

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
SUCR 2000-10975  
SUCR 2000-10977

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COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL  
DAY THREE

JASON ROBINSON  
TANZERIOUS ANDERSON

\* \* \* \* \*

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 21, 2002  
Boston, Massachusetts

Mary M. Wrighton  
Official Court Reporter

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1 (Whereupon, the proceedings were  
2 reconvened at 9:35 o'clock a.m., without the  
3 jury.)

4 THE COURT: May I see counsel at side  
5 bar, please?

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

8 THE COURT: ~~Ms. Tate~~ is coming on  
9 this morning, sir?

10 MR. TOCHKA: Yes, probably this  
11 afternoon. She is coming in today but she will  
12 be going this afternoon.

13 THE COURT: Okay. Mr. Flaherty, you  
14 said that you thought voluntariness was an issue  
15 with respect to any statements Ms. Tate would  
16 make about one or both of the defendants. I'm  
17 going to require you to make an offer of proof  
18 for the record for your contention.

19 MR. FLAHERTY: My understanding, Your  
20 Honor, from the state of the evidence as I've  
21 reviewed it from the police reports, grand jury  
22 minutes and witness statements, is that on March  
23 27 and 28 at or about the time of the alleged  
24 homicide of Iman Yazbek, all of the witnesses and



1 alleged participants had been using drugs and/or  
2 alcohol in and around the park in the Faneuil  
3 housing development.

4 Based upon that, I would suggest that  
5 any statements attributed to Tanzerius Anderson  
6 by Joleena Tate or any other civilian witnesses  
7 at or about that time must be subject to the  
8 humane practice rule doctrine and, in addition to  
9 that, I think in an over abundance of caution  
10 while we're conducting those voir dres, we  
11 should inquire as to whether or not any of those  
12 civilian witnesses who will attribute statements  
13 to my client, Tanzerius Anderson, or Jason  
14 Robinson, were themselves under the influence of  
15 alcohol or drugs or perceived the defendants to  
16 be under the influence of alcohol or drugs.

17 THE COURT: Mr. Tochka?

18 MR. TOCHKA: Your Honor, I'd object.  
19 Number one, whether or not the witnesses were  
20 under the influence when they heard the defendant  
21 allegedly make these statements is not a humane  
22 practice rule issue.

23 THE COURT: Just talk about the  
24 defendants.

1 MR. TOCHKA: Whether they voluntarily  
2 or not made those statements, that's an issue  
3 that he can explore during the trial. What Mr.  
4 Flaherty is suggesting is that every single trial  
5 where there is a statement made attributed to a  
6 defendant, that there is always a hearing. It  
7 would be a mini trial within a trial. The issue,  
8 as I understood it, was, he wanted a humane  
9 practice on the issue of a particular statement,  
10 he wanted a voir dire on a particular statement  
11 which was a statement allegedly where he made a  
12 statement that he had kidnapped an individual,  
13 threw him in the trunk of the car, he was driving  
14 around with an individual in the trunk of a car.  
15 That's what I understood he wanted the motion for  
16 voir dire on.

17 THE COURT: I don't have a motion for  
18 voir dire. I don't have a written motion. I  
19 just have an oral motion.

20 MR. TOCHKA: I wouldn't be seeking to  
21 put that particular statement in. I suggest  
22 there is no reason at this point in time for a  
23 motion or voir dire.

24 MR. FLAHERTY: The statement I'm

1 talking about specifically, Your Honor, is,  
2 apparently the Commonwealth is going to attempt  
3 to introduce statements made by my client at the  
4 Mckinley Park after the alleged homicide about  
5 what took place and things of that nature. It's  
6 my understanding from review of the police  
7 reports, grand jury and witness statements, that  
8 all of the witnesses and defendants were in the  
9 Faneuil housing project and had been smoking  
10 marijuana, had been smoking marijuana, according  
11 to this witness, Joleena Tate, in the automobile  
12 at or about and prior to the time of these  
13 statements.

14 So I think it's important that we make  
15 an inquiry under the humane practice.

16 MR. TOCHKA: Your Honor, just in  
17 response to that, I suggest whether or not the  
18 individuals are smoking marijuana or not, that  
19 does not go to the voluntariness of their  
20 statements to another individual. I suggest this  
21 is not within the humane practice rule he is  
22 referring to.

23 THE COURT: The issue is whether or not  
24 the voluntariness, the will of, in this case, the

1 defendants, was overcome in some way, whether it  
2 was a statement made voluntarily and we  
3 ordinarily interpret that to mean of one's own  
4 free will, that there was no coercion or no  
5 tricks, and there is no allegation of any  
6 coercion or any tricks or any duress so we can  
7 leave all of that aside.

8 I think the sole issue is whether or  
9 not, based on what Mr. Flaherty says, the  
10 defendants may have been ingesting drugs at or  
11 about the time they made these statements,  
12 whether that would overcome any will that they  
13 might have had about making these statements, but  
14 this is how we are going to leave it so we can  
15 begin with the trial this morning. I will  
16 consider this further. she is not coming on  
17 until this afternoon?

18 MR. TOCHKA: Correct.

19 THE COURT: And I may well defer any  
20 decision to do any voir dire in the absence of  
21 the jury until we've reached that point in the  
22 testimony, but there are many statements which  
23 Ms. Tate is going to be testifying about made by  
24 one or both of these defendants?

1 MR. TOCHKA: Correct.

2 THE COURT: It would essentially mean  
3 going through her entire testimony on voir dire.  
4 There was a motion to suppress statements which  
5 had to do with statements made to the police by  
6 Mr. Anderson. I, myself, denied that. Okay. So  
7 that's how we are going to leave it.

8 Anything else before we get started?

9 MR. TOCHKA: Yes, Your Honor. If I  
10 could have just one second to get some other  
11 photographs. Your Honor, with respect to the  
12 autopsy photos, the witness would be the third  
13 witness, the medical examiner.

14 THE COURT: Chirnov?

15 MR. TOCHKA: Yes. These are the  
16 photographs which I'm seeking to admit and just  
17 for the record, these are photographs that I'm  
18 not seeking to admit.

19 THE COURT: Okay. Is this something  
20 that might be done after the break or you think  
21 before the break?

22 MR. TOCHKA: I'm not sure.

23 THE COURT: Okay. Let's just go  
24 quickly through these. There are four

1 photographs then that you seek to admit out of a  
2 total of twelve?

3 MR. TOCHKA: Yes.

4 THE COURT: Okay. Counsel has had an  
5 opportunity to review these, is that right?

6 MR. TOCHKA: Yes.

7 MR. FLAHERTY: That's correct.

8 MR. DOOLIN: Yes, Your Honor.

9 THE COURT: Is there an objection to  
10 these four photographs?

11 MR. DOOLIN: Yes, Your Honor.

12 MR. FLAHERTY: Yes.

13 THE COURT: On what grounds?

14 MR. DOOLIN: The grounds, I think that  
15 certainly two of the photos would come in. I  
16 would suggest to the Court that the photo that  
17 shows the right side of Mr. Yazbek's forehead  
18 with an abrasion, there is certainly some  
19 relevance to that and there is obviously  
20 relevance to the wound of the face. I would  
21 suggest one photo of the wound to the face come  
22 in on the left side, one photo of the wound to  
23 the face come in on the right side, and that's  
24 all that should come in and I would suggest that

1 admitting the other two photos, specifically a  
2 photo that is some kind of a medical device on  
3 Mr. Yazbek's head and also the photo of the wound  
4 being open --

5 THE COURT: I'm sorry. I have no  
6 photograph of a medical device.

7 MR. DOOLIN: No, Your Honor. This  
8 right there.

9 THE COURT: Oh, I'm sorry.

10 MR. FLAHERTY: It appears as if it is a  
11 metal rod, Your Honor, that is being inserted  
12 into the wound.

13 MR. TOCHKA: If I can just cut to the  
14 chase, as I told both counsel, I'm not seeking to  
15 introduce anything that shows this particular  
16 problem. I would suggest to crop that so that  
17 one would go to the jury and I told them that I  
18 am seeking to admit this particular photograph  
19 because this shows the back of the wound.

20 THE COURT: This photograph. Which  
21 one?

22 MR. TOCHKA: This shows the wound.  
23 This photograph also shows a wound that the  
24 others do not show and these two particular

1 photographs, Your Honor, I would suggest this one  
2 shows, in terms of the wound, prior to the  
3 medical examiner, basically shows closing the  
4 face. This shows the open nature of the wound  
5 and there will be testimony in terms of the type  
6 of weapon that would be used that would cause  
7 such a wound. This one would show where the  
8 entry is.

9 THE COURT: One of theories under which  
10 the Commonwealth is proceeding is extreme  
11 atrocity or cruelty. These are probative on that  
12 and the Commonwealth has already exercised its  
13 discretion not to show eight of the twelve  
14 autopsy photos. I believe that the four that  
15 have been selected are all probative and any  
16 prejudicial effect is outweighed by their  
17 probative value. They may be admitted.

18 MR. DOOLIN: I ask that my objection be  
19 noted, Your Honor.

20 MR. FLAHERTY: As well as on behalf of  
21 Mr. Anderson.

22 THE COURT: Thank you.

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



1 (Whereupon, the jury was escorted into  
2 the courtroom at 9:43 o'clock a.m.)

3 THE COURT: Ladies and gentlemen, I'd  
4 like to welcome you back this morning. We are at  
5 this time ready to continue with the trial. Your  
6 notes, as you see, are provided for you on your  
7 seats.

8 Before we do resume the trial, it is my  
9 obligation to ask each of you whether you have  
10 complied with my instructions about the case,  
11 about not discussing the case or consulting any  
12 outside source of any kind. If you have not so  
13 complied, would you raise a hand, please?

14 THE JURY: (No response.)

15 THE COURT: Thank you very much. The  
16 record should reflect no juror has. We will  
17 continue at this time.

18 Mr. Tochka, your next witness, please.

19 MR. TOCHKA: Thank you, Your Honor.  
20 The Commonwealth would call Officer John  
21 Rouvalis. May I proceed, Your Honor?

22 THE COURT: You may.  
23  
24

1                                    JOHN ROUVALIS,

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, could you please introduce yourself?

7                                    A        My name is ~~Officer John Rouvalis~~ I'll spell my  
8                                    last name.    R-o-u-v-a-l-i-s.

9                                    Q        And, sir, how long have you been a Boston Police  
10                                    officer?

11                                    A        For seven years.

12                                    Q        And where are you currently assigned?

13                                    A        I'm assigned to Area D, District 4.

14                                    Q        Where is that located?

15                                    A        South End.

16                                    Q        Prior to that where were you assigned to?

17                                    A        Area E, District 14, Allston, Brighton.

18                                    Q        How long had you worked in the Allston, Brighton  
19                                    area?

20                                    A        Five years.

21                                    Q        I want to direct your attention to March 28 of  
22                                    the year 2000.    Were you working?

23                                    A        Yes, I was.

24                                    Q        And what were your hours?

1 A Morning watch tour of duty which is between the  
2 hours of eleven forty-five p.m. to seven thirty  
3 a.m.

4 Q And what do those duties involve?

5 A That night I was assigned to the kilo 4201 alpha  
6 unit which is a marked patrol car, one man unit,  
7 uniformed, answer radio calls and patrol the  
8 Allston, Brighton sector of the City of Boston.

9 Q Officer, at some point during the early morning  
10 hours did you receive a radio call to go to the  
11 Faneuil development?

12 A Yes, I did.

13 Q Can you tell us approximately what time did you  
14 receive that call?

15 A Approximately three fifty-four a.m.

16 Q And were in you a one-man unit?

17 A Yes, I was.

18 Q And that was a marked car?

19 A Yes, it was.

20 Q And what was the call for?

21 A Originally it was for a man down in the back by  
22 the dumpster.

23 Q And about what time did you get there?

24 A I got there just about three fifty-six, three

1 fifty-seven a.m.

2 Q So minutes after receiving that phone call you  
3 arrived?

4 A Yes.

5 Q And when you arrived, sir, were you the first  
6 response unit to arrive?

7 A I was the first police to arrive.

8 Q Other than the police, who else arrived?

9 A The EMS.

10 Q And the EMS arrived before you or after you?

11 A They were ahead of me but we pulled in down the  
12 driveway together.

13 Q When you say the driveway, where is that driveway  
14 located?

15 A On the side of the Faneuil Street housing  
16 development.

17 Q At this time in the early morning, can you tell  
18 us what the lighting conditions were?

19 A It was dark, overcast, so it was dark, very dark.

20 Q And had it begun to rain yet?

21 A No.

22 Q And do you recall who the EMT's were that were in  
23 front of you?

24 A I do.

1 Q Who were they?

2 A EMT's Matt Athas and Brian Reardon.

3 Q Where did you park your cruiser?

4 A I parked by the ambulance.

5 Q And where did the ambulance park its truck?

6 A At the end of the driveway there is a gate that  
7 contains the dumpster. They parked in front of  
8 that and I parked right behind them.

9 Q Now, as you got out of your cruiser, did you turn  
10 your attention in the direction of the Faneuil  
11 development, the back door?

12 A Yes, I did.

13 Q Can you tell the jurors, what observations did  
14 you make?

15 A I made the gruesome discovery of locating the  
16 victim.

17 MR. DOOLIN: Objection, motion to  
18 strike.

19 THE COURT: Overruled.

20 BY MR. TOCHKA:

21 Q What observations did you make?

22 A My first observation was the pool of blood that  
23 collected and then my eyes kind of slowly looked  
24 up and saw the victim.

1 Q And what observations did you make about the  
2 victim?

3 A I was drawn to the -- his face.

4 Q And what, in particular, did you observe?

5 A It almost looked as though someone sliced --

6 MR. DOOLIN: I object. I object.

7 THE COURT: Overruled.

8 ~~(continued) Someone had sliced his face and it~~  
9 ~~was detached from his skull and his eyes were~~  
10 ~~popped out and I wasn't certain if they were~~  
11 ~~still there or not.~~

12 BY MR. TOCHKA:

13 Q And this pool of blood, where was the pool of  
14 blood?

15 A It was located downhill from the victim probably  
16 about three feet.

17 Q Now, at some point did you see what the medical --  
18 -- the EMT's did?

19 A Yes, I did.

20 Q What did they do?

21 A They quickly looked over the victim, checked for  
22 a pulse, and then placed a yellow blanket or  
23 sheet on top of him.

24 Q And, sir, did you look around that crime scene?

- 1 A Yes, I did.
- 2 Q And what observations did you make looking  
3 around?
- 4 A Initially I saw a set of keys that were lying on  
5 the stoop, a Wall Street Journal that was on the  
6 driveway.
- 7 Q Did you observe any glasses?
- 8 A And a set of glasses by the victim's hand.
- 9 Q What did you do next?
- 10 A I contacted the patrol supervisor.
- 11 Q And who was that?
- 12 A Sergeant Riley.
- 13 Q And were notifications made to other units?
- 14 A That would be his responsibility, but, yes, they  
15 were.
- 16 Q And do you know what other units were notified?
- 17 A That would be the homicide, ID, crime lab, and  
18 the district captain.
- 19 Q And who was the district captain?
- 20 A Captain Evans.
- 21 Q And did he arrive on the scene?
- 22 A Yes, he did.
- 23 Q And do you recall who arrived from the homicide  
24 unit?

1 A That would be Sergeant Detective Coleman,  
2 Detective Traylor.

3 Q And Sergeant Coleman is the individual seated at  
4 the counsel table?

5 A Yes, he is.

6 Q Now, at some point in time did you speak to a man  
7 by the name of Edward Laureano?

8 A Yes, I did.

9 Q And can you describe his demeanor?

10 A He was -- when I was at the crime scene I saw him  
11 kind of standing in the courtyard and I  
12 approached him and I had asked him was he the one  
13 who made the call --

14 MR. FLAHERTY: Objection. Non-  
15 responsive.

16 THE COURT: Another question, please.

17 BY MR. TOCHKA:

18 Q Did you approach?

19 A Yes.

20 Q Did you have a conversation with him?

21 A Yes.

22 Q Could you describe his demeanor?

23 A Calm.

24 Q What happened next?



1 A I asked --

2 Q Let me ask you. You got his name. Did you get  
3 his information? His address and the like?

4 A Yes, I did. He provided me with his license.

5 Q What happened next?

6 A I took down the information. While I was taking  
7 down the information, he had told me that --

8 MR. FLAHERTY: Objection.

9 THE COURT: Not what he said, sir.

10 MR. TOCHKA: Not what he said.

11 THE COURT: Another question.

12 BY MR. TOCHKA:

13 Q After you spoke to him, what did you do next?  
14 What did you physically do next?

15 A I started putting tape around the crime scene.

16 Q Is that the yellow tape around the crime scene?

17 A Yes, it is.

18 Q At some point in time when you turned that corner  
19 and you saw the individual lying on the -- where  
20 was he lying in relationship to the stairway?

21 A Horizontal.

22 Q His feet were in which direction?

23 A His feet were facing the driveway, his head  
24 towards the wall.

1 Q Now, when you turned that corner did you observe  
2 a car parked there?  
3 A Yes.  
4 Q And what type of car, do you recall?  
5 A It was a gray Buick Skylark.  
6 Q And did you do any investigation relative to that  
7 car?  
8 A I did. I observed that the window, the driver's  
9 side window was open and I placed my hands on the  
10 hood at which time I determined that it was cool.  
11 Q And did you do any other investigation relative  
12 to the --  
13 A No.  
14 Q At some point did you determine who the owner of  
15 that car was?  
16 A I did.  
17 Q How did you do that?  
18 A I ran the license plate on the computer in my  
19 police car.  
20 Q And who did you learn was the owner of the car?  
21 A It came back to an Iman Yazbek, 88 Hearn Street,  
22 Watertown.  
23 Q Sir, let me show you this photograph and ask you  
24 if you can recognize anything that that's a

1 photograph of?

2 A I recognize it as being the keys that I observed  
3 that night on the stoop of the stairs.

4 Q Does that photograph fairly and accurately depict  
5 where you observed the keys?

6 A Yes.

7 Q And is there anything different from what you  
8 observed there other than the two cones?

9 A No, sir.

10 Q Thank you. And by the way the two cones that are  
11 there, what are those cones for?

12 A Those are used for crime scenes for marking  
13 evidence.

14 MR. TOCHKA: Your Honor, I move to  
15 introduce this photograph into evidence.

16 THE COURT: No objection? Next  
17 exhibit.

18 (Exhibit No. 9, being a photograph, as  
19 described above, was marked and admitted into  
20 evidence.)

21 MR. TOCHKA: Your Honor, if I may  
22 publish it on the monitor?

23 THE COURT: Yes.

24 BY MR. TOCHKA:

1 Q Sir, I'm placing what's now been marked as  
2 Exhibit 9. Do you recognize that, sir?

3 What does that show?

4 A Shows Exhibit 9, sir.

5 Q Yes. Does that show the keys that you observed?

6 A Yes, it does.

7 Q Sir, I'm going to show you what's been previously  
8 marked Exhibit 6.

9 MR. TOCHKA: And, with the Court's  
10 permission, if I could ask the witness to step  
11 down to the monitor?

12 THE COURT: Yes, sir.

13 BY MR. TOCHKA:

14 Q Sir, keeping Exhibit 9 in mind, can you show us  
15 where you observed the keys on Exhibit 6?

16 A Right up here.

17 Q And that's on the second step?

18 A Yes, sir.

19 Q Thank you, sir. Why don't you stay there for a  
20 second?

21 THE COURT: I think we have a pointer  
22 somewhere, Mr. Tochka. Thank you.

23 BY MR. TOCHKA:

24 Q I'm going to show you what's been previously

1 marked as Exhibit 2.

2 Now, you mentioned that the EMT's, upon  
3 their arrival, after checking the pulse, put a  
4 yellow blanket on the victim. Is that the yellow  
5 blanket you referred to?

6 A Yes, sir.

7 Q And the car, is that the car that you referred to  
8 that you ran the license plate check?

9 A Yes, sir.

10 Q That came back to Iman Yazbek?

11 A Yes, sir.

12 Q And does that show fairly and accurately the  
13 relationship of the car to the body?

14 A Yes, it does.

15 Q And fairly and accurately the relationship of the  
16 body to the stairwell?

17 A Yes, it does.

18 Q Sir, showing you what's been marked Exhibit 3, do  
19 you recognize what that's a photograph of, sir?

20 A Yes, I do.

21 Q And what is that a photograph of?

22 A Of the victim.

23 Q ~~And does that fairly and accurately depict his~~

24 ~~facial wounds that you have described to this~~

1 jury?

2 A Yes, it does.

3 Q And the pool of blood that you observed, can you  
4 show us on that scene where the pool of blood  
5 was?

6 A It trickled down in this direction so it would be  
7 down in here.

8 MR. TOCHKA: Thank you, sir. You can  
9 resume the stand. Thank you, Officer. I have no  
10 further questions.

11 THE COURT: Thank you very much. Mr.  
12 Doolin?

13 MR. DOOLIN: Thank you.

14  
15 CROSS EXAMINATION

16 BY MR. DOOLIN:

17 Q Sir, how long have you been with the Boston  
18 Police Department?

19 A Seven years.

20 Q And it's fair to say that your duties with the  
21 Boston Police Department are that you are a  
22 patrol officer? Is that right?

23 A That's correct.

24 Q And is it fair to say that you wear a uniform in

1 your duties, is that correct?

2 A That's correct.

3 Q And on the night in question it is also fair to  
4 say that you were working a night shift? Is that  
5 right?

6 A That's correct.

7 Q What time did your shift start?

8 A Eleven forty-five p.m.

9 Q And what time would it end normally?

10 A Seven thirty a.m.

11 Q Is it fair to say that the Boston Police  
12 Department has three shifts?

13 There's a morning shift, an afternoon  
14 shift and an overnight shift?

15 A Yes, sir.

16 Q Now, is it also fair to say that in your time  
17 with the Boston Police Department you have worked  
18 out in Allston, Brighton? Is that right?

19 A Yes, sir.

20 Q And it's also fair to say that within Allston,  
21 Brighton, there are plainclothes officers who  
22 function as detectives? Is that correct?

23 A There are detectives and plainclothes officers.

24 Q But there are detectives with the Allston,

1 Brighton station, is that correct?

2 A Yes, sir.

3 Q And it's also fair to say that the Boston Police  
4 Department has many units within it that have  
5 different functions? Is that correct?

6 A Yes, sir.

7 Q There is a homicide unit, is that correct?

8 A Yes, sir.

9 Q Sergeant Detective Coleman is a member of that  
10 unit, is that right?

11 A That's correct.

12 Q Is it also fair to say that there's an  
13 identification unit?

14 A Yes, sir.

15 Q The identification unit has individuals that do  
16 fingerprinting and things of that nature, is that  
17 correct?

18 A That's correct.

19 Q There are also photographers who work within the  
20 identification unit, is that right?

21 A That's right.

22 Q The Boston Police Department also has a light  
23 truck, is that correct?

24 A That's correct.



- 1 Q And a light truck is a vehicle that comes to the  
2 scene of a crime and has lighting that is on it,  
3 is that correct?
- 4 A That's correct.
- 5 Q It helps to illuminate the scene for the  
6 officers, is that right?
- 7 A That's correct.
- 8 Q It's also fair to say that the Boston Police  
9 Department also has a crime lab? Is that  
10 correct?
- 11 A That's correct.
- 12 Q And there are officers who work at the crime lab,  
13 is that right?
- 14 A I'm not sure on that one, sir.
- 15 Q Are there technicians who work at the crime lab?
- 16 A Yes, sir.
- 17 Q Now, your testimony is that you were the first  
18 officer who responded to the scene that night, is  
19 that correct?
- 20 A Yes.
- 21 Q And your testimony is that you got to the scene  
22 somewhere around eleven fifty-five or eleven  
23 fifty-six, is that right?
- 24 A No, sir.

- 1 Q What time did you get there?
- 2 A Three fifty-four, three fifty-six.
- 3 Q Three fifty-four, I'm sorry.
- 4 A A.M.
- 5 Q When you got there at three fifty-four, it's your  
6 testimony that it was not raining, is that  
7 correct?
- 8 A That's correct.
- 9 Q And it's also your testimony that when you got to  
10 the scene that you made observations of the  
11 positioning of the body, is that correct?
- 12 A Yes.
- 13 Q And that you also made observations of eyeglasses  
14 that were up on the step, is that correct?
- 15 A No, sir.
- 16 Q Did you make any observations of any eyeglasses?
- 17 A Yes, sir.
- 18 Q Where were the eyeglasses?
- 19 A By the victim's hand.
- 20 Q Did you observe any lenses?
- 21 A I didn't.
- 22 Q Okay. Did you check up on the step at all?
- 23 A I didn't want to trample on the crime scene. No.
- 24 Q That's fine. And it's your testimony that the

1 crime scene was set up by yourself and other  
2 officers, is that correct?

3 A Yes.

4 Q And when a crime scene is set up, it's fair to  
5 say that there is tape that is put up? Is that  
6 correct?

7 A Yes.

8 MR. DOOLIN: May I approach the  
9 witness, Your Honor?

10 THE COURT: Yes, sir.

11 BY MR. DOOLIN:

12 Q I show you this photograph. Do you recognize  
13 what's depicted in that photograph?

14 A Yes, I do.

15 Q What's depicted in that photograph?

16 A I believe this right here would be the doorway to  
17 89 Faneuil Street and this is the walkway that  
18 leads up from the courtyard which is behind it.

19 Q Okay. So is there also crime tape that is in  
20 there?

21 A There is.

22 Q Is that a fair and accurate representation of the  
23 way that scene looked that night?

24 A Yes.

1 MR. DOOLIN: I ask that be moved into  
2 evidence, Your Honor.

3 MR. TOCHKA: No objection.

4 THE COURT: It may be marked and  
5 admitted.

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

9 MR. DOOLIN: May I publish this to the  
10 jury on the monitor?

11 THE COURT: Yes.

12 BY MR. TOCHKA:

13 Q And this is the crime scene tape that you're  
14 referring to, is that correct?

15 A Yes, it is.

16 Q And that was set up by yourself and by other  
17 officers that night to keep people away from the  
18 crime scene, is that right?

19 A That's correct.

20 Q And it's fair to say that the crime scene tape  
21 that was set up runs off the fence from the area  
22 in back of 89 Faneuil, is that right?

23 A I believe, yes.

24 Q Now, is it your testimony that there were EMT's

1 who arrived almost simultaneously with you at  
2 three fifty-four?

3 A Yes, it is.

4 Q And the EMT's that arrived, it's fair to say that  
5 they put a blanket over Mr. Yazbek's body? Is  
6 that correct?

7 A Yes.

8 Q And is it fair to say that this was done to  
9 preserve the condition of the body as it was  
10 found at three fifty-four or three fifty-six?

11 A No, I think it was just for dignity-wise.

12 Q Okay. But was anything placed over any other  
13 evidence that was at the scene?

14 A No.

15 Q Is it fair to say that then at some point that  
16 morning it began to rain?

17 A Yes.

18 Q What time did it start to rain?

19 A ~~Around, I believe it was about five eleven.~~

20 Q Well, did you write a police report on this?

21 A I did.

22 Q And when you wrote a police report, it's fair to  
23 say that the events were fresher in your mind?  
24 Is that correct?

1 A Right.

2 MR. DOOLIN: May I approach the  
3 witness?

4 THE COURT: Yes, sir.

5 BY MR. DOOLIN:

6 Q When you wrote your police report, it's fair to  
7 say that you said it was at four fifteen, is that  
8 correct?

9 A Yes, sir.

10 Q ~~at four fifteen~~ it began to rain, is that  
11 ~~correct?~~

12 A Yes.

13 Q Now, at any point in time was any kind of cover  
14 device used for the crime scene?

15 A No.

16 Q There was no canvas that was put up over the  
17 crime scene, is that correct?

18 A No, not at that time.

19 Q What time did Sergeant Riley arrive at the crime  
20 scene?

21 A Shortly after I called him, somewhere four,  
22 between four and four oh six.

23 Q Shortly after four o'clock, is that correct?

24 A Right.

1 Q [REDACTED]

2 [REDACTED] Sergeant Riley was there, is that correct?

3 A That's correct.

4 Q And he would be your supervisor, is that right?

5 A That's correct.

6 Q Do the detectives who are assigned to Allston,  
7 Brighton, are there other night shifts of  
8 detectives?

9 A No.

10 Q So it's fair to say that there are no detectives  
11 that were working the overnight shift that night?  
12 Is that right?

13 A That's correct.

14 Q What time did Sergeant Coleman arrive on the  
15 scene?

16 A [REDACTED]

17 Q So it's fair to say that you had been there for  
18 over an hour before Sergeant Coleman arrived? Is  
19 that correct?

20 A Yes.

21 Q And he was the first responding member of the  
22 homicide team, is that right?

23 A Yes.

24 Q And at no time between the time that you arrived

1 and the time that Sergeant Coleman arrived was  
2 any sort of canvas device put up over the crime  
3 scene, is that correct?

4 A That's correct.

5 Q Did you yourself go inside the hallway at 89  
6 Faneuil that night?

7 A I did not.

8 Q At any point in time did you move Mr. Yazbek's  
9 body?

10 A No.

11 Q I think you testified on direct examination that  
12 you had made observations of a New York or of a  
13 Wall Street Journal, is that correct?

14 A Yes, sir.

15 Q Where was that Wall Street Journal?

16 A It was in the driveway in front of the Buick  
17 Skylark.

18 Q You said it was in front of the Buick Skylark.  
19 Was it -- how many feet away from the Buick  
20 Skylark was it?

21 A Several.

22 MR. DOOLIN: May I approach the  
23 witness, Your Honor?

24 THE COURT: Yes, sir.



1 BY MR. DOOLIN:

2 Q I show you this photograph. Do you recognize  
3 what's in that photograph?

4 A It is a Wall Street Journal.

5 Q Is that a fair and accurate representation of the  
6 way that the area around the Wall Street Journal  
7 was that night?

8 A Yes.

9 MR. DOOLIN: I ask that be published to  
10 the jury, Your Honor, by way of the monitor.

11 MR. TOCHKA: No objection.

12 BY MR. DOOLIN:

13 Q Now, it's fair to say that there is a Boston  
14 Police cone that is placed next to it, is that  
15 right?

16 A That's correct.

17 Q And it's fair to say that the Boston Police cones  
18 are placed there by yourself or by other officers  
19 at a crime scene to show different pieces of  
20 evidence? Is that correct?

21 A Yes.

22 Q And that the cones are numbered sequentially, one  
23 through however many cones there are, is that  
24 correct?

1 A Yes.

2 Q And, in fact, in this case, that was cone number  
3 six, is that right?

4 A That's correct.

5 MR. DOOLIN: I'm sorry. I don't think  
6 I had this marked. I move to have it marked.

7 THE COURT: Without objection, it shall  
8 be marked.

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

12 MR. DOOLIN: What I was showing you for  
13 the record was Exhibit No. 11.

14 BY MR. DOOLIN:

15 Q Now, when you arrived at the crime scene, sir,  
16 your testimony was that you observed some glasses  
17 and that you observed the Wall Street Journal, is  
18 that correct?

19 A Yes.

20 Q Did you ever observe a Timberland watch?

21 A No.

22 Q And your testimony was that after your arrival  
23 that other officers from the Boston Police  
24 Department also began to arrive on the scene. Is

1           that right?

2     A     Yes.

3     Q     You said Sergeant Riley came, is that right?

4     A     Yes.

5     Q     The captain from the station, Captain Evans, also  
6           arrived at some point, is that right?

7     A     Yes.

8     Q     And it's also fair to say that numerous other  
9           officers began to arrive at the scene? Is that  
10          correct?

11    A     That's correct.

12    Q     And Officer Pettus arrived, is that right?

13    A     I'm not familiar with that officer.

14    Q     Are you familiar with an officer from the  
15          identification unit who took pictures?

16    A     Yes.

17    Q     Was there an officer from the identification unit  
18          there taking pictures that night?

19    A     Yes.

20    Q     Is it also fair to say that there were other  
21          detectives who began to arrive as the morning  
22          progressed? Is that right?

