THE COURT: Other than these statements
10 from Tate about the conversations she had with
11 Anderson, you're not intending to elicit any
12 information specifically to the commission of
13 other crimes by these individuals, are you?

14 MR. TOCHKA: No, no.

15 THE COURT: Alright. Mr. Flaherty,
16 anything more, sir?

17 MR. FLAHERTY: I would just rest on my
18 argument, Your Honor, and suggest that it's
19 highly prejudicial. Mr. Tochka offers this as a
20 reason for what Ms. Tate did but I would suggest
21 to this Court that Ms. Tate may have just as
22 compelling reasons to give Mr. Tochka a reason as
23 to why she did this.

24 THE COURT: Well, I do think that the

1 Commonwealth should be entitled to give some
2 context to the statement by Tate to Anderson
3 concerning the commission of the crimes at issue
4 in this case. I do not want Tate to testify
5 about any -- the commission of any other specific
6 crimes that they may have committed. I will give
7 a limiting instruction if requested to do so at
8 the time of the admission of this, Mr. Flaherty.

9 MR. FLAHERTY: If I understand your
10 ruling, Your Honor, then you'll allow the
11 government to elicit evidence that Joleena Tate
12 and Tanzerius Anderson had a conversation
13 regarding firearms in New Hampshire and exclude
14 any mention of some type of supposed criminal
15 enterprise he was talking about, according to
16 Tate?

17 THE COURT: No. These statements are
18 made apparently in Newton, according to Mr.
19 Tochka, but I'm going to permit him to elicit
20 from Tate the conversation or conversations she
21 had with Anderson about forming this commission,
22 so to speak, and using women as bait and whatever
23 the content of the conversation was, for the
24 purpose of giving some context to the background

1 for the commission of these crimes.

2 MR. FLAHERTY: And you're excluding the
3 stuff about kidnapping and locking people in
4 trunks?

5 THE COURT: I have no idea what, at
6 this point what the conversation is going to be
7 and testimony will be about that. I think
8 probably what we ought to do is have a brief voir
9 dire of Tate only on the specific -- that
10 specific matter.

11 Mr. Tochka, when is she coming on?

12 MR. TOCHKA: Your Honor, I expect that
13 she will be testifying sometime tomorrow.

14 THE COURT: Well, at the end of the day
15 we'll arrange perhaps to have that so I know what
16 the full -- what her testimony will be on that
17 limited point.

18 MR. TOCHKA: That's fine.

19 THE COURT: It's not a far ranging voir
20 dire. It's only on the prior bad act motion.

21 MR. TOCHKA: That's fine.

22 THE COURT: Insofar as it relates to
23 those conversations between Tate and Anderson
24 about forming a commission.

1 MR. TOCHKA: That's fine.

2 THE COURT: Alright. So we will do a
3 short voir dire on that tomorrow.

4 MR. TOCHKA: She should be testifying
5 tomorrow. Hopefully she's being brought in
6 today, although I don't know if the habe went out
7 or not.

8 THE COURT: Where is she? In
9 Framingham?

10 MR. TOCHKA: No, she's in a juvenile
11 facility.

12 THE COURT: Alright. What was your
13 intention with respect to your opening statement?

14 MR. TOCHKA: Your Honor, what I'd ask,
15 unless I misunderstood the Court, that I would be
16 able to get into the commission but not the
17 specific acts about kidnapping.

18 THE COURT: Yes, that's right.

19 MR. TOCHKA: So I will just refer to
20 how he wanted to set up a group in which he would
21 use women as bait but not specific acts, how he
22 said he kidnapped individuals.

23 THE COURT: Yes. And we'll flesh out
24 the full content of that when she comes in for

1 the voir dire. Alright.

2 Are you requesting a limiting
3 instruction? If so, you can tell me tomorrow
4 morning but I would give one at the time that she
5 may give that testimony.

6 MR. FLAHERTY: I would, Your Honor, and
7 I guess during the voir dire not only should we
8 inquire into what she should say but also inquire
9 under humane practice.

10 THE COURT: That's the first time I'm
11 hearing it's a live issue at trial, Mr. Flaherty,
12 but -- is it a live issue at trial?

13 MR. FLAHERTY: Well, I don't know, Your
14 Honor. I don't know what she is going to testify
15 to about the state of Mr. Anderson. I think the
16 Court, sui sponte, must examine that as to any
17 statements of a criminal defendant made to any
18 person. We discussed it during the motion to
19 suppress the statements given to the police and I
20 suggested that at some point during the trial it
21 may become a live issue.

22 THE COURT: Mr. Tochka, do you have
23 anything you want to say about that?

24 MR. TOCHKA: Yes, Your Honor. I'd

1 object to that. What Mr. Flaherty, in essence,
2 is saying is that we should have a motion in
3 limine for each one of the witnesses because each
4 one of the three key Commonwealth witnesses, I
5 suggest, are going to give statements allegedly
6 made by Tanzerius Anderson and I suggest that
7 there is no foundation for a motion in limine as
8 to all those three witnesses.

9 MR. DOOLIN: Judge, may I just be heard
10 respectfully? It goes into what Mr. Flaherty and
11 Mr. Tochka have just been arguing before the
12 Court about this decision about the commission.
13 I've filed a previously denied motion to sever my
14 client's case from that of Tanzerius Anderson and
15 I renew that motion. Respectfully, this
16 conversation as to the commission, I don't think
17 that there is going to be any evidence that my
18 client participated in that conversation or any
19 evidence that links my client to any sort of
20 conversation.

21 I won't belabor the arguments that I
22 have already made to the Court in the last two
23 weeks in the motions that I've filed but that's
24 another piece of evidence that's going to come

1 in, I suppose in Mr. Tochka's opening and through
2 evidence in the case, of a group that my client
3 is going to be linked to and, respectfully, I
4 move to sever my client's case from that of Mr.
5 Anderson.

6 THE COURT: Well, are you requesting a
7 limiting instruction?

8 MR. DOOLIN: I would be, Your Honor. I
9 absolutely would be requesting a limiting
10 instruction but I do, even in requesting that
11 limiting instruction, I do move to sever my
12 client's case respectfully.

13 THE COURT: Well, we have heard
14 argument on that and I have denied that motion.

15 MR. DOOLIN: I bring it again based
16 upon that evidence that's going to come in about
17 the commission, linking my client to some sort of
18 a gang.

19 THE COURT: Well, i'm denying that
20 motion, sir. You may, of course, renew it again
21 if appropriate during the course of the trial.

22 Alright. Any other motions?

23 MR. FLAHERTY: There's just a
24 supplement to the motion in limine, Your Honor.

1 What I have done is attached the reports,
2 investigative reports relative to the handwriting
3 exemplar, the sending of the items to the FBI,
4 the analysis report of Mr. Duane and the Yankee
5 Clipper hotel receipt and statement or a portion
6 of a statement of Joleena Tate along with an
7 affidavit of counsel I'd ask the Court to
8 consider under Dauber and Lannigan.

9 I know the Court said this case is
10 different from Hines because the defendant has
11 not provided any expert testimony to say that
12 this is reliable. I think that it is the
13 proponent's obligation to satisfy for purposes of
14 admissibility the factors under Dauber and
15 adopted by Lannigan and the Court should consider
16 that prior to the introduction of this evidence.
17 This evidence relates to a signature that appears
18 on a hotel receipt that will be attempted to
19 corroborate the testimony that's expected from
20 this cooperating witness and connect the
21 defendant to what I'm calling prior bad act
22 evidence in a different jurisdiction and then
23 tangentially connect him to a suggestion that he
24 had stolen the supposed murder weapon for the

1 indictments on March 27, 28.

2 So I would suggest that the obligation
3 rests with the Commonwealth to satisfy this Court
4 that the four factors under Dauber are met prior
5 to admission and in my affidavit, my
6 understanding is that the science or the supposed
7 science of handwriting comparison will fail.

8 THE COURT: Alright. I have reviewed
9 your affidavit and I don't think it furthers the
10 motion, respectfully. There has to be something
11 put before the Court to put at issue the matter
12 at hand. You have, so to speak, challenged, you
13 have raised in your motion that the Commonwealth
14 should be precluded from introducing expert
15 testimony relating to handwriting comparisons.
16 You have proffered no expert, no excerpts from a
17 deposition of an expert, no affidavit from an
18 expert putting this in issue.

19 You also have not requested any kind of
20 a hearing at which I could entertain and make
21 some determinations and, respectfully, the
22 affidavit you proffered which, by the way, is
23 unsigned by you, assuming that you have a signed
24 copy somewhere, has not advanced that issue and,

To Defense

1 in the Hines case, Judge Gertner's case, the
2 defendant proffered an expert who was then cross
3 examined by the government. There was some
4 evidence upon which Judge Gertner could make her
5 determination.

6 So there is really nothing before me
7 here today, and that's where the matter lies and
8 I think it's incumbent upon the party raising the
9 issue to put it before the Court in various ways,
10 and to join the issue with respect to that. I
11 will, however, continue to reserve.

12 When is Mr. Duane coming?

13 MR. TOCHKA: He should be coming
14 tonight, Your Honor.

15 THE COURT: Pardon?

16 MR. TOCHKA: He should be in at four
17 o'clock today.

18 THE COURT: When are you putting him
19 on?

20 MR. TOCHKA: I had intended to put him
21 on tomorrow. At the rate this trial is
22 proceeding, I think probably Friday.

23 THE COURT: About how long do you
24 expect his testimony to be?

1 MR. TOCHKA: No more than an hour.

2 THE COURT: Alright. Well, I will
3 continue to think about it but it's my position
4 that it's not enough just to file a Dauber
5 motion. There has to be something that is put
6 before the Court so that determinations can be
7 made, and I also understand you're not cross
8 examining Mr. Duane at a voir dire or you're not
9 examining him in the first instance, so, for all
10 those reasons I'm not going to -- I'm going to
11 continue to reserve the motion. Alright.

12 Anything else we need to resolve?
13 Would counsel like to make a view opening?

14 MR. DOOLIN: I would.

15 THE COURT: Have you all agreed on the
16 locations that the jury is going to be seeing on
17 the view?

18 MR. TOCHKA: Yes, Your Honor, we have.

19 MR. FLAHERTY: Yes.

20 THE COURT: Can I just see counsel a
21 moment?

22 (Whereupon, a discussion occurred off
23 the record at side bar.)

24 THE COURT: The defendants each waive

1 their right to go on the view?

2 MR. DOOLIN: Right.

3 THE COURT: And everybody wants to make
4 a view opening?

5 MR. TOCHKA: Yes, Your Honor.

6 THE COURT: Okay. So we will start
7 momentarily. Thank you.

8 (Whereupon, the proceedings were
9 recessed at 10:00 o'clock a.m., and reconvened at
10 10:15 o'clock a.m.)

11 THE COURT: Ladies and gentlemen, I'd
12 like to welcome you back this morning. Before we
13 go on a view which is going to be to give you an
14 opportunity to see some locations about which
15 you'll be hearing in the course of the trial,
16 there are several preliminaries that we need to
17 do.

18 The first of those is to have the clerk
19 swear you in, this time as jurors who will hear
20 and decide the evidence in this case, and then he
21 is going to read to you the indictments. Those
22 are the formal criminal charges the Commonwealth
23 has brought against each of these defendants.
24 And then I will be back with you to give you a

1 few more remarks and then we'll proceed to
2 matters relating to the view.

3 Thank you again for your attention.

4 THE CLERK: Jurors, please rise.

5 (Whereupon, the jury was sworn and
6 impaneled at 10:16 o'clock a.m.)

7 THE CLERK: I'd ask you please be
8 seated. I'd draw your attention to the following
9 indictments.

10 Indictment number 2000-10777-001:

11 "Commonwealth of Massachusetts, Suffolk ss., at
12 the Superior Court, Department of the Trial
13 Court, for criminal business, begun and holden at
14 the City of Boston within and for the County of
15 Suffolk on the first Monday of July in the year
16 of our Lord two thousand.

17 The jurors for the Commonwealth of
18 Massachusetts on their oath present that:
19 Tanzerius Anderson, on March 28, 2000, did
20 assault and beat Iman Yazbek with intent to
21 murder him and by such assault and beating did
22 kill and murder Iman Yazbek.

23 As to 002: "The jurors for the
24 Commonwealth of Massachusetts on their oath

1 present that: Tanzerius Anderson on March 28,
2 2000, being armed with a dangerous weapon, to-
3 wit, a handgun, did assault Iman Yazbek with
4 intent to rob him and thereby did rob and steal
5 from the person of the said Iman Yazbek money and
6 personal property of said Iman Yazbek."

7 As to 003: "The jurors for the
8 Commonwealth of Massachusetts, on their oath,
9 present that: Tanzerius Anderson, on March 28,
10 2000, did unlawfully and knowingly have in his
11 possession a firearm as defined by General Laws
12 Chapter 140, Section 121, that is, a weapon from
13 which a bullet can be discharged and of which the
14 length of the barrel is less than sixteen inches,
15 the said Tanzerius Anderson not being present in
16 his residence or place of business, not having in
17 effect a license to carry firearms issued under
18 General Laws Chapter 140, Section 131 or 131F,
19 and not complying with the provisions of General
20 Laws 140, Section 129C and 131G."

21 004: "The jurors for the Commonwealth
22 of Massachusetts on their oath present that:
23 Tanzerius Anderson, on or about the week of March
24 28, 2000, did directly or indirectly willfully

1 endeavor by intimidation, force or express or
2 implicit threats of force to influence, impede,
3 obstruct, delay or otherwise interfere with
4 Heather Coady furnishing information to a crime
5 in an investigation relating to a violation of a
6 criminal statute of the Commonwealth."

7 And 005: "The jurors for the
8 Commonwealth of Massachusetts, on their oath,
9 present that Tanzerius Anderson, on or about
10 March 28, 2000, armed with a dangerous weapon,
11 to-wit, a knife, did assault Iman Yazbek with
12 intent to rob him and thereby did rob and steal
13 from the person of the said Iman Yazbek money and
14 personal property of the said Iman Yazbek."

15 Indictment number 2000-11975-001: "The
16 jurors for the Commonwealth of Massachusetts on
17 their oath present that: Jason Robinson, on or
18 about March 28, 2000, did assault and beat Iman
19 Yazbek with intent to murder him and by such
20 assault and beating did kill and murder Iman
21 Yazbek."

22 002: "The jurors for the Commonwealth
23 of Massachusetts on their oath present that:
24 Jason Robinson, on or about March 28, 2000, being

1 armed with a dangerous weapon, to-wit, a knife,
2 did assault Iman Yazbek with intent to rob him
3 and thereby did rob and steal from the person of
4 said Iman Yazbek money and personal property of
5 the said Iman Yazbek."

6 003: "The jurors for the Commonwealth
7 of Massachusetts on their oath present that:
8 Jason Robinson, on or about March 28, 2000, being
9 armed with a dangerous weapon, to-wit, a handgun,
10 did assault Iman Yazbek with intent to rob him
11 and thereby did rob and steal from the person of
12 the said Iman Yazbek money and personal property
13 of the said Iman Yazbek."

14 And 004" The jurors for the
15 Commonwealth of Massachusetts on their oath
16 present that: Jason Robinson, on or about March
17 28, 2000, did unlawfully and knowingly have in
18 his possession a firearm as defined by General
19 Laws, Chapter 140, Section 121, that is, a weapon
20 from which a bullet could be discharged and of
21 which the length of the barrel was less than a
22 sixteen inches, the said Jason Robinson not being
23 present in his residence or place of business,
24 not having in effect a license to carry firearms

1 we'll proceed to the Commonwealth's case and any
2 testimony that time allows.

3 At this time we are going to -- I'm
4 going to give the attorneys an opportunity to
5 speak to you directly about things relating
6 obviously to the view. They'll have a fuller
7 opportunity after we return to talk about the
8 case in general.

9 Thank you again for your anticipated
10 cooperation. Mr. Tochka?

11 MR. TOCHKA: Thank you. Good morning,
12 ladies and gentlemen. What I'd like to do is
13 show you an aerial photograph and this aerial
14 photograph is the area in which we are going to
15 basically be going out to. This is the Brighton
16 section of Boston and, as Her Honor told you, I'd
17 ask you just to stop, look and listen and where
18 we are going to is, this is the Faneuil
19 Development area in Brighton and we are going to
20 go down an alleyway, a pathway that's on the
21 corner of Goodenough Street and Faneuil Street.
22 We are going to walk down that alleyway to the
23 back of 89 Faneuil Street.

24 I'd ask you to pay particular close

1 attention to the back of the 89 Faneuil Street,
2 the back entrance that leads to a hallway that
3 goes out towards -- there is a second entry to
4 the building. I just ask you to take a note of
5 those two entrances. I would ask you to note in
6 the back of -- the entry to the back of 89, there
7 is a utility area, there's a fence there for
8 trucks and dumpsters and the like.

9 I would also ask you to pay close
10 attention to this area right here that's
11 described as the play area and from there, I'd
12 suggest that we'll go into -- I'll ask you to
13 take note of the parking lot that exits onto
14 Faneuil Street, and we'll go to the McKinley
15 Park. I'd ask you to pay close attention to,
16 there is a set of swings and a water fountain at
17 that area. I ask you to take note of that.
18 That's basically the area of the development that
19 we'll be walking through and into the park.

20 From there, we'll go back on the bus
21 and take a ride down to the corner of Market and
22 Faneuil Street. I'd ask you to take note of the
23 store which is on the righthand side and on the
24 lefthand side is a car wash called Scrub-a-Dub.

1 I ask you to take note of that. We'll continue
2 on the bus and go up Market Street and take a
3 left on Beacon Street. The Faneuil Development,
4 as you can see, borders Beacon Street and
5 Faneuil. We'll go down Beacon Street and come
6 back up Goodenough Street and, no longer on this
7 particular area, we'll go up Faneuil and about a
8 half a mile or a mile to the area of Oak Square.

9 From Oak Square we'll go up to Dunboy
10 Street. I will ask you to take note of a
11 particular house on Dunboy Street. At that time
12 we'll leave the house area, still staying on the
13 bus, then we will go to the area of Rogers Park
14 which is in Brighton approximately a half a mile
15 to a mile away, staying on the bus. Moving on
16 from Rogers Park, then we will come to the
17 Charles River and go to the Arsenal Mall and
18 there is a park as well at the Arsenal Mall.
19 We'll stay on the bus and I'll just point out a
20 particular swing area and the like in the Arsenal
21 Mall park as well. Then we will go back on the
22 bus and come back here.