23    A     The only detectives I saw were Sergeant Detective  
24          Coleman and Traylor.

1 Q Did you see Detective Paul Mahoney?

2 A I don't recall.

3 Q ~~Did you see Detective Ceaser?~~

4 A ~~I don't recall.~~

5 Q Did you see Detective, Sergeant Detective  
6 Creavon?

7 A I remember seeing Sergeant Detective Creavon.

8 Q Did you write what's called a Boston Police  
9 Department one one?

10 A Yes, I did.

11 Q Is it fair to say that you wrote that one one in  
12 the hours after the incident happened? Is that  
13 correct?

14 A Yes.

15 MR. DOOLIN: May I approach the  
16 witness, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. DOOLIN:

19 Q Is it fair to say that when you wrote your one  
20 one that you had a list of officers who arrived  
21 at the scene? Is that correct?

22 A Yes.

23 Q Detective Paul Mahoney was one of those officers,  
24 is that right?

1 A Yes, sir.

2 Q [REDACTED]  
3 was another one of those officers? Is that  
4 correct?

5 A [REDACTED]

6 Q And it's also fair to say that you were the  
7 officer who wrote the one one that night? Is  
8 that correct?

9 A Yes.

10 Q And, in fact, did you write that one one at about  
11 ten o'clock that morning?

12 A I think I was released from the crime scene about  
13 seven fifty a.m. I would have gotten back to the  
14 station about eight and then I probably would  
15 have started. I think I completed it maybe at  
16 ten o'clock a.m.

17 Q Would that be what your recollection was?

18 A Yes.

19 Q And it's fair to say that when you wrote the one  
20 one you also wrote what's called a form twenty-  
21 six? Is that correct?

22 A Yes, sir.

23 Q Now, it's fair to say that a one one is what  
24 might be described as a Boston Police Department

1 incident report? Is that right?

2 A A one one?

3 Q Yes.

4 A Yes, sir.

5 Q And it's also fair to say that a form twenty-six  
6 is a narrative that's written by the Boston  
7 Police? Is that correct?

8 A Yes, sir.

9  And you wrote both of those that night, is that

10  correct?

11 A Yes, sir.

12 Q And it's fair to say that one of the important  
13 things that you do as a police officer is that  
14 you document the work that you do? Is that  
15 correct?

16 A Yes.

17 Q By way of writing reports about your observations  
18 at a certain scene, is that correct?

19 A Yes.

20 Q And that you also wrote in your one one about the  
21 conversation that you had with Mr. Laureano, is  
22 that correct?

23 A I don't think I put that in the one one, sir.

24 Q Did you write that in your form twenty-six?

1 A Yes, I did.

2 Q And it's fair to say one of the things that you  
3 wanted to do was you wanted to memorialize your  
4 conversation that you had with Mr. Laureano, is  
5 that correct?

6 A Yes.

7 Q And you wanted to identify Mr. Laureano as a  
8 possible witness, is that right?

9 A Yes, sir.

10 Q Now, at any point that night, sir, did you  
11 canvass any of the buildings in that area?

12 A No, I did not.

13 Q And it's your testimony, sir, that you left the  
14 crime scene somewhere around -- did you say seven  
15 thirty?

16 A I believe it was seven fifty a.m.

17 Q Seven fifty. Did you see Detective Juan Torres  
18 that night?

19 A I don't recall.

20 Q Do you recall seeing Detective Paul McLaughlin?

21 A I don't recall.

22 Q Is it fair to say that you know that Detective  
23 Torres and Detective McLaughlin worked at that  
24 time under the direction of Sergeant Coleman? Is

1           that correct?

2    A    I wouldn't know that, no.

3    Q    Alright.  And is it your testimony, sir, that the  
4           car that you made observations of, that you ran  
5           the plate on that car, and that car came back to  
6           the name, Iman Yazbek?  Is that correct?

7    A    Yes, sir.  .

8    Q    And that car was several feet away from where Mr.  
9           Yazbek's body was, is that correct?

10   A    Yes.

11   Q    And again it's fair to say that you made  
12           observations that the car window was open?  Is  
13           that correct?

14   A    Yes.

15   Q    And that again, there was no canvass or tarp that  
16           was put over that car, is that correct?

17   A    That's correct.

18   Q    And that it began to rain heavier as the morning  
19           went on, is that correct?

20   A    Yes.

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

23                   THE COURT:  Thank you.  Mr. Flaherty?

24                   MR. FLAHERTY:  Thank you, Your Honor.



CROSS EXAMINATION

BY MR. FLAHERTY:

Q Officer Rouvalis, my name is Timothy Flaherty. I represent Mr. Anderson.

If I ask you any questions you don't understand, just let me know and I'll try and rephrase them. Okay?

A Okay.

Q On March 28 you were working an overnight shift at the Brighton station house and you responded to 89 Faneuil about three fifty-four a.m., correct?

A Yes.

Q And you have been a Boston Police officer for seven years?

A Yes.

Q Five of those years in the Brighton, Allston area?

A Yes.

Q Prior to your commission as a Boston Police officer, you attended the Boston Police Academy, right?

A Yes.

Q Where you received training, correct?

1 A Yes.

2 Q You learned what was important about writing  
3 reports, right?

4 A Yes.

5 Q And you also learned what was important about  
6 securing a crime scene, correct?

7 A Yes..

8 Q And as part of your training you were told that  
9 immediately upon reporting or responding to a  
10 crime scene, first responsibility is to get in  
11 touch with a shift commander, is that right?

12 A If there is a victim involved, sir?

13 Q Where a victim is involved such as this was on  
14 March 28 of 2000.

15 A Your first responsibility is the viability of the  
16 victim.

17 Q Okay. It was immediately apparent to you, was it  
18 not, sir, that was a crime scene when you got out  
19 of your cruiser at three fifty-four a.m.?

20 A Yes.

21 Q And based upon that you immediately took steps to  
22 secure the crime scene, right?

23 A Yes.

24 Q And in doing so, I think your testimony was that

1 after the EMT's determined that the victim was  
2 not responsive to vital signs, you then contacted  
3 your patrol supervisor, right? Is that the first  
4 thing you did?

5 A I don't recall if the first thing -- but that  
6 would be one of the first things I did, yes.

7 Q And immediately thereafter, sir, what's the next  
8 thing you do?

9 Is that when you attempted to identify  
10 who the owner of the automobile may be?

11 A No.

12 Q Alright. Immediately thereafter that is when you  
13 took a view of the crime scene to see what  
14 existed there, noticed the Wall Street Journal  
15 and the keys you testified were located there?

16 A Yes.

17 Q And so that the first thing you do, you make a  
18 cursory look of the scene and then you call your  
19 supervisor?

20 A Sure, yes.

21 Q And the reason why you do that is because, as you  
22 testified on direct examination, it's a  
23 supervisor's responsibility to get in touch with  
24 the crime lab, get in touch with the photo and

1 print people, and get in touch with the other  
2 technicians to process the crime scene, right?

3 A Yes.

4 Q And that's very important in a case like this,  
5 right?

6 A Yes.

7 Q It was clear to you that the victim had expired,  
8 right?

9 A Yes.

10 Q And it was also clear to you that there was a  
11 very distinct possibility this may be a homicide  
12 case, right?

13 A Yes.

14 Q It was also clear to you at that time, was it  
15 not, sir, in your experience as a Boston Police  
16 officer, that the man expired from a gunshot  
17 wound, correct?

18 A No.

19 Q Would you tell us the location of the body, sir,  
20 when you first arrived, the location of the head?

21 A It was facing towards the building.

22 Q Was it on a grassy area?

23 A Semi grassy.

24 Q Was it near any sharp objects?

1 A There were rocks.

2 Q Okay. Did it appear as if there were any rocks  
3 in the area that could have caused the injury  
4 that you described on direct examination?

5 A Possibly.

6 MR. FLAHERTY: May I see, I think it's  
7 Exhibit 9. For the record, Exhibit 3 is on the  
8 monitor.

9 BY MR. FLAHERTY:

10 Q Can you see the monitor from where you are,  
11 Officer?

12 A Yes, I can.

13 Q Do you see any rocks in the area of that person's  
14 upper body?

15 A No, I don't.

16 Q So were you mistaken when you said there may be  
17 some rocks in the area?

18 A I believe the question was, would it be possible  
19 for a rock and I said yes.

20 Q Okay. Well, my question was, were there any  
21 rocks in the area. You didn't move this person,  
22 right?

23 A No.

24 Q Did you -- in your mind was it clear to you that

1 this was not an accident at that time?

2 A Yes.

3 Q Now, you have responded to various scenes in your  
4 seven years in the Boston Police Department,  
5 correct?

6 A Yes.

7 Q Scenes of that nature, sir?

8 A Yes.

9 Q Are you familiar with what a gunshot wound looks  
10 like?

11 A Yes.

12 Q And this appeared to you in your experience, in  
13 your training as a Boston Police officer, as the  
14 first responder to the scene, that this was an  
15 injury caused by a gunshot wound, was it not?

16 A No.

17 Q The EMT's arrived and they made an observation of  
18 the body, correct?

19 A Yes.

20 Q And you had conversation with them?

21 A Yes.

22 Q Shared the collective knowledge in the  
23 conversation?

24 A Yes.

1 Q And based on the sharing of the collective  
2 knowledge after the EMT's made an examination and  
3 your experience and training as a Boston Police  
4 officer and your seven years responding to scenes  
5 like this, you knew that this was a wound  
6 suffered or caused by a gunshot?

7 A I had reason to believe but we weren't positive  
8 as a group. We still weren't positive that it  
9 was a gunshot.

10 Q Reason to believe, correct?

11 A Reason to believe, yes.

12 Q Now, immediately thereafter when you formed a  
13 reason to believe that it is an injury caused by  
14 a gunshot wound, you then assembled a crime scene  
15 tape, right?

16 A Yes.

17 Q Is that the very next thing you do, the crime  
18 scene tape?

19 A I believe prior to doing that I observed Mr.  
20 Laureano in the courtyard.

21 Q Okay. And as a part of your training and  
22 experience in the Boston Police Academy, it is  
23 very important in a scene like this where you  
24 have reason to believe a victim expired as a

1 result of a gunshot wound to get statements of  
2 potential witnesses, right?

3 A Yes.

4 Q And you knew that Mr. Laureano was the person who  
5 reported finding the body, correct?

6 A Not until I asked him.

7 Q And based upon your conversation with him, you  
8 felt it important to get his name, his address,  
9 his identifying information, right?

10 A Yes.

11 Q Which of the next responding homicide detectives  
12 conducted a follow-up interview of Edwin  
13 Laureano?

14 A I wasn't present during that, no.

15 Q Did you take notes during your conversation with  
16 him?

17 A Just his information and then mentally what he  
18 told me.

19 Q To whom did you pass your information along?

20 A I would have passed it along to the patrol  
21 supervisor.

22 Q And that's Sergeant Riley; correct?

23 A Yes.

24 Q Okay. And after taking that statement from Mr.



1           Laureano, did you speak to any other potential  
2           witnesses at or about 89 Faneuil Street?

3           A     No.

4           Q     Is that then, sir, when you put the crime scene  
5           tape up?

6           A     Yes.

7           Q     Now, was it before or after you put the crime  
8           scene tape up that you made the observations of  
9           the automobile?

10          A     Before.

11          Q     Alright. So prior to the crime scene tape going  
12          up, you went over and you felt the hood of the  
13          car, right?

14          A     No. I think I did it after I set up the crime  
15          scene tape.

16          Q     After the crime scene tape. And the reason for  
17          setting up the crime scene tape is because you  
18          wanted to preserve the crime scene, correct?

19          A     Yes.

20          Q     And the reason for that, you're taught to  
21          preserve the crime scene, is because there may be  
22          some type of forensic evidence available that  
23          could be processed by the experienced detectives  
24          and the technicians from the crime scene lab,

1 right?

2 A That's correct.

3 Q And I think you testified on direct examination  
4 you realized how important all this was and you  
5 didn't want to trample the crime scene, right?

6 A Yes.

7 Q And you knew in your mind since it was a reason  
8 to believe that the person expired from a gunshot  
9 wound there may be ballistics evidence, right?

10 A Sure, yes.

11 Q Sort of like bullet fragments and things of that  
12 nature?

13 A Yes.

14 Q And the crime scene tape is up, that's when you  
15 felt the hood of the car, right?

16 A Right. It would have been sometime after. I  
17 don't know exactly when.

18 Q And the reason for feeling the hood of the car is  
19 to see whether or not the car had just arrived,  
20 right?

21 A Yes.

22 Q And if the possibility of the person who  
23 committed this gun shooting, the shooting, might  
24 possibly be in the area, right?

1 A Yes.

2 Q When you did that, is it then next that you  
3 checked with the Registry of Motor Vehicles to  
4 determine the owner of the automobile?

5 A I didn't run that plate until homicide was there,  
6 I believe. I think that was later.

7 Q At some point you were assigned to secure the  
8 crime scene, right?

9 You remained until seven fifty a.m.,  
10 right?

11 A Yes.

12 Q So you were there for about four hours, right?

13 A Yes.

14 Q And in that four hour period of time a number of  
15 police officers responded, right?

16 A Yes.

17 Q And is it fair to say Sergeant Riley was one?

18 A Yes.

19 Q Is it fair to say Officer Sheets was another?

20 A Yes.

21 Q Is it fair to say that Officer McNulty was  
22 another?

23 A Yes.

24 Q Is it fair to say that Officer Witkins was

1 another?

2 A Yes.

3 Q Is it fair to say that Officer Kelley was  
4 another?

5 A Yes.

6 Q Is it fair to say that Sergeant Detective Coleman  
7 arrived?

8 A Yes.

9 Q Is it fair to say that Officer Pettus was  
10 present?

11 A Yes.

12 Q Is it fair to say that Detective Creavon was  
13 present?

14 A Yes.

15 Q Detective Traylor was present?

16 A Yes.

17 Q Was there an assistant district attorney who made  
18 himself known to you by the name of Kevin Hayden  
19 who arrived at the scene?

20 A Yes.

21 Q Was there also a Captain Evans at the scene?

22 A Yes.

23 Q Detective Paul Mahoney was present?

24 A Yes.

- 1 Q Sergeant McDonough was present?
- 2 A Yes.
- 3 Q Detective Ceaser or Ceaser?
- 4 A Ceaser, yes.
- 5 Q Officer Stevens, correct? At some point?
- 6 A I'm not familiar with Officer Stevens.
- 7 Q Officer Coyne?
- 8 A I don't recall Officer Coyne.
- 9 Q And in addition to that, members or people from
- 10 the medical examiner's office arrived while you
- 11 were present?
- 12 A I don't recall the medical examiner's office
- 13 being there.
- 14 Q The emergency medical technicians that you
- 15 mentioned earlier, they arrived?
- 16 A Yes.
- 17 Q And you're not the only one that had reason to
- 18 believe that this was an injury caused by
- 19 gunshot, are you, sir?
- 20 A No.
- 21 Q The light truck that comes from the
- 22 identification unit, that's a large truck with
- 23 heavy lighting, right?
- 24 A Yes.

1 Q As a matter of fact, in some of the photographs  
2 you can see the glare caused from the lighting  
3 truck, right?

4 A Yes.

5 Q And that light was shown down on the immediate  
6 area of 89 Faneuil Street, right?

7 A Yes.

8 Q And this light truck was present when the  
9 homicide detectives and other detectives arrived  
10 to process the crime scene, right?

11 A Yes.

12 Q At, I think you said, at four ten a.m. it began  
13 to rain?

14 A Yes.

15 Q And the rain was heavy at times, sir?

16 A Very heavy, yes.

17 Q Rained heavily for an hour, right, prior to the  
18 homicide detectives arriving at the scene?

19 A About, yes.

20 Q And as Mr. Doolin asked you, there was no tarp  
21 placed over the crime scene, immediate crime  
22 scene area, right?

23 A No.

24 Q Are you equipped in your cruiser with any tarps

1 or blankets?

2 A No, sir.

3 Q And there was nothing placed over the driver's  
4 side of the automobile, right?

5 A No.

6 Q And you noted the window was down, correct?

7 A Yes.

8 Q And it's fair to say, sir, in your training and  
9 experience in your seven years on the Boston  
10 Police Department that at a crime scene such as  
11 this, just like on March 28, 2000, there is an  
12 exchange of collective information among the  
13 investigating officers, right?

14 A Yes.

15 MR. FLAHERTY: No further questions,  
16 Your Honor.

17 THE COURT: Thank you. Anything more?

18 MR. TOCHKA: Yes.

19

20 REDIRECT EXAMINATION

21 BY MR. TOCHKA:

22 Q Officer, you were just asked by Mr. Flaherty,  
23 after a series of questions, whether or not upon  
24 your arrival you believed that this was a gunshot

1 wound when you saw Mr. Yazbek's face.

2 Do you remember that question?

3 A Yes.

4 Q Let me show you a photograph. Sir, does that  
5 photograph fairly and accurately depict a close-  
6 up of the face that you saw back in March 28 of  
7 the year 2000?

8 A Yes.

9 Q When you saw that face, sir --

10 MR. TOCHKA: The Commonwealth would  
11 move to introduce this as an exhibit.

12 MR. FLAHERTY: Objection, Your Honor.

13 THE COURT: Let me see counsel.

14 (Whereupon, the following discussion  
15 occurred at side bar:)

16 THE COURT: Grounds for the objection?

17 MR. FLAHERTY: There is already  
18 pictures in, Your Honor, that depict the injury....  
19 He has testified to his observations. There is  
20 no need for the photograph to be admitted into  
21 evidence.

22 MR. TOCHKA: There is no photograph  
23 that shows a close-up of the injury that this  
24 officer saw. My brother has made it an issue in



1 terms of whether that appeared to be a gunshot  
2 when he saw it.

3 THE COURT: The objection is overruled.

4 MR. FLAHERTY: Your Honor, excuse me.  
5 May I be heard?

6 THE COURT: I just heard you, sir.

7 MR. FLAHERTY: May I be heard further?  
8 The reason for my objection is that this  
9 photograph --

10 THE COURT: Sir, could you try to keep  
11 your voice down?

12 MR. FLAHERTY: I'll try. The reason  
13 for my objection is this photograph is  
14 duplicative of earlier photographs. The line of  
15 questioning directed to the witness was directed  
16 to his observations of what he saw. He testified  
17 that it appeared as though there was a slice to  
18 the face as is my memory of his direct  
19 examination. I queried him on that and his  
20 response was that he had reason to believe that  
21 it was a gunshot wound.

22 Your Honor, to admit this photograph in  
23 some way, shape or form to vouch for or to  
24 corroborate his direct examination is improper

1           because it is inflammatory, it's prejudicial, we  
2           have had a discussion about the crime scene  
3           photographs. My line of questioning does not  
4           open up the door to admit additional crime scene  
5           photographs. So for those reasons, Your Honor,  
6           I'd object.

7                         MR. DOOLIN: I object also.

8                         THE COURT: Let me just say this for  
9           the record that this particular photograph which  
10          the Commonwealth is seeking to admit is not  
11          duplicative of the others which the Commonwealth  
12          has indicated it intended to put in through the  
13          medical examiner and I do think that cross  
14          examination entitles the Commonwealth to have it  
15          admitted at this time.

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

18                        (Exhibit No. 12, being a photograph, as  
19                        described above, was marked and admitted into  
20                        evidence.)

21                        THE COURT: Ladies and gentlemen, let  
22           me just take this opportunity, we have heard a  
23           few objections made already in the course of the  
24           trial and let me explain the role of objections.

1 Our trials must be conducted according to rules  
2 of evidence and from time to time you have heard  
3 and will continue to hear objections made by  
4 counsel when, in their judgment, the testimony  
5 about to be given by the witness is inadmissible  
6 under our rules.

7 My job is to make decisions about that.  
8 So if I overrule the objection, it means the  
9 witness may go ahead and answer the question. Of  
10 course, that constitutes evidence together with  
11 all other evidence. If, for whatever legal  
12 reason, I sustain the objection, it means the  
13 witness is not allowed to answer the question and  
14 you can't guess or speculate about what that  
15 answer might have been.

16 Occasionally you will see us approach  
17 as you just did the side bar over here for  
18 discussions relating to matters of law. Those  
19 conferences are outside of your hearing but on  
20 the record because you may hear only that which I  
21 rule admissible. Thank you very much.

22 MR. TOCHKA: Your Honor, may I publish  
23 this on the screen, the exhibit?

24 THE COURT: Yes.

1 BY MR. TOCHKA:

2 Q Sir, I'm putting Exhibit 12 on the screen at this  
3 point in time. Can you take a look at that?

4 MR. TOCHKA: Can he step down, please,  
5 with the Court's permission?

6 THE COURT: Yes.

7 BY MR. TOCHKA:

8 Q Sir, does that photo fairly and accurately depict  
9 how you saw Iman Yazbek on that morning?

10 A Yes, it does.

11 Q When you saw that individual in that photograph,  
12 did you believe at that point in time that that  
13 was a gunshot wound?

14 A It could have been a number of things. I had no  
15 idea, sir.

16 Q Have you seen gunshot wounds prior to this?

17 A Yes, I have.

18 Q Had you ever seen a gunshot wound like that?

19 MR. DOOLIN: I object.

20 MR. FLAHERTY: Objection.

21 THE COURT: The objection is sustained.

22 MR. TOCHKA: You can take the stand,  
23 sir.

24 THE COURT: You can take it off the

1 monitor, sir.

2 MR. TOCHKA: I will.

3 BY MR. TOCHKA:

4 Q Actually, let me just show you one further  
5 picture. It's actually Exhibit 3. In terms of  
6 the glasses that you saw, I'm just putting the  
7 arm of Exhibit 3 on the screen.

8 Could you step down, with the Court's  
9 permission? And does that photograph depict  
10 where you saw the glasses of Iman Yazbek?

11 A I don't see them here but they were right by his  
12 hand.

13 THE COURT: Sir, we can't hear you.  
14 Speak up, please.

15 THE WITNESS: I can't see it with this  
16 picture but they were right by his hand.

17 MR. TOCHKA: You can resume the stand,  
18 please, sir.

19 BY MR. TOCHKA:

20 Q Sir, let me show you this photograph and ask if  
21 you would take a look at it, particularly looking  
22 at this particular area that I'm pointing out.

23 Does that show where you observed the  
24 glasses in relationship to Iman Yazbek?

1 A Yes.

2 MR. TOCHKA: The Commonwealth would  
3 move to introduce this photograph into evidence.

4 MR. DOOLIN: No objection.

5 MR. FLAHERTY: None from the defendant.

6 THE COURT: It may be marked.

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

10 MR. TOCHKA: And with the Court's  
11 permission, if I could publish Exhibit 13 on the  
12 screen?

13 THE COURT: Yes, sir.

14 MR. TOCHKA: And, sir, could you step  
15 to the screen, sir? With the Court's permission?

16 THE COURT: You may step down.

17 BY MR. TOCHKA:

18 Q And, sir, can you point out where you observed  
19 the glasses?

20 A (Indicating.)

21 Q And if I can just -- is that a fair and accurate  
22 representation of --

23 A Yes.

24 Q -- where the glasses were?

1 A Yes, sir.

2 MR. TOCHKA: Thank you. Would you  
3 resume the stand? I have no further questions.

4 THE COURT: Thank you. Anything more,  
5 Mr. Doolin?

6 MR. DOOLIN: Yes. May I approach the  
7 witness, Your Honor?

8 THE COURT: Yes, sir.

9  
10 RE CROSS EXAMINATION

11 BY MR. DOOLIN:

12 Q I show you this photograph. Do you recognize  
13 what's depicted in that photograph?

14 A Yes, I do.

15 Q And does it generally depict the area of the  
16 entrance to 89 Faneuil Street?

17 A Yes.

18 Q And is that a fair and accurate representation of  
19 the way that area looked that night?

20 A Yes, it is.

21 Q Is it also fair to say that there are two cones  
22 that are in the picture?

23 A Yes.

24 MR. DOOLIN: I'd move this into

1 evidence, Your Honor.

2 MR. TOCHKA: No objection.

3 THE COURT: It may be marked and  
4 admitted.

5 (Exhibit No. 14, being a photograph, as  
6 described above, was marked and admitted into  
7 evidence.)

8 BY MR. DOOLIN:

9 Q Showing you again what's been marked Exhibit No.  
10 14, did you make observations of a set of keys  
11 that were up on the stairs?

12 A Yes.

13 Q Did you also make observations of a lens of  
14 eyeglasses that are up on the stairs?

15 A I didn't see that, sir, no.

16 Q Okay. And were you there when these cones were  
17 put down?

18 A I believe I was, yes.

19 Q Did you put the cones down, sir?

20 A No.

21 MR. DOOLIN: I'd ask to publish this to  
22 the jury, Your Honor, by way of the monitor, if I  
23 may.

24 THE COURT: Yes.



1 BY MR. DOOLIN;

2 Q When you looked at that area up on the stairs,  
3 did you make any observations at all of a lens to  
4 a glasses that's depicted in Exhibit -- or in  
5 cone number five?

6 A No.

7 Q But you did make observations of a set of keys,  
8 is that correct?

9 A Yes.

10 Q And it's fair to say that this is the set of keys  
11 that you observed, is that right?

12 A Yes, sir.

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

15 THE COURT: Thank you. Mr. Flaherty?

16 MR. FLAHERTY: Nothing further from  
17 this witness, Your Honor.

18 MR. TOCHKA: No further questions.

19 THE COURT: Thank you very much, sir.  
20 You may step down.

21 MR. TOCHKA: May I call the next  
22 witness, Your Honor?

23 THE COURT: Yes, sir.

24 MR. TOCHKA: The Commonwealth would

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call Riad Yazbek.

THE CLERK: Your Honor, I believe he requested the use of a court interpreter. May the interpreter be sworn first?

INTERPRETER SWORN

RIAD YAZBEK,

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

DIRECT EXAMINATION

BY MR. TOCHKA:

Q Sir, could you --

THE COURT: I'm sorry. The interpreter must interpret.

THE INTERPRETER: I was instructed that I stand by --

THE COURT: I'll see you at side bar.

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

MR. TOCHKA: Mr. Yazbek speaks English. He's been here for now two years. At some point when I was going over questions he was having some difficulty in speaking English. I asked him whether or not he would feel at ease having

1 someone who speaks Arabic standing next to him.  
2 He said yes, if he should need a person. I don't  
3 believe he would need a person.

4 THE COURT: We are not going to do this  
5 in a fragmented fashion. He either gets the  
6 questions in English and answers directly in  
7 English or both questions and answers are  
8 interpreted for him.

9 MR. TOCHKA: Could we start with  
10 English and if he has a problem switch completely  
11 to the Arabic at some point in time?

12 THE COURT: No. The attorneys have to  
13 know the extent to which, I think, he is  
14 testifying through an interpreter or not and I  
15 want it consistent. You may certainly, if he  
16 understands some English, say that he has  
17 requested the assistance of an interpreter but I  
18 think it poses some problems for us because the  
19 jury has no way of knowing whether he is second  
20 guessing understanding your questions, so he  
21 doesn't appear unintelligent here and so they  
22 have a right to observe his demeanor and I think  
23 it's more confusing for them if they have to make  
24 observations about his demeanor to attempt to

1 speculate about whether or not he is truly  
2 understanding the questions or not.

3 So I think in the interest of clarity  
4 and for the jury's assessment of his credibility,  
5 that we ought either to use the interpreter  
6 consistently or that he testify in English  
7 without the assistance of an interpreter.

8 MR. TOCHKA: Okay. At this point then  
9 I'll have him testify without the interpreter.

10 THE COURT: Okay.

11 MR. TOCHKA: I think he has enough. I  
12 think he just needed it as a crutch in the off  
13 chance. In my conversation with him, he  
14 understood my questions. He just seemed at a  
15 point a little bit nervous that he might become  
16 nervous in the courtroom. So I'd rather have the  
17 jury hear from him.

18 THE COURT: Okay. So you can elicit  
19 the initial questions and say that we have sworn  
20 in an interpreter and as to why he is testifying  
21 without one, but I will ask, Madam Interpreter,  
22 if you just wait in the rear of the courtroom  
23 until his testimony is over.

24 THE INTERPRETER: Sure.

1 THE COURT: Alright. Thank you very  
2 much.

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

5 BY MR. TOCHKA:

6 Q Sir, could you please introduce yourself? Tell  
7 us your name.

8 A Riad Yazbek.

9 Q And could you spell your name, please?

10 A R-i-a-d, is my first name. My last name,  
11 Y-a-z-b-e-k.

12 Q Is English your native language?

13 A Not much.

14 Q Okay. What's your native language?

15 A Arabic.

16 Q Can you tell us where you were born?

17 A I born in Lebanon.

18 Q And how old are you, sir?

19 A I'm thirty-four now.

20 Q And can you tell us in Lebanon, did you have any  
21 brothers and sisters?

22 A Um-hum, I have one brother in Lebanon.

23 Q And how many brothers and sisters did you have in  
24 Lebanon?

- 1 A I have one.
- 2 Q And what's that brother's name?
- 3 A Elias, E-l-i-a-s, Elias.
- 4 Q How old is he?
- 5 A He's thirty-eight.
- 6 Q Did you have any sisters in Lebanon?
- 7 A No.
- 8 Q Do you have any sisters living here?
- 9 A No.
- 10 Q No sisters. How many brothers do you have?
- 11 A I have three brothers, me fourth.
- 12 Q And what are your brothers' names? You just told
- 13 us one of the brothers.
- 14 A My brothers, yes, my brother Abboud and Iman.
- 15 Q Abboud. Where does Abboud live?
- 16 A Abboud live with me in Brockton.
- 17 Q And how long has Abboud lived here?
- 18 A About two years now.
- 19 Q And do you know when he arrived -- strike that.
- 20 Abboud has lived here about two years?
- 21 A Right.
- 22 Q And you said you had a brother Iman?
- 23 A Yes.
- 24 Q And do you know when Iman came to this country?

1 A I think in '87, 1987.

2 Q Do you know about how old he was when he arrived?

3 A Twenty-one, twenty-two. I'm not sure.

4 Q Was he your oldest brother or not?

5 A Oldest brother.

6 Q And do you know what type of work he did when he  
7 came to this country?

8 A He do, when he come here, he work in hardware  
9 store like painting and store, small store. Then  
10 he --

11 Q At some point in time did he start his own  
12 business, do you know?

13 A Yes. He worked the store. Then he go work  
14 landscaping and nighttime he work in the gas  
15 station. Then when he start good landscaping, he  
16 leave the gas station.

17 Q And you said what type of business? A  
18 landscaping business?

19 A Landscaping contractor.

20 Q Do you know what the name of the -- I'm sorry.  
21 Wait for me to finish the question, sir.

22 What was the name of the landscaping  
23 company?

24 A Yazbek Landscaping.

- 1 Q Did he have any trucks in connection with that  
2 landscaping business?
- 3 A Yes.
- 4 Q And did the trucks have any name on the side of  
5 them?
- 6 A Yazbek Landscaping.
- 7 Q Do you know what type of work your brother would  
8 do in the off season when there wasn't any  
9 landscaping work to do?
- 10 A Yes. He was doing snow plow and he was do like  
11 basement work and --
- 12 Q Okay. I understood the basement work. What type  
13 of basement work was he doing?
- 14 A Sometime they put like wood in the basement, in  
15 the floor in the basement.
- 16 Q So he was doing carpentry type work?
- 17 A Um-hum.
- 18 Q Is that a yes?
- 19 A Yes.
- 20 Q Okay. Sir, I'm going to show you this photograph  
21 and ask you if you can identify that photograph.
- 22 A Yes, sir.
- 23 Q And who is that a photograph of?
- 24 A This is my brother.



1 Q Do you know when that photograph was taken  
2 approximately?

3 A I think one year before.

4 Q One year before what?

5 A Um, I was not here. One year before he got  
6 killed.

7 MR. TOCHKA: Your Honor, the  
8 Commonwealth --

9 BY MR. TOCHKA:

10 Q Is that a fair and accurate representation as to  
11 how your brother looked?

12 A Yeah.

13 MR. TOCHKA: The Commonwealth would  
14 move to introduce this photograph into evidence.

15 MR. FLAHERTY: No objection.

16 MR. DOOLIN: No objection, Your Honor.

17 THE COURT: It may be marked and  
18 admitted.

19 (Exhibit No. 15, being a photograph, as  
20 described above, was marked and admitted into  
21 evidence.)

22 MR. TOCHKA: With the Court's  
23 permission, I'd ask to publish it on the monitor.

24 BY MR. TOCHKA:

1 Q Sir, when did you say that photograph was taken?  
2 Do you know?  
3 A I'm not sure. Maybe one year before.  
4 Q And approximately how tall was your brother?  
5 A I don't know.  
6 Q Was he as tall as you?  
7 A One sixty by meter. I don't know by foot.  
8 Q In relationship to you, how tall was your  
9 brother?  
10 A He is very, very nice with me.  
11 Q No. I'm asking you, sir, in relationship to how  
12 tall you are, was your brother as tall as you  
13 are? Shorter than you are?  
14 A Is little shorter than me.  
15 Q Shorter than you are?  
16 A Little bit.  
17 Q And, sir, when did you come to this country?  
18 A I have now three year and five months, yeah.  
19 Q Do you remember, in relationship to when your  
20 brother was killed, how long had you been in this  
21 country?  
22 A Probably five months.  
23 Q And when you came to this country, where did you  
24 live?

1 A With my brother.

2 Q And where was that?

3 A In Watertown.

4 Q What street was that on?

5 A 88 Hearn Street.

6 Q What street?

7 A 88 Hearn.

8 Q 88 --

9 A Hearn.

10 Q H-e-a-r-n?

11 A Yes.

12 Q Who did you live there with?

13 A I lived with my brother, Ricardo, and I have a  
14 cousin.

15 Q And what type of work did you do when you came to  
16 this country?

17 A I worked with him one month.

18 Q You worked with him what, sir?

19 A One month, then I go work in gas station.

20 Q And, sir, when did you last see your brother?

21 MR. DOOLIN: Judge, I object.

22 THE COURT: He may answer that.

23 BY MR. TOCHKA:

24 Q When was the last time you saw your brother?

1 A It was me and Ricardo home about nine o'clock.  
2 Then he called me, he said, come, I need help,  
3 come down, help me. I go down, help him. He was  
4 leave some stuff at home like food and we stayed  
5 home like thirty minutes. Then I go inside the  
6 kitchen and he tell me, I'm going, he say,  
7 tomorrow it going to be rain, I'm not working  
8 tomorrow, I going tonight, spend night, go out  
9 about nine thirty.

10 Q Do you know where he went?

11 A I don't know.

12 Q Do you know if your brother had a cell phone?

13 A Yes, sir.

14 Q Do you know when he left the house whether he had  
15 a cell phone with him?

16 A Yes, sir.

17 Q Do you know whether or not your brother had money  
18 with him when he left the house?

19 A I have no idea.

20 Q And when did you learn about your brother's  
21 death, sir?

22 A Next day. I be work and Ricardo, he come my  
23 work, my brother don't come. Ricardo, I wake up,  
24 Ricardo take me work. Then I don't know what

1 time they know Ricardo about my brother and when  
2 I come back from work about six o'clock they told  
3 me.

4 Q Who told you, sir?

5 A Ricardo.

6 Q And did you go somewhere?

7 A Yeah. They took me to --

8 MR. DOOLIN: Judge, I object.

9 THE COURT: Another question, sir.

10 BY MR. TOCHKA:

11 Q Where did you go, sir, after that?

12 A I go, me and Ricardo, they took me to Brighton  
13 police. Then they took me to Boston, I don't know  
14 what they call this one, where my brother is.

15 Q Is that the Boston medical examiner's --

16 MR. DOOLIN: I object.

17 THE COURT: Move on, Mr. Tochka.

18 MR. TOCHKA: May I be heard at side  
19 bar?

20 (Whereupon, the following discussion  
21 occurred at side bar:)

22 MR. TOCHKA: I'm only asking, did he  
23 identify his brother's body. That's it.

24 MR. DOOLIN: I'll stipulate.

1 THE COURT: Okay. What else do you  
2 have with him, sir?

3 MR. TOCHKA: That was it.

4 THE COURT: Okay.

5 MR. TOCHKA: Just to ask him about the  
6 car.

7 THE COURT: I just want to make sure we  
8 are not going down the road of seeing him in the  
9 morgue.

10 MR. TOCHKA: I was going to say, was he  
11 present during the identification of his  
12 brother's body.

13 THE COURT: Yes, that's it.

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

16 BY MR. TOCHKA:

17 Q Sir, that day with Ricardo, were you present for  
18 the identification of your brother's body?

19 A Um-hum, yes, sir.

20 Q What type of car did your brother drive?

21 A They took me, Ricardo --

22 Q No. I'm asking you, your brother, Iman, what  
23 type of car did he have?

24 A 1990 Buick Skylark.

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MR. TOCHKA: Thank you, sir. No further questions.

THE COURT: Thank you very much. Mr. Doolin, any examination?

MR. DOOLIN: I don't have any questions, Your Honor.

MR. FLAHERTY: Just a few, Your Honor.

CROSS EXAMINATION

BY MR. FLAHERTY:

Q Mr. Yazbek, my name is Timothy Flaherty. If I ask you any questions you don't understand, just let me know and I'll try and rephrase them.

Okay?

How long, sir, did you live with your brother here in this country?

A About five months.

Q Did you ever have occasion to meet a woman named Joleena Tate?

A I don't know the name but if they show me something, I know.

Q Does the name Veronica mean anything to you?

A Veronica, yeah.

Q Jennifer Stacey, does that mean anything to you?

1 A Yes, sir.

2 Q And Joleena Tate, that name means nothing to you?

3 A I hear it. Nobody mean nothing from what I hear,  
4 just the name.

5 Q Did you ever see your brother in the company of a  
6 younger women who was not Veronica and not  
7 Jennifer? By the name of Joleena?

8 MR. TOCHKA: Objection.

9 THE COURT: He may answer if he can.

10 A One time. I don't know the name but I saw, I  
11 hear these names, Veronica.

12 BY MR. FLAHERTY:

13 Q So you don't know whether or not this woman  
14 visited Hearn Street in Watertown?

15 A Yes. They came home, the times, if he was there,  
16 first day when I met her, I saw her from the  
17 first day.

18 Q How many times did she come to the house in  
19 Watertown?

20 A Two people --

21 MR. TOCHKA: I would object, only if we  
22 can clarify who we're talking about.

23 THE COURT: Rephrase the question.

24 BY MR. FLAHERTY:



1 Q Sir, I'm referring to the woman that your brother  
2 met, not Veronica, not Jennifer, Joleena Tate.

3 A Um-hum.

4 Q Do you understand my question, sir?

5 A Yes.

6 Q You were present the day that your brother met  
7 her?

8 A Yes.

9 Q Is it fair to say that they were friends?

10 A Can you say that again?

11 Q Is it fair to say that this girl that your  
12 brother met, Joleena, she and your brother were  
13 friendly?

14 A No.

15 Q Not friendly?

16 A From first day my brother is not friendly.

17 Q And how old -- sir, your brother is one year  
18 older than you, correct?

19 A Two years.

20 MR. FLAHERTY: Two years. No further  
21 questions, Your Honor.

22 THE COURT: Anything more, sir?

23 MR. TOCHKA: No further questions.

24 THE COURT: Thank you very much, sir.

1 You may step down.

2 MR. TOCHKA: Do you want to call the  
3 next witness now, Your Honor?

4 THE COURT: Yes.

5 MR. TOCHKA: The Commonwealth would  
6 call Dr. Chirnov.

7  
8 ALEXANDER CHIRNOV

9 called as a witness, being first duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. TOCHKA:

13 Q Good morning, sir. Could you please tell us your  
14 name?

15 A My name is Alexander Chirnov, C-h-i-r-n-o-v.

16 Q Sir, what is your occupation?

17 A I am forensic pathologist in the chief medical  
18 examiner's office in Boston.

19 Q And can you tell us what are the duties of a  
20 forensic pathologist?

21 A Death investigation, establish cause and manner  
22 of death.

23 Q And can you describe for the jurors your  
24 background and training?

1 A I completed my medical school in Moscow, Russia.  
2 I immigrated to the United States, completed a  
3 four year residency in anatomic and clinical  
4 pathology in Brown University.

5 THE COURT: Doctor, I'm going to ask  
6 you to speak more directly into the microphone.

7 A (continued) And one year surgical pathology  
8 fellowship in Brown University and one year  
9 forensic pathology fellowship in Brown  
10 University.

11 BY MR. TOCHKA:

12 Q And, sir, approximately how many autopsies have  
13 you conducted?

14 A More than fifteen hundred.

15 Q Did you conduct the autopsy of Iman Yazbek?

16 A Yes.

17 Q And can you tell the jurors when and where?

18 A In 720 Albany Street, Boston, Massachusetts, on  
19 March 28, 2000.

20 Q And prior to conducting the autopsy, what history  
21 did you have relative to the deceased?

22 A I received history from preliminary police report  
23 consisting of that he was shot on the street and  
24 pronounced dead on the scene.

- 1 Q And was there any evidence of medical treatment  
2 at the time when you observed the body of Iman  
3 Yazbek?
- 4 A No.
- 5 Q And do you know why that was?
- 6 A Because he was pronounced dead on the scene.
- 7 Q Did Mr. Yazbek have any identifying marks such as  
8 tattoos?
- 9 A Yes. He had a tattoo on his right upper arm over  
10 here.
- 11 Q And what type of tattoo was that?
- 12 A It's evergreen, three, consistent with Lebanon  
13 national symbol.
- 14 Q The Lebanese national symbol?
- 15 A Yes.
- 16 Q When Mr. Yazbek arrived -- when he arrived at the  
17 medical examiner's office, can you tell us what  
18 he was wearing -- was he clothed?
- 19 A Yes.
- 20 Q And did you remove the clothing from the body of  
21 Mr. Yazbek?
- 22 A Yes.
- 23 Q And what did you do with that clothing?
- 24 A They were submitted to Boston Police crime lab.

1 Q Sir, I'm going to show you this jacket and ask  
2 you if you can identify it.

3 A Yes.

4 Q And what is that, sir?

5 A The jacket which he was -- windbreaker.

6 Q Is that the jacket that Mr. Yazbek wore at the  
7 time when you observed him at the medical  
8 examiner's office?

9 A Yes.

10 Q And does that fairly and accurately represent the  
11 jacket as to how it appeared?

12 A Yes.

13 MR. TOCHKA: Your Honor, I move to mark  
14 this as an exhibit.

15 MR. DOOLIN: No objection.

16 MR. FLAHERTY: No objection.

17 (Exhibit No. 16, being a jacket, as  
18 described above, was marked and admitted into  
19 evidence.)

20 BY MR. TOCHKA:

21 Q Let me show you these pants and ask if you can  
22 identify these pants.

23 A Yes.

24 Q And what are they?

1 A He was wearing these pants.

2 Q And do these fairly and accurately depict the  
3 pants Iman Yazbek wore on the date that you  
4 observed his body at the medical examiner's  
5 office?

6 A Yes.

7 MR. TOCHKA: Your Honor, the  
8 Commonwealth would move to introduce the pants.

9 MR. FLAHERTY: No objection.

10 MR. DOOLIN: No objection.

11 THE COURT: They shall be marked and  
12 admitted.

13 (Exhibit No. 17, being a pair of pants,  
14 as described above, was marked and admitted into  
15 evidence.)

16 MR. TOCHKA: Your Honor, if I might  
17 just show the jurors by walking up and down the  
18 aisle?

19 THE COURT: Yes, sir.

20 BY MR. TOCHKA:

21 Q Now, sir, with reference to the pants, did you  
22 make any observations of the pants?

23 A Was blood on the pants and the pants was wet.

24 Q There was blood on his pants. And can you

- 1 describe the blood?
- 2 A It's spreading part on the upper part and front  
3 upper part.
- 4 Q Of the pants?
- 5 A Yes.
- 6 Q And how was it spread on the pants?
- 7 A It's spread in small spots of the blood.
- 8 Q Spatters, would that be fair --
- 9 A Yes.
- 10 Q And did you observe any other spatters on his  
11 shirt as well?
- 12 A Yes.
- 13 Q And in terms of the stomach of Mr. Yazbek, did  
14 you observe any blood on his stomach?
- 15 A No.
- 16 Q So if I could show you, if I can put Exhibit 3 on  
17 the monitor, sir, and if I could ask you to look  
18 at Exhibit 3 on the monitor, does that depict the  
19 pants that Mr. Yazbek was wearing?
- 20 A Yes.
- 21 Q Does that depict the shirt that he was wearing?
- 22 A Yes.
- 23 Q And does that fairly depict the jacket?
- 24 A Yes.

- 1 Q And with the Court's permission, if you could  
2 step down to the diagram and show us where the  
3 spatters were.
- 4 A You can see on this picture.
- 5 Q On the pants, and how about the shirt?
- 6 A (Indicating)
- 7 Q Did you observe any spatter on his stomach area?
- 8 A This.
- 9 Q Thank you. Sir, did you conduct an external  
10 examination of Mr. Yazbek?
- 11 A Yes.
- 12 Q Just so the jurors have a reference point, when  
13 you do a typical -- when you do an autopsy, can  
14 you tell us what procedure you follow?
- 15 A The procedure is separated into two steps. The  
16 first one is external examination and the second  
17 step is internal examination.
- 18 Q And when you conducted the external examination,  
19 can you tell us, did you measure the body of Mr.  
20 Yazbek?
- 21 A Yes.
- 22 Q And how tall was he?
- 23 A He was sixty-four inches.
- 24 Q Is that five feet four inches?



- 1 A Yes.
- 2 Q And how much did he weigh?
- 3 A One ninety pounds.
- 4 Q And how would you describe his body development?
- 5 A Normal, mildly obese.
- 6 Q Normal, mildly obese?
- 7 A Yes.
- 8 Q Did you observe any evidence of trauma on the  
9 external examination of Mr. Yazbek?
- 10 A Yes.
- 11 Q What was that evidence?
- 12 A It was laceration on the right side of the face.
- 13 Q And can you describe that laceration for us?  
14 What do you mean by laceration, first off?
- 15 A This means a rupture of the skin.
- 16 Q And can you describe the laceration for us,  
17 please?
- 18 A I can show on myself. This is six inches long  
19 laceration of the right side of the cheek.
- 20 Q And how deep was the laceration?
- 21 A Up to two inches.
- 22 Q Did you observe any stippling associated with the  
23 laceration?
- 24 A Very small stippling.

- 1 Q And can you explain to the jurors what stippling  
2 is, how it's caused?
- 3 A Stippling is spotting, surrounding a gunshot  
4 wound or exit, result of gun powder tattooing the  
5 skin.
- 6 Q And you observed no stippling around the face --
- 7 A No.
- 8 Q -- where the laceration was? What did you find  
9 during your internal examination?
- 10 A But I also found exit gunshot wound on the right  
11 side of the neck, horizontal and rear.
- 12 Q You got ahead of me there.
- 13 A Yes.
- 14 Q Where was the wound on the right side?
- 15 A On the right side of the neck.
- 16 Q And how far below the ear was it?
- 17 A It's approximately two inches.
- 18 Q And how would you describe that neck injury?
- 19 A This is also skin, horizontally two and a half  
20 inches laceration.
- 21 Q Two and a half inch laceration?
- 22 A Yes.
- 23 Q And is it horizontal?
- 24 A Yes.

1 Q And what do you mean by horizontal?

2 A It's parallel to the shoulder.

3 Q Now, did you conduct an internal examination?

4 A Yes.

5 Q And can you tell us what you found in your  
6 internal examination?

7 A I found gunshot wound which entered this side of  
8 the cheek, go to the palate, destroys maxilla,  
9 the facial bone over here, the mandible, and exit  
10 on the neck.

11 Q So in terms of the first facial bone that it  
12 struck, where is that facial bone?

13 A It's over here, sinus, frontal bone.

14 Q And in terms of the palate, where's the palate?

15 A This is internal part of the mouth.

16 Q And would that be also called in layman's terms,  
17 the roof of the mouth?

18 A Yes.

19 Q And then the bullet went through the bone in the  
20 face, through the palate, and which direction?

21 A Down to the mandible, this is bone, jaw.

22 Q And are there two jaw bones? A lower and upper  
23 jaw bone?

24 A Yes.

- 1 Q And did it traverse the upper jaw bone?
- 2 A Yes.
- 3 Q And when it hit the lower jaw bone, what happened
- 4 then?
- 5 A It ricocheted and exited on the back of the neck.
- 6 Q And did you observe any associated stippling
- 7 inside the facial area --
- 8 A Yes.
- 9 Q -- of the victim? And where did you observe the
- 10 stippling?
- 11 A Inside the wound.
- 12 Q And do you know where inside the wound?
- 13 A Practically on entire wound.
- 14 Q And what significance did that have in terms of
- 15 your autopsy, the stippling that was not on the
- 16 outside but on the inside?
- 17 A It is consistent with contact or close to contact
- 18 gunshot wound.
- 19 Q And when you say contact or close to contact
- 20 gunshot wound, what do you mean?
- 21 A The distance between barrel and skin was less
- 22 than half inches.
- 23 Q Was less than --
- 24 A Half inches.

1 Q And so, as I understand your testimony, the  
2 bullet entered the face of Mr. Yazbek and exited  
3 through his neck, correct?

4 A Yes.

5 Q Can you tell us by your examination how you made  
6 the decision that the bullet entered the front,  
7 the face area, and exited his neck?

8 A When a bullet strikes the skin or body, it is  
9 forming defect which means tissue, you lose, and  
10 then bullet exit the body, it is skin of elastic  
11 and it's lacerated. When you try to put ends of  
12 the wound, exit wound, you can put all wound  
13 together, but when you try to put entrance wound,  
14 you have defect of the tissue which is called  
15 loss of tissue. It's consistent with entrance  
16 gunshot wound.

17 Q So the fact that you could -- the fact that the  
18 entrance wound, you could not put together, that  
19 is the facial area of the wound, the laceration  
20 could not be completely closed?

21 A Yes.

22 Q That indicated to you that that was the entry?

23 A Yes.

24 Q And the fact that the exit wound which is

1 horizontally shaped could be closed, the skin  
2 could be closed, that indicated to you that is  
3 the exit wound?

4 A Yes.

5 Q Now, when you conducted your internal examination  
6 of the face area of Mr. Yazbek, were your  
7 findings confirmed as to the entrance wound and  
8 the exit wound?

9 A Yes.

10 Q And would you tell the jurors how that was  
11 confirmed?

12 A It was a fragment of the jacket of the bullet was  
13 found on the tip of the tongue and fragments of  
14 the bone, as a result of this, was also embedded  
15 in the tip of the tongue, is consistent with  
16 movement from the top to down.

17 Q So, as I understand your testimony, the fragments  
18 of the bones from the palate --

19 A Yes.

20 Q -- was in a downward --

21 A Yes.

22 Q -- fashion indicating the path of the bullet?

23 A Yes.

24 Q And there was also chips from the fragments found

1 on the tongue?

2 A Yes.

3 Q And you also said that there was part of the  
4 bullet that was on the top of his tongue?

5 A Yes, jacket of the bullet.

6 Q When you say jacket, again for the jurors, what  
7 do you mean by jacket?

8 A External copper like of bullet.

9 Q It's the covering of the bullet?

10 A Yes.

11 Q And can you tell the jurors the path of the  
12 bullet?

13 A It's from top to bottom, slightly left to right  
14 and downward.

15 Q And, sir, I'm going to ask you, do you have --

16 MR. TOCHKA: Actually, can I see the  
17 Court at side bar?

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

20 MR. TOCHKA: I would ask him to use  
21 this just to show the path of the bullet. I  
22 forgot to tell counsel about that, because I'm  
23 going to ask him to look at the exhibit -- I'm  
24 not moving to introduce it in evidence, just for

1 demonstrative purposes so he can show the  
2 dimensional quality.

3 MR. DOOLIN: I don't object to it.

4 MR. FLAHERTY: No objection.

5 THE COURT: Okay.

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

8 BY MR. TOCHKA:

9 Q Sir, did you bring with you today a medical  
10 skull?

11 A Yes.

12 Q Would you please take that out?

13 A (Complying.)

14 Q And it's fair to say, sir, that this is a plastic  
15 skull?

16 A Yes.

17 Q Now, what I'm going to ask you to do, sir, if you  
18 could stand --

19 MR. TOCHKA: Would it be alright if he  
20 stood here or closer to the jurors, Your Honor?

21 THE COURT: He can stand closer to the  
22 jurors as long as the attorneys can see.

23 BY MR. TOCHKA:

24 Q Sir, in a nice loud voice, that being a three



1 dimensional model, so the jurors can see as well  
2 as defense counsel, so they can see it, would you  
3 show us the path of the bullet?

4 A It entered over here, the entrance.

5 THE COURT: Dr. Chirnov, you are going  
6 to have to keep your voice up, please.

7 A (continued) Okay. The entrance over here and  
8 across this area consistent with defect of the  
9 entrance, the bullet went through this area,  
10 formed defect over here, and across over to here  
11 and just across this there and ricochet on the  
12 back, based on this side, from this much entrance  
13 back.

14 BY MR. TOCHKA:

15 Q So if you can, holding the skull, as the bullet  
16 entered -- and what you pointed out, just so I  
17 can make it clear for the record, is below the  
18 right eye?

19 A Yes.

20 Q To the right of the nose area?

21 A Yes.

22 Q The bullet entered in this particular location  
23 where you have marked it, correct?

24 A Yes.

- 1 Q It then proceeded to go through the roof of the  
2 mouth?
- 3 A Yes.
- 4 Q As it goes through the roof of the mouth, is that  
5 when you say the bone splinters were going in a  
6 downward fashion?
- 7 A. Yes.
- 8 Q And they landed on, some of them embedded where?
- 9 A On the top of the tongue.
- 10 Q And you also found on the top of the tongue what,  
11 sir?
- 12 A The jacket.
- 13 Q And the upper jaw bone that you referred to,  
14 where is that, sir?
- 15 A This is this one.
- 16 Q So it's the facial area here, the face bone here  
17 going through the upper jaw?
- 18 A Yes.
- 19 Q Going through the top of the mouth?
- 20 A Yes.
- 21 Q Going down, then striking the lower jaw?
- 22 A Yes.
- 23 Q And then as it strikes the lower jaw, it  
24 ricochets?

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MR. DOOLIN: Judge, I'm going to object.

THE COURT: It's a leading question, sir.

A Exits --

BY MR. TOCHKA:

Q And as it ricocheted, it did what, sir?

A It went backward.

Q Thank you. Next I'm going to show you this diagram.

MR. TOCHKA: If I could ask, with the Court's permission, if Dr. Chirnov could step from the stand?

THE COURT: Yes.

BY MR. TOCHKA:

Q Showing you that diagram, the top skull which shows the frontal skull and a right side, can you mark on the top and on the bottom the path of the bullet?

MR. DOOLIN: Judge, I object.

THE COURT: He may do that, sir.

BY MR. TOCHKA:

Q Can you mark this, can you show us the path of the bullet?

1 A (Complying.)

2 Q And then show us the line as to the path of the  
3 bullet where it went down.

4 A (Indicating.)

5 MR. TOCHKA: Thank you, sir. May that  
6 be marked, Your Honor, for identification??

7 THE COURT: Yes, for identification.

8 (Exhibit B, being a diagram, as  
9 described above, was produced and marked for  
10 identification.)

11 MR. TOCHKA: And may I just walk it  
12 along the path of the rail?

13 THE COURT: You may.

14 MR. TOCHKA: Thank you.

15 BY MR. TOCHKA:

16 Q Now, sir, at the time did you take photographs of  
17 the internal examination of the body of Mr.  
18 Yazbek, the facial area?

19 A Yes.

20 Q And, sir, you described the six inch laceration  
21 and wound to the face of Mr. Yazbek, correct?

22 A Yes.

23 Q Sir, I'm going to show you this photograph and  
24 ask you, were you present when that photograph

1 was taken?

2 A Yes.

3 Q And does that fairly and accurately depict the  
4 six inch laceration that you've spoken of to this  
5 jury?

6 A Yes.

7 Q Does that actually in the corner show the tattoo  
8 of Lebanon that you referred to?

9 A Over here.

10 Q Is that a fair and accurate representation, sir?

11 A Yes.

12 MR. TOCHKA: The Commonwealth would  
13 move to introduce this into evidence.

14 MR. DOOLIN: I object.

15 THE COURT: Overruled.

16 (Exhibit No. 18, being a photograph, as  
17 described above, was marked and admitted into  
18 evidence.)

19 BY MR. TOCHKA:

20 Q Sir, did you also cause to be taken a photograph  
21 of the face of Mr. Yazbek showing where the  
22 bullet entered?

23 A Yes.

24 Q And how did you do that, sir?

1 A I put edges of the wound together.

2 Q You tried to close the edges of the wound?

3 A Yes.

4 Q And as you testified that's one way that you  
5 determine the entrance of the wound?

6 A Yes.

7 Q Does this photograph fairly and accurately depict  
8 that, the --

9 A Yes.

10 Q -- face of Mr. Yazbek?

11 A Yes.

12 MR. TOCHKA: The Commonwealth would  
13 move to introduce this photograph at this time.

14 MR. DOOLIN: No objection from the  
15 defendant.

16 THE COURT: Is that an objection or not  
17 an objection?

18 MR. DOOLIN: Not to this one, Your  
19 Honor.

20 THE COURT: Thank you.

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

24 BY MR. TOCHKA:

1 Q Doctor, did you observe any abrasions to the  
2 face?

3 A The forehead.

4 Q The left side of the forehead?

5 A Yes.

6 Q And can you tell the jurors, what's an abrasion?

7 A Superficial defect of the skin.

8 Q And how is that caused?

9 A With scratching.

10 Q And does --

11 A Scratch of the skin.

12 Q And does this photograph fairly and accurately  
13 depict that abrasion, sir?

14 A Yes.

15 MR. TOCHKA: The Commonwealth would  
16 move to introduce this photograph, Your Honor.

17 MR. DOOLIN: No objection to this  
18 exhibit, Your Honor.

19 MR. FLAHERTY: No objection.

20 THE COURT: It shall be marked and  
21 admitted.

22 (Exhibit No. 20, being a photograph,  
23 was marked and admitted into evidence.)

24 BY MR. TOCHKA:

1 Q And, sir, did you have occasion to have taken a  
2 photograph showing the exit wound in the neck  
3 area?

4 A Yes.

5 Q And, sir, does that photograph fairly and  
6 accurately depict the exit wound that you  
7 described?

8 A Yes.

9 MR. TOCHKA: The Commonwealth would  
10 move to introduce this photograph into evidence.

11 MR. DOOLIN: I object to the exhibit,  
12 Your Honor.

13 THE COURT: The objection is overruled.

14 (Exhibit No. 21, being a photograph, as  
15 described above, was marked and admitted into  
16 evidence.)

17 MR. TOCHKA: Your Honor, I'd ask the  
18 witness if the witness can step to the diagram --  
19 to the monitor.

20 THE COURT: To the monitor, yes, sir.

21 MR. TOCHKA: Sir, could you step down  
22 to the monitor here? Actually, I would have him  
23 step to this side -- he doesn't even need it. He  
24 can use the pen.



1 Sir, can you step to the side over  
2 here?

3 MR. DOOLIN: Judge, I object,  
4 respectfully.

5 THE COURT: The objection is overruled  
6 for reasons that were discussed at side bar.

7 Ladies and gentlemen -- before you  
8 display it, Mr. Tochka --

9 MR. TOCHKA: Yes.

10 THE COURT: Let me just advise the  
11 members of the jury that the photographs you are  
12 about to see are very graphic. They are evidence  
13 in this case. They have been admitted as an  
14 exhibit but I just caution you that they are very  
15 graphic.

16 BY MR. TOCHKA:

17 Q Sir, showing you that exhibit which is Exhibit  
18 No. 18, can you tell us what that depicts?

19 A It's a laceration of the face consistent with  
20 entrance gunshot wound.

21 Q Is that the six inch laceration of the face that  
22 you referred to?

23 A Yes.

24 Q Now, you said one way that you determined that it

1 was an entrance wound was by doing what, sir?

2 A Putting edges of the wound together.

3 Q And the fact that you could not put a portion of  
4 the edges together indicated what?

5 A Defect of the tissue which is tissue loss  
6 consistent with entrance gunshot wound.

7 Q And can you demonstrate, sir, what does that  
8 picture show?

9 A Defect of the tissue. This is laceration which  
10 was put all together.

11 Q And how did you do that, sir?

12 A Just moving the skin.

13 Q And so it shows us, where was the entrance wound  
14 then, sir?

15 A Yes, over here.

16 Q And that's, for the record, Exhibit 19 which I've  
17 shown.

18 Sir, you've also testified as to the  
19 neck wound being horizontal?

20 A Yes.

21 Q And approximately two and a half inches. And let  
22 me show you now what's been marked as Exhibit 21,  
23 and can you tell the jurors what that shows?

24 A This is showing exit wound. It's over here.

1 Q And finally, sir, is the abrasion that you  
2 noticed on the face of Mr. Yazbek on his left  
3 forehead.

4 I'm showing you now Exhibit 20. Can  
5 you show what that is?

6 A It's abrasion, superficial skin defect.

7 Q And, sir, do you have an opinion how that could  
8 have been caused?

9 A It can be just impact or movement.

10 Q Impact or movement on what?

11 A The hard surface.

12 MR. TOCHKA: Thank you, sir. If you  
13 could resume the stand.

14 THE COURT: We are going to take a  
15 recess. How much more do you have?

16 MR. TOCHKA: This will probably be a  
17 good time. I believe probably at least another  
18 five, ten minutes.

19 THE COURT: Alright. Thank you.

20 Ladies and gentlemen, we are going to take the  
21 morning recess at this time. We had some coffee  
22 brought in. Leave your notes in your envelopes  
23 on the seats. Do not discuss the case during the  
24 recess and we'll see you shortly.

1 (Whereupon, the proceedings were  
2 recessed at 11:15 o'clock a.m., and reconvened at  
3 11:45 o'clock a.m.)

4 THE COURT: You may continue, sir.

5 MR. TOCHKA: Thank you, Your Honor.

6 BY MR. TOCHKA:

7 Q Dr. Chirnov, I'm showing you Exhibit 20 which is  
8 the abrasion to Mr. Yazbek's forehead.

9 A Yes.

10 Q Can you see that? And can you tell the jurors  
11 whether or not that abrasion was caused -- can  
12 you tell us when it was caused in relationship to  
13 the gunshot wound?

14 A I don't know.

15 Q Can you tell us whether it was caused hours  
16 before or minutes before?

17 MR. DOOLIN: I object.

18 THE COURT: He can answer that  
19 question.

20 A There is no inflammation reaction on the skin  
21 consistent with response on this.

22 THE COURT: Speak directly into the  
23 microphone, sir.

24 THE WITNESS: Yes. There is no

1 inflammatory reaction in the abrasion. Whether  
2 it happened minutes before death or after death,  
3 I don't know.

4 BY MR. TOCHKA:

5 Q And with respect to the fragments that you took  
6 during your autopsy, the bullet fragments, the  
7 jacket that you referred to, were those submitted  
8 to the Boston Police crime lab?

9 A Yes.

10 Q And with respect to the laceration that you  
11 described to this jury, the six inch laceration,  
12 I want to show you what's been marked as Exhibit  
13 19, and ask you, the bullet wound having entered  
14 two inches below the eye --

15 A Yes.

16 Q -- do you have an opinion as to what could have  
17 caused the six inch laceration?

18 A Most of this laceration was result of gases which  
19 go with bullet.

20 MR. FLAHERTY: I'm sorry, Your Honor.  
21 Could I have that answer again?

22 THE COURT: Would you answer again,  
23 sir?

24 THE WITNESS: With gasses which go with

1 bullet. It's out of explosion of gunpowder that  
2 there is gas formed which moves and these gases  
3 go with bullet to the tissue, causes this  
4 laceration.

5 BY MR. TOCHKA:

6 Q And if a gun was held say five or ten feet away  
7 from the individual, would you get this type of a  
8 laceration?

9 A No.

10 Q If a gun was held half an inch as you just  
11 described, would you get this, consistent with  
12 this laceration?