23 Thank you.

24 THE COURT: Thank you. Mr. Doolin?

1 MR. DOOLIN: Thank you. Good morning,
2 everybody. Today we are going to get on the bus
3 and go over to an area of Brighton that's been
4 called the Faneuil Development. When we go over
5 to the Faneuil development, there's some things
6 that it's very important to note. As Judge Rouse
7 told you, it's important to stop, to look around,
8 to follow what the lawyers are saying at the
9 various buildings and houses and areas that
10 you're going to see during the course of the time
11 that we're out at this area.

12 We're going to take you from this area
13 over here of McKinley playground, this is on
14 Faneuil Street across from the development. We
15 are going to lead you down an alley that is to
16 the -- on this side of 89 Faneuil Street. We're
17 going to bring you specifically to the area of 89
18 Faneuil Street and also the area of 85 Faneuil
19 Street which is right up this way from that, and
20 you will be able to see. You will also be able
21 to make observations and we'll point you to make
22 observations of the different buildings that are
23 in that area, houses, businesses and the like.

24 The Faneuil development, as you'll see,

1 is bordered by a number of different buildings.
2 There are buildings that are over here on the
3 Beacon Street side which we'll point you
4 attention to, and buildings that are down here on
5 Faneuil Street. That's 89 and there are a number
6 of other numbers, a number of other buildings as
7 you go down towards 85 that we'll be asking you
8 to make observations about.

9 We'll specifically be asking you to
10 make observations about an area that's called the
11 play area. That is an area between the buildings
12 that are on the Faneuil Street side and also the
13 buildings that are over here on the Beacon Street
14 side. After we have had a chance to look at all
15 those different buildings that are in this area,
16 and the things that are over here in the McKinley
17 playground, McKinley Park area, then we'll get
18 back on the bus.

19 When we get back on the bus, you will
20 be taken to a couple of different locations that
21 are in the Watertown, Brighton area. We won't be
22 getting off the bus in those locations but you
23 will be asked to make certain observations of
24 some areas that are there.

1 So, during the course of the time that
2 we're out there, I'm going to ask you to stop, to
3 look around, to pay attention to what everybody
4 is directing you to, what the lawyers are
5 directing you to specifically and to look at the
6 different buildings, points of view, lighting,
7 that is there, lighting that you may observe,
8 different trees and things of that nature,
9 specifically in the play area.

10 Thank you.

11 THE COURT: Mr. Flaherty?

12 MR. FLAHERTY: Thank you. Good
13 morning. As I know all of you are very well
14 aware, my name is Timothy Flaherty. I represent
15 Tanzerius Anderson and I can think of no more
16 solemn, sober, serious occasion for our meeting
17 because this young man has been accused of
18 murder. Her Honor has properly instructed you
19 that it is very important and it is your
20 obligation and duty to pay particular attention
21 during this view and I won't belabor the points
22 that we ask you to look at nor will I belabor the
23 vantage points or sight lines that we'll direct
24 your attention to, but let me just remind you to

1 keep in mind your viewpoints, your sight lines,
2 your vantage lines from this view.

3 When you return here in court, keep
4 those in your mind because when the witnesses
5 take the stand, this stand, and testify about
6 what they observed and what they heard, it will
7 be important for you to recall those sight lines,
8 those vantage points, and it will especially
9 important for you to know not only what was seen
10 or heard but what was not seen and not heard.

11 THE COURT: Thank you very much, ladies
12 and gentlemen. We are going to proceed down to
13 the bus now and the court officers will direct
14 you after they have been sworn by the clerk.

15 (Whereupon, the court officers were
16 sworn at 10:35 o'clock p.m.)

17 THE COURT: Ladies and gentlemen, if
18 you would follow the court officers, please.

19 (Whereupon, the proceedings in court
20 were recessed to the view, during which the
21 following occurred:)

22 MR. TOCHKA: Once again, ladies and
23 gentlemen, good morning. I'd like you to take
24 note of a number of points of view here. Now, if

1 you'll take note of this particular driveway
2 which leads down to the end there which we are
3 going to walk in a second. If you take note by
4 the corner there's a sign that says Goodenough
5 Street and Faneuil Street. Across the street is
6 McKinley Park which you saw in the aerial
7 photograph, and I'd like you to take notice of 81
8 Faneuil which is right there as you turn left.

9 MR. DOOLIN: I'd ask you to take note,
10 as we stand here on Faneuil Street of the
11 proximity of the buildings to your right, 81
12 Faneuil, as relevant to the driveway that stands
13 directly in front of us to our right. I'd ask
14 that you make observations --

15 THE COURT: To your right or left?

16 MR. DOOLIN: I'm sorry, to the jury's
17 right. I'd also ask you to make observations, if
18 you would, of any houses that you see in the area
19 on Faneuil Street, houses that you might observe
20 in the vicinity of Goodenough Street.

21 I'd ask you make observations, if you
22 would, of this angle as you stand here on Faneuil
23 Street, of any buildings that are in the end of
24 the driveway. I'd also ask, if you would, to

1 look, if you turn around and face the other way,
2 the other direction that we have been facing on
3 Faneuil Street and look down at the length of the
4 development, how far down it goes, and the
5 various objects and things that you see as you
6 look down at the ground in front of 81 Faneuil
7 Street, looking down Faneuil towards Market.

8 MR. FLAHERTY: For the record, Timothy
9 Flaherty. Ladies and gentlemen, I ask you to pay
10 particular attention to the number of windows you
11 see on each building and each location of the
12 building with respect to the brick housing
13 development, the proximity of the homes next to
14 the driveway. I'd also ask you to pay particular
15 attention to the location of any trees or
16 shrubbery here and in the additional locations,
17 and I would ask you, as you face the development,
18 to pay attention to this section of the
19 development, the architecture of the development.

20 MR. TOCHKA: What we are going to do
21 now, ladies and gentlemen, is walk down this
22 driveway. As we're walking down this driveway, I
23 just ask you to pay attention to what will come
24 into view as you're walking down this area.

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Ladies and gentlemen, I'm going to ask you to stop now, just look at the direction we came down this driveway, look at the door. You see to my left the entranceway over there to 85. I'd ask you to pay most attention to 89, the corner of this particular building right there to my left, the area there. I ask you to pay attention to the slope, how it slopes down. I'd ask you to pay attention to the grassy area right next to that bush. I'd also ask you to pay attention to this maintenance area, the fence, the dimensions of the fence and the like.

I'm going to ask you to pay attention, ladies and gentlemen, as you can see, the back of the development, you can see actually where that dog is right there which is going to be known as the play area. I'd ask you to take a look at the view you'd have from there.

After you've finished, after all the attorneys have talked to you, I'm going to ask you to step over close to that area, the corner where the gate is and to take a further look, but I'll wait for the other attorneys.

MR. DOOLIN: As you stand here to the

1 side of 89 Faneuil, I'm going to ask you to make
2 particular observations of the windows that you
3 see and the apartments above 89 Faneuil. I'm
4 going to make -- ask you to make observations of
5 the windows that you might see over on the side
6 of 85 Faneuil and the doorway of 85 Faneuil, the
7 amount of storage in the building, the
8 architecture of the building and the way it's set
9 up, vis a vis the way we're standing here now.

10 I'm going to ask that you pay attention
11 and make observations, if you would, to this area
12 in back where this fence is, the size of the
13 fence, to the distance between one side of the
14 fence as you observe it and the other side of the
15 fence. I'm going to ask you to make observations
16 of the number of fences that there are and where
17 they stand in relation to each other. I'm going
18 to ask that you make observations generally of
19 the area from the side of the fence to 89
20 Faneuil, the approximate distance between the two
21 points.

22 I'm going to also ask that you make
23 observations, if you would, as you look up
24 towards Faneuil Street, the distance of the

1 driveway, the approximate distance from where we
2 stand to where we began the journey up on the
3 corner or up on the street in front of Faneuil
4 Street.

5 MR. TOCHKA: I would ask the jurors to
6 pay attention to the windows above 85 Faneuil,
7 the windows above 89 Faneuil, the location of
8 this wall and the wall of the development and the
9 other wall of the development, the fence and the
10 green siding between the chain links and I would
11 ask you to pay particular attention to the
12 distance from the interior of 89 Faneuil where
13 that orange door is located, the door which
14 appears open now and the shrub outside.

15 Ladies and gentlemen, at this point I'm
16 going to ask you to stand by the fence over here,
17 by the gate.

18 Ladies and gentlemen, I'm going to ask
19 you pay attention to this particular walkway to
20 my left to 284, the building there on my lefthand
21 side. I'm going to ask you to pay attention to
22 the first floor where you see the tree on my
23 lefthand side, the first floor set of windows and
24 what they would look onto. I'm going to ask you

1 to pay attention to the dimensions here, how the
2 walkway, if you go down this way, actually the
3 same path the two detectives have just walked. I
4 ask you also to pay attention to the corner over
5 there where the benches are. We're going to be
6 walking over there shortly, the play area, and
7 the dimensions actually of this whole particular
8 area.

9 I would ask you now just to turn and
10 face 89, if you would, just take a look at the
11 view that you have of inside 89. We're going to
12 walk in there in a second. If you could just
13 take a look at the first floor of 89, the cages
14 on the fences there and the front area of 89, the
15 grassy area, the stairs leading up 89.

16 MR. DOOLIN: I'm going to ask that you
17 make observations if you will of the building
18 that's numbered 284 North Beacon. I'm going to
19 ask that you make observations of the number of
20 stories and the position of the windows of the
21 first floor, second floor, third floor. I also
22 ask that you make observations, if you would, to
23 the area between 89 Faneuil and 284 North Beacon
24 of different shrubbery that's in the area.

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I'm going to ask that you make observations as you stand here at the back of 89 Faneuil down to the area where you might see some benches, picnic tables and things of that nature. I'm going to ask as you stand here in the back of 89 Faneuil to make observations of generally of what's in the hall. We'll be going into the hall to make further observations, but just as to how the door looks at 89 Faneuil Street and the different things that you observe in the doorway at 89 Faneuil.

I'm going to also ask that you make observations of the parking lot that is adjacent to 284 North Beacon Street.

MR. FLAHERTY: I would ask you to pay a particular attention to the sight lines of the windows above 282 and 284, 284 North Beacon, to 89 Faneuil, the sight lines from the picnic table and the play area we'll be going to, from the picnic table to 89, the relative locations of the pine tree and the shrubbery and, as you enter 89 Faneuil, I'd ask you to pay particular attention to the distance between the area and the grass near the shrubs to the interior of 89 where the

1 door or door jamb interior wall is located.

2 MR. TOCHKA: Ladies and gentlemen, what
3 we're going to do now is, we're going to have you
4 go in five at a time through the hallway here and
5 just take notice as you go through the hallway,
6 the doorways that you're walking through, the
7 dimensions, the stairs to the second floor, and
8 I'd ask you just to pay particular attention to
9 the two exits that I talked about in the corner,
10 this exit over here and there's one other exit to
11 get out of the building on the other side.

12 MR. DOOLIN: I'm going to ask that you
13 make observations of the inside, of the number of
14 doors that you see, the stairs that you might see
15 as you go into the hallway. I also ask that you
16 make observations of a set of mailboxes that are
17 in there and I'm going to ask that you make
18 observations of the approximate dimensions of the
19 hallway, how big it is, and also ask that you
20 make observations, if you would, as you are going
21 in there, of the approximate distances between
22 the grassy area where the shrub is that you might
23 observe in front of 89 Faneuil and the
24 approximate distance to the inside hallway of 89

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Faneuil.

MR. FLAHERTY: I'd ask also that you pay particular attention to the wall inside, how it's designed, what it looks like and when you go through 89 to the other exit, I'd ask you just to take a moment to peek up and look at the windows above, the sight lines of the windows, and that's all for this location.

MR. TOCHKA: Let me add one thing. As you're walking through this particular door, could you please pay particular attention to the width of the doorway and, as you're walking through the door, there is a door immediately on your left, pay particular attention to that door immediately on your left.

So why don't we just take the first five?

A JUROR: Keep going through?

MR. TOCHKA: Keep going through the other way. Ladies and gentlemen, I'd ask you to pay particular attention to this particular door here and how this particular door leads to a maintenance room, and, as Mr. Flaherty said, the stairway going up here that leads to the second

1 floor. If you just take note, if you take notice
2 of that, if you take notice of that and of the
3 window that's overlooking the second floor
4 landing, and that's all I have inside.

5 THE COURT: Are we going to go through,
6 straight through?

7 MR. TOCHKA: Yes. And if I can
8 actually have the jurors come a little bit closer
9 here? And I want to point out a few things here.
10 One is, I wanted to point out this particular
11 door. Two, I wanted to point out the stairway
12 that leads up to the second floor and I wanted to
13 point out the window on the second floor landing,
14 and three, I just wanted -- I want the jurors to
15 take particular notice of the dimensions of this
16 particular hallway and the lighting conditions of
17 this particular hallway.

18 MR. DOOLIN: I'd ask that you pay
19 attention to this area here.

20 MR. TOCHKA: I'd going to ask you to
21 take note of this doorway on my lefthand side,
22 and two, I'd ask you to take note of this
23 particular small section next to the door.

24 Next, I'd ask you to take note of the

1 dimensions of the hallway, the lighting
2 conditions of the hallway, and finally, I'd ask
3 you to take note of the stairwell that leads up
4 to the second floor and I'd ask you to note the
5 window on the second floor landing.

6 MR. DOOLIN: I'd ask you to note also
7 opposite to the area we're standing in now near
8 the door to the area that we came in through at
9 the end of the stairs, the relative distances
10 that you might observe. I also ask you to make
11 observations of the type of doors that you see as
12 we came in through the hallway.

13 MR. TOCHKA: Thank you. Ladies and
14 gentlemen, what I'd ask you to do is walk down
15 this way to the play area.

16 MR. FLAHERTY: Actually, before we go,
17 if I could just remind the jurors, again the
18 sight lines from the windows above this exit of
19 89 Faneuil. That's all.

20 MR. TOCHKA: Alright.

21 MR. DOOLIN: Also, you should look up
22 from this exit of 89 Faneuil as to the relative
23 distances, proximity of the various buildings
24 that you see that are to the left and to the

1 right of this and the amount of windows that you
2 might observe.

3 MR. TOCHKA: Ladies and gentlemen, I'm
4 going to ask you to take notice of a number of
5 things here. First, there's a play area where
6 Mr. Flaherty is standing right now. I'm going to
7 ask you to pay attention to the view that you
8 have of the play area, including the view to the
9 back of the entire play area which is the area of
10 the asphalt you're looking at right now. I'd ask
11 you to take notice of the view to your left,
12 again the maintenance fence, in particular to the
13 section in between the maintenance fences, or one
14 fence, the second in between, I'd ask you to pay
15 attention to that.

16 I'd ask you to pay attention again to
17 this particular tree here, the first set of
18 windows there. I'd ask you to take notice, if
19 you can see over here, these two buildings, the
20 farther building, the building in back of the one
21 -- in back of this building here, the one in the
22 back. I ask you to take notice of the particular
23 building.

24 I ask you to take notice of across over

1 here, there's a building that's 280 and that's
2 the building where the blue car is, that
3 particular building, that's building number 280.
4 I'd ask you to take notice, if you turn around,
5 do an about face, I'd just ask you to take notice
6 of the stairs over here in the corner leading up
7 to the parking lot area. I'd ask you to take
8 notice of the pathways that we just walked down
9 and I'd ask you to take notice of where it says
10 75 Faneuil, that doorway right there, and I think
11 that's it.

12 MR. DOOLIN: I'm going to ask you to
13 make observations of the relative dimensions of
14 the play area. I'm going to ask you to make
15 observations, if you would, of the picnic table
16 you may observe and the proximity of that picnic
17 table to the various buildings that you see that
18 are within the scope of our vision. I'm going to
19 ask that you make observations of 284 North
20 Beacon, 282 North Beacon, 278 North Beacon, 280
21 North Beacon and their relative distances to the
22 picnic table.

23 I'm going to ask that you make
24 observations also, if you would, of 75 Faneuil,

1 make observations of the area of the doorway of
2 75 Faneuil, the proximity of 75 Faneuil Street to
3 the parking lot, the proximity of that parking
4 lot to 65 Faneuil, the building that you may
5 observe on the other side of the lot.

6 I'm also going to ask that you make
7 observations back towards the fence area, the
8 distances between the fences as you may observe
9 them, the number of fences that are there, and
10 their relative proximity to 284 Faneuil and also
11 their proximity to the picnic table that we have
12 directed your attention to previously.

13 MR. FLAHERTY: At this location, I ask
14 each juror to note the windows at 284, 280, the
15 proximity to the picnic table and the pathways.
16 I'd ask you, as Mr. Doolin did, to note the
17 pathway leading from the exit we just left, 89
18 Faneuil, and how that pathway is laid out, and I
19 would ask if each juror would please stand by the
20 picnic table at some point and take note of the
21 sight lines from the picnic table back to the
22 first tier of 89 Faneuil, before we went into the
23 hallway. Also note the green siding on the chain
24 link fence again.

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MR. TOCHKA: I apologize because I was listening to Mr. Flaherty. I ask you to look at the view from where you are right now by the bench, to the distance between those two particular fences.

Ladies and gentlemen, I just ask that you look from where you are at this bench here to the fence, those two particular fences, in particular, the area in between the fences.

What we're going to do now, we're going to walk down this pathway and walk up back to the back of 89, and I ask you just to pay attention to the distance that we travel and the view that you have.

Ladies and gentlemen, I'd ask you to look at the view that you have from this particular first floor apartment to where you are right now. Then we're going to continue walking. I don't know if counsel has anything else to add.

MR. DOOLIN: Not only to look at the first floor but also the second floor, the third floor as well.

MR. TOCHKA: If we continue walking -- Ladies and gentlemen, I ask you to look at this

1 particular fence area here. Actually, if we can
2 do it, maybe five at a time, with the Court's
3 permission, I'd just ask you to look how -- I'm
4 going to ask you, after defense counsel is
5 finished, to look at the view you have going down
6 this walkway to the pathway you walked down
7 earlier.

8 MR. DOOLIN: I just ask you again to
9 make observations of the distance between the
10 fences, the amount of fences and their relative
11 heights.