13 A Yes.

14 Q When you say the gasses, what do you mean by  
15 that?

16 A The gases which form as result of explosion,  
17 gunpowder.

18 Q Sir, is that consistent with the flash when a gun  
19 is fired, the flash that comes out of the barrel?

20 A Yes.

21 Q And the explosion that comes with that is what  
22 caused this?

23 A Yes.

24 Q Now, the direction, though, is from two inches

1 below the eye in a downward fashion. What does  
2 that indicate to you?

3 A Direction of the bullet.

4 Q And direction of the bullet, does that indicate  
5 the direction, how the gun was held in  
6 relationship --

7 A Yes.

8 Q And could you, using yourself, show how the gun  
9 would have been held?

10 MR. DOOLIN: I object.

11 THE COURT: The objection is sustained.

12 BY MR. TOCHKA:

13 Q Can you tell from looking at this wound the  
14 position of the individual who fired the gun,  
15 where that individual would be standing? Yes or  
16 no.

17 MR. DOOLIN: I object.

18 THE COURT: Side bar.

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

21 THE COURT: Grounds for the objection?

22 MR. DOOLIN: It's speculation, Your  
23 Honor. There is no basis for any of that.

24 MR. TOCHKA: That's what he would say,

1 that you can't tell.

2 MR. FLAHERTY: Then it's an improper  
3 question, Judge.

4 THE COURT: This person is not  
5 qualified, sir, as a ballisticsian or anyone else  
6 who, I think, can answer that question. So I'm  
7 going to sustain the objection in that form.

8 MR. TOCHKA: I would suggest to the  
9 Court (he is qualified in the sense of saying  
10 there is no way somebody could tell where a  
11 person was standing because that's going to be a  
12 question for this jury as to, was the individual  
13 standing in front, was the individual standing in  
14 the back. You cannot tell from the bullet wound,  
15 the path, how the person was shot, the position  
16 of the body versus the position of the person.)

17 As an expert, he can testify as a  
18 medical examiner that you cannot tell, there is  
19 no way you can speculate. I just want to get  
20 that before the jury, that he can't speculate.

21 THE COURT: If you think this is within  
22 his expertise of a medical examiner, then I think  
23 you have to lay a better foundation for his  
24 knowledge and I don't think that's been done.



1 MR. TOCHKA: Okay.

2 THE COURT: And I think a few questions  
3 in that regard would help. Thank you.

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

6 BY MR. TOCHKA:

7 Q Now, sir, at some point in time did you cause a  
8 toxicology report to be prepared in connection  
9 with this case?

10 A Yes.

11 Q What is a toxicology report?

12 A The examination of toxic substance in the blood.

13 Q And did the toxicology report come back in  
14 connection with this case?

15 A Yes.

16 Q And what were -- let me ask you, in terms of the  
17 toxicology report, is that a standard practice in  
18 all autopsies?

19 A Yes.

20 Q So it's done all the time?

21 A Yes.

22 Q And what was the report that came back in  
23 connection with this case?

24 A It was negative for street drugs and other toxic

1 substances.

2 Q Were there any drugs or toxic substances found?

3 A No.

4 Q And was there any alcohol found, ethanol?

5 A Yes.

6 Q And how much was that?

7 A It was point oh one.

8 Q And what is that indicative of, sir?

9 A The legal limit for the state of Massachusetts is  
10 point oh eight. It's eight times less than legal  
11 limit.

12 Q And now, sir, you've also testified as to the  
13 blood spatter on the pants of Mr. Yazbek and the  
14 shirt area.

15 And do you have an opinion, sir, what  
16 would have caused that?

17 MR. DOOLIN: Judge, I object.

18 THE COURT: Rephrase the question.

19 MR. TOCHKA: I'll ask some more  
20 questions, Your Honor.

21 BY MR. TOCHKA:

22 Q Sir, this type of particular gunshot wound where  
23 an individual is shot -- let me ask you.

24 How many gunshot wounds have you been

1 involved in in terms of the autopsy?

2 A Around two hundred.

3 Q And have you observed gunshot wounds to the  
4 facial area?

5 A Yes.

6 Q And do you have an opinion, sir, as to what would  
7 have caused -- just yes or no, do you have an  
8 opinion as to what would have caused the splatter  
9 on the pants of the deceased?

10 MR. FLAHERTY: Objection.

11 THE COURT: Probability, Mr. Tochka.  
12 Rephrase the question, please.

13 BY MR. TOCHKA:

14 Q Sir, you have gone to medical school, correct?

15 A Yes.

16 Q In Russia?

17 A Yes.

18 Q As well as Brown University, correct?

19 A Yes.

20 Q And you studied anatomy, correct?

21 A Yes.

22 Q And this, a gunshot wound when an individual is  
23 shot, based upon your training and experience, do  
24 you have an opinion as to what would cause a

1 spatter on the pants area of the individual?

2 MR. TOCHKA: Mr. Flaherty, I can't see  
3 the witness.

4 THE COURT: Side bar.

5 (Whereupon, a discussion occurred off  
6 the record at side bar.)

7 BY MR. TOCHKA:

8 Q Sir, do you have an opinion as to what would  
9 happen when an individual was shot in the face?  
10 Relative to this spatter on the pants, what would  
11 cause that?

12 A I think it's the result of laceration of the  
13 face. There is blood which is present in the  
14 face, splattered all over the body.

15 Q That's all I was asking you, sir. Did you, in  
16 connection with this case, did you cause a death  
17 certificate to be completed?

18 A Yes.

19 Q And, sir, what was the cause of death?

20 A Gunshot wound to the head.

21 Q And can you tell the jurors, sir, how soon after  
22 the gunshot wound, how quickly the individual  
23 would have expired as a result of that gunshot  
24 wound?

1 MR. DOOLIN: I object.

2 THE COURT: This individual, the  
3 objection is overruled.

4 A Based on medical literature that patients who  
5 would sustain this type of wound die instantly.

6 BY MR. TOCHKA:

7 Q And, sir, the fact that this gunshot did not  
8 enter any vital organs -- or, did it enter any  
9 vital organs, the gunshot?

10 A No.

11 Q Can you tell the jurors how then an individual  
12 would die as a result of such a gunshot wound?

13 MR. DOOLIN: I object.

14 THE COURT: Put the question again.

15 BY MR. TOCHKA:

16 Q To a reasonable degree of medical certainty, sir,  
17 based on your training and experience as to an  
18 individual suffering a gunshot wound like you  
19 observed on the face of Mr. Yazbek, based upon  
20 your training and experience, do you have a  
21 reasonable degree of medical certainty as to how  
22 an individual would die from such a gunshot  
23 wound?

24 MR. DOOLIN: I object.

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THE COURT: How did this individual die?

BY MR. TOCHKA:

Q How did this individual die?

A As a result of heart stop, as reflex on the damage of the face.

Q Sir, is this the death certificate which you signed in connection with this case?

A Yes.

MR. TOCHKA: Your Honor, I would move to introduce this as an exhibit, not to be published to the jurors at this time.

MR. DOOLIN: No objection, Your Honor.

MR. FLAHERTY: No objection.

THE COURT: It shall be marked and admitted.

(Exhibit No. 22, being a document, as described above, was marked and admitted into evidence.)

MR. TOCHKA: I have no further questions. Thank you, sir.

THE COURT: Thank you very much. Cross examination, Mr. Doolin.

MR. DOOLIN: Thank you, Your Honor.

*Judge gives question of her sustained objections by defense she leads words. the question*

1 CROSS EXAMINATION

2 BY MR. DOOLIN:

3 Q Dr. Chirnov, it's fair to say that your, the  
4 autopsy that you performed on this case was on  
5 March 28 at about ten thirty, is that right?

6 A It started at ten thirty.

7 Q Ten thirty in the morning, is that right?

8 A Yes..

9 Q Did you yourself go to the scene at 89 Faneuil  
10 Street that morning?

11 A No.

12 Q Were you ever asked to go to the scene on that  
13 day of March 28 by members of the Boston Police  
14 Department?

15 A No.

16 Q Sir, it is your testimony that in performing this  
17 autopsy, that one of the things that you did was  
18 that you measured Mr. Yazbek? Is that correct?

19 A Yes.

20 Q And he was five foot four inches, is that right?

21 A Yes.

22 Q A hundred and ninety pounds, is that right?

23 A Yes.

24 Q It's fair to say that you described him, I think

1 on direct examination, as being normal to mildly  
2 obese? Is that right?

3 A Yes.

4 Q It's fair to say that he was a somewhat heavy  
5 gentleman, is that right?

6 A Yes.

7 Q And is it also your testimony that one of the  
8 things that you did in -- when you performed the  
9 autopsy is that you examined his arms? Is that  
10 correct?

11 A Yes.

12 Q There was no trauma to his arms, is that correct?

13 A Yes.

14 Q And you gave a good thorough examination, is that  
15 right?

16 A Absolutely.

17 Q And there were no trauma to his legs, is that  
18 right?

19 A Yes.

20 Q And you gave a good thorough examination of that,  
21 is that right?

22 A Yes.

23 Q There was no trauma to his front of his body, to  
24 the chest area or to the abdomen, is that right?



- 1 A Yes.
- 2 Q And again you gave a good thorough examination in  
3 that area, is that right?
- 4 A Yes.
- 5 Q There was also no trauma to his back, is that  
6 correct?
- 7 A No.
- 8 Q And, sir, it is your testimony that the trauma  
9 that you observed at one -- that there was were  
10 two areas of trauma on his face, is that right?
- 11 A Yes.
- 12 Q One of which was to his left forehead, is that  
13 right?
- 14 A Yes.
- 15 Q Now, the left forehead was an abrasion, is that  
16 correct?
- 17 A Yes.
- 18 Q And it's fair to say that you were not able to  
19 tell when that abrasion occurred. Is that  
20 correct?
- 21 A Yes.
- 22 Q And it's also fair to say, sir, that when you  
23 made an examination of the right side of the  
24 face, that one of the things that you were doing

1 is, you were trying to look for an entrance wound  
2 and an exit wound? Is that right?

3 A Yes.

4 Q Can you define for this jury what the word  
5 stippling means?

6 A Spotting.

7 Q And is it fair to say that it's a spotting that  
8 is, in the realm of forensic pathology, that is  
9 caused by gunpowder? Is that correct?

10 A Yes.

11 Q And it's also fair to say that that's one of the  
12 things that you look for in your examination  
13 during an autopsy? Is that right?

14 A Yes.

15 Q And the importance of the gunshot powder and the  
16 stippling that results from it is to make a  
17 determination as to the distance of the wound.  
18 Is that right?

19 A Yes.

20 Q And it's fair to say that there are several  
21 different ranges of wounds that you look at or  
22 that you're aware of in your practice as a  
23 forensic pathologist? Is that right?

24 A Yes.

- 1 Q It's fair to say there is something that's called  
2 a distance wound, is that right?
- 3 A Yes.
- 4 Q And also a thing that is called a medium range  
5 wound, is that right?
- 6 A Yes.
- 7 Q And then there is a close range wound, is that  
8 right?
- 9 A It's contact or close range.
- 10 Q So you use three different categories, is that  
11 right?
- 12 A Yes.
- 13 Q It's fair to say that when you say it's a contact  
14 or a close range wound, that the range of the  
15 wound -- a contact wound is when a weapon is  
16 pressed to the person's face, is that right?
- 17 A Yes.
- 18 Q And it's fair to say that a close range wound  
19 would be a distance of somewhere between six to  
20 twelve inches? Is that right?
- 21 A No.
- 22 Q What would your definition be?
- 23 A UP to one inch.
- 24 Q Up to one inch?

1 A Yes.

2 Q And your definition is that after one inch it  
3 becomes a medium range wound, is that correct?

4 A Yes.

5 Q Now, sir, your testimony is that the stippling  
6 that you observed, that you observed was inside  
7 the wound itself, is that right?

8 A Yes.

9 Q There was no stippling that was on the entrance  
10 wound, is that right?

11 A Yes.

12 Q And it's also your testimony, sir, that one of  
13 the things that you did as a forensic pathologist  
14 is that you also made observations of a jacket  
15 and pants? Is that correct?

16 A Yes.

17 Q And those were the jacket and pants that came to  
18 the medical examiner's office with Mr. Yazbek's  
19 body, is that right?

20 A No.

21 Q Were they on his body?

22 A No. They were actually, the jacket was on the  
23 body.

24 Q Okay. And is it also fair to say that one of the

1 things that you did was you examined the jacket,  
2 is that right?

3 A Yes.

4 Q And you examined the pants, is that correct?

5 A No.

6 Q You did not examine the pants?

7 A No.

8 Q On March 28 did you ever look at a pair of pants  
9 in connection with this case?

10 A You're talking about pants? Yes, I examined,  
11 yes.

12 Q Okay. You did examine the pair of pants, is that  
13 right?

14 A Yes.

15 Q And it's your testimony that after -- when you  
16 examined those pants, it's fair to say that you  
17 were wearing gloves? Is that right?

18 A Yes.

19 Q And the reason why you wear gloves or one of the  
20 reasons is to protect your hands, is that  
21 correct?

22 A No.

23 Q Well, were you wearing gloves that day?

24 A Yes.

1 Q And it's fair to say that one of the reasons is  
2 to preserve the evidence? Is that right?

3 A Yes.

4 Q And by wearing gloves, it's fair to say that you  
5 were able to handle the evidence without your  
6 leaving your fingerprints on it, is that right?

7 A Yes, and contamination of my own material on the  
8 evidence.

9 Q It's fair to say that you did not want to  
10 contaminate the evidence which was the pants? Is  
11 that right?

12 A Yes.

13 Q And that you wore gloves at all times when you  
14 handled those things, is that right?

15 A Yes.

16 Q It's also fair to say that after your examination  
17 of the jacket and the pants, that you sent the  
18 jacket and the pants somewhere? Is that right?

19 A Yes.

20 Q Where was it sent?

21 A Actually they go to drying chamber because it is  
22 wet and crime lab did not accept wet pants as  
23 evidence. They should be dry.

24 Q So is it fair to say that after a period of time

1           that the crime lab eventually accepted the pants  
2           and the jacket?

3     A     Yes.

4     Q     When was that?

5     A     I don't know.

6     Q     Was it accepted on March 28?

7     A     No. .

8     Q     Where was it kept on March 28, the pants and  
9           jacket?

10    A     Drying chamber.

11    Q     And where is that?

12    A     It's in autopsy room. There is a special  
13           equipment which keeps things dry.

14    Q     Was there a Boston Police officer who was in  
15           charge of that room?

16    A     No.

17    Q     Who is in charge of that room?

18    A     Technician supervisor in office of chief medical  
19           examiner.

20    Q     And, sir, do you have any knowledge of when the  
21           jacket and the pants were given to the Boston  
22           Police crime lab?

23    A     No.

24                           MR. DOOLIN: I don't have any other

1 questions.

2 THE COURT: Thank you. Mr. Flaherty,  
3 any questions?

4 MR. FLAHERTY: Thank you.

5

6 CROSS EXAMINATION

7 BY MR. FLAHERTY:

8 Q Dr. Chirnov, my name is Timothy Flaherty. I  
9 represent Mr. Anderson. If I ask you any  
10 questions you don't understand, just ask me to  
11 rephrase it. I'll try.

12 Sir, this autopsy was performed at the  
13 office of the chief medical examiner on March 28,  
14 2000, correct?

15 A Yes.

16 Q At ten thirty a.m.?

17 A The beginning.

18 Q And I think you testified on direct examination  
19 that from a history you learned that this was a  
20 gunshot wound to the face, right?

21 A Yes.

22 Q So prior to conducting the autopsy you had  
23 information that this wound was a gunshot wound  
24 to the face, correct?



1 A Yes.

2 Q And from whom did you receive that information?

3 A From case report.

4 Q I'm sorry?

5 A Case report of police report. It comes to us,  
6 they give us information.

7 Q And was that Sergeant Detective Coleman from the  
8 Boston Police homicide unit?

9 A I can check it for you in my folder. Yes.

10 Q And he was present during the autopsy, right?

11 A Yes.

12 Q So by ten thirty a.m. on March 28, 2000, there  
13 was information relayed to you that this was a  
14 victim of a gunshot wound, right?

15 A Yes.

16 Q Now, sir, in medicine there's different fields of  
17 study, correct?

18 A Yes.

19 Q There's pediatrics, radiology, forensic  
20 pathology, correct?

21 A Yes.

22 Q And what does it mean to be board certified, sir?

23 A It means complete requirements, training and take  
24 an exam.

1 Q On March 28 of 2000 when this autopsy was  
2 performed at the office of the chief medical  
3 examiner, sir, you were not then board certified  
4 in forensic pathology, correct?

5 A Yes.

6 Q Yes, meaning you were not board certified?

7 A Yes, you're right.

8 Q And, sir, in fact, on March 28 of 2000 you were  
9 not employed, were you, sir, by the office of the  
10 chief medical examiner?

11 A Yes.

12 Q Yes, meaning you were not employed, correct?

13 A Yes, was not employed.

14 Q You were a fellow, meaning a student, correct?

15 A Fellow, yes.

16 Q And during this autopsy you were being supervised  
17 by Dr. Kessler, correct?

18 A Yes.

19 Q And, in fact, sir, in July of 2000 that's when  
20 you became employed by the office of the chief  
21 medical examiner, right?

22 A Yes.

23 Q Is that a full time position, sir?

24 A Yes.

1 Q And in July of 2000 when you became employed you  
2 were not then board certified, correct, sir?

3 A Yes.

4 Q And today as you testify before the jurors you  
5 are not board certified in forensic pathology,  
6 right?

7 A Yes.

8 Q And what that means, sir, is presently you have  
9 not demonstrated a level of competence in  
10 forensic pathology to a board by a testing  
11 procedure, correct?

12 A No.

13 Q Have you taken a test, sir, to be board  
14 certified?

15 A The tests will be administered -- 2001, it was a  
16 break and next test is this year.

17 Q We are in 2002, correct, sir?

18 A Yes. We miss one year as a result of  
19 reorganization of the board.

20 Q So you are not board certified, correct?

21 A Yes.

22 Q You testified that you have done about two  
23 hundred autopsies involving gunshot wounds, is  
24 that right, sir?

1 A Yes.

2 Q And a number of those were gunshot wounds to the  
3 face area, is that right?

4 A Maybe twenty-five, thirty.

5 Q Twenty-five to thirty. And of those twenty-five  
6 to thirty autopsies with gunshot wounds to the  
7 face, how many of those did you do when you were  
8 not supervised, sir?

9 A Most of them.

10 Q Most of them. So somewhere less than twenty-five  
11 were autopsies you had done unsupervised, right?  
12 Is that a fair statement, sir?

13 A Yes.

14 Q During the autopsy, as Mr. Doolin mentioned, you  
15 made an external examination, right?

16 A Yes.

17 Q And the only trauma that you noted was associated  
18 with a single gunshot wound, right?

19 A And abrasion.

20 Q And an abrasion to the forehead, right?

21 A Yes.

22 Q There was nothing of the nature of what we would  
23 refer to as defensive wounds, right?

24 A No.

1 Q There was not abrasions or contusions about the  
2 wrists or elbow area, correct?

3 A Yes.

4 Q And there was nothing in your examination  
5 indicating a struggle, correct?

6 A Yes.

7 Q Sir, you testified regarding stippling.

8 A Yes.

9 Q I think on direct examination in response to Mr.  
10 Tochka's question, you testified that stippling  
11 is gunpowder stuck to the skin at either an exit  
12 or an entrance wound?

13 A Yes.

14 Q Would you agree with me, sir, that stippling is  
15 caused by a discharge of a firearm? Right?

16 A Yes.

17 Q And the stippling is the gunpowder residue in the  
18 discharge of a firearm that fires, strikes the  
19 tissue area?

20 A Or the exit, it's also possible.

21 Q More likely on the entrance than the exit, sir?

22 A Absolutely.

23 Q Absolutely, right?

24 A Yes.

1 Q And in your examination of Mr. Yazbek, you saw  
2 stippling in one location, right?

3 A Yes.

4 MR. FLAHERTY: For the record, Your  
5 Honor, Exhibit 21 is on the monitor.

6 BY MR. FLAHERTY:

7 Q Can you see that, sir?

8 A Yes.

9 Q The stippling you saw was at that wound, right?

10 A Yes.

11 Q Below the ear?

12 A Yes.

13 Q Would you also agree with me, sir, in your  
14 experience in less than twenty-five gunshot  
15 wounds to the face, that when there's deformation  
16 to the projectile with associated bone fractures,  
17 that usually the exit wound is larger than the  
18 entrance wound?

19 A Yes.

20 Q And in this case there was deformation of the  
21 projectile, meaning the bullet was broken up?  
22 You found some fragments, right?

23 A Yes.

24 Q And there was also some bone fractures, right?

1 A Yes.

2 Q And you testified, did you not, that the wound to  
3 the face was six inches?

4 A Yes.

5 Q And the wound below the ear was two inches?

6 A Yes.

7 Q And the only stippling that's normally associated  
8 with entrance wounds was on the wound to the --  
9 below the ear, correct?

10 A Yes.

11 Q And taking those factors into consideration, you  
12 would agree with me, would you not, Dr. Chirnov,  
13 that those factors point to the directionality of  
14 the wound exactly opposite to your opinion?

15 A Yes, but the problem is --

16 Q I'll ask the question, Doctor. And I think your  
17 response was yes?

18 MR. TOCHKA: May he be allowed to  
19 answer?

20 THE COURT: Have you finished your  
21 answer, sir?

22 THE WITNESS: No.

23 THE COURT: You may do so.

24 A (continued) This is only the part of the

1 evidence which we collected. More important  
2 evidence which we found based on the direction of  
3 the bullet, is finding fragments of the jacket on  
4 the top of the tongue which practically makes  
5 impossible direction of the wound from the back  
6 to front.

7 BY MR. FLAHERTY:

8 Q And the fact that they were found on top of the  
9 tongue --

10 A Yes.

11 Q -- is what makes it practically impossible,  
12 right?

13 A Yes.

14 Q You have your autopsy report in front of you?

15 A Yes.

16 Q Now, when you wrote your autopsy report, there is  
17 a section included there, evidence of trauma,  
18 correct, Doctor?

19 A Yes.

20 Q And that's when you write a narrative about your  
21 observations during your examination of the  
22 wound, right?

23 A Yes.

24 Q And when you wrote that narrative that was



1 directly at the time of the autopsy?

2 Actually, you create a narrative by  
3 dictating, do you not?

4 A Yes.

5 Q And so your observations are contemporary or your  
6 recording of your observations are made  
7 contemporaneous with what you see, right?

8 A No.

9 Q They are not?

10 A No.

11 Q You make a recording?

12 A No.

13 Q You don't make an audio recording?

14 A I make an audio recording after I finish.

15 Q Oh. Then you check your audio recording for  
16 accuracy?

17 A Yes.

18 Q And you take notes, too?

19 A Yes.

20 Q And then all of those are combined to put into  
21 your narrative where it says evidence of trauma,  
22 right?

23 A Yes.

24 Q Okay. Do you see that portion of your autopsy

1 report, sir?

2 A Yes.

3 Q And do you see where you say, you describe  
4 fragments of the bone?

5 A Yes.

6 Q Correct me if I'm wrong but you write, fragments  
7 of the bone is noted in the mouth and in the  
8 tongue, right?

9 A Yes.

10 Q That doesn't mean on top of, right?

11 A It means on the top.

12 Q I'm sorry, sir. What it reads is, the fragments  
13 of bone is noted in the mouth and in the tongue.

14 A But if you look on the anatomy of the tongue,  
15 anatomy of the tongue, it's open, the anterior  
16 surface and blood surface is close to the base of  
17 the mouth.

18 Q You'll agree with me your autopsy report does not  
19 say what you just testified to now, right, sir?

20 A There is two fragments of the jacket of the  
21 bullet found on the base of the tongue in the cut  
22 wound, next sentence.

23 Q Right. I see it, sir. Multiple fragments of the  
24 jacket on the bullet found in the mouth --

- 1 A And then the next sentence.
- 2 Q Right. I see it, sir. Multiple fragments of the  
3 jacket on bullet found in the mouth.
- 4 A Next sentence.
- 5 Q Next sentence. There were two fragments of the  
6 jacket of the bullet found on the base of the  
7 tongue and/or -- excuse me, not and, and the cut  
8 wound, correct?
- 9 A Yes, yes. It's, base of the tongue is anterior  
10 surface of the tongue.
- 11 Q Correct me if I'm wrong, sir, but does on the  
12 base of the tongue in the cut wound mean --
- 13 A Yes.
- 14 Q -- inside the wound?
- 15 A It's cut through the base of the tongue.
- 16 Q So from it being in the tongue, sir, is that the  
17 factor that caused you to form an opinion exactly  
18 opposite the stippling behind the ear and the  
19 large fragment, large wound on the front of the  
20 face?
- 21 A No, no. You completely exclude in the opinion  
22 presence of the gunpowder through the wound.
- 23 Q Now, would you please direct me where in your  
24 evidence of trauma narrative you mentioned

1 evidence of gunpowder through the wound?

2 Take a minute, sir, and look at it.

3 Point it out to me.

4 A It's not mentioned.

5 Q And as I recall your observations are recorded by  
6 audio tape?

7 A Yes.

8 Q You review the audio tape, you review your  
9 handwritten notes?

10 A Yes.

11 Q And then you perform the narrative, right?

12 A Yes.

13 Q And if it was there, sir, is it a fair statement  
14 to say you would have put it in your narrative  
15 because that would be an important fact as to  
16 directionality as you're relying and testifying  
17 in front of the jury today?

18 A Yes.

19 Q But it's not in there, right? Right, sir? It's  
20 not in there?

21 A It's not here because I described direction of  
22 the wound.

23 Q Now, sir, you testified on direct examination  
24 that you took the jacket and pants that you found

1 on the victim and you put them in the chamber  
2 room, is that right?

3 A Yes.

4 Q And you also took blood from the victim as well,  
5 right?

6 A Yes.

7 Q And the reason for taking the blood is for blood  
8 typing purposes, correct?

9 A Yes.

10 Q Do you know whether or not any blood typing was  
11 done in this case?

12 A No.

13 Q You also testified on direct examination that you  
14 believed that the blood found on the clothes that  
15 you observed was somehow caused by the  
16 directionality of the wound, right?

17 A Yes.

18 Q But, sir, isn't it true you can't tell us whether  
19 or not the blood is even Mr. Yazbek's blood on  
20 his clothes? Can you?

21 A I can say based on my observations consistent  
22 with his blood.

23 Q Well, let me ask it this way, Doctor. To a  
24 reasonable degree of medical certainty, you have

1 absolutely no idea as we stand here in court and  
2 the clock reads twelve seventeen p.m. whose blood  
3 is on those clothes, right?

4 MR. TOCHKA: Objection to the form of  
5 the question.

6 THE COURT: He may answer that.

7 BY MR. FLAHERTY:

8 Q To a reasonable degree of medical certainty,  
9 Doctor --

10 A I have no verification of the blood typing on the  
11 clothing.

12 Q That's because it wasn't performed, right?

13 A It's duty of crime lab.

14 Q Now, with respect to the blood on the clothes,  
15 you've never trained in blood stain pattern  
16 analysis, have you, sir?

17 A Yes.

18 Q You have?

19 A Yes.

20 Q Well, then you understand, sir, do you not, that  
21 several factors must be taken into consideration  
22 before a person --

23 A Of course.

24 Q Like if there's any introduction to the scene

1 prior to the analysis by the blood stain person,  
2 correct?

3 A Yes.

4 Q Like, for instance, if it had been raining, sir?

5 A And wind and other atmospheric conditions,  
6 temperature.

7 Q Right.

8 A There's plenty of --

9 Q Whether or not EMT's arrived at the scene, right?

10 A Yes.

11 Q Whether or not police officers arrived at the  
12 scene, right? All of those are factors?

13 MR. TOCHKA: Objection, Your Honor. If  
14 the witness can be allowed to answer a question  
15 when it's asked?

16 THE COURT: Have you finished your  
17 answer, sir?

18 THE WITNESS: There's multiple factors  
19 which influence blood pattern.

20 BY MR. FLAHERTY:

21 Q And you know of no factors that may have been  
22 introduced to Mr. Yazbek's clothes or to the  
23 scene itself prior to your observation, correct?

24 A Yes.

1 Q And because of that, sir, you can render no  
2 opinion whatsoever as to blood stain  
3 interpretation on the clothes, isn't that fair to  
4 say?

5 A I based my interpretation on the observation of  
6 the body which I saw in the morgue and he was  
7 fully clothed with protective bags on the arms.

8 Q Sir, are you familiar with firearms at all?

9 A Yes.

10 Q And, sir, assuming for the purposes of this next  
11 question that the wound that you observed,  
12 irregardless of the directionality, was caused by  
13 the firing of a three fifty-seven magnum, and  
14 assuming further for the purposes of this  
15 question that the ammunition used in the firing  
16 of the three fifty-seven magnum was proper  
17 ammunition, you would expect, would you not, sir,  
18 to see much more damage than you saw on the  
19 autopsy?

20 MR. TOCHKA: Objection, Your Honor.

21 THE COURT: Sustained as to form.

22 BY MR. FLAHERTY:

23 Q Well, would you expect to see, assuming those  
24 factors, would you expect to see something



1 different than you saw when you performed the  
2 autopsy March 28, 2000?

3 MR. TOCHKA: Objection.

4 THE COURT: Sustained.

5 BY MR. FLAHERTY:

6 Q In addition, sir, there was hair taken and that  
7 hair was for typing purposes as well?

8 A It's for DNA analysis, most of the cases.

9 Q And none of that was done as far as you know,  
10 right?

11 A It was submitted to the crime lab.

12 Q And the wound that you call the entrance wound,  
13 sir, that you say the gases caused the  
14 laceration, you saw absolutely no evidence of  
15 stippling there, right?

16 A Yes, except inside.

17 Q Right. And that stippling or gunpowder that you  
18 say was inside never appears in the narrative in  
19 your autopsy report, right?

20 A Yes.

21 MR. FLAHERTY: No further questions for  
22 the witness, Your Honor.

23 THE COURT: Anything more, Mr. Tochka?

24 MR. TOCHKA: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. TOCHKA:

Q Sir, Mr. Flaherty asked about your being board certified. What does that mean?

A It means take an exam after you complete training.

Q And was there a reason why you're not board certified at this point in time?

A Because the board was in the stage of reorganization and they didn't give exam.

Q And in terms, could you tell the jurors what has been your work experience in the area of pathology?

A I finished my medical school in 1983 and I did three years post graduate in biophysics and the beginning of 1990, I emigrated to the United States and passed all requirements, exams and start pathology residence program at Brown University. I completed four years pathology residence at Brown plus one year surgical pathology fellowship and one year forensic pathology fellowship. I present few articles at the annual meetings of American Academy of Forensic Science.

1 Q And, sir, can you tell us in terms of your work  
2 experience, where have you worked as a staff  
3 pathologist?

4 A I am a staff pathologist, I was working in a  
5 hospital in private lab and in United States and  
6 in office of chief medical examiner.

7 Q And in terms of your experience as a pathologist,  
8 you've told this jury you've conducted how many  
9 autopsies?

10 A In office of chief medical examiner I conducted  
11 three hundred fifty autopsies and more than two  
12 hundred autopsies conducted due to my training in  
13 Brown University and over a thousand autopsies  
14 conducted in former Soviet Union as forensic  
15 pathologist.

16 Q And based upon your having conducted a total of  
17 how many autopsies, sir?

18 A Total in United States more than fifteen hundred,  
19 total in my life more than two thousand.

20 Q In conducting over two thousand autopsies, sir,  
21 can you tell this jury how you came to the  
22 conclusion as to the path and direction of the  
23 bullet?

24 MR. DOOLIN: I object.

1 THE COURT: He may answer that.

2 A Okay. Based on complex of evidence, not only one  
3 evidence but on the complex of evidence,  
4 consistent with skin defect and presence of the  
5 direction of the wound, presence of the jacket on  
6 the top of the tongue, and fracture fragments in  
7 the mouth.