12 MR. FLAHERTY: I would ask you, as you
13 go through, to touch the fence.

14 MR. TOCHKA: Ladies and gentlemen, what
15 we're going to do now, we're just going to walk
16 back down the pathway and walk up to the
17 direction of the parking lot.

18 Ladies and gentlemen, at this point,
19 number one, looking over here to my left, the two
20 buildings in between the parking lot -- or the
21 parking lot in between the two buildings, the
22 play area here, the view that you have from where
23 you're standing is actually about where those
24 people are walking through that particular play

1 area. I just ask you to turn around and look at
2 the vantage point where you went in the hallway
3 of 89 and came out and just look at that pathway
4 that leads to where we are now.

5 MR. DOOLIN: I'm going to ask you to
6 make observations of the building at 75 Faneuil
7 again, the distance, the proximity of 75 Faneuil
8 to the parking lot, the distance from 75 Faneuil
9 to the building over near the side of the parking
10 lot, the windows that you might observe that face
11 onto the parking lot, and also make observations
12 of the distance from the area of the picnic
13 tables that we've observed there and the area of
14 the parking lot between 75 and 55 Faneuil.

15 MR. FLAHERTY: As we stand here, I ask
16 everyone again to note 75 Faneuil, note the
17 number of windows in the housing development,
18 note the relative sight line from each of those
19 windows to the play area, to the pathways leading
20 to and from 89, and to the entire perimeter of
21 the entire housing development.

22 MR. TOCHKA: Ladies and gentlemen, I'd
23 ask you to take notice of two additional things.
24 One is the parking lot from where we are right

1 now to the park, McKinley Park, to the basketball
2 court that you can see there in the distance.

3 In terms of this building here on my
4 left, 75 Faneuil, I ask you to pay particular
5 notice to the apartment that is right above the
6 bicycle here that's parked in the front, the
7 windows right above which is where I'm pointing
8 to right now, these particular windows which
9 there's a stipulation to that being apartment
10 215.

11 And now, ladies and gentlemen, we're
12 going to 75 Faneuil and I'm going to ask you to
13 pay attention to how, again, just as you did with
14 89, the entrance, the two entrances, I'm going to
15 ask you to pay attention to the entrance of 75
16 Faneuil here, how it comes out on the other side
17 and the view that you have on the other side of
18 the 75 Faneuil entrance to the 89 Faneuil
19 entrance where we came out the back.

20 Ladies and gentlemen, I ask you to pay
21 attention, as you walk, to 89 Faneuil where we
22 came out, the pathway that leads from where we
23 are now to 89 Faneuil. I ask you to pay
24 attention to the pathway leading from the street

1 of Faneuil Street and after we're finished, we're
2 going to go in 71 Faneuil which is right here and
3 we are going to go through 71 Faneuil to the
4 other entrance, the second entrance that will
5 come out onto the street of Faneuil Street.

6 MR. DOOLIN: I'm going to ask that you
7 make observation of the fences that you might
8 observe in the area and also make observations
9 again of the windows and the apartments that are
10 above this area and the back of 75 between 75 and
11 71 Faneuil.

12 MR. FLAHERTY: I'd ask you that you
13 note the windows, the sight lines and the sound
14 of both Mr. Tochka's and Mr. Doolin's voices as
15 they speak to you.

16 MR. TOCHKA: Ladies and gentlemen, at
17 this time we're going to walk from 71 Faneuil to
18 the other side. Ladies and gentlemen, I'm going
19 to ask you to pay attention now, as you exit, in
20 particular 71 Faneuil, if you just look, if you
21 look at the pathway that leads here, I'll have
22 you walk down, and how it leads us to the
23 particular parking lot. That's all that I have.

24 MR. DOOLIN: I ask that you make

1 observations of the back of 71 Faneuil, the
2 distance to the parking lot, the distance from
3 that part of the parking lot closest to 71
4 Faneuil back towards the play area and I'm going
5 to ask that you make observations, if you will,
6 of the distance from the back of 71 Faneuil where
7 we now stand to the last of the buildings in the
8 development, the distance between the last of
9 those buildings and the area of 71 Faneuil that
10 we just came from.

11 MR. FLAHERTY: I'd ask all the jurors
12 again, note the windows, note the sight lines,
13 the distance from 89 Faneuil to this location
14 where we are, the distance from this location
15 where we're at to the very last building of the
16 development.

17 MR. TOCHKA: Ladies and gentlemen,
18 we're just going to go inside the parking lot.
19 I'm just going to ask you to look around, while
20 you're inside the parking lot, of the views, the
21 three sixty view, and then we're going to cross
22 into the park.

23 At this point, ladies and gentlemen,
24 all I want you to do is take notice of where that

1 bike is laying against that entrance, the
2 distance to the parking lot. I just ask you to
3 take notice again of that particular play area
4 and the view that you have from the walkway from
5 the play area and the stairs that we walked to
6 come to this particular parking lot as well as
7 the stairs we just walked up earlier. That's it.

8 MR. DOOLIN: I'm going to ask that you
9 make observations of the distance from the picnic
10 table, the area, the play area, to the entire
11 distance of the parking lot, the part that's
12 we're standing in now, the part that we've been
13 in before. I'm going to also ask you to make
14 observations of any lighting that you might see
15 on the side of the buildings, the amount of
16 lighting, and also to any lighting you might see,
17 whether it's visible or not visible on Faneuil
18 Street.

19 MR. FLAHERTY: I'd ask you to note the
20 windows, the vantage points and sight lines from
21 the windows.

22 MR. TOCHKA: Ladies and gentlemen, I
23 ask you to take note of the dimensions of the
24 park, the basketball court area, the swings over

1 here to our left, the benches to my left, those
2 two benches behind that tree, and the view that
3 you have from where you are here to buildings
4 across the street, the Faneuil development, those
5 last two buildings on the corner, and that's it.

6 MR. DOOLIN: I'm going to ask you to
7 make observations of the relative distance
8 between the buildings on Faneuil and the
9 development, not only the last two buildings but
10 all the buildings that you observe. I'm going to
11 also ask that you make observations of the
12 distance between this area and the area where you
13 see play apparatus that we'll be going to next,
14 but then also to the distance between the area of
15 the play apparatus and those houses that are over
16 there backing up on Goodenough Street, make
17 observations of the distances.

18 MR. FLAHERTY: I'd ask all the jurors
19 to note the sight lines from the windows on the
20 rear of each of those houses, half dozen or so
21 houses facing into the parking lot -- I'm sorry,
22 into the playground area and the benches by the
23 swing set.

24 MR. TOCHKA: Ladies and gentlemen, at

1 this point what I'm going to ask you to do, we're
2 just going to walk to where the benches are. I
3 ask you to stand by the benches and just take
4 notice of the particular area there. I believe
5 it's a fountain that's broken off there. Pay
6 attention to the fountain, and at that point I'm
7 just going to ask you to go back on the bus.

8 What I'm going to ask you to do now,
9 ladies and gentlemen, just turn around, I believe
10 you can see the base of the fountain right where
11 I'm standing here. If you can see the fountain
12 and the bench there, if you can just look at the
13 view that you have of the development from here,
14 and the covering of the trees and the like.

15 MR. DOOLIN: I'm going to ask that you
16 make observations of the area we're standing in
17 now, the proximity of this area to the houses on
18 Goodenough Street at the end and the view of the
19 windows that you may observe on the back of those
20 houses.

21 MR. FLAHERTY: Just the sight lines
22 from the houses.

23 MR. TOCHKA: If you could just walk
24 here back to the bus.

1 Ladies and gentlemen, we're all set
2 with the development and McKinney Park. We are
3 now going to get on the bus and go down the
4 street. I'm going to ask you to pay attention as
5 we're going down the street to the distance from
6 here to the corner where you see Store Twenty-
7 Four on your righthand side which we'll stop,
8 we'll point it out to you, and on your lefthand
9 side you'll see the Scrub-a-Dub car wash, and
10 then we're going to turn the corner, and as we
11 turn the corner, you'll see a Dunkin Donuts on
12 your righthand side. I ask you to pay attention
13 to that. Again, we'll point it all out, but just
14 in terms of the distance. Thank you.

15 Ladies and gentlemen, I ask you to take
16 notice on your righthand side, there's a Store
17 Twenty-Four, the parking lot, and there's a
18 stipulation it goes onto Market Street. I ask
19 you to take notice of, on your lefthand side, the
20 Scrub-a-Dub here, to the particular stall, the
21 particular first stall, the proximity between the
22 Store Twenty-Four and the first stall of the
23 Scrub-a-Dub.

24 Ladies and gentlemen, I'm going to just

1 ask you to pay notice now to the Dunkin Donuts on
2 your righthand side and to the intersection here
3 of Market Street and North Beacon Street. We're
4 going to take then a left and as we take a left,
5 I'm going to point on the lefthand side to a
6 dinette there called the Pig and Whistle.

7 Now, ladies and gentlemen, as you can
8 see on your lefthand side, the diner, the Pig and
9 Whistle, and if you'd just look at that in terms
10 of proximity as we're coming around the block to
11 the Faneuil development where we just came from.
12 I'd ask you also to take notice of the pay phones
13 that are right in front of the Pig and Whistle
14 there. As we pass it, you'll see them on the
15 lefthand side right by where the newspaper stands
16 are.

17 Ladies and gentlemen, what I'm going to
18 ask you now to do is to pay attention to,
19 actually, the scene on your lefthand side, the
20 play area that we were just spending all the time
21 in. If you can also look at 282, the building
22 here on my righthand side, and 280 which is the
23 building on the lefthand side, to the pathway
24 that's in between those two. Particularly, I

1 want you to pay attention to the fact that 282,
2 the pathway that is in between the two buildings,
3 how it then loops into 282, into the courtyard
4 area of 282. I want you to pay attention to the
5 distance from there to the street.

6 MR. DOOLIN: I want you to make
7 observations, if you would, as we drive by with
8 the Faneuil development on our left, about the
9 parking lot and the businesses that are next to
10 the parking lot and the end of the Faneuil
11 development after 282.

12 MR. FLAHERTY: And I would ask you to
13 note as we pass on your left the sign that
14 declares Fines Towing.

15 MR. TOCHKA: Ladies and gentlemen, I'll
16 just make it brief. 280 is on your lefthand
17 side, this building here, 282B, this building
18 here, there is a pathway in between. The pathway
19 leads to a courtyard which is in between, which
20 is back, in back of 282 which is this little
21 courtyard which you can see here. I'm going to
22 ask you also just to pay attention to how this
23 street over here, Vineland Street, the view you
24 have of the street to 282.

1 I'm also going to ask -- we're going to
2 leave here. We're going to go to Bigley Street -
3 - I'm sorry, Dunboy Street so we're going to go
4 up, take a left onto Goodenough Street which is
5 the street that we pointed out when we first got
6 off the bus. We're going to go right down the
7 street to Faneuil Street. I'm just going to ask
8 you to pay attention, in terms of the distance
9 from the Faneuil developments to the location
10 that we're going now, Dunboy Street.

11 Ladies and gentlemen, I just want you
12 to take a quick note, on your lefthand side, the
13 Kiki's Market there. Ladies and gentlemen, I'm
14 going to ask you to take note of this particular
15 house here on your lefthand side which is, we are
16 now on Dunboy Street, being 74 and 76.

17 Ladies and gentlemen, I'm just going to
18 ask you to take note on your righthand side of
19 this particular variety store, Brooks Variety
20 Street. We are now on Brooks Street, and of the
21 phones that are in front of Brooks Variety Store.

22 Ladies and gentlemen, what I'm going to
23 ask you to do is take notice of, on your
24 righthand side, Rogers Park, on Howell. The

1 street on the other side, we're going to loop
2 around. We'll be on the other side.

3 MR. DOOLIN: I'm going to ask that you
4 make observations, if you would, as you look out
5 the window, of the area of Rogers Park, to look
6 at any apparatus that you might see within the
7 park. I'd ask you that you look at the proximity
8 of the houses that ring the park.

9 MR. TOCHKA: I believe what we're going
10 to do, we're going to go down the street here,
11 take a right which will be the school on the
12 lefthand side, then we'll loop around to come to
13 the other side of the park.

14 Ladies and gentlemen, I just want to
15 point out the other side of Rogers Park, in
16 particular the baseball diamond area here, and
17 that's it. Ladies and gentlemen, what we're
18 doing right now is just to give you a view of the
19 perspective from Rogers Park to Dunboy Street,
20 there's Kiki's Market so we come back to Kiki's
21 Market, so I just ask you to pay attention in
22 terms of the distance from Kiki's Market to
23 Dunboy Street where we went, where the house was
24 that I also showed you and Rogers Park which was

1 up the street. And at this point we're going to
2 go now to Watertown and to the Arsenal Mall.

3 Ladies and gentlemen, I just want to
4 point out that we are now in Watertown. We're
5 now in the Arsenal Park. I just wanted to point
6 out the swing sets on your righthand side.

7 I'm just going to ask you to take
8 notice on your lefthand side there's a
9 restaurant. As you can see from the sign, it's
10 called Wadi's Restaurant in Watertown. Thank
11 you.

12 MR. FLAHERTY: I'd also ask you to note
13 that it's also a nightclub, ladies and gentlemen.

14 MR. TOCHKA: And that's it, ladies and
15 gentlemen. We're back to the courthouse.

16 THE COURT: Ladies and gentlemen, we're
17 going to take the luncheon recess now so if you
18 want, you do not have to return to the
19 courthouse. You may go take your lunch. Just be
20 back, please, at the jury room by quarter past
21 two. Thank you very much.

22 (Whereupon, the proceedings were
23 recessed on the bus at 1:15 o'clock p.m., and
24 reconvened in the courtroom at 2:25 o'clock p.m.,.

1 THE COURT: Ladies and gentlemen, thank
2 you very much for your attention this morning.
3 We will be right with you to begin the trial
4 formally. Yes?

5 (Whereupon, the following discussion
6 occurred at side bar:)

7 MR. TOCHKA: Your Honor, in terms of
8 sequestration, Mr. Flaherty asked me if I had any
9 objection to his client's mother in the
10 courtroom. She is a tangential witness. I said
11 I don't have any objection to that and there is
12 no objection from both counsel for the victim's
13 family to be in the courtroom as well. And the
14 third was Alan Tate. He is the father of Joleena
15 Tate that, once he testifies, that he be allowed
16 to stay. It's agreed that he would be allowed to
17 remain for his daughter's testimony after he
18 testified.

19 THE COURT: For the record, I am
20 allowing Sergeant Detective Coleman to assist you
21 at counsel table.

22 MR. TOCHKA: Thank you, Your Honor.

23 (Whereupon, the discussion at side bar
24 was concluded.)

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THE COURT: Ladies and gentlemen,
before we listen to opening statements, I want to
take a few moments to explain some matters to you
which will hopefully assist you in understanding
the trial as we proceed. I want to begin with
the indictments which the clerk read to you
before we went on the view this morning. Those
are the formal criminal charges that the
Commonwealth makes.

In this case there are several
indictments, several charges against these two
defendants. Essentially, those indictments
against each defendant are charging them with the
crime of first degree murder, there are two
counts of armed robbery, there is, with respect
to defendant Tanzerius Anderson, a charge of
intimidation of a witness, a charge of unlawful
possession of a firearm. With respect to
defendant Anderson, he also has an unlawful
possession of a firearm charge as well as the
armed robbery and the first degree murder charge.

Now, it is important you understand
that these indictments are the manner by which
the Commonwealth informs an individual that he or

1 she is being charged with the commission of a
2 crime. It is not any evidence of either one of
3 these defendants' guilt or any basis from which
4 you can infer their guilt. It's the formal
5 charge that lets the person know the crime that
6 he or she is being accused of committing.

7 It will be up to the Commonwealth in
8 the course of the trial to prove the guilt of
9 each defendant on these charges beyond a
10 reasonable doubt and the defendants, like anyone
11 charged with a crime, are presumed innocent until
12 proven guilty. At no time do they have any
13 burden or responsibility to prove anything, to
14 say anything, to put on any evidence, to take the
15 stand.

16 When I've completed my remarks, you are
17 going to listen to the opening statements or
18 statement of the Commonwealth and then the
19 defendants have an opportunity if they would like
20 to make a statement through their attorneys but
21 they are not required to do it. Now, the purpose
22 of opening statements is to give you a preview of
23 coming events, essentially laying out for you the
24 evidence that the Commonwealth hopes to put

1 before you. It's really alerting you to the
2 substance of the case and what you'll be hearing
3 throughout the course of the trial by way of
4 witnesses' testimony and the exhibits. Exhibits
5 can be anything, an item of physical evidence, a
6 document, medical record, photograph, anything of
7 that sort.

8 Now, after the Commonwealth has
9 concluded its statement, the defendants, as I
10 said, through their attorneys are given a similar
11 opportunity but keep in mind there is no
12 obligation on them at any time to make a
13 statement or to do anything in this case.

14 After the opening statement or
15 statements have been made, the Commonwealth goes
16 first in its presentation of the evidence. There
17 will be witnesses called. Any of them, of
18 course, are subject to be cross examined by
19 defense counsel. There will also, as I
20 indicated, be exhibits introduced. At the
21 conclusion of the Commonwealth's case, each
22 defendant is given an opportunity if he would
23 like to call witnesses and to introduce exhibits
24 but is under no requirement of any kind to do

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that.

At the end of all of the evidence, after you have heard all the witnesses and all the exhibits have been put before you, the attorneys get their second opportunity to address you directly. At that time it's called closing argument. It is called that because the attorneys get to summarize the evidence, characterize it in a way that's favorable to their client, pull it together, in other words, and urge upon you certain conclusions and judgments they hope you will draw.

Now, it is very important you listen carefully to everything that goes on. Keep in mind that with respect to the opening statements and closing arguments made by the lawyers that that does not --- those events do not in any way constitute evidence. Evidence in this case is going to come in through what the witnesses tell you, their actual answers, together with any exhibits.

After the arguments have concluded, it is my job to explain to you the law which applies to the case. I will be explaining to you what

1 the elements of each one of these crimes is, in
2 other words, what the Commonwealth has to do to
3 prove the defendants guilty beyond a reasonable
4 doubt, what we mean by the standard of proof
5 beyond a reasonable doubt, and some other matters
6 about which you'll need to know in order for you
7 to render your verdict.