8 Q And the fracture fragments are where in the  
9 mouth, sir?

10 A On the base of the tongue, on the top of the  
11 tongue.

12 Q On the top of the tongue, the fragments from  
13 what, sir?

14 A From jacket and from the bone.

15 Q And from what bones, connected to what?

16 A Maxilla bones.

17 Q And that's connected to the palate that you  
18 referred to?

19 A Yes.

20 MR. TOCHKA: Thank you, sir. No  
21 further questions.

22 THE COURT: Anything more?

23 MR. DOOLIN: I don't have any  
24 questions, Your Honor.

1 MR. FLAHERTY: Very briefly.

2  
3 RE CROSS EXAMINATION

4 BY MR. FLAHERTY:

5 Q The reason you didn't take the exam to be board  
6 certified is because the board was reorganizing,  
7 right?

8 A Yes.

9 Q Okay. That doesn't mean that's why you're not  
10 board certified, correct?

11 A I'm not board certified because there is no exam  
12 to take.

13 Q Right. But we are assuming, are we not, for the  
14 purpose of that question, that you would have to  
15 demonstrate competence to the board?

16 A No, I'm already board eligible. It's when they  
17 took my credentials. And I have to take the  
18 exam.

19 Q You're eligible to take the test?

20 A Yes.

21 Q But you haven't passed the test yet?

22 A No, because they didn't -- I didn't take the  
23 test.

24 MR. FLAHERTY: Right. Nothing further,

1 Your Honor.

2 THE WITNESS: Because the test was not  
3 available for this time.

4 THE COURT: Thank you.

5 MR. TOCHKA: Thank you. I have no  
6 further questions.

7 THE COURT: Thank you very much, sir.  
8 You may step down.

9 MR. TOCHKA: Your Honor, the  
10 Commonwealth would call the next witness, Edward  
11 Gauthier.

12 THE COURT: May I see counsel for a  
13 moment?

14 (Whereupon, a discussion occurred off  
15 the record at side bar.)

16  
17 EDWARD GAUTHIER,  
18 called as a witness, being first duly sworn,  
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. TOCHKA:

22 Q Sir, could you please introduce yourself to the  
23 jurors and spell your last name?

24 A Sorry?

1 Q Could you introduce yourself?

2 A Edward Gauthier.

3 Q And, Mr. Gauthier, could you spell your last

4 name?

5 A G-a-u-t-h-i-e-r.

6 Q How old are you, sir?

7 A Twenty-five.

8 Q Do you work?

9 A Yes, I do.

10 Q And not where you work but what type of work do

11 you do?

12 A Auto.

13 Q How long have you worked in the auto business?

14 A About a year.

15 Q Sir, do you live inside the City of Boston or

16 outside the City of Boston?

17 A Inside.

18 Q And directing your attention to the year 2000,

19 March of 2000, where were you living then?

20 A Revere.

21 Q Prior to that where were you living?

22 A 75 Faneuil.

23 Q And is that in Brighton?

24 A Correct.

1 Q How long had you lived in Brighton for?

2 A All my life.

3 Q You had lived all your life in the Brighton

4 Faneuil development?

5 A Off and on, yes.

6 Q And who did you live there with?

7 A My parents.

8 Q With who?

9 A My parents.

10 Q And back in March of 2000 where was your mother

11 living?

12 A 75 Faneuil.

13 Q And who was she living there with?

14 A Herself and me.

15 Q And back in March of the year 2000, did you know

16 a person by the name of Heather Coady?

17 A Yes.

18 Q How long did you know Heather Coady for?

19 A Over ten years.

20 Q What was your relationship with her?

21 A Friends.

22 Q And do you know where she lived back then?

23 A Faneuil projects.

24 Q And where in relationship to 75 where you lived



1 did she live?

2 A Across the play area.

3 Q How far of a walk was it?

4 A Minute.

5 Q And what was -- okay. And back in March of 2000

6 did you know a person by the name of Jason

7 Robinson?

8 A Yes, I did.

9 Q And do you see Jason Robinson in court today?

10 A Yes, I do.

11 Q Would you please point him out and describe what

12 he's wearing?

13 A Blue shirt, braids.

14 Q Is that the person I'm standing behind right now?

15 A Yes.

16 MR. TOCHKA: Your Honor, if the record

17 could reflect the identification of the

18 defendant, Jason Robinson?

19 THE COURT: Yes..

20 BY MR. TOCHKA:

21 Q How long did you know Jason Robinson for, sir?

22 A Over ten years.

23 Q And back in March can you tell us what your

24 relationship was -- can you tell us what your

- 1 relationship was with him?
- 2 A Good friends.
- 3 Q At some point in time was he living in the  
4 development?
- 5 A Yes.
- 6 Q Could you tell us where he lived when he lived in  
7 the development?
- 8 A Yes. He lived in 89 with his grandfather.
- 9 Q Where in 89 did he live?
- 10 A Third floor.
- 11 Q And do you know who else he lived with when you  
12 say his grandfather?
- 13 A Aunt.
- 14 Q And do you know -- did you know his grandfather's  
15 name?
- 16 A Mr. Robinson.
- 17 Q And is that how you referred to him as Mr.  
18 Robinson?
- 19 A Yes.
- 20 Q And do you know whether or not -- where his  
21 grandmother lives?
- 22 A She lived in the same building.
- 23 Q The same, 89?
- 24 A Yes.

- 1 Q And how do you refer to her?
- 2 A Didn't really know her.
- 3 Q Now, back in March of the year 2000, did you know
- 4 a person by the name of Joleena Tate?
- 5 A Yes.
- 6 Q And how long had you known her for?
- 7 A A couple years, two, three.
- 8 Q Did you know where she lived?
- 9 A Oak Square.
- 10 Q Had you ever been -- before March, 2000, had you
- 11 ever gone to her house?
- 12 A No.
- 13 Q Now, with respect to Joleena Tate, what was your
- 14 relationship with her?
- 15 A Friends.
- 16 Q So we can have an idea, in terms of Heather
- 17 Coady, Jason Robinson and Joleena Tate, who were
- 18 you friendlier with, if there is a person of
- 19 those who you were friendlier with?
- 20 A Jason and Heather.
- 21 Q And do you know who Heather was friendly with
- 22 back then? Do you know if she knew Joleena Tate?
- 23 A Yes.
- 24 Q And is that how you met Joleena Tate, through

1 Heather?

2 A No.

3 Q Now, back in March of the year 2000, did you know  
4 a person by the name of Tee?

5 A Yes.

6 Q And back in March of 2000 -- do you see the  
7 person that you know as Tee in court today?

8 A Yes, I do.

9 Q And if you could just tell the Court what he's  
10 wearing?

11 A A jacket, tie.

12 MR. FLAHERTY: No objection, Your  
13 Honor. No objection. Mr. Anderson is sitting at  
14 counsel table.

15 BY MR. TOCHKA:

16 Q Sir, is that the person that I'm standing behind  
17 right now?

18 A Correct.

19 MR. TOCHKA: Your Honor, if the record  
20 can reflect the identity of the defendant,  
21 Tanzerius Anderson?

22 MR. FLAHERTY: No objection, Your  
23 Honor.

24 BY MR. TOCHKA:

1 Q How long had you known the defendant, Tanzerius  
2 Anderson, back in March of 2000?

3 A Not long.

4 Q How did you meet him?

5 A Through Jason.

6 Q And how did Jason describe him to you?

7 MR. DOOLIN: I object.

8 THE COURT: I'm sorry. May I have the  
9 question again?

10 MR. TOCHKA: I'll rephrase it, Your  
11 Honor.

12 BY MR. TOCHKA:

13 Q When you met him through Jason, did you know what  
14 Jason's relationship was with the defendant based  
15 upon your conversation with the defendant?

16 MR. DOOLIN: Your Honor, I object.

17 MR. FLAHERTY: Objection.

18 THE COURT: He may answer that.

19 A I thought he was his cousin.

20 BY MR. TOCHKA:

21 Q And why did you think that, sir?

22 A Because that's what I was told.

23 Q By who?

24 A Jason.

1 Q How many times -- I'm sorry. How many times back  
2 in March had you seen him prior to this incident?

3 A Seen who?

4 Q I'm sorry. Tanzerius Anderson.

5 A I met him a couple times, probably three, four.

6 Q And did you know his full name at this point in  
7 time?

8 A I knew him as Tee.

9 Q And how did you know him as Tee? How did he  
10 identify himself to you?

11 A He never told me his name.

12 Q Who told you his name?

13 A Jason introduced him to me as Tee.

14 Q Now, I want to direct your attention to March 27  
15 going into March 28.

16 Sir, do you recall March 27 being a  
17 Monday?

18 A Yes.

19 Q And do you recall on that Monday where you were  
20 staying that night?

21 A 75.

22 Q And you said that your mother lived at 75 as  
23 well?

24 A Correct.

- 1 Q And what apartment number is that, sir?
- 2 A Two fifteen.
- 3 Q That weekend prior to -- on the twenty-seventh, a
- 4 Monday, was anyone else staying at your house?
- 5 A Repeat the question?
- 6 Q Sure. On the twenty-seventh going into the
- 7 twenty-eighth --
- 8 A Um-hum. *What's missing?*
- 9 Q You said you, Jason' Robinson, 'correct?
- 10 A Yes *to what*
- 11 Q Do you know where Jason Robinson was staying
- 12 those nights, the twenty-seventh into the twenty-
- 13 eighth?
- 14 A The night before the twenty-seventh he stayed at
- 15 my house.
- 16 Q And the night before the twenty-seventh was
- 17 Sunday, the twenty-sixth, correct?
- 18 A Correct.
- 19 Q Now, on the twenty-seventh, in the evening of the
- 20 twenty-seventh, at some point in time were you at
- 21 your house at two fifteen? *AM?*
- 22 A Yes.
- 23 Q That evening, and who was in your house with you?
- 24 A Jason, Heather, Tee, Joleena.

1 Q And while you were in the house with Heather,  
2 Jason, Tee and Joleena, where was your mother?

3 A She wasn't home.

4 Q And do you know where she was?

5 A Yes.

6 Q Now, not where she was but do you know who she  
7 was with?

8 A Yes.

9 Q And who was she with?

10 A My aunt.

11 Q Does your aunt live in Boston?

12 A No.

13 Q Now, that particular evening, sir, when you were  
14 with those individuals, can you tell us what you  
15 were doing that evening?

16 A Playing video games, listening to music, smoking.

17 Q When you say playing video games, who was playing  
18 video games and where were the video games being  
19 played?

20 A Everybody was playing video games in my room.

21 Q And you say playing video games and what?

22 A Listening to music.

23 Q And is there a stereo in your room?

24 A Yes.



1 Q And is that where you were listening to music?

2 A Yes.

3 Q And you said you were smoking?

4 A Yes.

5 Q And who was smoking?

6 A Everybody.

7 Q And can you tell the jurors what you were

8 smoking?

9 A Marijuana.

10 Q And at some point did somebody leave your house?

11 A Tee and Joleena.

12 Q And do you know why they left?

13 A To drive Joleena home.

14 Q And who did you learn that from?

15 A They said it.

16 Q Who said it?

17 A Both of them, Joleena and Tee.

18 Q Did you know back in March how old Tanzerius

19 Anderson was?

20 A No.

21 Q Did you know how old Joleena Tate was?

22 A Yes.

23 Q And how old?

24 A Fifteen, sixteen.

- 1 Q And when Joleena Tate and Tanzerius Anderson said  
2 they were driving Joleena Tate home, did you know  
3 what type of car they were driving in?
- 4 A Yes.
- 5 Q And what type of car was that?
- 6 A It was a Mazda.
- 7 Q And had you seen that Mazda before?
- 8 A Yes.
- 9 Q And how many times had you seen that Mazda  
10 before?
- 11 A Three, four.
- 12 Q And can you tell us who was -- who would you see  
13 driving that Mazda?
- 14 A Tee.
- 15 Q On this particular night when Joleena and the  
16 defendant, Tanzerius Anderson, left your house,  
17 had you seen the car earlier in the evening, the  
18 defendant's car?
- 19 A Yes.
- 20 Q And where was his car parked?
- 21 A On the street, Faneuil Street.
- 22 Q And at some point in time did the defendant  
23 return?
- 24 A Yes.

- 1 Q About how long before he returned?
- 2 A Good forty-five minutes.
- 3 Q And did you see when he returned where the car
- 4 was parked?
- 5 A Parking lot.
- 6 Q Whose parking lot?
- 7 A My parking lot.
- 8 Q And where in your parking lot was the car parked?
- 9 A Right in front of my window.
- 10 Q Now, when he returned who was at the house in
- 11 your apartment?
- 12 A Me, Jason and Heather.
- 13 Q Do you know about what time the defendant,
- 14 Tanzerius Anderson, returned to your apartment?
- 15 A No, I don't.
- 16 Q Do you know how long he stayed in your apartment
- 17 after returning?
- 18 A Over an hour.
- 19 Q And when he left, do you know where he was going?
- 20 A To make a phone call.
- 21 Q How do you know that?
- 22 A Because he said he had to make a phone call.
- 23 Q And can you tell us, what did you say to him when
- 24 he said he had to make a phone call?

- 1 A Go to the Pig and Whistle.
- 2 Q And where is that located?
- 3 A Market Street off Beacon.
- 4 Q And was there a reason why you said that? What
- 5 I'm asking you, did you have a phone in your
- 6 house?
- 7 A No, I didn't.
- 8 Q When he left, prior to him leaving, can you tell
- 9 us where Jason Robinson was?
- 10 A With me, my house, my home.
- 11 Q And was Heather as well there?
- 12 A Yes.
- 13 Q Did you hear, when Tanzerius Anderson left, did
- 14 you hear Jason Robinson say anything to him?
- 15 A Yes.
- 16 Q What did you hear Jason Robinson say?
- 17 A You better hurry up back if he wanted to make
- 18 some money.
- 19 Q At this point in time did you know what they were
- 20 referring to or what Jason Robinson was referring
- 21 to?
- 22 A No.
- 23 Q Did Tanzerius Anderson respond to that?
- 24 A No.

- 1 Q What did Tanzerius Anderson then do?
- 2 A Left.
- 3 Q And what did Jason then continue to do?
- 4 A Play video games.
- 5 Q At some point did you move into your living room?
- 6 A Later on, yes.
- 7 Q And who did you go in there with?
- 8 A Heather.
- 9 Q And what did you do there with Heather?
- 10 A Played cards.
- 11 Q What games did you play? What card games?
- 12 A Rummy.
- 13 Q What?
- 14 A Rummy.
- 15 Q How long did you play that for about?
- 16 A Forty minutes, an hour.
- 17 Q And while you were playing cards with Heather,
- 18 what was Jason doing?
- 19 A In the room playing video.
- 20 Q Now, at some point in time -- do you know whether
- 21 or not Jason Robinson had a pager back then?
- 22 A He had a pager.
- 23 Q And do you know whether or not Heather had a
- 24 pager?

1 A Heather used Jason's.

2 Q And how did you know that?

3 A I was always around her.

4 Q While you were in your living room playing rummy  
5 with Heather in the card game, did the pager go  
6 off?

7 A Yes.

8 Q And when the pager went off, what did Heather do?

9 A Yelled to Jason.

10 Q Who had the pager when it went off?

11 A Heather.

12 Q What did you hear her yell to Jason?

13 MR. FLAHERTY: Objection.

14 THE COURT: Rephrase the question.

15 It's leading.

16 BY MR. TOCHKA:

17 Q Where were you when she said something to Jason?

18 A We were in the living room.

19 Q Where was Jason at the time?

20 A In the bedroom.

21 Q Did she say something to Jason after the pager  
22 went off?

23 A She yelled to him --

24 MR. FLAHERTY: Objection.

1 THE COURT: Sustained.

2 BY MR. TOCHKA:

3 Q Can you just answer yes or no? Did she say  
4 something to him?

5 A Yes.

6 Q Did he respond?

7 A Yes.

8 Q And what did she say to him?

9 MR. DOOLIN: I object.

10 MR. FLAHERTY: Objection.

11 THE COURT: Sustained.

12 MR. TOCHKA: Can I be heard at side  
13 bar?

14 THE COURT: You may.

15 (Whereupon, the following discussion  
16 occurred at side bar:)

17 THE COURT: Grounds for the objection?

18 MR. FLAHERTY: Hearsay.

19 MR. TOCHKA: It's not hearsay. It's  
20 not offered -- the defendant's state of mind that  
21 she is notifying him, she said, does eleven  
22 thirty mean anything to you. He then responded,  
23 yes, and they left shortly after. Shortly after  
24 that he left the building so I suggest it's in

1 terms of his state of mind.

2 THE COURT: What's relevant about his  
3 state of mind?

4 MR. TOCHKA: Because it will come out,  
5 as I said in my opening, through the other  
6 witnesses that there is an agreed upon -- there  
7 is an agreed upon motive as to how this robbery  
8 was going to be conducted. Joleena had told  
9 Tanzerius Anderson and Jason Robinson the number  
10 that she would put in the pager would be the time  
11 that she is coming back from the restaurant in  
12 order to give them time to set up and to do this  
13 particular robbery. So I suggest it's relevant  
14 as to his statement, yes, he is aware of that  
15 particular -- the significance of that time and  
16 it's relevant. It's not hearsay.

17 THE COURT: Heather Coady is coming and  
18 she will be testifying about this, sir?

19 MR. TOCHKA: And she will be testifying  
20 as well, yes.

21 THE COURT: Okay. Anything further,  
22 gentlemen?

23 MR. FLAHERTY: I just state, Your  
24 Honor, that it's hearsay. It's being offered for



1 the truth of the matter asserted. It doesn't  
2 fall within any delineated exceptions to hearsay.  
3 There is a lot of case law on this and I would  
4 ask that you properly exclude it.

5 MR. TOCHKA: It's being offered for his  
6 state of mind. Eleven thirty, do you know what  
7 that means, it's offered for his state of mind.

8 THE COURT: Mr. Tochka, what does the  
9 defendant respond?

10 MR. TOCHKA: He says yes and then he  
11 leaves the building.

12 THE COURT: Okay. The objection is  
13 overruled.

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

16 BY MR. TOCHKA:

17 Q Sir, when the pager goes off, does Heather Coady  
18 say anything to Jason Robinson?

19 A Yes.

20 Q And what does she say? *Hearsay*

21 A Does eleven thirty mean anything.

22 Q And when she says that, how does she say that?

23 Where is Jason Robinson at that time?

24 A He's at the end of the living room.

- 1 Q And when she says, does eleven thirty mean  
2 anything, what does Jason Robinson say?
- 3 A Yes.
- 4 Q And what does he then do?
- 5 A Goes back in the room.
- 6 Q And what's the next thing that you see Jason  
7 Robinson doing after that?
- 8 A He left.
- 9 Q And how much time passed between the time of  
10 Heather Coady asking Jason Robinson, does eleven  
11 thirty mean anything, and Jason Robinson leaving?
- 12 A Fifteen, twenty minutes.
- 13 Q And where were you when he left?
- 14 A In the living room.
- 15 Q And you were with who?
- 16 A Heather.
- 17 Q And what were you doing?
- 18 A Playing cards.
- 19 Q At some point does Heather Coady leave?
- 20 A Yes.
- 21 Q How soon after Jason Robinson left did she leave?
- 22 A Twenty minutes.
- 23 Q And do you know where she was going?
- 24 A Home to walk the dogs.

- 1 Q And did you have any conversation with her before  
2 she left?
- 3 A Just that we'd meet up in the play area.
- 4 Q And what did you do after she left?
- 5 A Cleaned up the house.
- 6 Q What do you mean, you cleaned up the house?
- 7 A Glasses, put them in the sink, put the Nintendo  
8 away.
- 9 Q I'm sorry. You put the glasses in the sink and  
10 you --
- 11 A Put the Nintendo away.
- 12 Q Put the Nintendo away? Where do you then go?
- 13 A Outside.
- 14 Q And when you went outside, where outside did you  
15 go?
- 16 A Play area.
- 17 Q How far is the play area from where you live?
- 18 A Right out the door.
- 19 Q And when you went out to the play area, sir, what  
20 did you see? Was anyone there at the time?
- 21 A Just Heather.
- 22 Q And what was she doing?
- 23 A Walking the dogs.
- 24 Q What happened next, sir?

- 1 A She brought the dogs in.
- 2 Q And then what did she do after she brought the  
3 dogs in?
- 4 A Met me in the play area.
- 5 Q Do you know Heather's mother?
- 6 A Yes, I do.
- 7 Q What's her name?
- 8 A Mary.
- 9 Q And did you see Heather's mother that evening?
- 10 A Yes.
- 11 Q And at what point in time did you see Heather's  
12 mother?
- 13 A Around twelve.
- 14 Q And how soon after Heather had gone -- was that  
15 after she had gone in? I'm sorry. Strike that.
- 16 You said that Heather walked the dogs  
17 and then she went in, correct?
- 18 A Yes.
- 19 Q And you stayed in the play area, correct?
- 20 A Yes.
- 21 Q Did Heather come out?
- 22 A Yes.
- 23 Q And where did she come when she came out?
- 24 A To the play area.

- 1 Q And at some point after that did you see  
2 Heather's mother?
- 3 A Yes.
- 4 Q And where did you see Heather's mother?
- 5 A In Heather's doorway.
- 6 Q And did her mother say anything?
- 7 A It's twelve o'clock, time to come in.
- 8 Q Did Heather respond or say anything?
- 9 A Yes.
- 10 Q What did she respond?
- 11 A I'll be in in a little while.
- 12 Q Now, while you were sitting in that play area,  
13 sir, are you familiar with the back of 89 Faneuil  
14 development?
- 15 A Yes.
- 16 Q And are you familiar with the maintenance area?
- 17 A Yes.
- 18 Q And back in March of 2000 while you were out  
19 there in the play area with Heather, how far away  
20 was the fence -- was the maintenance area from  
21 you?
- 22 A Straight across the play area, just go, take a  
23 little pathway and it's right there.
- 24 Q While you were out with Heather after her mother

1 had made that comment, it's twelve, time to come  
2 in, did you observe -- make any observations of  
3 that fenced area?  
4 A Yes.  
5 Q And what caused you to make some observation?  
6 A Some noise back there.  
7 Q And can you describe the noise for us?  
8 A Just like somebody was rubbing up against the  
9 fence.  
10 Q And which direction were you facing when you  
11 first heard that noise?  
12 A Into the play area.  
13 Q So would that be away from the fence?  
14 A Yes.  
15 Q And what did you do when you heard that noise?  
16 A Turned around.  
17 Q And when you turned around, what did you see?  
18 A Somebody was over there.  
19 Q Did you recognize the person that was over there?  
20 A Yes.  
21 Q And who was that person?  
22 A Jason.  
23 Q What did you see Jason doing?  
24 A Just walking back and forth.

- 1 Q Approximately five or ten minutes later, sir --  
2 did you stay in the play area?
- 3 A Yes.
- 4 Q Approximately five to ten minutes later did you  
5 hear anything?
- 6 A Yes.
- 7 Q What did you hear?
- 8 A Whistling.
- 9 Q And when you heard the whistling, which direction  
10 was it coming from?
- 11 A Same area.
- 12 Q What did you do when you heard the whistle?
- 13 A Turned around.
- 14 Q Again, were you facing the play area at the time?
- 15 A Yes.
- 16 Q And which direction was Heather facing?
- 17 A Same way.
- 18 Q When you turned around, what did you see?
- 19 A Joleena.
- 20 Q And where was Joleena?
- 21 A At the 89 building.
- 22 Q What was she doing?
- 23 A Whistling.
- 24 Q And can you tell who she was whistling to?

1 A Heather.

2 Q What did she do after she whistled?

3 A She yelled for Heather.

4 Q Where was Joleena when she yelled for Heather?

5 What was she doing at that time?

6 A Just standing.

7 Q And when she yelled for Heather, did you hear

8 what she said?

9 A She said, Heather, what you doing --

10 MR. FLAHERTY: Objection. Objection,

11 Your Honor.

12 THE COURT: Overruled.

13 BY MR. TOCHKA:

14 Q What did she say?

15 A She said, Heather, what you doing, you're

16 supposed to meet me here at eleven thirty.

17 Q What did Heather do?

18 A She got up and started walking to her.

19 Q And when you say she got up and starting walking

20 towards her, what was Joleena doing when Heather

21 was walking towards Joleena?

22 A Walking towards Heather.

23 Q Where did they meet up?

24 A The walkway between 89 and the other building.



- 1 Q Do you know a person by the name of Oscar Vega?
- 2 A Yes, I do.
- 3 Q How well do you know Oscar Vega?
- 4 A Real well.
- 5 Q Where did he live back then?
- 6 A The building right across from 89.
- 7 Q Is there a tree in front of the building?
- 8 A Yes.
- 9 Q In connection with where Oscar Vega lived and
- 10 where that tree was, where were Heather and
- 11 Joleena? Where did they meet up?
- 12 A Probably by that tree.
- 13 Q After they met up, what did you see them start to
- 14 do?
- 15 A Just grabbed onto one another.
- 16 Q How did they grab onto one another?
- 17 A Arms.
- 18 Q In terms of arms, are you talking about hugging
- 19 each other or just wrapping one arm around the
- 20 other arm?
- 21 A Wrapping.
- 22 Q What did they then do?
- 23 A Looked back towards the building.
- 24 Q What did you do?

1 A I walked to the play area.

2 Q Why did you do that?

3 MR. DOOLIN: I object.

4 THE COURT: Sustained.

5 BY MR. TOCHKA:

6 Q As you were walking to the play area, what was  
7 your state of mind at that time?

8 MR. DOOLIN: I object.

9 THE COURT: Sustained.

10 BY MR. TOCHKA:

11 Q As you are walking through the play area, sir,  
12 what did you hear, if anything?

13 A Sounded like a firecracker went off in the  
14 hallway.

15 Q Could you tell the direction it was coming from?

16 A 89.

17 Q When you heard that sound, what did you do?

18 A Finished walking through the play area.

19 Q At some point did you turn around?

20 A Yes.

21 Q How soon after hearing that sound did you turn  
22 around?

23 A A short time, thirty seconds, maybe.

24 Q When you turned around, can you tell the jury

1           what you saw?

2     A     Two people coming out of that building.

3     Q     And which building are you talking about?

4     A     89.

5     Q     And which entrance to 89?

6     A     There's two entrances. They came out the back  
7           entrance.

8     Q     Now, you saw Joleena Tate earlier whistling by  
9           one entrance, correct?

10    A     Front entrance.

11    Q     That's the front entrance?

12    A     Well, that's the back entrance. The other  
13           entrance is the front.

14    Q     Okay. So in connection with where you saw  
15           Joleena Tate, that entrance you're calling what?

16    A     The front.

17    Q     And where you saw these two individuals running,  
18           what entrance would that be?

19    A     The back.

20    Q     As you look at these two individuals, did you  
21           recognize them?

22    A     Yes.

23    Q     Tell the jurors who you recognized them to be.

24    A     Jason and Tee.

- 1 Q What did you do?
- 2 A Just kept walking through the play area.
- 3 Q What did Joleena and Heather do?
- 4 A They walked into the play area.
- 5 Q At some point did you turn around again?
- 6 A Yeah. When I got to the end of the play area.
- 7 Q What did you see?
- 8 A I seen Jason and Tee running through the parking  
9 lot and Joleena and Heather walking up the steps.
- 10 Q When you saw Jason and Tee walking through the  
11 parking lot, what were they doing? Walking or  
12 running, would you say?
- 13 A Running.
- 14 Q And as they're running through the parking lot,  
15 you saw Heather and Joleena, were they walking or  
16 were they running?
- 17 A Walking.
- 18 Q Which direction were Jason Robinson and Tanzerius  
19 Anderson running towards?
- 20 A Into the parking lot like towards the play area.
- 21 Q And what happened next?
- 22 A I just heard a door shut.
- 23 Q Did you turn around at some point after that?
- 24 Do you know where Heather was at that

1 point when you heard the door shutting?

2 A She was at the top of the steps.

3 Q Do you know where Joleena was?

4 A At the top of the steps.

5 Q And how about Tanzerius Anderson?

6 A I didn't see him.

7 Q And how about Jason Robinson?

8 A He was walking over towards where Joleena and  
9 Heather were.

10 Q And then at some point in time did you go back  
11 and meet up with Heather? *when?*

12 A Yes. She met up with me.

13 Q Alright. When you say she met up with you, what  
14 do you mean?

15 A I was heading up towards Faneuil Street so she  
16 was in the play area.

17 Q And how soon did she meet up with you after you  
18 heard the door slam? *one door slam*

19 A A minute.

20 Q And was she with anybody?

21 A No.

22 Q Do you know where Joleena Tate was at that time?

23 A I think, I assumed she went with them.

24 MR. DOOLIN: I object.

1 THE COURT: It shall be stricken.

2 BY MR. TOCHKA:

3 Q Approximately how many doors did you hear slam?

4 A Three. *what happened next were court?*

5 Q When Heather met up with you, was Joleena Tate  
6 there?

7 A No.

8 Q Was Jason Robinson there?

9 A No.

10 Q Was Tanzerius Anderson there?

11 A No.

12 Q Where did you go with Heather Coady?

13 A To the park.

14 Q To the where?

15 A Park.

16 Q And where in the park did you go?

17 THE COURT: Mr. Tochka, we are going to  
18 break for lunch. So you may begin that question  
19 after lunch.

20 MR. TOCHKA: That's fine.

21 THE COURT: Okay. Mr. Gauthier, would  
22 you step down, please, sir?

23 Ladies and gentlemen, would you leave  
24 your notes in your envelopes on your seats? We

1 are going to take the luncheon recess at this  
2 time. Please do not discuss the case over the  
3 luncheon hour. I'll see you at two p.m. Thank  
4 you.

5 (Whereupon, the proceedings were  
6 recessed at 12:55 o'clock p.m., and reconvened at  
7 2:19 o'clock p.m.)

8 MR. TOCHKA: May I proceed, Your Honor?

9 THE COURT: Yes.

10 BY MR. TOCHKA:

11 Q Mr. Gauthier, I believe we left off that you said  
12 you crossed the street with Heather and you went  
13 to the McKinley Park, correct?

14 A Correct.

15 Q And where did you go in the park?

16 A To the bench up in the back of the park.

17 Q And what did you do there?

18 A Smoked.

19 Q What did you smoke?

20 A Weed.

21 Q That's marijuana, correct?

22 A Correct.

23 Q Now, at some point while you were in the park,  
24 did somebody come to the park?

- 1 A Yes.
- 2 Q And how much time passed from the time you got to  
3 the park and somebody came?
- 4 A Forty-five minutes.
- 5 Q And who was that that came?
- 6 A Jason, Tee, and Joleena.
- 7 Q Could you see from which direction they were  
8 coming from?
- 9 A Through the basketball court.
- 10 Q Where did they go when they came into the park?
- 11 A Right to us.
- 12 Q And how long did Jason, Tanzerius and Joleena  
13 stay in the park for?
- 14 A About five minutes.
- 15 Q And while they are there in the park, did you  
16 observe whether or not Tanzerius spoke to  
17 Heather?
- 18 A Yes, he did.
- 19 Q And where were you when he was speaking to  
20 Heather?
- 21 A On the bench right beside her.
- 22 Q How close were you to them?
- 23 A Pretty close.
- 24 Q And when you say pretty close, give us an idea.



1 A She was right beside me, right here.

2 Q And where was Jason at that time?

3 A Standing up.

4 Q And how close were all of you?

5 A Like a little circle.

6 Q And what did Tanzerius say to Heather?

7 MR. DOOLIN: I object..

8 MR. FLAHERTY: Objection.

9 THE COURT: Overruled.

10 MR. FLAHERTY: May I just be heard very  
11 briefly at side bar?

12 THE COURT: Very briefly, sir, please.

13 (Whereupon, the following discussion  
14 occurred at side bar:)

15 MR. FLAHERTY: Thank you. Just for the  
16 record, my memory of the testimony of this  
17 witness was that earlier in the evening everyone  
18 smoked marijuana at 75 Faneuil Street. He's now  
19 proposing to testify to statements made by  
20 Tanzerius Anderson after the ingestion of  
21 marijuana. I would submit that under Travares  
22 and under Parker that that makes voluntariness of  
23 this statement a live issue at trial and the  
24 Court should conduct a voir dire and make sure

1 that voluntariness is proven beyond a reasonable  
2 doubt before the statement is admitted before the  
3 jury.