8 When I am done, it becomes your turn to
9 go to the jury room, to carefully consider and
10 compare all of the evidence, sort through it, and
11 to determine whether the Commonwealth has, on
12 each one of these indictments, proven the
13 defendants' guilt beyond a reasonable doubt.
14 Your verdict must be based solely on the
15 evidence, that is, what is given to you here in
16 the courtroom, assisted by whatever observations
17 you made on the view this morning. It is
18 impermissible for you to consider anything other
19 than what has been given to you here through the
20 witnesses and the exhibits.

21 It is very important that you keep an
22 open mind until you get to the jury room because
23 until I tell you to go decide the case, it is not
24 ready for your judgment and that is because you

1 need to have all the evidence put before you, the
2 arguments made, as well as my instructions on the
3 law before you can proceed to render your
4 verdict.

5 The job of the attorneys is to present
6 the case on behalf of their clients. Mine is to
7 make sure that there is a fair and orderly trial
8 and, as we proceed throughout the trial, I'm
9 going to be giving you some additional
10 instructions which will hopefully assist you in
11 understanding what's going on.

12 At the conclusion of the opening
13 statements I'm going to have distributed to you
14 some materials, paper and pencils. The reason
15 I'm doing that is to give you an opportunity to
16 take notes if you would like to do so of the
17 evidence. You may use those notes at the end of
18 the case when you're deliberating to recall any
19 testimony or evidence, to assist you in
20 remembering what was said or what was done in the
21 courtroom.

22 You are not required to take notes and
23 if you don't, please don't feel that your memory
24 is any less good than the juror who has taken

1 notes or that you are not as qualified to render
2 a verdict as the juror who has, and if you do
3 decide to take notes, please don't feel that you
4 have a verbatim transcript or that you are in a
5 superior position to decide the case. It's
6 really an individual matter and that's the
7 purpose for taking notes, it is simply to help
8 you recall what was done during the trial because
9 there will be no typed transcript to give you at
10 the end.

11 Again, we want to thank you for your
12 continued attention. We are at this time going
13 to listen to the opening statement which will be
14 made on behalf of the Commonwealth by Mr. Tochka.

15 MR. TOCHKA: Thank you. Good
16 afternoon, ladies and gentlemen. Let me
17 reintroduce myself. My name is Bob Tochka and
18 I'm an assistant district attorney and I
19 represent the people of Suffolk County. It is my
20 responsibility to present to you the evidence
21 against Tanzerius Anderson and Jason Robinson,
22 both charged with the first degree murder of Iman
23 Yazbek in March of the year 2000. It is my job
24 at this time to give you an overview, what I

1 suggest is the evidence that you will be hearing
2 in connection with this case.

3 We just came back from the view and, as
4 you recall, when we got off the bus we walked
5 down that driveway. Back in March, 2000, March
6 28 of 2000, Iman Yazbek drove down that driveway
7 and never drove back and never came back because
8 back in March of the year 2000, Tanzerius
9 Anderson, armed with a three fifty-seven magnum,
10 along with his good life-long friend, Jason
11 Robinson, during the course of robbing this
12 thirty-five year old man, put the gun to his
13 face, virtually point blank, a three fifty-seven,
14 pulled the trigger, and basically annihilated the
15 right side of Iman Yazbek's face, and then they
16 fled.

17 So what happened on this particular
18 night? How did it lead up to that particular
19 incident? Well, this is what I'd suggest is the
20 evidence you are going to hear. On that night
21 Edward Laureano, about four o'clock in the
22 morning, a man who worked out in Gloucester, he
23 has his family who lives in Brighton in the
24 development on the second floor of 89 Faneuil,

1 the first building that we went into, he came
2 home that night because he was separated from his
3 wife and his job is, basically he would leave
4 work, get off of work, come home, relieve his
5 wife so that she then could go to work in the
6 morning because he worked at night.

7 As he's walking down that driveway,
8 just as you did today, as he turned the corner,
9 he noticed a man and a car. The car was parked
10 right in front of that building, right in front
11 of the door. There was a man, he saw legs
12 sticking out against the wall. He thought it was
13 a set-up. Edward Laureano looked around. He
14 went in back where he thought the first place was
15 that someone might be hiding to do something to
16 him. He went in the back of the area where that
17 dumpster is, the fence, and he's looking around.

18 You'll hear Edward Laureano is an ex-
19 Marine and is about -- you'll hear that he is an
20 Ex-Marine and he was very concerned as to what he
21 saw. He didn't know if it was a set-up. He
22 didn't know what was going on. He didn't see
23 anybody, so he walked a little bit closer and as
24 he got upon the body, he saw the body of Iman

1 Yazbek laying there on his back, one arm on his
2 chest, the other hand out, a pool of blood going
3 down the driveway, going down the slant that I
4 pointed out at the beginning when we were at the
5 view. He looked around some more, concerned that
6 something was going to happen, concerned that now
7 he was really -- that the killers were right
8 around the corner.

9 He then walked -- he didn't want to go
10 into that side of the building because he didn't
11 know what would be in that hallway, but that was
12 the hallway that he had to go in, that's the
13 hallway where his children were upstairs, so
14 instead of going in that hallway, he walked in
15 the path going down and looped around and came in
16 the back way, the other way that we walked out.
17 As he's walking in, he's checking, he's looking,
18 he's trying to be careful, he's looking through
19 the walls, he's looking past the wall.

20 As he gets to the first floor landing
21 by that little door on the lefthand side that I
22 pointed out to you, he looked at the stairs up
23 top, he looked at that window that I pointed out
24 to you to look at on the second floor because

1 he's looking for a reflection. He wants to see,
2 because as he's looking up the stairs, he can see
3 the reflection of the second floor landing. He
4 wants to see if there's anybody there that is
5 going to do something to him. He doesn't see
6 anything. Slowly he goes up inside. First thing
7 he does when he gets inside that house is he
8 checks on each one of his children, he goes in
9 the room of each child and checks to make sure
10 that that child is safe. He then called the
11 police.

12 The police come on the scene. You'll
13 hear from the police officers who got there the
14 same time as the EMT's. When the EMT's arrived,
15 they looked at the body of Iman Yazbek. They did
16 a quick pulse. They knew that the man was dead.
17 You'll hear that then Sergeant Coleman who is
18 sitting with me at the table arrived on scene.
19 They do a canvass. They do an investigation.
20 They knock on doors, They ask people if you saw
21 anything. They talk to various people. They
22 look around, they look at Iman Yazbek, going
23 through his pockets.

24 At this point in time, when Sergeant

1 Coleman is on that particular crime scene, you'll
2 learn that they did not know that the man had
3 been shot because all they saw was his face
4 peeled off. They didn't know what could have
5 caused that, that severe damage to somebody's
6 face. It wasn't until the medical examiner
7 arrived on scene and the medical examiner turns
8 the body over that they see an exit bullet wound
9 in the side of his neck, two inches below the
10 ear.

11 So the bullet had gone through his
12 face, you'll learn from the medical examiner, at
13 point blank range, an inch below the right eye,
14 went through his face, down through his palate as
15 if the person is holding the gun in this fashion,
16 down through the roof of his mouth. It then went
17 through his upper jaw, shattering his upper jaw,
18 going into and hitting his lower jaw bone. The
19 bullet then ricocheted back and out his neck and
20 it wasn't until the time when the medical
21 examiner is on scene and they see the hole in the
22 back that they determine that this was a gunshot
23 wound.

24 They also, when they're on scene now,

1 check, after they've taken the photographs, check
2 to see for identification on the individual.
3 There is no wallet on him. There is no
4 identification. There's no money on him. There
5 is nothing on him to identify who he is. The
6 police then continue their search. They look for
7 ballistics evidence, to see if there's any shell
8 casings or the like.

9 You should hear from the ballisticians
10 that when a revolver is fired, sort of like a
11 western gun with a cylinder, when a revolver is
12 fired, the bullet comes out and the shell remains
13 inside that revolver. When a semiautomatic gun
14 is fired, you will learn that sort of like -- the
15 semiautomatics are similar to what the police
16 officers use, that when that gun is fired with a
17 square handle, the shell casing shoots out, the
18 bullet comes out the barrel and the shell casings
19 kick out. There are no shell casings at the
20 scene. There's no shell casing, suggesting that
21 a revolver was used in this case. 357

22 They continue the investigation and
23 they talk to a number of individuals. They talk
24 to a Heather Coady because an individual says

1 Heather Coady -- they knocked on doors and an
2 individual says, yes, at about twelve o'clock on
3 March 27 I heard a loud bang and you'll hear that
4 many individuals that the police questioned that
5 night said, I heard a loud bang, I went back to ^{who is}
6 sleep. One particular lady says, I heard a loud ~~this~~
7 bang, I looked out and I saw Heather Coady with
8 another individual. You'll hear that the police
9 then go and talk to Heather Coady and she is
10 reluctant, she does not want to talk to the
11 police, she does not want to go to the station
12 with the police, she does not want to cooperate
13 at all with the police.

14 The police continue their investigation
15 and they speak to, about seventy-two hours later,
16 and that morning actually, they speak to also
17 Eddie Gauthier. Eddie Gauthier says, I was out
18 there in the area of the play area, the area that
19 we were today, I didn't see anything. There is
20 this loud bang. What happens then is about
21 seventy-two hours later, Eddie Gauthier, who
22 lived in the development for eighteen years, who
23 knows Heather Coady, who knows Jason Robinson,
24 and is good friends with Jason Robinson, who had

1 recently been introduced by Jason Robinson to an
2 individual that Jason Robinson referred to as
3 Tee, and referred to him as his cousin.

4 Eddie Gauthier contacts the police. He
5 goes himself to the police station, to the D-14
6 Brighton police station. He's twenty-three years
7 old. He goes with his mother to the police,
8 station. Sergeant Coleman is called on the phone
9 that there is an individual that wants to talk to
10 the police. Sergeant Coleman tells the D-14
11 police officers, bring him down. I'll come over
12 to the homicide unit, bring him down to the
13 homicide unit and we'll interview him. He comes,
14 Eddie Gauthier, and he goes with his mother to
15 the homicide unit and this is what he tells the
16 police.

17 He says, that night on March 27 I was
18 in my apartment and I was with Heather Coady, I
19 was with Jason Robinson, and I was with a person
20 I know as Tee, and I was also with a person I
21 know as Joleena. Joleena, you'll hear, lives on
22 Dunboy Street, 74 and 76, that red building that
23 we went to. He said in his statement, and he'll
24 tell you, Joleena Tate, I've known her then about

1 three years, she lives not in the development,
2 she lives up in the area of Oak Square. That is
3 the Dunboy Street area.

4 He says that night at some point in
5 time Tanzerius Anderson, who you'll hear at that
6 point was nineteen years old, going on twenty,
7 Joleena Tate is sixteen years old, about to turn
8 seventeen, that Joleena Tate and Tanzerius
9 Anderson left, they left the development.

10 Shortly Tanzerius Anderson came back. At some
11 point while Tanzerius Anderson comes back to
12 Eddie Gauthier's apartment, that's 215, the
13 building above where the bicycle was that I
14 pointed out in the corner by the parking lot,
15 they come back to his apartment. In the
16 apartment is Heather Coady, Jason Robinson, Tee,
17 and Eddie Gauthier.

18 At some point Tee says, I have to use
19 the phone. Eddie Gauthier's phone does not work
20 so they suggest to him, go to the Pig and Whistle
21 around the corner and use the phone that's over
22 there. As he's leaving, Jason Robinson says to
23 him; hurry up, hurry up, if you want to meet
24 somebody. Tanzerius Anderson leaves. At some

1 point Eddie -- Heather Coady then leaves as well
2 and she goes to that area next to the play area.
3 One of the buildings across at 282, I believe it
4 is, she goes into her house. She's seventeen
5 years old.

6 Eddie Gauthier comes outside to the
7 play area and this is late into the evening now,
8 and he's sitting at the table at the play area.
9 Heather Coady comes out and they're sitting there
10 and as they're sitting there, and they'll tell
11 you that they are smoking marijuana as they're
12 sitting there, Eddie Gauthier turns because he
13 hears a noise, he hears a banging and clanking
14 noise and it sounds like someone is up against
15 the fence area. He turns, he looks, he sees
16 Jason Robinson, in the dead of night, going back
17 and forth in that little area between those two
18 spaces, between the dumpster and where the trucks
19 are in that fenced-in area that we went into.
20 He's going back and forth.

21 He's getting kind of concerned, Eddie
22 Gauthier, at this point, what's going on here.
23 You'll hear then shortly after that Eddie
24 Gauthier hears a whistle. Now, he is in the play

1 area and he turns and he turns and looks and he
2 sees the person who's whistling and it's Joleena
3 Tate. Now, Joleena Tate had already gone home.
4 She doesn't live in the development. He's
5 looking at her. She whistles and then she walks
6 down that pathway from 89, down the pathway, and
7 she sees in the play area Heather Coady. Heather
8 Coady whistles back. Joleena says to Heather
9 Coady, where have you been, Heather, I've been
10 waiting for you, I've been looking for you, words
11 to that effect. Heather says, what are you
12 talking about. She starts looking toward
13 Joleena.

14 Now, eleven thirty is important because
15 that's approximately the time when all this is
16 starting to transpire, because eleven thirty was
17 the same number that was placed in the pager just
18 hours before while Jason Robinson, Heather Coady
19 and Eddie Gauthier were in the apartment, Eddie
20 Gauthier's apartment. About nine thirty, ten
21 o'clock a pager goes off and Heather is holding
22 onto the pager and you'll hear that Heather
23 regularly is the girlfriend of Jason Robinson and
24 it's Jason's pager, they share the pager. You'll

1 hear the reason why Heather uses that pager at
2 times and you'll hear at times it is because of
3 the fact that she would sell drugs. She would
4 sell marijuana, that would be a number that she
5 would use for people to page her.

6 The pager goes off. She looks at the
7 pager, says, eleven thirty. She yells out to
8 Jason who is in the other room, Jason, Jason,
9 does eleven thirty mean anything to you? He
10 says, oh, yeah, yeah, and then he walks out of
11 the apartment. Shortly after he had walked out,
12 Eddie Gauthier walked out and then Heather walked
13 out. Then they go into the play area, Eddie and
14 Heather go into the play area. They hear the
15 banging back and forth and this man, Jason
16 Robinson, clanging back and forth between the
17 fences. They hear the whistles, Joleena coming
18 down the walkway, Heather walking towards
19 Joleena.

20 As they go towards that walkway, you'll
21 hear that what happened next is that there is a
22 loud bang and you'll hear from the person who
23 lives at the building, right where that tree is
24 that I told you to look at on the first floor,

1 and his name is Oscar Vega, and he'll tell you
2 that before the shot went off he was working on
3 his computer. He was going to Framingham State.
4 He looked out the window and he saw Heather meet
5 up with Joleena right by where that tree was. He
6 saw Heather was walking in the direction of 89
7 and then meeting up with some girl and started
8 walking back towards the play area, consistent
9 with what Eddie will tell you, and what Heather
10 will tell you. He'll say while those two girls
11 were walking in the direction of the play area he
12 heard a bang and that bang came from the area of
13 89 Faneuil Street.

14 Eddie will tell you next what he saw as
15 he is in the play area. He's walking away
16 because now something is going on, something is
17 going on here and Eddie knows it because he's
18 seen Jason going back and forth, running back and
19 forth, banging the fence. He hears Joleena
20 whistle to Heather and Joleena, she had just left
21 the development hours before and talks about,
22 something about, oh, I'm supposed to meet you,
23 where have you been. He starts walking. He
24 hears the bang. He turns, he sees, after the

1 bang, thirty seconds or so, he sees Tanzerius
2 Anderson and Jason Robinson running out of the
3 back entrance of 89, not the entrance where you
4 went, where we first went but you walked through
5 the hallway and you came to the other side of the
6 building. They're at the other side running
7 away, having cut through that hallway. He then
8 sees Jason Robinson and Tanzerius Anderson enter
9 the parking lot and they get into a car and
10 Joleena Tate gets into the car and the three take
11 off.

12 You'll hear that during this taped
13 interview when Sergeant Coleman talked to Eddie
14 Gauthier, he says to Eddie Gauthier, did you know
15 a person by the name of Iman Yazbek, and Eddie
16 Gauthier says no, so what Sergeant Coleman does
17 is, he shows Eddie Gauthier a picture, a photo
18 picture, a picture that's taken for a
19 registration, a registration for a car, a
20 license, a driver's license, a blow-up. He shows
21 it to Eddie Gauthier, do you know this guy.

22 Eddie Gauthier is twenty-three years
23 old. He's with his mother. The first time he
24 sees the picture, because at that point it wasn't

1 out there in the public in terms of who had been
2 shot, he sees the picture of Iman Yazbek, twenty-
3 three years old with his mother, and is flooding
4 with tears, uncontrollably crying, as he sees
5 that picture, so much so that the sergeant has to
6 go into another room to get him a tissue box and
7 can hear the crying down the hallway.

8 As he continues to sob, Sergeant
9 Coleman asks him, why are you crying? Eddie
10 Gauthier says, I didn't know that that's the man,
11 I know him as Yaz, I know him as a man who lived
12 in Watertown, I know him as the man that when I
13 was fourteen or fifteen years old, that he would
14 come into the development because he had a
15 landscaping business and that he would hire the
16 little kids and give the kids a chance to make a
17 buck, that he'd hire his brother, that he was a
18 nice guy. He'd also been good to him. I didn't
19 know that was the guy.

20 What happens next? They said -- Eddie
21 Gauthier then goes home after the taped statement
22 and at this point in time the police now start to
23 look for Joleena Tate in order to question her.
24 And you'll hear from Joleena Tate and you'll hear

1 from Heather Coady and this is what you'll hear
2 from Joleena Tate. You'll hear that she met
3 Tanzerius Anderson back in February of the year
4 2000. She was sixteen going on seventeen, he was
5 nineteen going on twenty, that she was, in
6 essence, infatuated with him. He was a good
7 looking guy, he was handsome, he had a job, he
8 got up regular hours and you'll hear from Joleena
9 Tate that she had been -- you'll hear from
10 Joleena Tate in terms of what she thought about
11 Tanzerius Anderson, how she just became head over
12 heels over him.

13 You'll hear that while she went out
14 with him a couple of times, they talked and he
15 talked about, boasting or whatever, but he talked
16 about, you know, I have plans, I have plans, and
17 I have plans to start up a group, a gang, I'm
18 going to call it the commission, the plan, what
19 I'm going to do, we'll get some guns, we'll rob
20 some drug dealers, we'll have some kids in
21 different schools, each high school. I'm going
22 to have a gang, the commission will have jackets
23 and stuff.

24 And here's a sixteen-year-old girl

1 infatuated. It's like how this man has his act
2 together, he knows what's going on. She says,
3 fine, I know where there is a gun. He says,
4 really? Where is there a gun? Well, she says, I
5 know my father has a gun up in New Hampshire. He
6 says, do you think we can get it? Well, yeah,
7 we can maybe go up to New Hampshire, he has a
8 condominium up there. So they plan it and they
9 go up to New Hampshire, and this is days before
10 the murder. They drive up to New Hampshire,
11 drive up to Conway, New Hampshire. They break
12 into her father's house. They steal her father's
13 three fifty-seven magnum.

14 They then check into a hotel that night
15 and you'll hear that Tanzerius Anderson checked
16 in and then came in the car and said, I think I
17 made a mistake. She said, what are you talking
18 about. He said, I signed my own name, maybe I
19 shouldn't have done that because, you see, he had
20 been very careful up to that point in time
21 because she'll tell you that when he went to New
22 Hampshire with her, he had a change of shoes
23 because he was concerned about footprints, he had
24 gloves, he had a bracelet that says, Tanzerius

1 Anderson and before they went into the house he
2 took the bracelet off and put it into his pocket.
3 He had a flashlight with him going up there. He
4 had a glass cutter in order to break in. He had
5 a crowbar. He was all set, but he made a
6 mistake, signed his name.

7 On the way back home from New
8 Hampshire, he continued to talk about this group
9 and, you know, we could really do stuff, a girl
10 would be good for this group because a girl could
11 set up guys, a girl would be good bait to get a
12 guy. She's sixteen years old. She then sees him
13 that Tuesday night, she sees him at Eddie
14 Gauthier's apartment and she says to him -- when
15 he says to her, I'm leaving, I'm going to work
16 tomorrow, Tanzerius Anderson says, I'm going to
17 work tomorrow, she says, why don't you stay. He
18 says, no, I got to get up early. She says, well,
19 what about doing a robbery like you talked about.
20 He says, sure, you have somebody in mind? Yeah,
21 I know this guy.

22 The sixteen-year-old girl trying to
23 keep this man in that particular apartment with
24 her that night. Well, who? Well, the guy, I

1 know Iman Yazbek, he's a nice guy, always has a
2 lot of money on him, he's a landscaper, he would
3 be an easy person because he would give up the
4 money, he wouldn't put up a fight, I can get him
5 to -- I can get him to pick me up and take me to
6 a restaurant. Oh, not a bad idea. So Tanzerius
7 Anderson then calls out to Jason Robinson who is
8 in the room and at Eddie Gauthier's apartment and
9 says to Eddie Gauthier -- and says to Jason
10 Robinson, they're lifelong friends, they have
11 known each other since kindergarten, Tanzerius
12 Anderson and Jason Robinson. Tanzerius Anderson
13 says to Jason Robinson, are you down for a
14 robbery? Jason says sure.

15 So Joleena will tell you that then she
16 and Jason Robinson go to her house. She calls up
17 Iman Yazbek. Iman Yazbek says, I'm at a
18 restaurant, Wadi's. She says, I'm having trouble
19 with my parents, I'm having trouble, how about if
20 we meet, can you pick me up. He says, yeah,
21 sure, I'll pick you up.

22 You'll hear that Iman Yazbek helped out
23 kids in the neighborhood, helped out his family.
24 You'll find that Iman Yazbek had a landscaping

1 business, that he came to this country thirteen
2 years ago back in 2000, that he started his own
3 business, that he was having his brothers come
4 over from Lebanon to help him out, that he hadn't
5 seen his brother for thirteen years and his
6 brother had just come four months before his
7 murder. One came and the other brother was on
8 his way, was in Florida visiting some friends,
9 about to come up to see his older brother, Iman
10 Yazbek, and that while he was in Florida he heard
11 that his brother was murdered, never got to see
12 his brother. You'll hear all about Iman Yazbek.
13 He then says, sure, I'm at a restaurant here,
14 I'll just bring you over to the restaurant. She
15 says, fine.

16 She then sets it up and she will tell
17 you, she will tell you that she set it up. She
18 will tell you that she is the one who asked
19 Tanzerius Anderson if he wanted to do a robbery,
20 she was the one who suggested the location and
21 she was the one who brought him there, and you'll
22 hear why she is saying those things and you'll
23 hear the agreement that she has in connection
24 with this case, and you'll hear that the

1 Commonwealth, in exchange for her testimony, is
2 recommending that she be sent to state prison
3 after she testifies for up to ten years.

4 She then meets up with Iman Yazbek.
5 She talks to him. She's at the restaurant. She
6 uses his cell phone while at the restaurant. She
7 pages the pager that Heather Coady has, Jason
8 Robinson's girlfriend, eleven thirty. She'll
9 tell you that then she brought Iman Yazbek back
10 by saying, can you drop me off at my girlfriend's
11 house, and he said, yes, and he brought her down
12 that driveway. She'll tell you that she got out
13 of the car, got out of the door. The deal was
14 that they were supposed to be waiting in the
15 hallway.

16 You'll hear that Jason Robinson lived
17 in that building, that hallway has no apartment
18 in it. You saw the other apartments in the other
19 buildings. That building, there is no apartment.
20 There is a maintenance area there. She gets out
21 of the car. Where are they? They're not around,
22 Jason and Tanzerius. The deal was, she'll tell
23 you, that she was going to say, once they came
24 and grabbed Iman, that she was going to say, oh,

1 my God, it's a robbery, and she was going to take
2 off so that when she talked to Iman later on, she
3 would say to him, geez, I don't know what the
4 heck just happened, geez, you got robbed, but it
5 didn't work like that because she went into the
6 hallway, she knocked on that door, the door, the
7 first door that I pointed out when you go into
8 that hallway. She knocked on the door, She
9 knows that that's a dummy door. She knows it
10 doesn't go to anything. She knows it's a
11 maintenance area, but they are not in the
12 hallway.

13 She thinks it's not going to happen so
14 she walks out and as she walks out, as Iman
15 Yazbek is about to leave, these two defendants
16 come from behind the dumpster, come from behind
17 the fences and, as they come from behind the
18 fences, Tanzerius Anderson grabs Iman Yazbek on
19 one side, Jason grabs him on the other side.
20 Joleena starts saying, Heather, Heather, I was
21 trying to meet you and starts walking off
22 quickly, and meets up with Heather Coady.

23 You'll hear that as she's walking with
24 Heather Coady she hears a loud bang. She runs.

1 She sees Jason and Tanzerius running from the
2 building. She gets into a car, Tanzerius
3 Anderson's car, she gets into the passenger's
4 side, Tanzerius gets into the driver's side and
5 Jason Robinson gets into the back seat and there
6 is a conversation that takes place during this
7 ride and you'll hear that discussion, that
8 conversation.

9 What happened, Joleena says, what
10 happened, this was not supposed to be a shooting,
11 the man was supposed to give his money up, the
12 man who would just give you anything, his shirt
13 off his back, would have given up his money, what
14 happened. Tanzerius Anderson says, I got my body
15 for the summer, he's murked, you'll hear the word
16 "murked" means murdered. I got my body for the
17 summer, he's murked. They drive around, they
18 drive through Brighton. They go into Allston and
19 they're driving.

20 Tanzerius Anderson takes out the gun
21 and she sees the gun and she recognizes the gun.
22 It's her father's gun. He takes the gun and he
23 hands it to his friend, Jason Robinson, and as
24 they're driving to a location, Tanzerius Anderson

1 comes upon a fenced in area, pulls the car into
2 the fenced area, it's like a business, commercial
3 slash residential area in Allston, he gets out of
4 the car, gets the gun from Jason and hides it
5 underneath a bobcat, a piece of equipment, gets
6 back in the car. They go on the turnpike and as
7 they're going onto the turnpike, Jason loses his
8 watch. Jason loses his watch and he's thinking,
9 I could have lost it in that struggle.

10 So they go back. The decision is made
11 by Tanzerius Anderson and Jason Robinson, we have
12 to go back. So they go back to the Faneuil
13 development and they go back and they see Heather
14 Coady and they see Eddie Gauthier who are in that
15 park by that water fountain, by those benches in
16 the McKinley Park. The three of them, Jason
17 Robinson, Joleena Tate and Tanzerius Anderson get
18 out of the car, go to the park. Tanzerius
19 Anderson makes a comment to Heather how he got
20 rid of it, suggesting the gun. Tanzerius
21 Anderson says to Heather Coady, you need to go
22 look for a watch, Jason lost a watch. Heather
23 Coady says, what type of watch. Jason Robinson
24 says, it's a Timberland, it's a Timberland watch.

1 So you'll hear what happens then is
2 that they get into the car, Joleena Tate,
3 Tanzerius Anderson, Jason Robinson. Inside the
4 car, Tanzerius Anderson is saying to Joleena
5 Tate, this nineteen-year-old man is saying to
6 Joleena Tate, you know, they're going to find
7 your prints, they're going to find that you were
8 in that restaurant, you got to have a story, you
9 got to come up with a story, stick to a story,
10 say that you just saw the guy at the restaurant,
11 he dropped you off and that's it. Remember,
12 remember, Joleena, they have no witnesses, they
13 don't have a weapon, the police have no
14 witnesses, they have no weapon, stick to the
15 story. Jason Robinson says, you can do it, just
16 stick to the story.

17 They then drive, they drive back to a
18 place in Allston, Tanzerius Anderson gets the gun
19 from underneath that bobcat, gets back in the
20 car, and once again hands off the gun to Jason
21 Robinson. Joleena Tate then has them drop her
22 off over at that red building on the top of
23 Dunboy Street. She gets out and she goes into
24 the building and she sees Eddie Gauthier and

1 Heather Coady. It's her house, it's Joleena's
2 house but Eddie Gauthier and Heather Coady are
3 there. She'll tell you and they'll tell you that
4 Heather Coady made a comment to her, Joleena, we
5 went back looking for the watch, that man's face
6 is blown off, I almost stepped on his body, you
7 guys are in big trouble, you guys better get out
8 of here.

9 The next morning the Boston Police find
10 the body, hours upon hours upon hours, Iman
11 Yazbek's body lay in the back of that driveway.
12 They find the body. They have Eddie Gauthier in
13 seventy-two hours. Eddie Gauthier tells them
14 what happened. They start looking for Joleena
15 Tate. Joleena Tate leaves. She takes off.
16 She's afraid. She knows her involvement. She
17 takes off. She takes off because she gets a call
18 from a friend who says, the police are going to
19 be coming and looking for you, they're going to
20 ask you some questions.

21 So that Thursday when she gets that
22 phone call -- earlier in the morning on that
23 Thursday, hours before she got the phone call,
24 the shooting happened, Monday and Tuesday night,

1 Thursday, we are into Thursday now, she gets a
2 phone call in the morning from Tanzerius Anderson
3 and Tanzerius Anderson says to her, Joleena, we
4 have to meet, we have to get Eddie, we have to
5 get Heather, we have to all meet. He says to
6 her, I'll meet you down the street at Brooks
7 Street. They pick the location. They are going
8 to meet at Brooks variety store, the place where
9 we stopped at the bottom of Brooks Street after
10 going to the red building.

11 They meet in front of Brooks variety,
12 they make phone calls, they are going to hook up
13 with Heather. They go around down the street.
14 They go to the Brighton development, Faneuil
15 development. They see Heather Coady. Heather is
16 with Jason. They get into the car. Now, in the
17 car it's Tanzerius Anderson, Jason Robinson,
18 Heather Coady and Joleena Tate. They drive to
19 the Store Twenty-Four around the corner, stop the
20 car. Tanzerius says to Heather, you got to go
21 get Eddie. Heather Coady, who is seventeen, who
22 is the girlfriend of Jason Robinson who is
23 nineteen, says, okay, and gets out of the car,
24 walks down the street, contacts Eddie Gauthier.

1 Eddie comes out, they want to talk to you.

2 Now, Eddie is terrified now because,
3 you see, Eddie has already talked to the police.
4 Eddie has already been -- this is Thursday
5 morning. Eddie has already gone that Wednesday
6 night into Thursday morning, has already been to
7 the police station, has already given the police
8 a statement. Now he's concerned for his safety
9 because now Heather is saying they want to talk
10 to you. So he walks down the street, tells his
11 mom to call the police.

12 He goes down the street and as they're
13 going down the street, Heather Coady and Eddie
14 Gauthier, they see the car, Tanzerius Anderson's
15 car. It leaves Store Twenty-Four and it goes
16 into the Scrub-a-Dub, that first stall there, so
17 Eddie walks with Heather Coady to the Scrub-a-
18 Dub. Heather Coady gets into the car, Tanzerius
19 Anderson and Jason Robinson get out of the car
20 and they meet with Eddie. What are you telling
21 the police, says Tanzerius Anderson, what did you
22 talk to the police about; have you told the
23 police anything? No, I told them I didn't know
24 anything, told them I don't know anything. Good.

1 Stick to that story.

2 Eddie Gauthier says now that he knows
3 the person who's been murdered, I heard that they
4 got -- that there was no identification on the
5 body. Tanzerius Anderson says, yeah, we got rid
6 of that, we got rid of the wallet, the ID, we got
7 rid of the gun. Eddie Gauthier says, I knew the
8 guy, he was a landscaper, I worked with him.
9 Tanzerius Anderson says, oh, you went to the
10 cops? Eddie Gauthier says, he wasn't a cop.
11 Well, when we had him in the back, he kept saying
12 police, police, police. It was please, please,
13 please with his accent, but this man says that he
14 was saying police, police, police. He said, I
15 thought he was a cop, I thought he was calling
16 for back-up.

17 They then get into the car and
18 Tanzerius Anderson drives to a Burger King. As
19 he's driving that car he continues to say, look
20 out, look out in the rear view mirror. Eddie is
21 sitting there in the back seat scared as a ghost.
22 They go into the Burger King. The only one that
23 eats is this man, Tanzerius Anderson. They then
24 go to Vineland Street, that street that is across

1 from the development that we pointed out after we
2 went to the Pig and Whistle. They stop there.
3 Heather Coady jumps out, goes to her house, more
4 conversation by Tanzerius Anderson and Jason
5 Robinson, I heard that you maybe told a reporter
6 about what you might have seen. Tanzerius
7 Anderson says, I saw it in the paper, you're
8 talking, you're talking to the press, you're
9 talking to the newspapers. Eddie Gauthier says,
10 I told them nothing, I told them the same thing I
11 told the police, I don't know anything.

12 He's already told the police earlier
13 that morning in a taped statement about what he
14 knew but he's not going to tell them what he's
15 told the police. They then say, okay, you're all
16 set. Eddie Gauthier gets out of the car.
17 Tanzerius Anderson says, we'll meet you tonight
18 at eight, eight thirty. Eddie Gauthier goes back
19 home, calls up Sergeant Coleman. Sergeant
20 Coleman says, look, you shouldn't stick around
21 that development any longer. Eddie Gauthier
22 then, for his safety, leaves the development.
23 Eddie Gauthier's mother who lived in that
24 development for years and years, for her safety,

1 is then transferred out of the development.

2 What happens then is, the car is driven
3 with Tanzerius Anderson and Jason Robinson to
4 Dunboy Street to drop off Joleena Tate and to
5 drop off Heather Coady. They then drop them off.
6 After they drop off Heather Coady and Joleena
7 Tate, these two defendants leave. Heather Coady
8 and Joleena Tate go into the house. As they go
9 into the house, at some point in time there is a
10 phone call. It's from a girl named Veronica.
11 She tells Joleena Tate, I just spoke with the
12 police, the police just interviewed me. They
13 have your name.

14 Joleena Tate now is afraid. She calls
15 up -- they page Jason Robinson and Tanzerius
16 Anderson calls back, what's up, what's going on,
17 I just dropped you off, what's happening. The
18 police are going to come, we need to talk, we
19 need to talk. Alright, alright, we'll be over.
20 No, I'm afraid they are going to come here any
21 time now. Alright, alright, where do you want to
22 meet? How about Amy's house? Tanzerius Anderson
23 says, no, no, she's still in school. They agree
24 upon a meeting place, Rogers Park, the park that

1 we went to. Heather Coady and Joleena Tate go to
2 Rogers Park waiting for Tanzerius Anderson and
3 Jason Robinson. Forty-five minutes or so later
4 the car drives up, Tanzerius Anderson's car.
5 They get into the car.

6 Eventually they drive to the Arsenal
7 Mall. Joleena Tate is saying to Tanzerius
8 Anderson, I'm leaving. He says, just stick to
9 the story, stick to the story, if you've got to
10 go, alright, but stick to the story, and if
11 anyone asks you, I don't know you, I don't know
12 you.

13 They go to the Arsenal Mall. They're
14 sitting on the swings, Tanzerius Anderson and
15 Joleena Tate, Jason Robinson and his girlfriend,
16 Heather Coady. There's more questions about what
17 happened. He tells her about what he did. He
18 tells her, I had the gun at his neck, Iman Yazbek
19 is calling for help, no, no, no, begging them,
20 begging them for his life, please, no, he's
21 saying to them, I know people in the development,
22 I'm not a bad man, please, please don't, he's
23 saying to them, and he's shot in the face.

24 The investigation then continues. Now

1 Joleena is on the run and the police are looking
2 for her. They eventually find her and you'll
3 hear where they found here and you'll hear how
4 her father, Alan Tate, how her father who is her
5 legal guardian, had been from January until
6 March. At that point in time they had had a
7 falling out and he'll tell you the reason they
8 had the falling out and he will tell you how he
9 had moved her from school to school to school.
10 He moved her from Edison, he moved her to St.
11 Andrews, I believe it was, in Allston, he moved
12 her to Mount St. Joseph's, another high school in
13 Brighton, and then he moved her to take her out
14 of Boston, -moved her to Maine where he paid
15 twenty thousand dollars in tuition to get her out
16 of the city, and you'll hear that she was
17 expelled in Maine from Fryberg Academy and that
18 January before the March murder when she was
19 expelled, her father had said to her, we're
20 through, I'm not dealing with you any more,
21 you're not my daughter, words to that effect, you
22 can't go on like this, you're not my daughter.

23 So she came back to Brighton, sixteen
24 years old, no school, she wasn't going to school,

1 in January and February, doesn't have her father,
2 doesn't have the person, the only person that was
3 really looking out for her during her lifetime,
4 and she meets up with this man.