4 MR. TOCHKA: Judge, I suggest that is  
5 not -- the fact that earlier in the night someone  
6 might have smoked marijuana, there is no  
7 indication at any point in time as to how much  
8 anyone smoked marijuana or the like at this point  
9 in time. I would suggest it's not a live issue  
10 at this point or will it become a live issue as  
11 the evidence comes in, I suggest.

12 THE COURT: As you indicated earlier  
13 there is no issue of any coercion here, of any  
14 tricks, of any force applied to Mr. Anderson with  
15 respect to any of these statements so he may  
16 continue. Your objection is overruled.

17 MR. DOOLIN: I would object, Your  
18 Honor, respectfully, under my previously filed  
19 and denied motion to sever and I just reiterate  
20 those grounds.

21 THE COURT: Okay.

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

24 THE COURT: May I see counsel a minute

1 back at side bar?

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

4 THE COURT: With respect to the  
5 statement, what is the witness going to say?

6 MR. TOCHKA: The defendant asked  
7 Joleena to look for a watch that Jason might have  
8 lost.

9 THE COURT: Okay. Is there any further  
10 instruction, Mr. Doolin, that you're requesting  
11 with respect to that? Is there any issue  
12 concerning joint venture that would require the  
13 Court to give any kind of instruction to the jury  
14 at this time?

15 MR. DOOLIN: Judge, as to a limiting  
16 instruction, is the Court thinking in regard to  
17 the statement of Mr. Anderson?

18 THE COURT: With respect to the  
19 proposed testimony that is going to be offered.

20 MR. DOOLIN: I'd ask the jury at this  
21 time not to take it into consideration against  
22 Mr. Robinson which has been the basis of my  
23 motion to sever.

24 THE COURT: Mr. Tochka?

1 MR. TOCHKA: Judge, I would object to  
2 that because that would not be the case law in  
3 terms of, it's a joint venture at this point in  
4 time, it's a continuing enterprise in terms of  
5 covering up the crime so it would not be a  
6 correct statement of the law to the jury.

7 THE COURT: You have established that  
8 Robinson is there at the time the statement was  
9 given?

10 MR. TOCHKA: Yes, he was there as well.

11 THE COURT: Thank you. Go ahead.

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

14 BY MR. TOCHKA:

15 Q Sir, let me ask you that question again. While  
16 you were in that circle with Jason Robinson,  
17 Joleena Tate, Heather Coady, and Tanzerius  
18 Anderson and yourself, I asked you whether or not  
19 Tanzerius Anderson had a conversation with  
20 Heather and you said yes.

21 And I ask you at this point in time,  
22 what was that conversation?

23 A To look for a watch.

24 Q And did he say where to look for the watch?

1 A Just to retrace their steps.

2 Q And while Jason was in that circle, did he  
3 respond? Did he say anything?

4 A He said what kind of watch it was.

5 Q What kind of watch did Jason say it was?

6 A Timberland watch.

7 THE COURT: Sir, keep your voice up,  
8 please, and speak directly into the microphone.

9 THE WITNESS: A Timberland watch.

10 BY MR. TOCHKA:

11 Q Was there any further conversation that Tanzerius  
12 Anderson had with respect to any items?

13 A Just that they got rid of it.

14 Q And who did he say that to?

15 A Just in general.

16 Q And when he said he got rid of it, what did you  
17 think he meant?

18 MR. DOOLIN: Objection.

19 MR. FLAHERTY: Objection.

20 THE COURT: Sustained.

21 BY MR. TOCHKA:

22 Q Now, at some point prior to leaving did Joleena  
23 Tate have a conversation with Heather?

24 A Briefly.

1 Q And what was that conversation about?

2 MR. FLAHERTY: Objection.

3 MR. TOCHKA: Actually, I'll strike that  
4 question, Your Honor.

5 BY MR. TOCHKA:

6 Q What did Joleena Tate and Heather do?

7 A Exchanged money and drugs.

8 Q And who exchanged the money?

9 A Joleena gave Heather the money.

10 Q And do you know how much money it was?

11 A Ten dollars.

12 Q And what did Heather give back?

13 A A bag of weed.

14 Q After that five minute or so conversation, did  
15 you see Jason, Joleena -- what did you see Jason,  
16 Joleena and Tanzerius do?

17 A They left.

18 Q And which direction did they go in?

19 A Back to the basketball court.

20 Q Did you see where they went when they got past  
21 the basketball court?

22 A No.

23 Q So who was now left in the park?

24 A Just me and Heather.

1 Q Did you have a conversation with Heather?

2 A Yes.

3 Q Not what was said but what did the conversation -  
4 - what was the subject of the conversation?

5 A Whether we were going to look for the watch.

6 Q And did you want to look for the watch?

7 A No.

8 Q Did Heather indicate whether or not she wanted to  
9 look for the watch?

10 A Yes.

11 Q At this point in time can you tell us, if you  
12 know, the relationship Heather had with Jason  
13 Robinson?

14 A Yes.

15 Q And what was their relationship at this time?

16 A Friends.

17 Q And do you know how close friends they were?

18 MR. DOOLIN: I object.

19 THE COURT: He may answer whether he  
20 knows, yes or no, and then lay the basis for his  
21 knowledge, please.

22 A Would you repeat the question?

23 BY MR. TOCHKA:

24 Q When you say that they were friends, let me ask

1 you, how often would you see Heather Coady back  
2 in March, back in the spring time and in the  
3 winter of the year 2000?

4 How often would you see her in the  
5 development?

6 A How did I see her?

7 Q How often would you see her?

8 A Every day.

9 Q How about Jason Robinson?

10 A Every day.

11 Q And do you know whether or not -- do you know  
12 what the relationship was between those two  
13 individuals?

14 MR. DOOLIN: I object.

15 THE COURT: He may answer.

16 A Friends.

17 BY MR. TOCHKA:

18 Q Do you know if they were boyfriend and  
19 girlfriend, based upon your knowledge?

20 A No.

21 Q You don't know?

22 A I don't know.

23 Q Now, at some point in time you said that you were  
24 having this conversation with Heather about the



1 watch?

2 A Yes.

3 Q What did you and Heather do next?

4 A We left the park and went looking for the watch.

5 Q And where -- and who looked for the watch?

6 A Heather.

7 Q And where did she go? Where did the two of you  
8 go when you left the park?

9 A Down the pathway towards 89.

10 Q And where did she go when she went down the  
11 pathway?

12 A Towards the front of 89.

13 Q Now, if I can ask you to step to this diagram,  
14 using this pointer, are you familiar with this  
15 particular diagram? Have you seen this before?

16 A Yeah. That's the Faneuil development.

17 Q Alright. And can you show us in the development  
18 when you say that that particular evening you  
19 were at your house with Tanzerius Anderson, Jason  
20 Robinson, Joleena Tate and Heather Coady, where  
21 is your building?

22 A Right here.

23 Q And that's pointed to where the S is on the word  
24 Faneuil Street, highlighted in red?

1 A Correct.

2 Q And when you testified before this jury that you  
3 went and you sat in the play area, can you point  
4 out where you sat in the play area?

5 First off, point out where the play  
6 area is here.

7 A Right here.

8 Q And that's where it says play area in red,  
9 correct?

10 A Yes.

11 Q Then can you point out where you sat in the play  
12 area?

13 A There is a little bench right here.

14 Q Alright. And is that a little -- a grassy area  
15 right where the intersection of this entrance is,  
16 where the pathways are?

17 A Correct.

18 Q You've also testified that when you -- when  
19 Heather Coady left your house she went to her  
20 house. Where is her house on this map?

21 A Here.

22 Q And that's the building that's, for purposes of  
23 identification, this being Beacon Street,  
24 correct?

1 A Correct.

2 Q And this being Vineland Street?

3 A Correct.

4 Q Is it opposite Vineland Street?

5 A Directly across.

6 Q Directly across. You have got to keep your voice  
7 up so all the jurors can hear you, please, sir.

8 A Directly across.

9 Q Now, when you said that that evening you saw  
10 Jason Robinson by the maintenance fence area,  
11 where is the maintenance fence area that you're  
12 referring to?

13 A Right here.

14 Q And that's the area that's in back of where the  
15 arrow is that says 89 that you have just pointed  
16 to, correct?

17 A Correct.

18 Q And when you testified that Joleena Tate whistled  
19 and then began walking down the pathway, can you  
20 show us the pathway that you're referring to?

21 A This pathway right here.

22 THE COURT: Sir, we can't hear you.

23 THE WITNESS: This pathway right here  
24 at the end of the building. There's another

1 pathway right here.

2 BY MR. TOCHKA:

3 Q And you said that Heather Coady met up with her  
4 and can you point that out for the jurors,  
5 please?

6 A Right here.

7 Q And that area that you're pointing out, sir, I  
8 asked you whether a friend of yours, Oscar Vega,  
9 lived in that area. Where does he live?

10 A First floor of the building.

11 Q Do you know what building that is?

12 A No, I don't.

13 Q You stated that then you left -- I'm sorry. Then  
14 you said that you saw, as you're walking through  
15 the play area, you heard a bang at some point,  
16 you turned and you saw two individuals you've  
17 identified as the defendants running, and where  
18 were they running from, sir?

19 A Came out this side of the building.

20 Q And that's the side closest to where the 89 is?

21 A Yes.

22 Q And did you see which direction they ran?

23 A They walked up this way.

24 Q Up the pathway --

1 MR. DOOLIN: I'm sorry. I can't hear.

2 THE WITNESS: They walked up the

3 pathway between 85 and 75.

4 BY MR. TOCHKA:

5 Q And at some point were they out of your view as  
6 they're going up the pathway?

7 A Yes.

8 Q And at what point would they be out of your view?

9 A After I turned around.

10 Q Okay. Then you said that you saw them again in  
11 the parking lot.

12 And where did you see them in the  
13 parking lot?

14 A Right here.

15 Q This is the parking lot you're referring to?

16 A Yes.

17 Q Do you know where the defendant, Tanzerius  
18 Anderson, was parked that night?

19 A Parked on this side.

20 Q You're referring to this side opposite from where  
21 your building is?

22 A Correct.

23 Q You said they, Joleena Tate and Heather Coady,  
24 were walking up the stairs at some point in time

1 after the shots were fired.

2 And where is that depicted in the  
3 diagram, in the aerial photo?

4 A The stairs are right here.

5 Q And those stairs lead to what?

6 A Towards my house.

7 Q And to the parking lot?

8 A Correct.

9 Q Now, you say at some point in time you left with  
10 Heather Coady to go to McKinley Park, correct?

11 A Correct.

12 Q And can you point out where you went with Heather  
13 Coady?

14 A This little area right here. There's a bench  
15 underneath the tree.

16 Q That is underneath the tree in McKinley  
17 playground, correct?

18 A Correct.

19 Q You said at some point in time, about forty-five  
20 minutes or so later, the defendants and Joleena  
21 Tate returned, coming from the basketball court.

22 And can you show us the direction that  
23 they came?

24 A They walked through the basketball court and

1 followed the path right up to where we were.

2 Q And then when they left which direction did they  
3 go?

4 A They went down the pathway and through the  
5 basketball court.

6 Q Then you testified that you had a conversation  
7 with Heather about whether or not to look for the  
8 watch.

9 And when you left the playground, which  
10 direction did you go?

11 A There is an exit right here. We just walked  
12 through that exit down the pathway.

13 Q And that being between 89 and your building?

14 A 81 and 71.

15 Q Where would 81 be?

16 A 81 is the front, 71 is this one.

17 Q So 81 is the front, 89 is the back, correct?

18 A Correct.

19 Q 71, and this over here is the front and what's in  
20 the back?

21 A 75.

22 Q So you went -- can you point out where you went  
23 between?

24 A There is a little pathway right here between the

1 buildings.

2 Q And as you're going down that pathway what does  
3 Heather Coady do?

4 A She walked towards the front of the building. I  
5 kept walking down the pathway.

6 Q When you say the front of the building, you're  
7 referring to the 89 front entrance?

8 A Correct.

9 Q And you walked down the pathway?

10 A Yes.

11 Q Did you see whether or not she went into the  
12 hallway or not?

13 A No.

14 Q Where did you then walk as you're going down the  
15 pathway?

16 A Just to the end of the pathway right here.

17 Q As you're going down that pathway, what do you  
18 see next? Who do you see next?

19 A Heather.

20 Q And just yes or no, did you have a conversation  
21 with her?

22 A Yes.

23 Q What do you do next?

24 A We walked down towards, heading towards the back



1 of 89.

2 Q Now, as you're going towards the back of 89, do  
3 you see a car?

4 A Yes.

5 Q And can you describe the car for us, please?

6 A Gray four-door car.

7 Q And as you're walking, the pathway leads to  
8 where?

9 A To the back door of 89.

10 Q And what did you do?

11 A Walked up the pathway.

12 Q Who did you walk up there with?

13 A Heather.

14 Q What do you see?

15 A The body.

16 Q Describe what you saw, sir.

17 A Do I have to?

18 Q Yes, sir.

19 A Just a body laying on the ground with one hand  
20 over his chest and the other hand to the side.

21 Q Did you see any blood, sir?

22 A Yes.

23 Q Where did you see the blood?

24 A Under his head dripping down to the pavement.

1 Q How long did you look at the body for?  
2 A Not long at all.  
3 Q Where was Heather when you saw the body?  
4 A Right beside me.  
5 Q What did she do?  
6 A Started walking towards the body.  
7 Q And then what?  
8 A I told her to stop.  
9 Q Why?  
10 A Because she was about to --  
11 MR. FLAHERTY: Objection.  
12 THE COURT: He may answer that.  
13 A (continued) Because she was about to step in  
14 blood.  
15 BY MR. TOCHKA:  
16 Q And what did she then do?  
17 A She stopped.  
18 Q What did you do next?  
19 A Walked up the pathway.  
20 Q The pathway where?  
21 A Heading towards Faneuil.  
22 Q Who were you walking up there with?  
23 A Heather.  
24 Q Where did you go?

- 1 A Joleena's house.
- 2 Q Had you ever been to Joleena's house before?
- 3 A No.
- 4 Q Who was directing you there?
- 5 A Heather.
- 6 Q Did she say why she was going there?
- 7 A To give Joleena's mother a bag of weed.
- 8 Q What did you do, sir?
- 9 A I went with her.
- 10 Q And did you go to Joleena's house?
- 11 A Yes.
- 12 Q Who was in her house?
- 13 A Her mother and her mother's boyfriend.
- 14 Q How long did you stay in the house for?
- 15 A More than an hour.
- 16 Q At some point while you were in the house did you
- 17 see Joleena Tate?
- 18 A Yes.
- 19 Q How long had you been there before you saw her?
- 20 A An hour.
- 21 Q And so -- and when you saw her, did you see where
- 22 she come into the house?
- 23 A She came in from down -- she came in through her
- 24 mother's entrance.

- 1 Q And what do you mean, she came through her  
2 mother's entrance?
- 3 A There's a door downstairs at her mother's house.  
4 Upstairs is her grandmother's house.
- 5 Q And when she came through her mother's entrance,  
6 did you have any conversation with her?
- 7 A No.
- 8 Q Was *Joleena* she alone?
- 9 A Yes.
- 10 Q Did you see whether or not Heather had any  
11 conversation with her?
- 12 A Yes, she did.
- 13 Q What did you do then?
- 14 A Sat on the couch.
- 15 Q At some point did you leave?
- 16 A Yeah.
- 17 Q How soon after you saw her did you leave -- after  
18 you saw Joleena Tate come in the house did you  
19 leave?
- 20 A Five minutes.
- 21 Q So you had been there approximately an hour or so  
22 when Joleena came home?
- 23 A Correct.
- 24 Q And then you left five minutes afterwards?

1 A Correct.

2 Q Where did you go?

3 A Home.

4 Q Who did you go there with?

5 A Heather.

6 Q Which pathway did you go?

7 A Up Faneuil Street.

8 Q About what time did you get home?

9 A A little after three.

10 Q The next morning, sir, that early morning of

11 Tuesday, the twenty-eighth, did the police come

12 to your house?

13 A Yes.

14 Q Do you know about what time they came?

15 A About eight o'clock.

16 Q Who was home at that time?

17 A Just me.

18 Q And did you have a conversation with the police?

19 A Yes.

20 Q Did you tell them what you had seen?

21 A No.

22 Q Why didn't you tell them what you had seen?

23 MR. FLAHERTY: Objection.

24 MR. DOOLIN: Objection.

1 THE COURT: I'll see counsel at side  
2 bar.

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

5 THE COURT: Grounds for the objection?

6 MR. DOOLIN: His state of mind, I would  
7 suggest, is irrelevant.

8 MR. FLAHERTY: This witness has not yet  
9 been impeached, Your Honor.

10 THE COURT: Okay. Sustained.

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

13 BY MR. TOCHKA:

14 Q Sir, that Wednesday morning when the police  
15 officer came to your house, do you know whether  
16 it was a uniformed officer or a plainclothes?

17 A Uniformed.

18 Q How long did you speak with that person for?

19 A Fifteen minutes.

20 Q Did you see, either on that afternoon, on Tuesday  
21 afternoon -- let me strike that.

22 When was the next time you saw Heather  
23 Coady?

24 A Later on that morning.

- 1 Q Where did you see her?
- 2 A My house.
- 3 Q Was she alone or was anybody with her?
- 4 A She wasn't even home when I got there. 2  
1
- 5 Q I want to direct your attention to Wednesday, the  
6 following day, March 29. Did you see Heather  
7 Coady on that day?
- 8 A Yes.
- 9 Q And on that particular day where did you see her?
- 10 A She was on my front steps.
- 11 Q Let me back you up. At some point on Wednesday,  
12 March 29, at some point did you have your  
13 mother's car on that day? Your mom's car?
- 14 A Yes, I did.
- 15 Q Did you have plans to go to the mall, shopping  
16 mall?
- 17 A Yes.
- 18 Q And who were you going to go to the mall with?
- 19 A Heather and Jeff.
- 20 Q And Jeffrey is who?
- 21 A My cousin.
- 22 Q And is he your natural cousin or you just call  
23 him your cousin?
- 24 A Just call him my cousin.

1 Q Where did he live?  
2 A 75 Faneuil Street.  
3 Q And same building you lived in?  
4 A Correct.  
5 Q Did he live above you or below you?  
6 A Above.  
7 Q And did you see on that Wednesday Heather Coady?/  
8 A Yes. (Mar 29, 2000)  
9 Q And you saw her with who?  
10 A Heather and Joleena and Jeff.  
11 Q Do you know whether or not Joleena was going into  
12 Jeffrey's house?  
13 A No, I don't.  
14 Q When you saw Joleena inside the house, what did  
15 you do?  
16 A I left.  
17 Q Was there a reason why you left?  
18 A Yes.  
19 MR. FLAHERTY: (Stood.)  
20 MR. TOCHKA: I'll move on.  
21 BY MR. TOCHKA:  
22 Q Did you have a conversation with Heather at some  
23 point that day?  
24 A Yes.



1 Q Did it involve what had happened that Monday into  
2 Tuesday night?

3 A Yes.

4 Q And what was that conversation?

5 A That I didn't want to be around Joleena.

6 Q Was there any conversation about whether or not  
7 you had spoken to the detectives?

8 A No.

9 Q I'm now going to move you into Thursday, March  
10 30.

11 On Thursday, March 30, in the early  
12 morning hours at approximately one o'clock in the  
13 morning, were you at the Boston Police homicide  
14 unit?

15 A Yes, I was.

16 Q And who were you there with?

17 A My mother.

18 Q And this is Thursday at about one o'clock in the  
19 morning?

20 A Correct.

21 Q Where had you gone with your mother before you  
22 went to the homicide unit?

23 MR. DOOLIN: I object.

24 THE COURT: He may answer that.

1 BY MR. TOCHKA:

2 Q Where had you gone?

3 A I was with my mom.

4 Q Did you have a conversation with your mom? Not  
5 what you said but did you have a conversation  
6 with your mom?

7 A Yes, I did.

8 Q As a result did you go somewhere?

9 A Yes.

10 Q Did you go to the D-14 police station?

11 A Yes, I did.

12 Q And about what time did you arrive there  
13 Wednesday night?

14 A A little after eleven.

15 Q And not what you said to any police officer but  
16 did you speak to a police officer there?

17 A Yes, I did.

18 Q As a result of speaking to the police officer,  
19 did you go somewhere?

20 A Yes, I did.

21 Q And where were you taken?

22 A Roxbury.

23 Q And is that the Boston Police headquarters, One  
24 Schroeder Plaza?

1 A Yes.

2 Q And who did you meet there?

3 A Detective Coleman.

4 Q And that's Detective Coleman sitting at the table

5 there?

6 A Correct.

7 Q Did your mom accompany you?

8 A Yes, she did.

9 Q And did you speak with Detective Coleman there?

10 A Yes, I did.

11 Q Sir, I can't ask you what was said but while you

12 were with Detective Coleman, at some point was a

13 taped statement taken from you?

14 A Yes.

15 Q Up until that point in time, sir, up until you

16 met with Detective Coleman, did you know the name

17 of -- did you know the person who had been

18 killed?

19 A No, I didn't.

20 Q Did you have a conversation with Detective

21 Coleman in which he informed you of the person's

22 name?

23 A Yes.

24 Q And did he first inform you of the person's full

1 name or a nickname?

2 MR. DOOLIN: I object.

3 THE COURT: Sorry?

4 MR. DOOLIN: I object, Your Honor.

5 THE COURT: Leading question, sir.

6 Rephrase it.

7 BY MR. TOCHKA:

8 Q Did Detective Coleman show you a photograph?

9 A Yes, he did.

10 THE COURT: Counsel.

11 (Whereupon, the following discussion  
12 occurred at side bar:)

13 THE COURT: This was the subject of a  
14 motion in limine?

15 MR. TOCHKA: I don't believe it was.

16 THE COURT: About an array?

17 MR. TOCHKA: This is not the photo  
18 array.

19 MR. FLAHERTY: Your Honor, while we're  
20 at the side bar, if we are going to get into the  
21 witness's reaction upon learning of the identity  
22 of the person who was killed, I'd object. There  
23 is no probative value.

24 THE COURT: What are those photographs?

*Was the  
array??*

1 MR. TOCHKA: It's a photograph shown  
2 him of Iman Yazbek. They asked him if he knew  
3 who it was. It's whether or not the person --

4 THE COURT: That's fine. You may  
5 continue.

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

8 BY MR. TOCHKA:

9 Q Sir, I'd ask you to take a look at this  
10 photograph.

11 Mr. Gauthier, have you looked at this  
12 photograph?

13 A Yes.

14 Q And who is that photograph of?

15 A Yaz.

16 Q Did you know the person, Yaz?

17 A Yes, I know him.

18 Q What?

19 A That's how I knew him.

20 Q What do you mean, that's how you knew him?

21 A That's how I knew him, as Yaz.

22 Q When did you meet this person named Yaz?

23 A I was a young teenager.

24 Q How did you meet him?

1 MR. FLAHERTY: Objection.

2 THE COURT: He may answer how he knows  
3 him.

4 A He owned a landscaping company. I worked for  
5 him.

6 BY MR. TOCHKA:

7 Q How old were you when you worked for him?

8 A About twelve.

9 Q Anybody else in your family work for him?

10 A My older brother.

11 Q What was your relationship to Yaz?

12 A I just worked for him.

13 Q When you say you just worked for him, how would  
14 you describe your relationship?

15 MR. DOOLIN: I object.

16 THE COURT: Sustained.

17 BY MR. TOCHKA:

18 Q After you left the police station, did you leave  
19 the police station with your mom?

20 A Yes, I did.

21 Q And where did you go?

22 A Back to District 14.

23 Q And from there where did you go?

24 A Me and my mom left.

1 Q And where did you go then?

2 A South Boston.

3 Q Was there a reason why you didn't go home?

4 MR. DOOLIN: I object.

5 THE COURT: Sustained.

6 A Yes.

7 THE COURT: Sir, when I sustain an  
8 objection, you don't answer the question. Thank  
9 you.

10 The answer is stricken. The jury is  
11 instructed to disregard it.

12 BY MR. TOCHKA:

13 Q At some point, sir, during that Thursday morning,  
14 did you see Heather Coady?

15 A Yes, I did.

16 Q And where were you when you saw her?

17 A I was in my house.

18 Q And about what time did you see her?

19 A Eleven. (AM)

20 Q How did you come to see her? How did you know  
21 that she was at your house?

22 A Because my cousin came downstairs and told me.

23 Q And who is that?

24 A Jeffrey.

1 Q And when he told you that, what did you do?

2 A I went outside.

3 Q Where did you see Heather Coady?

4 A Sitting on my steps.

5 Q Did you have a conversation with her?

6 A Yes.

7 Q Did she ask you to go somewhere with her?

8 A Yes.

9 Q Where was that?

10 A Store Twenty-Four.

11 Q Did she say why?

12 A Yes.

13 Q Why was that?

14 MR. FLAHERTY: Objection.

15 MR. DOOLIN: Objection

16 THE COURT: Sustained.

17 BY MR. TOCHKA:

18 Q Did you walk with her to Store Twenty-Four?

19 A Yes.

20 Q And what was your reason for going there?

21 MR. FLAHERTY: Objection.

22 THE COURT: Put another question, sir.

23 BY MR. TOCHKA:

24 Q Did you go to Store Twenty-Four?



1 A We walked that way, yes.

2 Q And you walked there with who?

3 A Heather.

4 Q And when you walked there with Heather, what did  
5 you see as you were walking to Store Twenty-Four?

6 A Jason, Tee and Joleena.

7 Q And what were they in?

8 A Tee's car.

9 Q And where did you see the car?

10 A Driving to cross the street to go to Scrub-A-Dub.

11 Q Driving across the street from where?

12 A Store Twenty-Four.

13 Q What did Heather do when the car drove across to  
14 the Scrub-A-Dub?

15 A Said, there they go.

16 Q What did the two of you do?

17 A Walked, went to Scrub-A-Dub.

18 Q And what was your reason for going to the Scrub-  
19 A-Dub?

20 A To meet Jason, Tee and Joleena.

21 Q And when you got to the Scrub-A-Dub, where was  
22 the car parked?

23 A Parked in the first stall at Scrub-A-Dub.

24 Q Was it parked where the overhang was like in the

1 driveway area?

2 A Yeah. He pulled into a stall.

3 Q And what happened as you got up close to the car?

4 A Jason and Tee got out.

5 Q What did Heather do?

6 A Got in the car.

7 Q When Jason and Tee got out, what did they do?

8 A Started talking to me.

9 Q And what was the conversation?

10 MR. DOOLIN: I object.

11 MR. FLAHERTY: Objection.

12 THE COURT: Sustained as to form.

13 BY MR. TOCHKA:

14 Q Who was present during this conversation?

15 A Me, Tee, Jason and Heather and Joleena.

16 Q Well, Joleena and Heather were in the car. Did

17 you have a conversation with Jason and Tanzerius

18 outside the car?

19 A Yes.

20 Q How close was Jason to you during this

21 conversation?

22 A Right in front of me.

23 Q How close was Tanzerius Anderson to you during

24 this conversation?

1 A Right in front of me.

2 Q What did Tanzerius Anderson say?

3 MR. DOOLIN: Again, I object.

4 MR. FLAHERTY: Objection.

5 THE COURT: Overruled.

6 BY MR. TOCHKA:

7 Q What was the conversation?

8 A I told him that I knew the gentleman.

9 Q Who did you tell that to?

10 A Jason and Tee.

11 Q What did you tell them when you told them that  
12 you knew the person?

13 A They said he wasn't a cop.

14 Q Who said he wasn't a cop?

15 A Tee.

16 Q Did he tell you he thought he was a cop?

17 A He said because that's all Yaz was saying is  
18 police, police.

19 Q Did he say that -- when he said that that's all  
20 that he was saying, did he say the word, Yaz?

21 A No, he didn't.

22 Q So what did he say?

23 A He just said that the guy kept saying police,  
24 police, back-up.

1 Q I'm sorry. He said the guy kept saying police,  
2 police?

3 A Yes.

4 MR. FLAHERTY: Objection, Your Honor.  
5 Asked and answered.

6 THE COURT: Another question, sir.

7 BY MR. TOCHKA:

8 Q And when he said back-up, is that what he said  
9 the man kept on saying, police, police, back-up?

10 MR. FLAHERTY: Your Honor, I object.

11 THE COURT: Let him finish his question  
12 first, please, sir.

13 BY MR. TOCHKA:

14 Q Could you tell the jurors exactly what you heard  
15 Tanzerius Anderson say after you told him that  
16 you knew the person who had been shot?

17 A He said that he thought he was a cop because he  
18 kept saying police, police.

19 Q And did he tell you what he did as a result of  
20 that?

21 A No, he didn't.

22 Q Was there any further conversation about a gun or  
23 a wallet or the like?

24 A Yes. I told them that they had to identify him

1 through his fingerprints and he had no wallet.

2 Q And what was their response to that?

3 A They got rid of it.

4 Q Who said they got rid of it?

5 A Both of them, Jason and Tee.

6 Q Did either one of them tell you as to which one

7 had shot the man in the back of 89 Faneuil

8 Street?

9 A No.

10 Q What did you do next?

11 A I got in the car.

12 Q And whose car was that?

13 A Tee's.

14 Q Why did you get in the car?

15 A Because police kept driving by.

16 Q And whose idea was it to get in the car?

17 A Everybody's.

18 Q Where did you go then?

19 A We drove up North Beacon Street.

20 Q Who drove?

21 A Tee.

22 Q And where did he drive to when you went up North

23 Beacon Street? Where did you then go?

24 A We went to Burger King.

1 Q And when you went to Burger King did you stay in  
2 the car or did you get out of the car?  
3 A We all got out.  
4 Q And what did you do in Burger King?  
5 A They ordered food.  
6 Q And who ordered food?  
7 A Jason, Tee, Heather, Joleena.  
8 Q How long did you stay in Burger King for?  
9 A I'm not sure.  
10 Q Where did you then go?  
11 A Went, drove to Vineland Street.  
12 Q And who was driving?  
13 A Tee.  
14 Q Where were you sitting?  
15 A Back seat behind Tee.  
16 Q And where was Jason Robinson sitting?  
17 A Beside me.  
18 Q Where was Joleena Tate sitting?  
19 A Passenger's seat.  
20 Q And where was Heather Coady sitting?  
21 A Next to Jason.  
22 Q So Joleena Tate and Tanzerius Anderson were up  
23 front?  
24 A Correct.

1 Q And you, Jason and Heather were in the back?  
2 A Correct.  
3 Q When you got to Vineland Street, where did  
4 Tanzerius Anderson park the car?  
5 A Right around the corner from where the entrance  
6 is.  
7 Q And what happened next as he parked the car?  
8 A We got out.  
9 Q At some point -- who got out first?  
10 A Heather.  
11 Q Where did she go?  
12 A She went home.  
13 Q And did you have any further conversation in the  
14 car with Jason Robinson and Tanzerius Anderson?  
15 A Not in the car.  
16 Q Was it outside the car?  
17 A Yes.  
18 Q And who was present during this conversation?  
19 A Me and Tee and Jason.  
20 Q Where was Joleena Tate?  
21 A In the car.  
22 Q And where was this conversation?  
23 A In the back of the car, the trunk.  
24 Q And how close were the three of you?

1 A Little circle.

2 Q And can you tell us, what was the conversation?

3 MR. DOOLIN: Object.

4 THE COURT: Rephrase the question, sir.

5 BY MR. TOCHKA:

6 Q Did Tanzerius say anything to you?

7 A Told me he had a newspaper clipping of my  
8 statement that was in the paper.

9 Q And what did he say about that?

10 A Just that he had it.

11 Q Did he say anything else to you?

12 A Yes.

13 Q What did he say?

14 A Asked me what my story was.

15 Q What did you tell him?

16 A What he wanted to hear.

17 Q What do you mean?

18 A Just told him that I wasn't saying anything.

19 Q And what did he say to you when you said that?

20 A Nothing, just to stick to my story.

21 Q And when he said stick to your story, had he told  
22 you earlier what your story should be or had  
23 there been any conversation about what your story  
24 should be?