5 You'll hear from her father and her
6 father will tell you that after the shooting, as
7 he regularly goes up to the condominium, he went
8 up to the condominium, he found that his gun was
9 missing. The police contact him, the Boston
10 Police. He knew now the police were looking for
11 his daughter. He engaged in a search for his
12 daughter. He's a private investigator. He will
13 tell you he had investigators out there searching
14 for his daughter. When his daughter was finally
15 found, he'll tell you that then he then brought
16 her forward.

17 Now, the police had Eddie Gauthier who
18 is not very good friends with Joleena Tate, who
19 just is an associate, who is telling the same
20 story that Joleena Tate is telling. Now, the
21 next person they talk to is Heather Coady and
22 you'll hear that Heather Coady is questioned and
23 she's brought before a grand jury and you'll hear
24 that Heather Coady does not want to testify, does

1 not want to get involved, does not want to say
2 anything. Remember, I told you from the
3 beginning of the opening statement that Heather
4 Coady, I had said, was very reluctant from the
5 beginning because she is Jason Robinson's
6 girlfriend. She loves him, she does not want to
7 say anything.

8 Months have gone by since this
9 incident. She then tells the police what she
10 knows. She then says to the police, same story,
11 the same facts you will hear from Eddie Gauthier
12 and from Joleena Tate. She adds something,
13 though. She also adds that that night she, too,
14 had a conversation, a conversation with Jason
15 Robinson out by the play area and she'll tell you
16 that Jason Robinson, before this shooting took
17 place, asked her for a knife and she'll tell you
18 that she said to Jason Robinson, no, I'm not
19 going to give you a knife, you're going to do
20 something stupid. He says, no, it's only for
21 show, just give me the knife, it's only for show,
22 and she'll tell you that she gave him a knife
23 that night and she'll tell you what she added,
24 that after the shot went off, after Jason

1 Robinson and Tanzerius Anderson are running
2 through that park, after the shot and after Iman
3 Yazbek lay on that ground, she ran up to Jason,
4 she gave him a kiss, and she said, I love you,
5 and he told her go inside, get in the house. And
6 you'll hear that she was reluctant to testify
7 then before the grand jury, and I suggest that
8 you'll hear that she is reluctant to talk to you
9 here on that witness stand because she still is
10 the girlfriend of Jason Robinson.

11 You'll hear that the investigation
12 continued and the police asked Joleena Tate,
13 where did you get the gun, where did the gun come
14 from, and she admitted, I stole it from my
15 father, I went up there with Tanzerius Anderson.
16 Where did you go up there? Joleena Tate, I went
17 up to the Yankee Clipper motel. You'll hear from
18 Sergeant Coleman that he then drove up to Conway,
19 New Hampshire, checked the Yankee Clipper hotel
20 and checked the receipts, saw the name
21 corroborating what Joleena Tate had said,
22 Tanzerius Anderson, corroborating that weekend,
23 the same weekend that Alan Tate will tell you
24 that his three fifty-seven magnum was stolen from

1 his apartment. That Yankee Clipper hotel is two
2 to three miles away from where his condominium is
3 located. and, she

4 And then you'll hear the police and she sta
5 question Tanzerius Anderson. You'll hear de. get
6 Tanzerius Anderson. You'll hear he had his story
7 down. He thought he had individuals that were any
8 going to corroborate what he was going to say. and he had

9 He had no reason to run because he had nobody
10 pointing him out as far as he knows. And so

11 you'll hear the police questioned him and they he
12 questioned him about New Hampshire and they asked
13 him, have you ever gone to New Hampshire and this
14 was -- they asked him this in April, a week or
15 two after the murder. No -- oh, yeah, I went with I

16 there, I went to Manchester, New Hampshire. J

17 You'll hear how far away Manchester is from hotel
18 Conway. What did you do in Manchester? I went
19 to look for my uncle. Who's your uncle? Uncle

20 Frank, I just went up there looking for my uncle.
21 Did you see him? No, I didn't know where he

22 lives, I didn't have a cell phone, he didn't have
23 a phone, and so, you know, we just decided to

24 come back. over ma

1 Well, who did you go up there with? I
2 went up there with my good friend, Jonathan,
3 Jonathan Simms. So you're up in Manchester, and
4 what did you do then? Well, we were tired so we
5 got a hotel room. You'll hear that Manchester is
6 nowhere near North Conway. And then what did you
7 do after that? Well, then we came home. So you
8 go up to Manchester for your uncle who you don't
9 see, get a hotel room with your friend, Jonathan,
10 and then you came back? Sure, that's what we
11 did.

12 Well, Jonathan was outside when they're
13 questioning the defendant so you will hear from
14 Detective Traylor, they brought Jonathan in.
15 Jonathan, did you ever go up to New Hampshire?
16 Yeah, we went up there, I went up there with
17 Tanzerius. What did you go up to New Hampshire
18 for? I went up, his uncle or his cousin, we went
19 up to see his Uncle Frank. Did you see him?
20 Yeah, we saw him, we were there an hour and a
21 half with him, we spent a hour and a half. Did
22 you ever stay at a hotel with him when you went
23 up there that time or any time? No, I never
24 stayed in a hotel with Tanzerius.

1 You'll hear from Joleena Tate they went
2 up to North Conway, they went up there together,
3 he signed in at the hotel in North Conway.

4 You'll hear, after all the evidence is said and
5 done, ladies and gentlemen, that while there was
6 a series of attempts to cover up this crime by
7 Tanzerius Anderson and Jason Robinson, even to
8 the point where Tanzerius Anderson made a comment
9 to Jason Robinson, is Heather going to stick to
10 the story, do we need to do something to Heather,
11 is she going to snitch, Jason says, no, that's my
12 girl, she's not going to snitch, she's going to
13 be fine. Tanzerius says, alright, if you're
14 vouching for her.

15 Then Tanzerius Anderson, just to seal
16 the bargain with Heather, says to Heather Coady,
17 there's that guy in the newspaper that I heard
18 about is snitching, he's a big shot guy, he's out
19 there snitching on Bulger, you know what I'd do
20 to that guy in the newspapers, if I ever caught
21 somebody that snitched, if I ever saw that guy,
22 I'd kill him. That's intimidation, letting
23 Heather Coady know what he's thinking about
24 should anyone directly or indirectly say

1 something about him.

2 Ladies and gentlemen, that, in sum --
3 and I appreciate your attention and I apologize
4 for the time but it's an important case. It's
5 important for all parties in connection with this
6 case and that, in sum and substance, is what I
7 expect the evidence is that you will receive and
8 after you've heard all the evidence and, based on
9 the evidence, the testimony of Heather Coady,
10 Eddie Gauthier, Joleena Tate, based upon the
11 corroboration of the evidence that you'll hear
12 from a handwriting expert, an FBI handwriting
13 expert that says the writing on that receipt in
14 the Yankee Clipper Hotel is --

15 THE COURT: Move on, sir.

16 MR. TOCHKA: Based on your observations
17 as well of that handwriting, you can compare the
18 handwriting yourself and observe it, based upon
19 all that evidence, I would ask you to find this
20 man, Tanzerius Anderson, guilty of the murder of
21 Iman Yazbek along with Jason Robinson. Thank
22 you.

23 THE COURT: Thank you very much.

24 MR. DOOLIN: May we approach?

1 (Whereupon, the following discussion
2 occurred at side bar:)

3 MR. DOOLIN: Judge, respectfully I
4 object to certain things that were said during my
5 brother's opening. Certain of these things, I
6 would suggest to the Court, inflamed the jury and
7 at this time, even after the government's
8 opening, that Susan Gauthier was moved out of the
9 development for her own safety, that hour after
10 hour Mr. Yazbek lay there on the ground, that one
11 of the Yazbek brothers came from Florida and
12 never got to see his brother, and descriptions of
13 the side of the face being ripped off, that he
14 was begging for his life.

15 Respectfully, based on those things, I
16 move for a mistrial at this point in time. This
17 is the type of rhetoric, I would submit, that is
18 impermissible. I would suggest to the Court that
19 any of these different elements is impermissible,
20 that, taken together and added up in totality,
21 are grounds for a mistrial at this point.

22 MR. FLAHERTY: On behalf of Tanzerius
23 Anderson, I join, Your Honor. I also note that
24 in addition --

1 THE COURT: Try to keep your voice down
2 as much as you can. Thank you.

3 MR. FLAHERTY: I join in his objections
4 and in his motion and I also mention that in
5 addition there was also mention of Edwin Gauthier
6 being in fear for his safety based upon his
7 actions also contributing to this element of
8 inflammatory rhetoric before the jury and I also
9 object to the mention in the opening of any FBI
10 document examiner and I join in Mr. Doolin's
11 motion.

12 THE COURT: Mr. Tochka?

13 MR. TOCHKA: With respect to the FBI
14 expert, I apologize. I didn't know I should not
15 get into it. I quickly turned --

16 THE COURT: It was ultimate opinion to
17 which I interjected, but you did move on.

18 MR. TOCHKA: As to Edwin Gauthier,
19 that's the testimony in terms of what he was
20 doing at that particular time. That's really --
21 I think the jury should be able to hear in terms
22 *testifying* of what was going on in his mind. In terms of
23 the fear of the mother, the mother was moved,
24 what I understand from the defense is that they

1 are going to put this on Eddie Gauthier as the
2 person who actually shot the victim. Well, if
3 he's the actual person who shot the victim, his
4 mother being moved out of the development, the
5 fact that he's concerned for his safety, I
6 suggest is very relevant to his credibility in
7 connection with this case.

8 As to the description of the side of
9 the face being torn off, the Court has seen those
10 pictures. I don't know how else to describe what
11 those pictures depict other than what the
12 witnesses have described it, as if the side of
13 his face were blown off. Those are the facts of
14 the case and, gruesome as they might be, it's the
15 facts of the case.

16 THE COURT: Yes, sir. Anything more?

17 MR. DOOLIN: Judge, in going through
18 Mr. Tochka's point about them being moved out of
19 the development for her fear of their safety,
20 again that is the government vouching for the
21 credibility of this witness and vouching for
22 Eddie Gauthier's truthfulness. Respectfully, I
23 would suggest that that's improper.

24 THE COURT: Alright. I'm denying the

1 motion for a mistrial. Is there any request for
2 a curative instruction?

3 MR. DOOLIN: I would be asking for a
4 curative instruction.

5 THE COURT: Which would be what?

6 MR. DOOLIN: To address these issues
7 that have been brought out about what happened in
8 the hallway, about him begging for his life,
9 about the injuries, about Gauthier --

10 THE COURT: No, sir. I'm not going to
11 go into any individual points that you made. Is
12 there something else that you are proposing? I'm
13 not addressing myself to the evidence or the
14 proposed evidence. Was there some broader
15 concept that you wished me to convey to the jury?

16 MR. FLAHERTY: On behalf of Mr.
17 Anderson, I would ask that you specifically
18 address each of these points that we have brought
19 up with you and explain to the jury that that
20 rhetoric or the mentions are the prosecutor's
21 view of the evidence and they are not to be
22 prejudiced or swayed or biased one way or the
23 other as a result of that. It's simply a
24 statement, not the evidence.

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THE COURT: I'm not giving those instructions. I've already instructed the jury that opening statements are not evidence, that they are not in any way -- they are not in any way to base the verdicts on the openings or closings, but I will reiterate that. Is there anything you want to say?

MR. TOCHKA: No.

(Whereupon, the discussion at side bar was concluded.)

THE COURT: Ladies and gentlemen, we are going to move next to the opening statements that are going to be made on behalf of each defendant. Before we do that, I just want to remind you what I had said about the role of opening statements before we listened to the Commonwealth's and that was that what the attorneys say in the course of the opening statements, and this goes for closing arguments as well, is not evidence. Evidence is going to be presented to you through the actual answers given by the witnesses and the exhibits and it is going to be up to you as members of the jury at the end of the case to decide what the evidence

1 was and whether to give any weight or
2 consideration to it. Thank you very much.

3 Mr. Flaherty?

4 MR. FLAHERTY: Your Honor,
5 respectfully, on behalf of Mr. Anderson at this
6 stage of the proceeding, I'll reserve his right
7 to open.

8 THE COURT: Thank you. Mr. Doolin?

9 MR. DOOLIN: Good afternoon. What was
10 just said in that opening statement is not
11 evidence. That's what Judge Rouse just told you.
12 The evidence that you'll hear over the course of
13 the next several days is going to come in to you
14 from several different forms. It's going to be
15 from people who come through that door, who come
16 through the bar enclosure, and who come up to
17 this witness stand and take an oath, who raise
18 their right hand and take an oath that they're
19 supposed to tell the truth about their knowledge
20 of what happened and what didn't happen at that
21 time. It will come in the form of evidence, of
22 photographs that come in front of you, of pieces
23 of evidence that you'll have a chance to take a
24 look at and feel when you go back into the jury

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room at the end of all of the evidence in this case.

Evidence is what you, the jury, judge to be evidence. You'll have a chance to listen to what these witnesses say. You'll have a chance to look at tangible evidence that comes in front of you because the fifteen of you who sit here in front of me are embarking on one of the most important experiences of your life. You're going to be the jurors, the triers of fact in the case of Tanzerius Anderson and Jason Robinson, my client.

Now, you've heard Judge Rouse and she has given you a precharge. Our clients are presumed to be innocent. The burden of proof in this case rests squarely on the Commonwealth and you, the jury, have to find the evidence beyond a reasonable doubt, the highest standard of proof in the American legal system.

THE COURT: Mr. Doolin, opening statement, please.

MR. DOOLIN: Yes. You're going to hear evidence over the course of the next several days from various witnesses because on March 27 of the

1 year, 2000, there were some people who gathered
2 over in the Faneuil development. You've had a
3 chance to go to the Faneuil development. You
4 went there this morning. You have had a chance
5 to look around. You've had a chance to see the
6 layout.

7 What you're going to hear from the
8 witnesses who testify over the next several days
9 is this, that at about three forty-five or four
10 o'clock that morning, an individual by the name
11 of Edward Laureano came to 89 Faneuil Street.
12 When he came to 89 Faneuil Street, he was the
13 first person to see Iman Yazbek who lay dead
14 right outside the stairs of 89 Faneuil Street.
15 The testimony that you're going to hear is that
16 Mr. Laureano, as any good citizen would, called
17 the police.

18 The Boston Police responded to the
19 scene. The first officer who was there was
20 Officer Rouvalis from the Brighton Police
21 Department. At about this time some EMT's
22 arrived, other police officers began to come to
23 the scene at three forty-five, four o'clock. As
24 four o'clock became four thirty, various members

1 of the Boston Police Department came to the
2 scene, specialized units. Sergeant Coleman from
3 the homicide unit came. He came about five ten
4 or five fifteen. You're also going to hear that
5 Detective Traylor also arrived and you're going
6 to hear about specialized people from the Boston
7 Police Department, a photographer, a lighting
8 truck, and things of that nature that came in.

9 At some point in time there were a good
10 number of officers who were on the scene that
11 began to do what is called canvass the area, to
12 go through 89 and to bang on some doors, to go
13 across the street to the area of North Beacon, to
14 that first apartment house, and bang on the doors
15 over there, to look for witnesses. One of the
16 things that you're going to hear about is the
17 police investigation in this case, the things
18 that they did and the things that they didn't do
19 because as that morning unfolded, they began to
20 talk to some people. The investigation began to
21 take shape. You're going to hear about a crime
22 scene. You're going to hear about evidence of
23 what happened at that crime scene, what was done
24 and what wasn't done.

1 The evidence that you're going to hear
2 is that the police officers, within the first six
3 to eight hours, ascertained a certain amount of
4 witnesses, some people who had heard things, who
5 had seen things, who had some evidence,
6 individuals by the name of Oscar Vega, Joanne
7 Constable, Eddie Gauthier, Heather Coady,
8 ascertained that day by Detective Paul Mahoney as
9 he began to canvass the area.

10 You're going to hear that at the
11 beginning of this investigation the person who
12 was seen outside that night, the person who was
13 seen in that play area was an individual by the
14 name of Heather Coady, that Oscar Vega had seen
15 her, that Joanne Constable had seen her. You're
16 going to hear that Eddie Gauthier was an
17 individual who was ascertained by the police
18 within hours after this incident happened. Eddie
19 Gauthier, Heather Coady, both interviewed by the
20 police. You've heard the government give their
21 opening in this case. You will hear the evidence
22 of this case as it begins to unfold for, in the
23 early morning hours of March 27 of the year 2000,
24 the people who were ascertained were Eddie

1 Gauthier and Heather Coady.

2 As the day unfolded, as the days
3 unfolded, as the twenty-eighth became the twenty-
4 ninth, as the twenty-ninth became the thirtieth,
5 there was another individual who was ascertained
6 by some other members, by the police department,
7 for the police had begun to investigate Mr.
8 Yazbek, where he had been that day, who he
9 associated with, who he was friendly with. Make
10 no mistake about it, Iman Yazbek was thirty-five
11 years old. On the night in question of March the
12 twenty-seventh into the early morning hours of
13 March the twenty-eighth, he was out with a
14 sixteen-year-old girl. They were over in Wadi's
15 Restaurant over in Watertown. That sixteen-year-
16 old girl was Joleena Tate.

17 The testimony that you're going to hear
18 is that, as the police began to investigate where
19 Mr. Yazbek had been that night, the name that
20 kept coming up was Joleena Tate. Joleena Tate
21 was very friendly with Heather Coady. Joleena
22 Tate, who Heather Coady calls her cousin, is very
23 friendly with her, went to school together.
24 Heather Coady also happens to be very friendly

1 with an individual by the name of Eddie Gauthier.
2 You're going to hear evidence, independent
3 evidence that Heather Coady was out there that
4 night in that play area.

5 You're going to hear independent
6 evidence that the police went back to what Mr.
7 Yazbek had been doing that night on March 27,
8 independent evidence from the people who were at
9 Wadi's Restaurant, who had seen Joleena Tate with
10 Mr. Yazbek that night, a cigarette lighter that
11 Ms. Tate had left at Wadi's Restaurant. Ms. Tate
12 had been in that car that was driven to the back
13 of 89 Faneuil Street that night. Independent
14 evidence from witnesses uninvolved in anything
15 about Joleena Tate, about Eddie Gauthier, about
16 Heather Coady.

17 What you won't hear over the course of
18 the next several days is independent evidence
19 about Jason Robinson. Over the course of the
20 next several days you will get to see forensic
21 evidence, hear about forensic evidence, see that
22 tangible evidence that comes into a courtroom,
23 evidence that you can touch, photographs that you
24 can look at, things that you can take back with

1 you when you go into that jury room, forensic
2 evidence, ballistic evidence, fingerprint
3 evidence, procedures that were done as to
4 ballistics, procedures that were done as to
5 fingerprints, procedures that were not done as to
6 fingerprinting and ballistics, criminologists
7 from the Boston Police crime lab who will come
8 in, who will talk about the things that they
9 analyzed and the things that they didn't analyze
10 during the course of this investigation.

11 Because over the next several days when
12 you hear about this forensic evidence, these
13 forensic tests that were done, you will hear one
14 thing and one thing only about Jason Robinson,
15 that not one iota of forensic evidence in the
16 case connects him to anything, connects him to
17 the death of Mr. Yazbek, connects him to a gun,
18 connects him to any sort of robbery, because
19 there is none. The reason why there is no
20 forensic evidence in the case against Jason
21 Robinson is because the police have the wrong man
22 here today.

23 What you're going to hear over the
24 course of the next several days is evidence,

1 believable evidence, forensic evidence, that
2 there is no link between Jason Robinson and this
3 crime.

4 I'm going to ask you at this point in
5 time to keep an open mind about all this, to
6 evaluate it as it comes in, to keep an open mind
7 until after you've heard the jury instructions of
8 Judge Rouse, until you have heard the arguments
9 of all the attorneys, to pay attention to all of
10 the evidence that comes in because you are the
11 judges of that evidence, and that evidence shows
12 that Jason Robinson was not involved in this
13 crime. Thank you.

14 THE COURT: Thank you, sir. Would you
15 call your first witness, please, Mr. Tochka?

16 MR. TOCHKA: Thank you, Your Honor.
17 Edward Laureano. May I proceed, Your Honor?

18 THE COURT: Yes.

19 MR. TOCHKA: Thank you.
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1 EDWARD LAUREANO,

2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TOCHKA:

6 Q Sir, can you please introduce yourself?

7 A My name is Edward Laureano.

8 Q Could you spell your last name, please, for the
9 record?

10 A Last name is L-a-u-r-e-a-n-o.

11 THE COURT: Now, Mr. Laureano, I'm
12 going to ask, sir, if you would move closer to
13 the microphone. It would help us hear you.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you very much, sir.

16 BY MR. TOCHKA:

17 Q And, sir, can you tell the jurors, what's your
18 occupation?

19 A I'm an assembler for an Inplant (phonetic
20 spelling).

21 Q You're an assembler for what?

22 A I-M Inplant Company in Gloucester.

23 Q How long have you been performing that work?

24 A Been there for two years now.

1 Q Can you tell the jurors, do you have any military
2 service?

3 A I served in the United States Marine Corps for
4 six years.

5 Q And are you married?

6 A Yes, I am.

7 Q And where does your wife live?

8 A My wife lives in Brighton.

9 Q Where particularly in Brighton?

10 A 89 Faneuil Street, Brighton.

11 Q How long has she lived there?

12 A She's been there since '98.

13 Q Do you have any children?

14 A I have seven.

15 Q How many?

16 A Seven.

17 Q Seven children, and how many children -- are they
18 all your children?

19 A I have three biological children and four
20 stepchildren.

21 Q And the four stepchildren are your wife's?

22 A They are my wife's, yes.

23 Q And where do your seven children live?

24 A They also reside at 89 Faneuil Street.

1 Q Now, back in the year 2000, particular in March
2 27 of 2000, were you working that evening -- what
3 were your hours that evening?

4 A I was on the second shift which was from three in
5 the afternoon until one thirty at night.

6 Q And where did you work?

7 A I worked for Avery Assembly Conductors in
8 Gloucester.

9 Q What would you do when you got off work?

10 A At the time we had an open window for overtime so
11 I was working twelve hour shifts so I worked from
12 three to three and then go straight home.

13 Q And straight home being --

14 A To 89 Faneuil Street.

15 Q And when you'd go to Faneuil Street, was your
16 wife working at that time?

17 A At that time my wife was working for CompUSA, she
18 had the morning shift.

19 Q So you'd go home. What would you do?

20 A I'd go home and get a couple hours of sleep, then
21 she'd go to work and my smallest child was three
22 so I would take care of him for most of the
23 morning.

24 Q Now, can you tell us on this particular night,

1 March 27 -- I'm sorry, March 27 going into March
2 28, do you remember arriving on the twenty-eighth
3 back in the development?

4 A Yes, I do.

5 Q And about what time did you get there?

6 A It had to be between three thirty or four. It's
7 roughly a forty-five minute drive from Gloucester
8 when there is no traffic.

9 Q And where did you park your car?

10 A I parked my car on Faneuil Street towards
11 Goodenough Street because the immediate parking
12 area in front of the complex is usually full at
13 that time.

14 Q Now, when you got out of your car, which way were
15 you going to enter the house?

16 A I had made it a habit to take -- when you're
17 coming from the direction of where I parked, the
18 first thing that you'll come up with is either a
19 driveway on your left that leads to 89 Faneuil or
20 the open court area which is further down also on
21 the left. I had made it a habit to always walk
22 down the driveway.

23 Q And did you do that on this particular evening?

24 A Yes, I did.

1 Q Early morning, and as you did that, what were the
2 lighting conditions as you're walking down that
3 driveway?

4 A The lighting conditions were there but they
5 weren't the best. It was sufficient.

6 Q Now, as you walked down the driveway, do you have
7 to turn the corner at some point?

8 A Yes.

9 Q And you turned the corner for what reason?

10 A 89 Faneuil is to the immediate right at the
11 bottom of that driveway.

12 Q When you did that on that particular occasion,
13 did you make any observations?

14 A I noticed there was a vehicle at the end of the
15 driveway.

16 Q And can you tell us which direction that vehicle
17 was facing?

18 A The vehicle was facing towards the building.

19 Q And was there anyone in that vehicle?

20 A As I came upon the vehicle, there was no one in
21 the vehicle.

22 Q What did you next see?

23 A As I come around the corner at the bottom of the
24 driveway, I see the person laying with his feet

1 towards me, laying on his right side.

2 Q And what are you thinking at this time?

3 A Right now I'm thinking, who else was around me,
4 was this a set-up. First thing I did was look
5 around. There's a dumpster to the left. There's
6 a fenced in area where the maintenance people
7 keep their truck.

8 Q Why did you look around that area?

9 MR. FLAHERTY: Objection.

10 THE COURT: Overruled.

11 A Having been raised in Boston, I'm kind of
12 cautious when certain situations just arise.

13 MR. FLAHERTY: Objection, motion to
14 strike.

15 THE COURT: Allowed.

16 BY MR. TOCHKA:

17 Q I was asking why you looked at that particular
18 area and the dumpster.

19 A The dumpster and the area that I said was fenced
20 in is a darkened area. Someone over there, you
21 wouldn't be able to see.

22 Q And did you look on this occasion that morning?

23 A Yes, I did.

24 Q And did you see anybody?

1 A No.

2 Q What did you do next?

3 A I walked around the left side of the vehicle.

4 After I looked around my immediate area, started
5 walking towards the person.

6 Q And how close did you get to the person?

7 A I'd say I got within about five feet before I
8 noticed the right side of that individual's face
9 was severely wounded.

10 Q And when you say severely wounded, what do you
11 mean?

12 A His face was distorted. You couldn't exactly
13 tell what had happened to him but it wasn't
14 attached to his face as a normal face would be.
15 It was a serious wound. You could tell it was a
16 wound.

17 Q Could you observe anything around the body?

18 A Around the body there seemed to be a trail of
19 what I perceived to be blood. It looked somewhat
20 dry which led me to believe that --

21 MR. DOOLIN: I object.

22 BY MR. TOCHKA:

23 Q Not what you believe, sir. When you saw the
24 trail of blood and -- where was the trail of

1 blood?

2 A The trail of blood was streaming or in a sense
3 streaming from where the individual was lying.

4 Q And when you say streaming, in what direction is
5 it going?

6 A It's going back towards the driveway.

7 Q Now, did you attempt to -- what did you do when
8 you saw this individual?

9 A Once I saw the individual, once I saw the wound,
10 my first initial reaction was going to go and try
11 to help him but the more I looked around, the
12 more it appeared there was nothing I could do for
13 him.

14 Q What did you do next?

15 A Next I walked around the building towards the
16 other entrance and went upstairs to check on my
17 family.

18 Q Can you describe when you went into the hallway,
19 into the back entrance, why didn't you go into
20 that front entrance?

21 MR. FLAHERTY: Objection.

22 MR. DOOLIN: Judge, I object.

23 THE COURT: Another question, sir,
24 please.

1 BY MR. TOCHKA:

2 Q Which entrance did you go into, sir?

3 A I took the other entrance around the building.

4 Q Was the entrance where you saw the body, was that
5 blocked in any fashion?

6 A The door to the entrance was closed. There was a
7 set of keys on the steps there, and I just didn't
8 want to walk through that area so I went around
9 the back.

10 Q And so what area then did you go into?

11 A I went around the building to what is basically
12 the front of the building.

13 Q and as you go into the front of the building, you
14 entered that first landing?

15 A Yes.

16 Q And can you describe the lighting conditions in
17 that hallway as you entered in there?

18 A Once you get in the lighting conditions weren't
19 the best. The lights were kind of dim,
20 yellowish, in fact.

21 Q What did you do next?

22 A I cautiously went up the stairs.

23 Q What do you mean by cautiously went up the
24 stairs?

1 A The ladder well spirals up in the building and
2 when you come around the corner there are certain
3 blind spots.

4 Q So what did you do?

5 A I walked in the building, made sure there was no
6 one in that immediate area where the ladder
7 starts, then I made my way slowly up the
8 building, making sure no one else was in the
9 hall.

10 Q Then what did you do?

11 A I went in my home, went in all my children's
12 rooms, made sure all my kids were okay, woke up
13 my wife, made sure she was okay, and then I
14 called the authorities.

15 Q And at some point in time, sir, did the
16 authorities come?

17 A Yes, they did.

18 Q And did you go downstairs and identify yourself
19 to the police?

20 A Yes, I did.

21 Q Sir, let me show you this aerial photograph and
22 ask if -- have you seen this before?

23 A Yes.

24 Q And it's fair to say that I showed you this at

1 some point?

2 A Yes, you did.

3 Q And, sir, is that a relatively -- or is that a
4 fair and accurate representation as to the
5 Faneuil development, the buildings as they
6 appeared back in the year 2000?

7 A Yes, it is.

8 MR. TOCHKA: Your Honor, if I could
9 have this marked as an exhibit?

10 MR. DOOLIN: No objection.

11 MR. FLAHERTY: No objection, Your
12 Honor.

13 THE COURT: No objection, it shall be
14 marked.

15 (Exhibit No. 1, being an aerial
16 photograph, as described above, was marked and
17 admitted into evidence.)

18 MR. TOCHKA: And with the Court's
19 permission, if I could have the witness step to
20 the diagram?

21 THE COURT: You may. You may step
22 down, sir.

23 MR. TOCHKA: If I can just move this a
24 little bit closer for the jury?

1 THE COURT: Yes.

2 BY MR. TOCHKA:

3 Q And, sir, I'm going to ask you, facing the
4 jurors, not blocking the view of the photograph,
5 and if you could take the pointer, sir.

6 Are you familiar with the orientation
7 of Faneuil Street, Faneuil Street being in this
8 area, Goodenough being in this area, and the park
9 being here?

10 A Yes.

11 Q Okay. Now, can you tell us, looking at that
12 diagram and the aerial photograph, where
13 approximately did you park the car?

14 A I parked the car approximately on the side of
15 Faneuil Street.

16 Q Okay. And that's the area of Goodenough Street?

17 A Just past Goodenough Street.

18 Q And when you say you walked down the driveway,
19 which driveway? Can you point that out?

20 A I'm going in this direction to my apartment.

21 Q That's heading towards the direct --

22 A Towards 89 Faneuil which is back here so when you
23 come across on the sidewalk, here's the driveway
24 which is on your left which is the first thing

1 you hit. Here's the open courtyard I was talking
2 about.

3 THE COURT: Mr. Laureano, I'm going to
4 have to ask you to keep your voice up, please.

5 THE WITNESS: I'm sorry. The second
6 way to get to the building is the open courtyard
7 I was speaking about so, force of habit, the
8 driveway would come up, first I'd walk down
9 there, walk down the driveway to 89 Faneuil.

10 BY MR. TOCHKA:

11 Q Now, can you point out in that diagram where the
12 car was that you saw that was parked?

13 A The car that I had was parked right about here.

14 Q And is there an arrow there that points saying
15 the direction of 89?

16 A That's 89 Faneuil right there.

17 Q And the body was how close to the car
18 approximately?

19 A I'd say within ten feet to the car.

20 Q And when you said that you went around the
21 building, which direction did you go to the other
22 side of the building?

23 A Once I found the person there, I walked this way
24 and around toward the front of the building, came

1 in through this direction.

2 Q And when -- you said that you looked, prior to
3 going in that direction, you looked in the area
4 of the dumpsters, and where is that area that you
5 were looking for?

6 A The area of the dumpsters, right here which,
7 there is no lighting back there and this is the
8 fenced off area I was talking about where the
9 maintenance truck is kept.

10 Q Thank you, sir. You can resume the stand.

11 A (Complying.)

12 MR. TOCHKA: Your Honor, may we
13 approach side bar?

14 THE COURT: Approach?

15 MR. TOCHKA: Yes. May we approach side
16 bar?

17 THE COURT: Yes.

18 (Whereupon, the following discussion
19 occurred at side bar:)

20 MR. TOCHKA: Your Honor, in terms of
21 the motion the defense had in terms of the
22 photograph, these are two photographs that the
23 Commonwealth would seek to introduce.

24 THE COURT: Any objections to these?

1 MR. FLAHERTY: These are the crime
2 scene photos, somewhat duplicative, I think, for
3 the purpose of establishing the location of the
4 body. Maybe the one that shows more of the scene
5 with the car and the address depicting 89 Faneuil
6 Street is probably best admitted into evidence.

7 MR. TOCHKA: I'm seeking to introduce
8 both of them into evidence, Your Honor.

9 THE COURT: As long as he can establish
10 they are a fair and accurate representation of
11 what he saw, any objection to those is overruled.
12 They are neither too graphic nor inflammatory and
13 I think they are probative.

14 (Whereupon, the discussion at side bar
15 was concluded.)

16 BY MR. TOCHKA:

17 Q Mr. Laureano, let me show you, first off, this
18 photograph and ask if you recognize what that's a
19 photograph of.

20 A It's a photograph of the situation, the way I
21 came upon it.

22 Q And is that a photograph of the car that you saw
23 in the back of 89?

24 A Yes, it is.

1 Q And does that also show the body of the
2 individual that you saw?

3 A Yes, it does.

4 Q Now, is it -- on that particular photograph, that
5 body at this time is covered with a yellow
6 blanket.

7 Was it covered in the yellow blanket
8 when you saw it?

9 A No, it wasn't.

10 Q Other than that, is that a fair and accurate
11 representation as to the relationship from the
12 car to the body and, other than the yellow
13 blanket, is that a fair and accurate
14 representation?

15 A Yes, it is.

16 MR. TOCHKA: I move to introduce this
17 photograph into evidence.

18 THE COURT: Whatever objections there
19 are are overruled. It may be marked and
20 admitted.

21 (Exhibit No. 2, being a photograph, as
22 described above, was marked and admitted into
23 evidence.)

24 MR. TOCHKA: Your Honor, I'd ask to

1 publish this to the jurors.

2 THE COURT: You may. Give it to the
3 court officer.

4 MR. TOCHKA: Did Your Honor want me to
5 continue with questioning or wait until the
6 photograph --

7 THE COURT: I would appreciate it if
8 you would continue. Thank you.

9 BY MR. TOCHKA:

10 Q Sir, let me show you this second photograph and
11 ask if you can identify that photograph.

12 A It's a photograph of the individual that I found
13 that night.

14 Q And is that a photograph of the individual
15 without the yellow blanket on him?

16 A Yes, it is.

17 Q And does that photograph fairly and accurately
18 depict the individual that you saw in the early
19 morning hours of March 28 of the year 2000?

20 A Yes, it does.

21 MR. TOCHKA: Your Honor, I move to
22 introduce this photograph into evidence.

23 THE COURT: Any objection?

24 MR. FLAHERTY: Same objection, Your

1 Honor.

2 THE COURT: Is that an objection, sir?

3 MR. FLAHERTY: Yes.

4 THE COURT: It's overruled. Thank you.

5 It may be marked and admitted.

6 (Exhibit No. 3, being a photograph, as
7 described above, was marked and admitted into
8 evidence.)

9 BY MR. TOCHKA:

10 Q And, sir, showing you -- does that show the
11 facial trauma that you observed on that evening?

12 A Yes, it does.

13 Q And does that show the pool of blood that you
14 observed on that evening?

15 A Yes, it does.

16 MR. TOCHKA: Your Honor, I move to
17 introduce this item -- to have this photograph
18 published.

19 THE COURT: You may.

20 MR. TOCHKA: Thank you, Mr. Laureano.
21 Nothing else.

22 THE COURT: Thank you, sir. Mr.
23 Doolin?

24 MR. DOOLIN: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. DOOLIN:

3 Q Mr. Laureano, I think you testified that on the
4 night in question you parked your car somewhere
5 out here on Faneuil Street, is that right?

6 A That's correct.

7 Q And you're familiar with this area, is that
8 right?

9 A Yes, I am.

10 Q Now, the area where you parked your car, was that
11 at the corner of Goodenough Street?

12 A To be honest with you, I don't recall if it was
13 the corner but I do recall it was on that side.

14 Q And you're familiar with that area up on Faneuil
15 Street where you parked that night, is that
16 right?

17 A Yes, I am.

18 Q Is it fair to say that there is a house that's on
19 the corner here of Faneuil Street and Goodenough
20 Street?

21 A Yes, it is.

22 Q And is it also fair that there is another house
23 that is also right next to that house on Faneuil
24 Street? Is that right?

1 A That's correct.

2 Q And it's also fair to say that the alley that you
3 went down is right next to that house? Is that
4 correct?

5 A Yes, it is.

6 Q Now, I show you this photograph, sir. Are you
7 familiar with the area that's depicted there?

8 A That is the driveway I was referring to.

9 Q And is that a fair and accurate representation of
10 the way that that driveway looked?

11 A Yes.

12 MR. DOOLIN: I'd offer this into
13 evidence, Your Honor.

14 MR. TOCHKA: No objection.

15 THE COURT: It shall be marked and
16 admitted.

17 (Exhibit No. 4, being a photograph, was
18 marked and admitted into evidence.)