- 1 A Just between me and Heather.
- 2 Q And when was that conversation?
- 3 A Later on that night of the twenty-seventh.
- 4 Q And that was while you were doing what?
- 5 A Walking to Joleena's house.
- 6 Q And what was that conversation about what story
- 7 you should have?
- 8 A Just that we were together and that we had sex.
- 9 Q That you and Heather --
- 10 A Correct.
- 11 Q And was that the truth?
- 12 A No.
- 13 Q When he told you to stick to your story, what did
- 14 you say to him?
- 15 A That he didn't have to worry.
- 16 Q Did you get back in the car at that point?
- 17 A No.
- 18 Q Did you see Heather again at this point?
- 19 A Yes.
- 20 Q Where was she?
- 21 A She was coming from the house.
- 22 Q And where did she go?
- 23 A Walked up Vineland Street.
- 24 Q In which direction?

- 1 A Towards the car.
- 2 Q Which direction did you go?
- 3 A Towards the projects.
- 4 Q Did you turn to see whether or not she got into  
5 the car?
- 6 A No, I didn't.
- 7 Q Where did you go when you went into the  
8 development?
- 9 A My house.
- 10 Q Who was home?
- 11 A Nobody.
- 12 Q Did you make any phone calls?
- 13 A Yes, I did.
- 14 Q Who did you call?
- 15 A My mother.
- 16 Q Where was your mom at that point?
- 17 A Southey.
- 18 Q Did you have a conversation with her?
- 19 A Yes, I did.
- 20 Q Did you call anybody else?
- 21 A Detective Coleman.
- 22 Q And did you have a conversation with him?
- 23 A Yes, I did.
- 24 Q What did you do that night, sir?

1 A I left.

2 Q Why did you leave?

3 MR. DOOLIN: Objection.

4 MR. FLAHERTY: Objection.

5 THE COURT: Sustained.

6 BY MR. TOCHKA:

7 Q Where did you go, sir?

8 A Southey.

9 Q How long had you lived in the Brighton  
10 development, sir?

11 MR. DOOLIN: Judge, I object.

12 THE COURT: He may answer that.

13 A All my life.

14 BY MR. TOCHKA:

15 Q Does your mom live in the Brighton development  
16 now, sir?

17 MR. DOOLIN: Your Honor, I object.

18 THE COURT: Sustained.

19 MR. TOCHKA: I have no further  
20 questions. Thank you.

21 THE COURT: Cross examination, Mr.  
22 Doolin.

23

24

1 CROSS EXAMINATION

2 BY MR. DOOLIN:

3 Q Mr. Gauthier, you are familiar with this area of  
4 Beacon Street, Faneuil Street and Goodenough  
5 Street, is that right?

6 A Correct.

7 Q It's fair to say that your, the building that you  
8 lived in was at 75, is that right?

9 A Yes.

10 Q And 75 Faneuil is a building, it's fair to say,  
11 that borders the play area? Is that correct?

12 A Yes.

13 Q And, in fact, your back window looks out onto the  
14 play area, is that correct?

15 A Correct.

16 Q And the building between 75 -- there is a  
17 building at 75 and a building at 65, is that  
18 right?

19 A Yes.

20 Q And there is a parking lot that's in between that  
21 building, is that right?

22 A Yes.

23 Q Now, Mr. Gauthier, it's your testimony, sir, that  
24 having grown up in that area of Brighton, that a

1 good many of your friends live in that area? Is  
2 that correct?

3 A Yes.

4 Q You're friendly with a person by the name of  
5 Derrick Jajopolous (phonetic spelling)?

6 A Derrick Jajopolous?

7 Q Yes.

8 A Yes, I know him.

9 Q Are you friendly with a person by the name of  
10 Duane Johnson?

11 A Yes.

12 Q Also friendly with an individual named Jeffrey  
13 Fitzgerald, is that right?

14 A Right.

15 Q You're also friendly with Heather Coady at this  
16 time, is that correct?

17 A Correct.

18 Q You had known Heather Coady for a long time,  
19 didn't you?

20 A Correct.

21 Q You also know Joleena Tate, don't you?

22 A Correct.

23 Q Now, it's fair to say at the time that Ms. Coady  
24 lived down here on North Beacon Street -- is that

1 correct? In this building here, is that right?

2 A Yes.

3 Q And it's also fair to say that through Ms. Coady  
4 you met an individual by the name of Joleena  
5 Tate? Is that correct?

6 A False.

7 Q Well, did you know Joleena Tate?

8 A Yes, I did.

9 Q Was she friendly with Heather Coady?

10 A Yes, she was.

11 Q And, in fact, did Joleena Tate and Heather Coady  
12 refer to each other as their cousin?

13 A Don't know.

14 Q Well, is it fair to say that the two of them were  
15 very friendly?

16 A Correct.

17 Q It's also fair to say that you refer to an  
18 individual named Jeffrey Fitzgerald as your  
19 cousin, correct?

20 A Correct.

21 Q And Jeffrey lives up on top of you at 75 Faneuil  
22 Street, is that right?

23 A Correct.

24 Q Now, it's your testimony, sir, is it not, that as

1 a result of knowing Heather Coady in March of  
2 2000 that you, yourself, and Heather Coady spent  
3 a lot of time together. Is that correct?

4 A Correct.

5 Q Your testimony, sir, is that on March 27 of the  
6 year 2000, yourself and Heather Coady were  
7 together for most of the day. Is that correct?

8 A Correct.

9 Q And, in fact, you were together with Heather  
10 Coady that afternoon, weren't you?

11 A Yes.

12 Q And, in fact, you were with Heather Coady that  
13 afternoon and you were also with her that  
14 evening, is that correct?

15 A Correct.

16 Q And you said, I think, on direct examination with  
17 Mr. Tochka that yourself and Heather Coady were  
18 at your apartment at 75 Faneuil Street, is that  
19 right?

20 A Yes.

21 Q Now, in that apartment at 75 Faneuil Street, sir,  
22 it's fair to say that throughout the day of March  
23 27 that yourself and Heather Coady were smoking  
24 marijuana? Is that right?

- 1 A Correct.
- 2 Q What time of day did you start smoking marijuana,  
3 sir?
- 4 A Early.
- 5 Q When you got up, right?
- 6 A A little after.
- 7 Q And it's fair to say, sir, that you continued to  
8 smoke marijuana throughout that day? Is that  
9 right?
- 10 A Correct.
- 11 Q Can you tell us what a Philly blunt is?
- 12 A It's a cigar.
- 13 Q Cigar filled with marijuana, is that correct?
- 14 A That's correct.
- 15 Q And how many blunts did you smoke that day?
- 16 A About five.
- 17 Q And when you say that you started -- that you  
18 smoked five blunts that day, it's fair to say  
19 that you began smoking those blunts in the  
20 morning? Is that correct?
- 21 A False.
- 22 Q What time did you get up that day?
- 23 A I got up at one.
- 24 Q You got up at one in the afternoon?



1 A Yes.

2 Q And when you got up at one in the afternoon that  
3 day, sir, shortly after getting up at one, you  
4 began to smoke marijuana, is that right?

5 A No.

6 Q Well, what time did you begin to smoke marijuana?

7 A Probably after five.

8 Q At five. So that was shortly after getting up,  
9 is that correct?

10 MR. TOCHKA: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. DOOLIN:

13 Q I'm sorry. Is it your testimony, sir, that you  
14 began to smoke marijuana at five o'clock that  
15 night?

16 A Yes, it is.

17 Q And between five o'clock that night and the time  
18 you went to bed, your testimony is that you  
19 smoked five blunts, is that right?

20 A Yes.

21 Q And it's also fair to say that on March 27 of  
22 2000 that your testimony is that in that  
23 apartment at 75 Faneuil that you were together  
24 there with Jason Robinson and Tanzerius Anderson?

- 1 Is that your testimony?
- 2 A Repeat the question?
- 3 Q Your testimony is that Tanzerius Anderson and  
4 Jason Robinson were at that apartment that day,  
5 is that correct?
- 6 A Correct.
- 7 Q And it's also your testimony that Joleena Tate  
8 was there, is that right?
- 9 A Correct.
- 10 Q Did you play basketball that day?
- 11 A Sure did.
- 12 Q Where did you play basketball?
- 13 A McKinley Park.
- 14 Q And when you were over playing basketball in  
15 McKinley Park, is it your testimony, sir, that  
16 Jason Robinson was with you?
- 17 A Yes, it is.
- 18 Q What was he wearing that day?
- 19 A He was wearing green Timberland boots, jeans and  
20 shirt.
- 21 Q What color were the jeans?
- 22 A Don't recall.
- 23 Q What color was the shirt?
- 24 A Don't recall.

- 1 Q What color pants were you wearing?
- 2 A Blue.
- 3 Q What color jacket were you wearing?
- 4 A Wasn't wearing a jacket.
- 5 Q Did you at any point that day have on a jacket?
- 6 A Later that night.
- 7 Q And the color jacket that you had on that night,
- 8 sir, what was that?
- 9 A Black.
- 10 Q And your testimony, sir, is that on that date you
- 11 were playing basketball over here in the
- 12 playground at McKinley? Is that right?
- 13 A That's correct.
- 14 Q And when you were playing basketball over there,
- 15 is it your testimony, sir, that there were other
- 16 individuals who were playing basketball there
- 17 with you that day?
- 18 A Yes.
- 19 Q And one of those individuals would be Sean Coady,
- 20 is that right?
- 21 A Kevin Coady.
- 22 Q Kevin Coady. Was there also another individual
- 23 named Alex who was playing basketball with you?
- 24 A Yes.

1 Q Did you tell the police that?

2 A Yes.

3 Q That those individuals were there with you, with  
4 Jason Robinson on that day? Is that correct?

5 A Yes.

6 Q And, sir, is it also your testimony that on March  
7 27 that yourself and Joleena Tate, Jason Robinson  
8 and Tanzerius Anderson went back to your  
9 apartment at 75 Faneuil? Is that right?

10 A Yes.

11 Q What time of night did Joleena Tate leave?

12 A About eight o'clock.

13 Q When she left at eight o'clock, is it your  
14 testimony that she left by herself or did she  
15 leave with someone?

16 A She left with somebody.

17 Q Who did she leave with?

18 A She left with Tee.

19 Q When Joleena Tate and Tee left the apartment --  
20 when you say Tee you mean Tanzerius Anderson, is  
21 that right?

22 A Correct.

23 Q And your testimony is that they left the  
24 apartment that night about eight o'clock? Is

1           that your testimony?

2    A       Correct.

3    Q       And the two of them left? Just the two of them,  
4           is that right?

5    A       Yes.

6    Q       And Jason Robinson, by your testimony, stayed in  
7           that apartment with you that night, is that  
8           right?

9    A       Correct.

10   Q       Is that correct?

11   A       Yes.

12   Q       And that Jason Robinson did not leave that  
13          apartment that night and leave with Tanzerius  
14          Anderson and Joleena Tate? Is that your  
15          testimony?

16   A       Correct.

17   Q       And that, as you were in that apartment that  
18          night, is it fair to say that there were -- were  
19          there any other individuals who were in the  
20          apartment other than those ones that we've  
21          mentioned?

22   A       No.

23   Q       Was Jeffrey Fitzgerald there?

24   A       No, he wasn't.

1 Q And is it your testimony, sir, that at some point  
2 that night that heather Coady received a page?  
3 A Yes.  
4 Q What time was that?  
5 A I have no idea.  
6 Q Well, what time did you leave the apartment that  
7 night to go outside?  
8 A I have no idea.  
9 Q You have no idea?  
10 A I don't wear a watch.  
11 Q None whatsoever? You don't have a clock in your  
12 house?  
13 A No. In my bedroom but I wasn't in my bedroom.  
14 Q Did you have a telephone in your house that  
15 night, sir?  
16 A No, I didn't.  
17 Q Did you have a telephone number at any point in  
18 time when you lived at 74 Faneuil?  
19 A Yeah, earlier when I lived at 75 but not at the  
20 time.  
21 Q When was the phone taken out of your house at 74  
22 Faneuil Street?  
23 A I have no idea.  
24 Q Did you have a phone in 1999?

- 1 A I don't know.
- 2 Q Did you have a phone in 2000?
- 3 A No.
- 4 Q And is it your testimony, sir, that at no point  
5 during that day was your mother at home? Is that  
6 right?
- 7 A She wasn't at home.
- 8 Q Was your mother there the night before?
- 9 A No.
- 10 Q And is it your testimony that you have no idea  
11 what time you left the house and went outside  
12 that night?
- 13 A I have no idea. After eleven.
- 14 Q Okay. So your testimony is that at some point  
15 between the time that Joleena Tate left and the  
16 time that you go outside at eleven, that Heather  
17 Coady received a page? Is that right?
- 18 A She received a page before we went out.
- 19 Q Okay. What time was that?
- 20 A I don't know what time she received the page.
- 21 Q How long before you went out?
- 22 A That she received the page?
- 23 Q Yes.
- 24 A Um, about maybe forty-five minutes.

1 Q So that would put it about ten fifteen? Is that  
2 your testimony?

3 A No, it's not. I don't know the time.

4 Q Well, you said you went out about eleven, is that  
5 right?

6 A Maybe after eleven.

7 Q Okay. What's your memory as to what time you  
8 went out?

9 A Sorry?

10 Q What's your memory as to what time you went out?

11 A I don't know what time we went out.

12 Q Did you go out after eleven? Is that what you  
13 said?

14 A After eleven, yes.

15 Q Okay. And your memory is that you went out, that  
16 this page came in forty-five minutes before you  
17 went out? Is that right?

18 A Correct.

19 Q And your testimony is that Heather had a pager,  
20 is that right?

21 A Yes.

22 Q And that page came over Heather's pager, is that  
23 correct?

24 A It wasn't Heather's pager.



1 Q So your testimony is that Heather had a pager on  
2 her that wasn't hers, is that right?

3 A Correct.

4 Q And your testimony, I think you said on direct  
5 examination, was that Heather had Mr. Robinson's  
6 pager? Is that your testimony?

7 A Correct.

8 Q But Heather was carrying it, is that right?

9 A Yes.

10 Q And it was Heather who saw the page, is that  
11 right?

12 A Correct.

13 Q And your testimony is that Heather at this point  
14 in time has some sort of a conversation with  
15 Jason Robinson, is that right?

16 A Correct.

17 Q While you were in the house with Jason Robinson  
18 and Heather that night, between eight and  
19 whatever time you went outside, were the three of  
20 you always together?

21 A The majority of the time.

22 Q Was Jason Robinson ever gone from the room or in  
23 any room together for any length of time with  
24 Heather Coady?

1 A No.

2 Q So your testimony is that while you were at the  
3 apartment the three of you were together at  
4 almost every relevant time, is that correct?

5 A Yes.

6 Q And there was no long period of time where Jason  
7 Robinson and Heather Coady were together in a  
8 room, is that correct?

9 A Correct.

10 Q So you heard all of the conversation that was  
11 being said between Heather Coady and Jason  
12 Robinson, is that right?

13 A Yes.

14 Q You were in the same room, is that correct?

15 A Yes.

16 Q At any point in time did you see Heather Coady  
17 give Jason Robinson a knife?

18 A No.

19 Q At any point in time did you hear Heather Coady  
20 and Jason Robinson discussing a robbery?

21 A No.

22 Q At any point in time did you hear Tanzerius  
23 Anderson and Joleena Tate discuss a robbery prior  
24 to their leaving?

- 1 A No.
- 2 Q And you were with them before they left, weren't  
3 you, sir?
- 4 A Correct.
- 5 Q And it's your testimony, isn't it, sir, that at  
6 some point that night, some time after eleven,  
7 that you yourself went outside? Is that right?
- 8 A Correct.
- 9 Q When did Jason Robinson leave the apartment?
- 10 A About ten, fifteen minutes before we did.
- 11 Q And your testimony is that Jason Robinson walked  
12 out the front door of that apartment, is that  
13 right?
- 14 A Correct.
- 15 Q And he left that apartment a span of ten or  
16 fifteen minutes before you left, is that correct?
- 17 A Correct.
- 18 Q Did you leave with Heather Coady?
- 19 A No, she left before I did.
- 20 Q So the chain of events that happened is that  
21 Jason Robinson left, is that right?
- 22 A Yes.
- 23 Q How much time before Heather Coady left?
- 24 A What do you mean? Before?

- 1 Q How much time elapsed between the time that  
2 Robinson left and the time that Coady left the  
3 apartment?
- 4 A About ten or fifteen minutes.
- 5 Q During those ten or fifteen minutes, you and  
6 Coady are in the apartment together, is that  
7 right?
- 8 A Correct.
- 9 Q And then your testimony is that Coady left the  
10 apartment herself?
- 11 A Correct.
- 12 Q She had to go walk her dog, is that your  
13 testimony?
- 14 A Correct.
- 15 Q And you stayed in the apartment, is that correct?
- 16 A Correct.
- 17 Q How long did you stay in the apartment for?
- 18 A About five minutes.
- 19 Q And during those five minutes, I think you said  
20 on direct examination with Mr. Tochka, that you  
21 cleaned up, is that right?
- 22 A Yes.
- 23 Q And when you went outside, it's your testimony  
24 that you walked down into this play area, is that

1 right?

2 A Yes.

3 Q And you were going to meet up with Heather Coady  
4 down there, is that right?

5 A Yes.

6 Q Now, you had been in that apartment where you  
7 lived at 75 for most of that evening, is that  
8 right?

9 A Correct.

10 Q During that time that you were at 75, your mother  
11 wasn't home, is that right?

12 A No, she wasn't.

13 Q And you continued to smoke marijuana inside 75  
14 Faneuil, didn't you?

15 A Correct.

16 Q You continued to get high, didn't you?

17 A Correct.

18 Q And it's also fair to say that your testimony is  
19 that you were supposed to meet Ms. Coady out here  
20 in the play area, is that correct?

21 A Yes.

22 Q And what was your purpose of meeting Ms. Coady  
23 out there in the play area?

24 A Smoke a blunt.

1 Q Well, you had been smoking blunts all evening  
2 inside of 75, hadn't you?

3 A Yes.

4 Q So at that point in time you decided you were  
5 going to go outside and smoke a blunt outside, is  
6 that right?

7 A Yes.

8 Q This area is policed by the Boston Housing  
9 Authority, isn't it?

10 MR. TOCHKA: Your Honor, objection.  
11 Could I be heard at side bar?

12 (Whereupon, the following discussion  
13 occurred at side bar:)

14 MR. TOCHKA: I'm not trying to  
15 interfere with his cross examination but I'm  
16 going to object to the tone of voice. There's no  
17 reason to be yelling in this small courtroom.  
18 There's no reason why that voice has been raised  
19 and raised so loud in terms of the level of the  
20 sound level that Mr. Doolin is using.

21 THE COURT: It's not only fast but it's  
22 very fast and we have a court reporter in  
23 training here and she is shaking her head and  
24 wondering if she should be considering a change

1 of vocation. So I would just ask that you slow  
2 down a bit and please, you don't need to shout.  
3 Thank you.

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

6 BY MR. TOCHKA:

7 Q Mr. Gauthier, when we left off you were leaving  
8 and you went outside to the play area, is that  
9 right?

10 A Correct.

11 Q And you went out there with the specific intent  
12 to smoke a blunt, is that right?

13 A Correct.

14 Q And you left the area at 75 where you had been  
15 smoking marijuana throughout the afternoon, is  
16 that right?

17 A Correct.

18 Q And you went outside to this area over by where  
19 the picnic tables are, is that right?

20 A Correct.

21 Q Now, that area is paroled by the Boston Housing  
22 Authority police, is that right?

23 A Correct.

24 Q In fact, they have an office that's over here on

1 North Beacon Street, is that right?

2 A Correct.

3 Q And your testimony, sir, is that instead of using  
4 drugs inside the house, you were going to go  
5 outside to use your drugs, is that right?

6 A Correct.

7 Q In full view of everybody, is that right?

8 A Correct.

9 Q And, sir, it's also fair to say that at this  
10 point in time that when you met up with Heather  
11 Coady out at the picnic area, was Heather Coady  
12 out walking her dog?

13 A When I left the house she was, yes.

14 Q Where did you see her walking her dog, sir?

15 A She was in a fenced area with her dog.

16 Q And when she was over at the fenced area and  
17 throughout the course of the time that she was  
18 walking her dog, did you see her having a  
19 conversation with somebody?

20 A Yes, I did.

21 Q Was she having a conversation with somebody who  
22 lived on the second floor of one of the  
23 buildings?

24 A Correct.



- 1 Q What building was it, sir, that she was having  
2 the conversation with that individual?
- 3 A The building we were sitting in front of.
- 4 Q And that would be in front of this building right  
5 here, is that correct?
- 6 A Correct.
- 7 Q What number is that?
- 8 A I have no idea.
- 9 Q Well, it's North Beacon Street, is that right?
- 10 A Yes.
- 11 Q And it's across the way from where Heather Coady  
12 lived, is that right?
- 13 A Yes.
- 14 Q And it's your testimony, sir, that as you were  
15 having this conversation with Ms. Coady, that you  
16 were seated on the picnic table? Is that right?
- 17 A Correct.
- 18 Q And when you're seated on the picnic table, sir,  
19 it's fair to say that Ms. Coady then brings her  
20 dog back to the house? Is that your testimony?
- 21 A Yes.
- 22 Q And after she brings her dog back to the house,  
23 sir, how long had you been outside?
- 24 A Less than five minutes.

- 1 Q And when she brings the dog back to the house,  
2 Ms. Coady joins you out by the picnic table, is  
3 that right?
- 4 A Correct.
- 5 Q Now, when Jason Robinson left the house over here  
6 at number 75, where did he say he was going?
- 7 A He didn't.
- 8 Q He just left, is that your testimony?
- 9 A Correct.
- 10 Q And, sir, as you were seated over there by the  
11 picnic table, I think you said on direct  
12 examination that you made some observations over  
13 by the dumpster area. Is that right?
- 14 A Correct.
- 15 Q And that dumpster area is over here adjacent to  
16 number 89, is that right?
- 17 A Correct.
- 18 Q And, sir, how far away from that area where the  
19 fences are, where the dumpster is, how far away  
20 were you seated?
- 21 A Probably less than a hundred feet.
- 22 Q What were the lighting conditions over there by  
23 the dumpster?
- 24 A Not good.

1 Q It was dark, wasn't it?

2 A Yes.

3 Q Now, you say that you saw Jason Robinson over

4 there, is that right?

5 A Correct.

6 Q When you saw him over there, what kind of pants

7 did he have on?

8 A I don't remember.

9 Q What color shirt?

10 A Jeans.

11 Q What color shirt did he have on?

12 A I don't remember.

13 Q Did he have on a coat?

14 A Not to my knowledge.

15 Q Did he have on a hat?

16 A That hat was on the bench with us.

17 Q There was a hat that was on the bench with you?

18 A Yes.

19 Q What type of a hat was on the bench with you?

20 A It was a Boston Red Sox hat.

21 Q Was it on the bench when you came out?

22 A I don't remember.

23 Q Well, you sat down, sir, and at some point you

24 saw the hat, is that right?

1 A I seen it later.

2 Q Did you see it when you sat down?

3 A No, I didn't.

4 Q So when you sat down at the picnic table there

5 was no hat there, is that right?

6 A Correct.

7 Q Well, now did it get there, sir?

8 A I don't know. I think Heather had it.

9 Q So your testimony is that Heather had a hat of

10 Jason's?

11 A I think Heather had it.

12 Q Did you see Heather put the hat down on the

13 table?

14 A No, I didn't.

15 Q When did you first see the hat?

16 A Before the noise -- after the noise.

17 Q After the noise?

18 A Yes.

19 Q Did Heather have it in her hands?

20 A I don't know if she had the hat in her hand.

21 Q Was Heather wearing the hat?

22 A No, she wasn't.

23 Q Was the hat on the table?

24 A Yes.

- 1 Q And you didn't see how it got there? Is that  
2 your testimony?
- 3 A Correct.
- 4 Q You just turned around and there it was? Is that  
5 what you're telling us?
- 6 A Correct.
- 7 Q When you look over across this area, this  
8 distance, and into this area, your testimony is  
9 that you see Jason Robinson, is that right?
- 10 A Correct.
- 11 Q How long are you making observations of Mr.  
12 Robinson in that area?
- 13 A Not long.
- 14 Q Can you describe that to us? How many minutes or  
15 seconds that was?
- 16 A Thirty seconds.
- 17 Q Did you see Tanzerius Anderson at all?
- 18 A No.
- 19 Q You didn't see Tanzerius Anderson over here in  
20 this dumpster area, is that right?
- 21 A I didn't see Tee, no.
- 22 Q And Tanzerius Anderson left that night, it's fair  
23 to say, at approximately eight o'clock? Is that  
24 right?

- 1 A That's when he left to bring Joleena home. He  
2 came back.
- 3 Q Oh, he came back to the house?
- 4 A Yeah.
- 5 Q What time did he come back to the house?
- 6 A I don't know. It was after eight.
- 7 Q And he came back by himself, is that right?
- 8 A Correct.
- 9 Q And how long did he stay at the house for?
- 10 A An hour.
- 11 Q What time did he leave?
- 12 A Don't know.
- 13 Q Did he leave before Jason Robinson?
- 14 A Yes.
- 15 Q And your testimony, sir, is that at that point in  
16 time as you're sitting out here on the bench with  
17 Heather Coady, that you hear a whistle? Is that  
18 right?
- 19 A Correct.
- 20 Q And that's from Joleena Tate, is that right?
- 21 A Correct.
- 22 Q Now, when you first see Joleena Tate, where do  
23 you see her?
- 24 A 89.

1 Q In the back of 89?

2 A Correct.

3 Q Do you see anybody else in the back of 89?

4 A No, I don't.

5 Q Do you see a car there?

6 A No, I don't.

7 Q Do you hear her get out of anything?

8 A No.

9 Q You just see her coming from the back of 89, is  
10 that right?

11 A I just see her standing there whistling.

12 Q You don't see another individual, is that right?

13 A No, I didn't.

14 Q You don't see a car, is that right?

15 A Correct.

16 Q And your testimony, sir, is that Joleena Tate  
17 whistles and she and Heather Coady meet up, is  
18 that right?

19 A Correct.

20 Q When Joleena Tate and Heather Coady meet up, what  
21 is your location, sir?

22 A Still on the bench.

23 Q Do you get up?

24 A Yes, I do.

1 Q Do you walk towards them?

2 A No, I don't.

3 Q Your testimony is that you begin to walk away, is  
4 that right?

5 A Yes.

6 Q After you heard a whistle, is that right?

7 A No -- yes, after I heard the whistle.

8 Q So you hear Joleena Tate whistle to Heather  
9 Coady, is that right?

10 A Correct.

11 Q And at this point in time you begin to walk away,  
12 is that right?

13 A After Heather gets up and walks over there.

14 Q You begin to walk away, is that your testimony?

15 A Correct.

16 Q And begin to walk from the area by the picnic  
17 tables across the play area, is that right?

18 A Correct.

19 Q And it's your testimony, sir, that you're walking  
20 away from 89, is that correct?

21 A Correct.

22 Q And that you're walking in this direction over to  
23 by 51 or across the play area, is that right?

24 A Correct.



1 Q And it's as you're walking, you have your back to  
2 Joleena Tate and Heather Coady? Is that what  
3 you're telling us?

4 A Correct.

5 Q And your testimony, sir, is that -- are you part  
6 of the conversation that Heather Coady and  
7 Joleena Tate have?

8 A No.

9 Q Do you hear what's said?

10 A No.

11 Q Do you hear Heather Coady say anything to Joleena  
12 Tate at all?

13 A No.

14 Q Does Joleena Tate say anything at all to Heather  
15 Coady?

16 MR. TOCHKA: Objection, Your Honor. At  
17 what point in time are we talking about?

18 THE COURT: Rephrase your question.

19 BY MR. DOOLIN:

20 Q When Joleena Tate and Heather Coady meet up --

21 A Yes.

22 Q -- do you hear Joleena Tate say anything to  
23 Heather Coady?

24 A Not when they were together, no.

1 Q Do you hear Joleena Tate say anything as she's  
2 coming down towards Heather Coady?

3 A When we turned around and heard her whistle, she  
4 was yelling, Heather. Heather was with me and  
5 then Joleena says, Heather, what you doing,  
6 you're supposed to meet me at eleven thirty.  
7 Heather gets up and says, what are you talking  
8 about, and walks towards her.

9 Q Your testimony, sir, is that Joleena Tate says to  
10 Heather that she's supposed to meet her at eleven  
11 thirty?

12 A Correct.

13 Q And Heather had been in her house a short time  
14 before this when she dropped her dog back into  
15 the house, is that right?

16 A Correct.

17 Q And Heather acted as if she didn't know what  
18 Joleena was talking about, is that right?

19 A Correct.

20 Q As if there had not been a conversation, is that  
21 right?

22 A Correct.

23 Q And it's your testimony, sir, that as you begin  
24 to walk across the play area that that's when you

1 hear this bang, is that right?

2 A Correct.

3 Q And as you -- when you hear the bang, is it fair  
4 to say that you're walking past 65 towards the  
5 last several buildings that are here?

6 A No.

7 Q Are you still in the play area?

8 A Yes.

9 Q Do you stop or do you keep walking?

10 A Stop.

11 Q You stop when you hear the bang, is that right?

12 A Yes.

13 Q Do you then continue to walk or do you stand  
14 there?

15 A Walk a little bit more.

16 Q You keep walking more towards this direction, is  
17 that right?

18 A Yes.

19 Q And your testimony, sir, is that you see the  
20 individuals that you identified as Tanzerius  
21 Anderson and Jason Robinson and they leave the  
22 back of 89, is that right?

23 A Front of 89.

24 Q And that they're together, is that right?

1 A Correct.

2 Q They're walking together, is that your testimony?

3 A Correct.

4 Q And then you see them over here between 65 and  
5 75, is that right?

6 A Correct.

7 Q Are they coming from the direction of Faneuil  
8 Street, sir?

9 A I assume so.

10 Q Did you see them come from that direction?

11 A No. I seen them in the parking lot.

12 Q Did you see them walk by your location here in  
13 the play area?

14 A No, they didn't.

15 Q You see them in the parking lot, is that right?

16 A Correct.

17 Q And is their car or Tanzerius Anderson's car, is  
18 it parked at the back of the parking lot toward  
19 the play area or is it parked at this end of the  
20 play area up by Faneuil Street?

21 A Towards the play area.

22 Q And your testimony is that you see them get into  
23 the car, is that right?

24 A I didn't see them get into the car. I heard the

1 door shut.

2 Q You heard the door shut. Did you see Joleena  
3 Tate?

4 A She was with Heather, yes.

5 Q She was with Heather in the play area, sir?

6 A Yes.

7 Q And your testimony is that you and Heather then  
8 walk across to McKinley Park, is that right?

9 A Correct.

10 Q Now, at some point in time I think you said on  
11 direct examination that after some conversation  
12 that you have over in McKinley Park, that you  
13 walked back to 89, is that right?

14 A Correct.

15 Q And when you walked back to 89, it's fair to say  
16 that you go to the back of 89, is that right?

17 A No, I don't.

18 Q Well, at any point in time do you see Mr.  
19 Yazbek's body in back of 89?

20 A Yes, I do.

21 Q And it's fair to say that you walked right up to  
22 the area where that body was? Is that your  
23 testimony?

24 A Correct.

- 1 Q And immediately after making observations in that  
2 area, yourself and Heather Coady go over to  
3 Joleena Tate's house, is that right?
- 4 A Correct.
- 5 Q And there is a conversation at Joleena Tate's  
6 house between yourself, Joleena Tate and Heather  
7 Coady, is that right?
- 8 A No.
- 9 Q Well, is Joleena Tate there at some point during  
10 the night?
- 11 A Yes.
- 12 Q Is she there by herself?
- 13 A She came by herself, yes.
- 14 Q Do she and Heather Coady have a conversation?
- 15 A A little conversation.
- 16 Q Does that conversation take place in the same  
17 room that you're in?
- 18 A No.
- 19 Q Where did they have that conversation?
- 20 A Off to the right of where I was sitting.
- 21 Q How far away from you?
- 22 A Don't really know.
- 23 Q Were you able to hear what they were saying?
- 24 A No.