19 BY MR. DOOLIN:

20 Q And I show you this photograph. Are you familiar
21 with what's depicted in that photograph?

22 A Yes, I'm familiar with that.

23 Q And what does that depict?

24 A That depicts the back of 89 Faneuil at the bottom.

1 of the driveway.

2 Q Okay. And is that a fair and accurate
3 representation of the way that that area looked
4 that night?

5 A The way the area looked, yes.

6 Q Okay. And is it also fair to say that there is
7 another building that is to the -- that's
8 adjacent to 89 Faneuil?

9 A It's part of the complex, yes.

10 Q Is that 85 Faneuil?

11 A I'm not familiar with the particular numbers, to
12 be honest with you.

13 Q But that's also a separate building, is that
14 correct?

15 A Yes, it is.

16 MR. DOOLIN: I'd offer this into
17 evidence, Your Honor.

18 MR. TOCHKA: No objection.

19 (Exhibit No. 5, being a photograph, as
20 described above, was marked and admitted into
21 evidence.)

22 BY MR. DOOLIN:

23 Q I show you this photograph. Are you familiar
24 with what's depicted in that photograph?

1 A Yes, I am.

2 Q What's depicted in that photograph?

3 A It's the rear entrance to 89 Faneuil.

4 Q And is that a fair and accurate representation of
5 that area?

6 A Yes, it is.

7 MR. DOOLIN: I'd offer that into
8 evidence as well, Your Honor.

9 MR. TOCHKA: No objection.

10 (Exhibit No. 6, being a photograph, as
11 described above, was marked and admitted into
12 evidence.)

13 BY MR. DOOLIN:

14 Q Showing you the last exhibit which is now Exhibit
15 6, the door to 89 Faneuil Street, have you -- you
16 have gone through that door on many occasions, is
17 that correct?

18 A Yes, I have.

19 Q Is it fair to say that that is somewhat of a
20 heavy door?

21 A Very.

22 Q Very heavy door. Is that what you said?

23 A Yes, sir.

24 Q Thank you. Showing you this photograph, are you

1 familiar with what that depicts?

2 A Looks like the interior of 89 Faneuil.

3 Q Is that inside the hallway of 89 Faneuil Street?

4 A Yes.

5 Q Is that a fair and accurate representation of
6 that area?

7 A Yes.

8 MR. DOOLIN: I'd offer that into
9 evidence as well, Your Honor.

10 MR. TOCHKA: No objection.

11 (Exhibit No. 7, being a photograph, as
12 described above, was marked and admitted into
13 evidence.)

14 BY MR. DOOLIN:

15 Q You testified that you also came to an area where
16 there is dumpsters, is that correct?

17 A Yes.

18 Q Is that what is depicted in that photograph?

19 A That is the dumpster I was referring to.

20 Q Is that a fair and accurate representation of the
21 way that that looks in the daylight?

22 A Yes.

23 MR. DOOLIN: I would offer this
24 photograph as well, Your Honor.

1 MR. TOCHKA: No objection.

2 THE COURT: It shall be marked.

3 (Exhibit No. 8, being a photograph, as
4 described above, was marked and admitted into
5 evidence.)

6 MR. DOOLIN: I would ask that these
7 photographs as a set be published to the jury,
8 Your Honor.

9 THE COURT: They may be.

10 BY MR. DOOLIN:

11 Q Mr. Laureano, I think you said you came there
12 sometime at three forty-five?

13 A The window I gave was three thirty, three forty-
14 five. I can't give you the exact time.

15 Q Your testimony was that as you came down that
16 alley that's next to 89 Faneuil -- was that alley
17 dark that night?

18 A Somewhat, yes. There are only position lights on
19 the building.

20 Q When you say there are position lights on the
21 building, is it fair to say that the only
22 lighting that's in that area is from lights that
23 are built into the building?

24 A True.

1 Q And your testimony is that when you came back
2 here to the area at 89 Faneuil, that at some
3 point you checked over by where the dumpsters
4 are. Is that correct?

5 A I glanced over there, yes. I didn't physically
6 walk over there. I just looked over there.

7 Q And I think you said on direct examination with
8 Mr. Tochka that that area was very dark. Is that
9 correct?

10 A True.

11 Q And it's fair to say that as a result of that
12 area being dark, that it was somewhat difficult
13 for you to ascertain what was in that area, is
14 that correct?

15 A Yes.

16 Q Now, it's your testimony that at some point you
17 came upon the body of Mr. Yazbek, is that
18 correct?

19 A Yes, I did.

20 Q And your testimony, I think, was that you made
21 certain observations of the position of the body
22 compared to 89 Faneuil Street, is that right?

23 A Yes.

24 MR. DOOLIN: May I see Exhibit 2 and 3,

1 please?

2 BY MR. DOOLIN:

3 Q Sir, it's your testimony, is it not, that the
4 body of Mr. Yazbek was in the position that it is
5 in in this photograph which is Exhibit 3? Is
6 that right?

7 A Yes.

8 Q It's fair to say that his feet were towards the
9 driveway, is that correct?

10 A Yes, it is.

11 Q And that he was not on the steps, is that
12 correct?

13 A No, he was not.

14 Q And that the door was closed, is that right?

15 A Yes, it was.

16 Q And you testified that you saw certain objects on
17 the stairs, is that correct?

18 A I remember seeing a set of keys.

19 Q A set of keys. Did you remember seeing any other
20 objects on the stairs that night?

21 A Nothing that jumps out of my recall, no.

22 Q And it's fair to say that you observed a car that
23 was within several feet of where Mr. Yazbek was,
24 is that correct?

1 A Yes.

2 Q And it is fair to say that that car was in the
3 driveway, is that right?

4 A Yes, it is.

5 Q That it was faced in towards 89 Faneuil, is that
6 correct?

7 A Yes, it is.

8 Q And did you make any observations of any
9 newspapers in the area?

10 A Newspapers, no.

11 Q Okay. And your testimony is that when you went
12 inside the house after checking on the welfare of
13 your family, that you phoned the police, is that
14 right?

15 A Yes, I did.

16 Q Now, sir, when you phoned the police did you
17 speak to the police at some point later that
18 morning?

19 A Once the authorities showed up, I came back down
20 and identified myself as the person that had
21 called.

22 Q Were you ever interviewed by police detectives
23 that day?

24 A Later that morning they came up to the apartment

1 and interviewed me.

2 Q Was that apartment 256?

3 A Yes.

4 Q Did the police officer take notes during the
5 conversation? The detectives?

6 A I believe so, yes.

7 Q Did they also interview your wife?

8 A I believe so.

9 Q What is your wife's name?

10 A Janet.

11 Q Same last name?

12 A Yes.

13 Q Janet Laureano?

14 A Yes, um-hum.

15 Q And did the police take notes while they were
16 interviewing her as well?

17 A I'm not sure. I don't recall that. I recall
18 them interviewing me.

19 Q Sir, at any point in time did you observe a
20 Timberland watch in the area where the car was or
21 in the area of the back of 89 Faneuil Street?

22 A A Timberland watch?

23 Q Yes...

24 A No, I didn't.

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MR. DOOLIN: I don't have any further questions.

THE COURT: Thank you.

MR. FLAHERTY: May I inquire?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. FLAHERTY:

Q Good afternoon, sir. My name is Timothy Flaherty. I represent Tanzerius Anderson.

I have a couple of questions. If you don't understand them, just tell me and I'll try and rephrase. Okay?

A Yes, sir.

Q You got to 89 Faneuil Street sometime between three thirty and four a.m., correct?

A Roughly.

Q And you had worked a twelve hour shift?

A Yes, sir.

Q Were you tired when you arrived, sir?

A Yes, I was.

Q When you made observations in the area of 89 Faneuil Street, it's fair to say that during your direct testimony you mentioned being concerned

1 somewhat?

2 A What you're referring to is when I saw the
3 individual?

4 Q Right.

5 A Yes.

6 Q And that's when you checked other locations back
7 there, right?

8 A Yes.

9 Q And, in fact, before you went into 89 Faneuil
10 Street, you walked down the pathway and came up
11 the rear entrance, right?

12 A Yes.

13 Q Now, when you first got to 89 Faneuil Street, you
14 saw the gray Buick Skylark, right?

15 A Yes, I did.

16 Q You saw the gentleman depicted in the photograph
17 with his feet extending back towards the alley,
18 correct?

19 A Yes, sir.

20 Q And is it your testimony, sir, you never saw a
21 copy of a Wall Street Journal in the area of 89
22 Faneuil Street?

23 A To be honest with you, the car was the first
24 thing that got my attention. The individual was

1 second. My concern was third and then by the
2 time I turned around and looked at the individual
3 again, he had my total attention.

4 MR. FLAHERTY: May I see 2 and 3?

5 BY MR. FLAHERTY:

6 Q You testified on direct examination, did you not,
7 that you had a good enough view of the entrance
8 to 89 Faneuil, you saw a set of keys, right?

9 A Yes.

10 Q And those keys were all the way up to the
11 apartment door, right?

12 A Yes.

13 Q Where were you standing when you saw the keys?

14 A I was standing roughly where that curb is near
15 where this newspaper is depicted.

16 Q Right. Exactly in the same spot as the
17 newspaper?

18 A Not exactly in the same spot as the newspaper but
19 near that same area, yes.

20 Q Would you tell the jury how far in distance would
21 you be from where the newspaper is depicted on
22 the photographs?

23 A I'd say I was no further than one and a half, two
24 feet away from it.

1 Q Is it fair to say, sir, that at the time you were
2 outside and you had made the observations you
3 made such as the keys, is it fair to say that,
4 based on your heightened awareness, you would
5 have seen the newspaper if it was there at the
6 time?

7 A I should have seen the newspaper. The only
8 thing, the keys caught my attention because they
9 were in my direct line, where I was looking at
10 the gentleman.

11 Q You didn't leave the newspaper there, right, sir?

12 A No, I didn't.

13 Q Now, on March 27 or 28, you were not living at 89
14 Faneuil, is that right?

15 A That's correct.

16 Q You were living in Roslindale, correct?

17 A I was living in Roslindale.

18 Q Now, how long had your wife, Janet, lived at 89
19 Faneuil Street prior to March 27, 2000?

20 A She had been there since '98.

21 Q And how much time had you spent there between
22 1998 and March of 2000?

23 A She kept her own residence and I kept mine up
24 until the time she got the job at CompUSA which

1 was maybe four months prior to that.

2 Q And on a weekly basis, sir, how often would you
3 go to the Faneuil development?

4 A I'd say almost every day.

5 Q Now, when you went inside -- well, incidentally
6 let me just say, did you touch the automobile at
7 all?

8 A No, sir.

9 Q Did you touch the gentleman who was lying on the
10 ground outside?

11 A No, sir.

12 Q And did you touch any other item in the area?

13 A I touched nothing.

14 Q But you walked through that area, right?

15 A I got as close as the curb.

16 Q What time that morning did it stop raining?

17 A That observation, I can't honestly say because
18 when I found the gentleman it wasn't raining. I
19 got upstairs, called the authorities. After that
20 I stayed with my family.

21 Q When you directed the police's attention to you,
22 was it raining at this point?

23 A It was starting to drizzle, yes, it was.

24 Q And it continued drizzling throughout the

1 morning, right?

2 A It was a bad morning, yes, it was.

3 Q In fact, rained pretty heavily, is that fair to
4 say?

5 A Moderate, yes.

6 Q When you went inside and you went upstairs, sir,
7 first you checked on your family, right?

8 A Yes.

9 Q And then at this point you placed a call
10 reporting what you had seen, right --

11 A Yes.

12 Q -- to the police? Now, is there a phone at 89
13 Faneuil Street?

14 A Yes, there is.

15 Q And you called from your cell phone, correct?

16 A Yes, I did.

17 Q And your cell phone number at that time was 617-
18 821-6007, right?

19 A Yes, it was.

20 Q So at about four thirty or whatever time it was,
21 four o'clock in the morning, after checking on
22 your family, you decided to use your cell phone
23 instead of using the phone in the apartment?

24 A I didn't make any distinctions between my cell

1 phone or the phone in the house, to be honest
2 with you.

3 Q There is no question in your mind that you used
4 the cell phone, is that right?

5 A I did use the cell phone. I don't have that
6 number any more so, to be honest with you, I
7 don't even remember the number at the time but I
8 made no distinctions whether to use the cell
9 phone or the house phone.

10 Q And when you were back outside at 89 Faneuil,
11 you never saw a Timberland watch?

12 A I did not see a watch.

13 Q And the discoveries that you made that morning
14 caused you to look in the dumpster area because
15 you were concerned, I think, something along
16 those lines, right?

17 A I glanced in that area. I did not walk towards
18 that area.

19 Q Were you concerned because of the people that
20 live in the housing development, sir?

21 A To be totally honest with you, I do not live in
22 the greatest neighborhood, no.

23 Q Well, you have been there, I guess, daily now
24 since 1998, right?

1 A Yes.

2 Q Do you know Eddie Gauthier?

3 A No.

4 Q Do you know Duane Johnson?

5 A No, I do not.

6 Q Do you know Derrick Japolis (phonetic spelling)?

7 A No.

8 MR. FLAHERTY: No further questions,
9 Your Honor.

10 THE COURT: Anything more, Mr. Tochka?

11 MR. TOCHKA: Nothing, Your Honor.

12 Thank you.

13 THE COURT: Thank you very much, sir.

14 You may step down. Thank you.

15 THE COURT: May I see counsel, please?

16 (Whereupon, a discussion occurred off
17 the record at side bar.)

18 THE COURT: Ladies and gentlemen, we
19 are going to adjourn for the day and we will pick
20 up tomorrow at nine o'clock. When you come in
21 tomorrow, you will be reporting to the jury room
22 and the schedule tomorrow will be nine until
23 about four with, of course, a luncheon recess.

24 Before you go there are a couple of

1 instructions I need to give you. The first
2 involves your notes. Please place them in the
3 envelope, leave them on your seat. They will be
4 undisturbed until tomorrow. No one uses these
5 notes in any manner except you so they will be
6 kept secure.

7 Secondly, you are not to discuss this
8 case with anyone or allow anyone to talk to you
9 about it. That includes not only any trial
10 participants but also any family or friends,
11 anyone else with whom you might come into
12 contact, anyone on the jury. It also includes
13 other members of the jury. So it means anyone.
14 I know it might be tempting to respond to
15 questions, perhaps, from those who want to know
16 what's going on in the case but you must and you
17 have an obligation to answer that you are
18 instructed by the judge not to talk about the
19 case.

20 The reasons for this are several. The
21 first is that, as I pointed out yesterday, it is
22 very important that you keep an open mind
23 throughout the case until you've heard everything
24 and have been sent to the jury room to decide it.

1 Discussing it can cause you to make premature
2 judgments about the case before you have been
3 given an opportunity to consider all the
4 evidence. Secondly, the judgments or opinions of
5 others could influence your own independent
6 judgment before you have fully formed yours and
7 have heard all the case. And, finally, it may be
8 that such discussions would give you information
9 or ideas about matters relating to the case which
10 doesn't come in through the witnesses or the
11 exhibits or doesn't come from observations that
12 you yourself have made on the view.

13 So it is very, very important that you
14 observe these instructions. We're counting on
15 each of you to be fair and impartial in
16 considering the evidence and in rendering your
17 verdict and to do so only on the evidence and the
18 legal instructions I give you at the end of the
19 case. When you come in tomorrow, we'll be asking
20 you on the record whether or not you have
21 complied with these instructions.

22 So we want to thank you again for your
23 attention. Hopefully you will have a good
24 evening. We'll see you tomorrow at nine o'clock.

1 (Whereupon, the jury was escorted from
2 the courtroom at 4:20 o'clock p.m.)

3 (Whereupon, the following discussion
4 occurred at side bar:)

5 THE COURT: We just received this note
6 form the juror which says as follows: Her Honor
7 should know that upon returning from lunch, I
8 used the restroom. I believe I may have shared
9 the restroom with this witness - that may be Mr.
10 Laureano. I used the urinal and after washing my
11 hands, I believe this witness entered the
12 restroom. I was exiting the restroom and he
13 exited the bathroom stall. I did not speak to
14 him or have any contact with him. I don't know
15 if this affects my ability to serve. I hope it
16 does not exclude me from my duty as a juror.
17 Sincerely, Christopher Meeuwisse.

18 He's in seat number two. I just want
19 to confirm what he said here.

20 (Whereupon, juror number 11-3 in seat
21 number two was brought to side bar.)

22 THE COURT: I just read the note and,
23 as I understand what it says, it is that you just
24 happened to be in the --

1 THE JUROR: There is a restroom
2 outside. We came back from lunch. Before I went
3 to the jury room, I went to use the restroom. I
4 knew there only was the one, and I used the
5 urinal and I started to wash my hands. As I was
6 washing my hands, I then dried them. As I was
7 throwing away the paper towel, a gentleman came
8 out of the restroom stall. I believe it may have
9 been him. I don't know if it was or --

10 THE COURT: But you exchanged --

11 THE JUROR: Nothing at all. I just
12 didn't want it to become an issue later.

13 THE COURT: We appreciate your bringing
14 that to our attention but I think the note and
15 what you said is self-explanatory so thank you
16 very much. We'll see you tomorrow at nine.

17 (Whereupon, the juror was escorted from
18 the courtroom.)

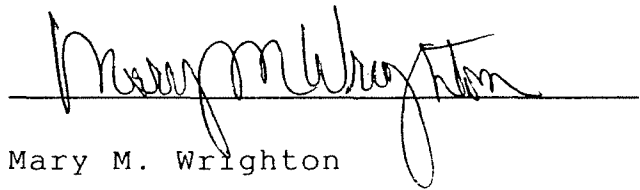
19 THE COURT: Mark this for
20 identification.

21 (Exhibit A, being a juror note, was
22 marked for identification.)

23 (Whereupon, the proceedings were
24 adjourned at 4:25 o'clock p.m.)

C E R T I F I C A T E

I, Mary M. Wrighton, do hereby certify
that the foregoing transcript, pages 1 through
188, is a complete, accurate and true record of
my stenographic notes as taken by me in the
aforementioned matter to the best of my skill and
ability.


Mary M. Wrighton