- 1 Q Was it in the same room?
- 2 A It was off to the right of where I was.
- 3 Q When you say it was off to the right, sir, my  
4 question is, were you in the same room?
- 5 A Yes.
- 6 Q And you weren't able to hear what they were  
7 saying, is that right?
- 8 A No.
- 9 Q And at some point you and Heather Coady walked  
10 home, is that right?
- 11 A Correct.
- 12 Q Now, sir, you've told us that you were not  
13 involved in anything that happened to Mr. Yazbek?  
14 Is that what you're telling us?
- 15 A Correct.
- 16 Q But your testimony, sir, is that as you were  
17 walking home from Joleena Tate's house that you  
18 and Heather Coady get together an alibi, is that  
19 right?
- 20 A That's correct.
- 21 Q But you haven't done anything wrong, is that  
22 right?
- 23 A Correct.
- 24 Q Ms. Coady didn't do anything wrong, is that

1 right?

2 A Correct.

3 Q Your testimony, and you've said this to the jury,  
4 is that you were just a witness to certain  
5 things, is that right?

6 A Correct.

7 Q And yet you and Ms. Coady, on the way home from  
8 Joleena Tate's house, begin to talk about an  
9 alibi, is that right?

10 A Correct.

11 Q And you set up an alibi for your good friend,  
12 Heather Coady, is that right?

13 A No, I didn't.

14 Q Well, did you talk about the alibi that you were  
15 going to provide for her?

16 A We were both together, yes.

17 Q You were going to say you were with her, is that  
18 right?

19 A Yes.

20 Q And she was going to say that she was with you,  
21 is that right?

22 A Correct.

23 Q And you were trying to protect Heather Coady, is  
24 that right?



1 A Yes. Correct.

2 Q And Heather Coady was trying to protect you, is  
3 that right?

4 A Correct.

5 Q And the two of you had a discussion about that as  
6 you walked from Joleena Tate's house up on Dunboy  
7 Street in Brighton back to the area of the  
8 Faneuil development, is that right?

9 A Correct.

10 Q How long a walk was that?

11 A Good hour.

12 Q So your testimony is that it took you an hour to  
13 get from Joleena's house in Oak Square to the  
14 area of the Faneuil development, is that right?

15 A Correct.

16 Q And just so we're clear, your testimony is that  
17 Jason Robinson and Tanzerius Anderson did not  
18 appear at Joleena Tate's house with Joleena Tate,  
19 is that right?

20 A Not while I was there.

21 Q And as you were walking back, you and Heather  
22 were talking about your alibi, is that right?

23 And what you were going to tell the police, is  
24 that right?

1 A Correct.

2 Q Because the next morning, it's fair to say, sir,  
3 that you were awoken by the police, is that  
4 right?

5 A Yes.

6 Q What time was that?

7 A Around eight o'clock.

8 Q And your testimony, sir, is that when you were  
9 woken up at eight o'clock the next morning -- was  
10 that by Detective Mahoney?

11 A I don't recall his name.

12 Q Was he wearing a uniform or was he in  
13 plainclothes?

14 A Uniformed.

15 Q Did you talk to a plainclothes detective that day  
16 at all on the twenty-eighth?

17 A Not that I recall.

18 Q Do you recall speaking to an officer or a  
19 detective who would have been about fifty years  
20 old with a mustache?

21 A Not that I recall.

22 Q So your testimony is that you just talked to a  
23 uniformed officer that day?

24 A There was another gentleman with him.

1 Q The other gentleman, was that other gentleman  
2 wearing plainclothes or a uniform?  
3 A I don't remember. I think they were both clothed  
4 in --  
5 Q Both wearing uniforms?  
6 A I think so.  
7 Q Okay. And although you had done nothing wrong  
8 the night before, is that your testimony?  
9 A Correct.  
10 Q When you were questioned by the police that next  
11 morning on March the twenty-eighth, it is fair to  
12 say that you told them that you were with Heather  
13 Coady that night? Is that right?  
14 A Correct.  
15 Q You told them that you were with her between  
16 eleven o'clock and two o'clock, is that right?  
17 A Correct.  
18 Q And the police talked to you for about fifteen  
19 minutes that day, didn't they, sir?  
20 A Correct.  
21 Q And the police kept asking you questions, didn't  
22 they?  
23 A Correct.  
24 Q And during all of those questions you denied that

1           there was another female that was out there, is  
2           that right? Is that correct?

3       A     Correct.

4       Q     And you denied that you saw a crime, is that  
5           right?

6       A     Correct.

7       Q     And you said that Heather Coady was with you  
8           during this entire period of time, is that  
9           correct?

10      A     Correct.

11     Q     Because that was your story that the two of you  
12           came up with the night before, right?

13     A     Correct.

14     Q     And on March twenty-eighth, it's fair to say,  
15           sir, that when the authorities asked you these  
16           questions, that under your present testimony  
17           today, that you would admit that you lied to the  
18           authorities? Is that right?

19     A     Would you repeat the question?

20     Q     Your testimony today, given your testimony today,  
21           you would admit that on March twenty-eighth that  
22           you lied to the authorities, is that right?

23     A     Correct.

24     Q     So when a police officer is asking you questions

1           about a crime some hours after it happened, the  
2           next morning, your first inclination was to lie,  
3           is that right?

4                       MR. TOCHKA:  Objection, Your Honor.

5           Asked and answered.

6   A       Right.

7                       THE COURT:  He may answer the question.

8           Would you repeat it?

9   BY MR. DOOLIN:

10  Q       Was your first inclination to lie to the police?

11  A       No.

12  Q       Your first inclination was to tell the truth, is  
13         that right?

14  A       No.

15  Q       Well, you did lie to the police, didn't you?

16  A       Yes, I did.

17  Q       And during fifteen minutes of questioning by the  
18         police that morning, it's fair to say that you  
19         told falsehoods during that entire fifteen  
20         minutes, didn't you?

21  A       Correct.

22  Q       Looked them right in the eye, told them that  
23         story, didn't you?

24                       MR. TOCHKA:  Objection, Your Honor.

1 THE COURT: He may answer.

2 BY MR. DOOLIN:

3 Q You looked them right in the eye, didn't you,  
4 sir?

5 A I didn't look them in the eye.

6 Q You looked down on the ground, is that what your  
7 testimony is?

8 A Yes.

9 Q And you looked down on the ground and you lied to  
10 them, is that right?

11 A I lied to them, yes.

12 Q And your testimony, sir, is that on the twenty-  
13 eighth after you had got done telling this  
14 version of events to the Boston Police, that at  
15 some point on the twenty-eighth that you met up  
16 with your good friend, Heather Coady, again, is  
17 that right?

18 A Correct.

19 Q And when you meet up with your friend, Heather  
20 Coady, do you see her at your apartment?

21 A Hers.

22 Q You see her at her house, is that right?

23 A Correct.

24 Q So after the police were done questioning you,

1 you went to her house, is that right?

2 A No.

3 Q Did you go there at some point later that day?

4 A Yes, I did.

5 Q And when you went to Heather Coady's house, it's  
6 fair to say that you and Heather Coady had a  
7 conversation about the police coming to see you,  
8 is that right?

9 A That's correct.

10 Q And the conversation that you had with Heather  
11 Coady, you told her that the police had talked to  
12 you, is that right?

13 A Correct.

14 Q And she told you that the police had talked to  
15 her, is that right?

16 A Correct.

17 Q And you told her that you had stuck to the story  
18 that the two of you had come up with the night  
19 before, is that right?

20 A Correct.

21 Q That you were her alibi, is that right?

22 A That we were together, yes.

23 Q And the two of you had been having sex, is that  
24 right?

1 A Correct.

2 Q You told the police the story that you and  
3 Heather Coady had been having sex at 75 Faneuil  
4 Street that night, is that right?

5 A Correct.

6 Q And when you got together with Heather Coady, you  
7 discussed the fact that Heather Coady had also  
8 told them the same story, is that right?

9 A Repeat the question?

10 Q You and Heather Coady discussed the fact that  
11 Heather Coady had also told them that she was  
12 with you that night, is that right?

13 A Correct.

14 Q And that she was having sex with you, is that  
15 right?

16 A Correct.

17 Q So the two of you once again got your story  
18 together, is that right?

19 A Correct.

20 Q You had gotten your story together the night  
21 before, is that right?

22 A Correct.

23 Q And you had gotten your story together again on  
24 the twenty-eighth, is that right?



1 A Correct.

2 MR. TOCHKA: Objection, Your Honor,  
3 asked and answered.

4 THE COURT: I think we have, sir. Move  
5 on, please.

6 BY MR. DOOLIN:

7 Q How long was that conversation that you had with  
8 Heather Coady?

9 A Not long.

10 Q On March 28, did you see Jason Robinson?

11 A I don't recall what day.

12 Q The day that you gave this story to the police,  
13 your first version of events, did you see Jason  
14 Robinson later that day?

15 A Not to my recollection.

16 Q Did you see Tanzerius Anderson?

17 A No, I didn't.

18 Q Did you get together some story with Jason  
19 Robinson on March 28?

20 A No.

21 Q Did you get together a story with Tanzerius  
22 Anderson?

23 A What day is March 28?

24 Q Well, March 28 would be the Tuesday, sir.

1 A The day after? No, I didn't see them at all.

2 Q Did you see Jeffrey Fitzgerald that day?

3 A No, I didn't.

4 Q Did you see Joleena Tate?

5 A Not that I remember.

6 Q Well, the next day -- is it your testimony that

7 the next day on the twenty-ninth that you see

8 Joleena Tate? Is that right?

9 A Correct.

10 Q You see her at Jeffrey Fitzgerald's place, is

11 that right?

12 A Correct.

13 Q So now this is Jeffrey Fitzgerald who you are

14 friendly with, is that right?

15 A Correct.

16 Q And he lived up on top of you at number 75, is

17 that right?

18 A Correct.

19 Q One floor up, is that right?

20 A Two floors up.

21 Q Okay. Two floors up. and he is the person who

22 you say is your cousin, is that right?

23 A Correct.

24 Q At his apartment on the twenty-ninth is Jeffrey

1 Fitzgerald, yourself, Heather Coady and Joleena  
2 Tate, is that right?

3 A Correct.

4 Q And Joleena Tate just happens to be at Mr.  
5 Fitzgerald's apartment that day, is that right?

6 A Correct.

7 Q And while you were at that apartment on March 29  
8 with Joleena Tate, Jeffrey Fitzgerald and Heather  
9 Coady, is it fair to say, sir, that again your  
10 stories were discussed?

11 A I left as soon as I seen Joleena in the house. \*

12 Q Did you stay there at any point in time when  
13 Joleena was there?

14 A No, I didn't.

15 Q Did you talk to Joleena?

16 A No, I didn't.

17 Q Did you talk to Heather about Joleena in the  
18 parking lot?

19 A Yes.

20 Q And your testimony, sir, is that Heather Coady  
21 told you about a conversation that she had just  
22 had with Joleena Tate, is that right?

23 A Not that I recall.

24 Q Did Heather Coady tell you anything about Joleena

1 Tate having to stick to a story as well?

2 MR. TOCHKA: Objection, Your Honor.

3 THE COURT: He may answer that.

4 A She told me that Joleena said that she was going  
5 to -- she was going to say that she was with Yaz  
6 earlier in the day.

7 BY MR. DOOLIN:

8 Q Because Joleena's fingerprints would have been in  
9 the car, is that right?

10 A Correct.

11 Q And that she was seen by various people with him  
12 that night, is that right?

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. DOOLIN:

16 Q But you did have a conversation with Heather  
17 Coady about Joleena Tate, is that right?

18 A Correct.

19 Q And that was on the twenty-ninth, is that right?

20 A I believe so.

21 Q Now, during the twenty-ninth, when that police  
22 officer woke you up that morning and during the  
23 twenty-ninth, it's fair to say that there was  
24 heavy police presence in this area, is that

1 right?

2 A Correct.

3 Q Were you aware that the police had talked to  
4 other individuals who lived in that area as well?

5 A No, I wasn't.

6 Q Did you see police officers, uniformed Boston  
7 Police officers in that area in those days?

8 A Yes, I did.

9 Q It's fair to say that the police were going  
10 around and they were asking questions? Is that  
11 right?

12 A Correct.

13 Q Now, sir, you know that you were seen in the play  
14 area that night, don't you?

15 A Yes.

16 Q You know that you were seen that night in the  
17 company of Heather Coady, don't you?

18 A Correct.

19 Q You know that in March of 2000, that Heather  
20 Coady was selling drugs, don't you, sir?

21 A Correct.

22 Q You knew that the police had information that  
23 there was another female who was observed talking  
24 to Heather Coady, is that correct?

1 A Correct.

2 MR. TOCHKA: Objection, Your Honor. At  
3 what point are we talking about?

4 THE COURT: Put another question, sir.

5 BY MR. DOOLIN:

6 Q On the twenty-ninth and into the thirtieth, you  
7 were aware, were you not, that the police had  
8 information that Heather Coady was seen or  
9 observed talking to another individual, another  
10 woman in the area, is that right?

11 A Correct.

12 Q Because the police had asked you about it, didn't  
13 they?

14 A Correct.

15 Q And you knew that you were linked with Heather  
16 Coady that night, didn't you, sir?

17 A Correct.

18 Q How tall are you, sir?

19 A Six feet.

20 Q And the police had been to your house and they  
21 had asked you questions on the twenty-eighth,  
22 hadn't they, sir?

23 A Correct.

24 Q Had they been back to you to talk to you on the

1 twenty-ninth?

2 A No.

3 Q Were they looking for you on the thirtieth to  
4 talk to you?

5 A As far as I know, no.

6 Q It's your testimony, sir, that you knew -- you  
7 had also gone into the area of 89 Faneuil that  
8 night, is that correct?

9 A Yes.

10 Q You're very aware, sir, are you not, of the  
11 layout of that area, is that correct?

12 A Correct.

13 Q The layout of the Faneuil development, is that  
14 right?

15 A Correct.

16 Q And it was at that point in time, sir, with all  
17 of that in your mind, that the police had talked  
18 to you, that you had been seen earlier with  
19 Heather, that you had been seen in the play area,  
20 and that you had been over here at the scene of  
21 this homicide, is that correct, that on March 30  
22 you went to the police? Is that right?

23 A Correct.

24 Q And, sir, when you went to the Boston Police on

1 March 30 they asked you some questions about what  
2 had happened that night, is that right?

3 A No, they didn't ask me questions.

4 Q Well, did you give a taped statement to the  
5 police?

6 A Yes, I did.

7 Q And they asked you questions and you answered  
8 them, did you not?

9 A Correct.

10 Q And they asked you questions, sir, about whether  
11 or not you had gone back to this area after your  
12 -- in the statement that you gave them on March  
13 30 and whether you had gone back to that area and  
14 whether you had seen the body of Mr. Yazbek, is  
15 that right?

16 A Correct.

17 Q Now, sir, clearly you would agree with me that  
18 when you talked to the police under your present  
19 testimony that you told them something that  
20 wasn't true on March the twenty-eighth? Is that  
21 right?

22 A Repeat the question.

23 Q You lied to the police on the twenty-eighth, is  
24 that right?



1 A Correct.

2 Q And when the police talked to you on the  
3 thirtieth and they asked you a specific series of  
4 questions about whether you had gone back to the  
5 area where that body was, it's fair to say, sir,  
6 that you denied it? Isn't that correct?

7 A Correct.

8 Q You again, under your present testimony, when the  
9 police asked you questions about whether or not  
10 you had been back to that area and had seen that  
11 body, you said no, is that correct?

12 A Correct.

13 Q So that's completely different than what you've  
14 testified to today, isn't it?

15 A Correct.

16 Q And again you lied to the police on March 30, is  
17 that correct?

18 MR. TOCHKA: As to what, Your Honor?

19 THE COURT: Rephrase the question, sir.

20 BY MR. DOOLIN:

21 Q Well, your testimony now is that you lied to the  
22 police on March 30 about whether or not you had  
23 been back to the area where that body was, is  
24 that right?

1 A Correct.

2 Q So you would agree with me that this is your  
3 second statement that you've made to the police,  
4 is that right?

5 A What's my second statement?

6 Q You had been interviewed by the police on the  
7 twenty-eighth, is that right?

8 A Correct.

9 Q And you were interviewed by the police on the  
10 thirtieth, is that right?

11 A Correct.

12 Q And when you were interviewed on the thirtieth,  
13 once again you told the police something that  
14 wasn't true, isn't that right?

15 Did you go back to that area, sir?

16 A When?

17 MR. TOCHKA: Objection.

18 BY MR. DOOLIN:

19 Q Did you go back to that area on the twenty-eighth  
20 and see Mr. Yazbek's body?

21 A Correct.

22 Q Did you tell the police on the thirtieth that you  
23 had not gone back there?

24 A I didn't, I didn't mention it at all. No, I

1           didn't, correct.

2   Q       Were you asked that?

3   A       No, I wasn't. Not the second time.

4   Q       The first time?

5   A       The first time, yes.

6   Q       On March 30?

7   A       No, March 28.

8   Q       When you spoke to Sergeant Coleman?

9   A       Which was the twenty-eight?

10  Q       Well, did you speak to Sergeant Coleman on the  
11           twenty-eighth?

12  A       Yes, I did.

13  Q       What time of the day did you speak to Sergeant  
14           Coleman on the twenty-eighth?

15  A       In the afternoon.

16  Q       Where did you speak to him in the afternoon?

17  A       On the phone.

18  Q       March 28?

19  A       Yes.

20  Q       The day after this incident happened?

21  A       Oh. The day after I didn't speak to Sergeant  
22           Coleman at all.

23  Q       You spoke to a uniformed officer, is that right?

24  A       Correct.

1 Q When you spoke to Sergeant Coleman, was that the  
2 thirtieth?

3 A Yes.

4 Q When you spoke to Sergeant Coleman that's when  
5 you gave a taped statement, is that right?

6 A Correct.

7 Q Sergeant Coleman asked you questions, is that  
8 right?

9 A Correct.

10 Q You answered the questions, is that right?

11 A Correct.

12 Q He asked you whether you had been back here, is  
13 that right?

14 A Correct.

15 Q And whether you had seen the body, is that right?

16 A Correct.

17 Q And once again, sir, you told him that you had  
18 not been back there, correct?

19 A Correct.

20 Q Is that right? So again you lied to him, didn't  
21 you?

22 A Correct.

23 Q You lied to them on the twenty-eighth because you  
24 didn't want to be involved in any sort of crime,

1 is that correct?

2 A No, because I didn't want him to know I seen the  
3 body. It wasn't actually a pretty sight.

4 Q You didn't tell them the truth, did you?

5 A No, I didn't.

6 Q You looked Sergeant Coleman right in the face,  
7 didn't you?

8 A Yes, I did.

9 Q And you told him a lie, didn't you?

10 A Correct.

11 MR. TOCHKA: Objection. Objection.

12 THE COURT: We have been over this, Mr.  
13 Doolin. Move on, please.

14 BY MR. DOOLIN:

15 Q And on March the thirtieth, your testimony, sir,  
16 is that after you gave this taped statement to  
17 Sergeant Coleman, that the taped statement ended  
18 several hours after you were at the station that  
19 night? Is that correct?

20 A Correct.

21 Q And you went back to the police department on  
22 April 7, is that right?

23 A Correct.

24 Q And when you went back to the police department

1 on April the seventh, you again spoke to some  
2 officer, is that right?

3 A Correct.

4 Q And this time you spoke to Detective Paul  
5 McLaughlin?

6 A Correct.

7 Q Who else did you speak to that day?

8 A Another detective.

9 Q Is that Detective Juan Torres?

10 A I don't recall.

11 Q Was it Detective Thomas Traylor?

12 A Thomas Traylor.

13 Q On April 7 you gave a second taped statement, is  
14 that right?

15 A Correct.

16 Q And on April 7 of 2000, sir, in that taped  
17 statement, did you mention to the police officers  
18 that you had been back in this area as is your  
19 current testimony?

20 A No, I didn't tell them. I told them off the  
21 record.

22 Q You told them only after you were going back home  
23 in the car, is that right?

24 A I wasn't going to tell them at all.

- 1 Q Because you didn't want to be in any trouble,  
2 isn't that right?
- 3 A No, because it wasn't a pretty sight.
- 4 Q So your testimony, sir, is that you didn't tell  
5 the homicide detectives that you saw something  
6 that wasn't a pretty sight? Is that what you're  
7 telling us?
- 8 A Rephrase the -- can you repeat the question?
- 9 Q So this is now the third statement that you gave  
10 to the Boston Police, is that right?
- 11 A What date are we talking about?
- 12 Q April 7.
- 13 A That's the second one.
- 14 Q Did you give a statement on the twenty-eighth?
- 15 A No -- I talked to Coleman.
- 16 Q Did you give a statement to a uniformed police  
17 officer on the twenty-eighth, Mr. Gauthier?
- 18 A Repeat the question.
- 19 Q On the twenty-eighth, you gave a statement to a  
20 uniformed cop?
- 21 A Correct.
- 22 Q The thirtieth you gave a statement to Sergeant  
23 Coleman?
- 24 A Correct.

1 Q April 7 you gave a statement to McLaughlin and  
2 Traylor?

3 A Correct.

4 Q So this is now the third conversation that you  
5 had with the police.

6 And once again you didn't tell them  
7 about going back to that body, is that right?

8 A Correct.

9 Q And it's only after you're leaving the police  
10 station in the car that you now bring that  
11 forward, is that right?

12 A Correct, because they didn't ask.

13 Q If they didn't ask, you didn't answer, is that  
14 right?

15 A You got it.

16 Q Did you see your friend, Jeffrey Fitzgerald, on  
17 the night of the twenty-seventh or into the early  
18 morning hours of the twenty-eighth?

19 A I didn't see him at all that day.

20 Q And you were in your apartment for most of that  
21 day, weren't you?

22 A Correct.

23 Q He didn't come down into that apartment at all?

24 A No, he didn't.



1 MR. TOCHKA: Objection, Your Honor.  
2 Asked and answered three times.

3 THE COURT: We have been around the  
4 bases. Move on, please.

5 BY MR. DOOLIN:

6 Q Did you see Duane Johnson that day?

7 A No, I didn't.

8 Q How long were you at this picnic table that  
9 night?

10 MR. TOCHKA: Objection, Your Honor.  
11 Asked and answered.

12 THE COURT: He may answer.

13 A Half hour, forty-five minutes to an hour.

14 BY MR. DOOLIN:

15 Q And how long were you in the park that night,  
16 McKinley Park?

17 A Half hour, forty-five minutes.

18 Q Did you see Mrs. Coady, Mary Coady, while you  
19 were at the picnic table?

20 A Yes, I did.

21 Q Did you see Joleena Tate's mother when you were  
22 at Joleena Tate's house?

23 MR. TOCHKA: Objection, Your Honor.  
24 Asked and answered.

1 THE COURT: Let me see counsel.

2 (Whereupon, a discussion occurred off  
3 the record at side bar.)

4 THE COURT: Ladies and gentlemen, this  
5 is what we want to do. We are going to complete  
6 Mr. Gauthier's testimony today so what I'm going  
7 to do is just give us a chance to stretch, go to  
8 the jury room, if you want to, make yourselves  
9 comfortable. We'll have you out of here by no  
10 later than four thirty. Thank you.

11 (Whereupon, the proceedings were  
12 recessed at 3:50 o'clock p.m., and reconvened at  
13 3:57 o'clock p.m.)

14 MR. DOOLIN: I have no further  
15 questions, Your Honor.

16 THE COURT: Thank you very much. Mr.  
17 Flaherty?

18 MR. FLAHERTY: Thank you, Your Honor.

19  
20 CROSS EXAMINATION

21 BY MR. FLAHERTY:

22 Q Mr. Gauthier, my name is Timothy Flaherty. I  
23 represent Mr. Anderson. I have a few questions  
24 for you.

1                   If you don't understand anything,  
2           please let me know and I'll try and repeat them  
3           and rephrase them for you. Okay?

4    A    Okay.

5    Q    You testified just a moment ago that if nobody  
6           asks you, you don't tell them, right?

7                   Meaning in your interviews with the  
8           Boston Police, if they didn't ask, you didn't  
9           tell them, right?

10   A    Correct.

11   Q    Anybody ever ask you if you shot Yazbek?

12   A    No.

13   Q    Sir, you told a lot of lies in this case, didn't  
14           you?

15                   MR. TOCHKA: Objection.

16                   THE COURT: Again, rephrase the  
17           question, sir.

18   BY MR. FLAHERTY:

19   Q    Well, would you agree with me, sir, that on March  
20           28 you lied to Detective Mahoney when he came to  
21           your house that morning and spoke to you?

22   A    Fabricated.

23   Q    Is there a difference in your mind between  
24           fabrication and lies, sir?

1 A Not really, no. I --

2 Q They both mean -- go ahead, finish your story,  
3 sir, because I don't want any --

4 THE COURT: No comments, please. You  
5 may answer the question, Mr. Gauthier.

6 A Correct.

7 BY MR. FLAHERTY:

8 Q Is there any difference in your mind between  
9 fabrication and lies, sir?

10 A No.

11 Q Same thing, right?

12 A Correct.

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: Overruled.

15 BY MR. FLAHERTY:

16 Q And on the twenty-eighth in the morning you were  
17 interviewed and you said that you and Heather  
18 Coady were in the play area at 75 Faneuil Street  
19 from eleven thirty to one a.m., right?

20 A Correct.

21 Q And you walked across the street to the large  
22 park on Faneuil Street and stayed there from ten  
23 until two thirty in the morning, right?

24 That's what you told the police,

1 correct?

2 A Correct.

3 Q That's a lie, right, sir?

4 A Excuse me. Repeat it? What --

5 Q When you told the police that you and Heather  
6 Coady were in the play area in the area of 75  
7 Faneuil Street from eleven thirty to one a.m.,  
8 then you walked across the street to the large  
9 park on Faneuil Street and stayed there until two  
10 a.m.?

11 A That's a lie, correct.

12 Q That's a lie. You also told them that you smoked  
13 a joint with Coady during this time, right?

14 A Correct.

15 Q That was a lie, too?

16 A No.

17 Q Didn't you testify here today, sir, you smoked  
18 marijuana?

19 A Four or five.

20 Q Four or five. You also said at no time did you  
21 observe Coady speaking with another female,  
22 right? That was a lie, right, sir?

23 A Depends on what time you're talking about.

24 Q Well, I'm talking about your interview on March

1 28 in the morning with Detective Paul Mahoney.  
2 A Correct. She wasn't talking to anyone. That's  
3 what I told.  
4 Q That's a lie because you saw her talking to  
5 Joleena Tate?  
6 A Correct.  
7 Q According to your testimony here today, right?  
8 A Correct.  
9 Q You also testified, sir, today here at this trial  
10 that you were wearing a black jacket on March 28,  
11 the twenty-seventh and the twenty-eighth, right?  
12 A Correct.  
13 Q You're sure of that?  
14 A Positive.  
15 Q Your memory today isn't better than it was on  
16 March 28?  
17 A It was a black polo jacket.  
18 Q Black polo jacket?  
19 A Yes.  
20 Q No doubt in your mind today?  
21 MR. TOCHKA: Objection, Your Honor.  
22 THE COURT: He may answer that.  
23 BY MR. FLAHERTY:  
24 Q No doubt in your mind today, right?

- 1 A About what?
- 2 Q That you were wearing a black polo jacket on  
3 March 27 or the twenty-eighth?
- 4 A Correct, no doubt.
- 5 Q Didn't you tell Detective Mahoney the next  
6 morning, sir, that you were wearing a dark blue  
7 jacket with Nautica in large white letters on the  
8 sleeve?
- 9 A Yes, it was. It was a black Nautica.
- 10 Q Is that a lie?
- 11 A No. I still have the coat. Do you want to see  
12 it?
- 13 Q I don't need to see the coat. I'm asking you  
14 now, was that a lie just now when you testified  
15 that you were wearing a black jacket?
- 16 MR. TOCHKA: Objection. Objection.
- 17 THE COURT: He may answer it.
- 18 A That night I was wearing a Nautica coat.
- 19 Q Did you just tell this jury less than thirty  
20 seconds ago that you were wearing a black polo  
21 jacket?
- 22 A I said that but it was a Nautica coat, yes,  
23 correct.
- 24 Q So which is it, sir?

1 A Black Nautica.

2 Q Which story are you --

3 MR. TOCHKA: Objection, Your Honor.

4 THE COURT: Please don't interrupt each  
5 other. I think one more question on this, then  
6 you can move on, Mr. Flaherty.

7 BY MR. FLAHERTY:

8 Q Which of your stories is the truth, sir?

9 A Black Nautica.

10 MR. TOCHKA: Objection.

11 THE COURT: The objection counsel is  
12 rising to make is sustained. The answer is  
13 stricken. You may put another question.

14 BY MR. FLAHERTY:

15 Q When you spoke with Detective Coleman and  
16 Detective McLaughlin on March 30, you also  
17 fabricated, sir, did you not?

18 MR. TOCHKA: Objection, Your Honor.

19 THE COURT: He may answer that.

20 A I don't understand the question.

21 BY MR. FLAHERTY:

22 Q On March 30 there was a portion of an interview  
23 that was taped with you and Detective Coleman and  
24 Detective McLaughlin, right, Mr. Gauthier?



1 A Correct.

2 Q And during that taped portion of the interview,  
3 you failed to tell the truth, right?

4 MR. TOCHKA: Objection. Your Honor.

5 THE COURT: If he understand the  
6 question, he may answer it.

7 A I don't understand the question.

8 BY MR. FLAHERTY:

9 Q Well, were you asked on that time when you spoke  
10 to them whether or not you had an occasion to see  
11 the body at 89 Faneuil Street when you spoke to  
12 Detective Coleman and Detective McLaughlin on  
13 March 30 at One Schroeder Plaza, Boston Police  
14 headquarters?

15 A Correct.

16 Q Do you remember being asked that question?

17 A I don't remember.

18 Q You don't remember being asked that question? Is  
19 your present memory exhausted, sir?

20 A Yes.

21 Q I'm sorry. I didn't hear your last answer.

22 A I have been in here too long.

23 Q Okay.

24 MR. TOCHKA: I couldn't hear your last

1 answer. Would you repeat it?

2 MR. FLAHERTY: Well, may I approach,  
3 Your Honor?

4 THE COURT: You may.

5 BY MR. FLAHERTY:

6 Q Mr. Gauthier --

7 MR. TOCHKA: Can I have a page number,  
8 please?

9 MR. FLAHERTY: It's page twenty-one,  
10 statement of Eddy Gauthier.

11 BY MR. FLAHERTY:

12 Q Just to yourself, would you read that question  
13 and look up at me when you're done?

14 Now, does that refresh your memory as  
15 to whether or not you were asked whether --

16 A Yes, I was.

17 Q You were asked, sir, weren't you?

18 A Yes, I was.

19 Q And on the thirtieth you lied to Coleman and  
20 McLaughlin, right?

21 A Correct.

22 Q You told them you didn't see anything, right?

23 A Correct.

24 Q In fact, sir, you testified about a statement

1           that you say Tanzerius Anderson and Jason  
2           Robinson made to you about Mr. Yazbek saying  
3           police, police, right?

4    A       Correct.

5    Q       But on March 30 you spoke on the telephone to  
6           Detective Coleman, right?

7    A       What day is the thirtieth?

8    Q       The thirtieth, sir, would be the Thursday.

9    A       Is that the day I went to Schroeder Plaza?

10   Q       That's right. In the afternoon you spoke to  
11           Detective Coleman on the telephone, right?

12   A       I believe that was the day, the day after I went  
13           in to Schroeder Plaza.

14   Q       There's one o'clock in the morning and then  
15           there's the following afternoon, right?

16   A       Correct.

17   Q       And when you spoke to Detective Coleman you told  
18           him about your conversation that you supposedly  
19           had or, according to you, had at the Scrub-A-Dub  
20           with Tanzerius Anderson and Jason Robinson and  
21           Joleena Tate and Heather Coady, right?

22   A       Correct.

23   Q       And when you relayed to Detective Coleman  
24           immediately after the conversation what took

1 place, you never told Detective Coleman any  
2 mention of police, police being stated by Mr.  
3 Yazbek, right?

4 A I just told him that we met each other at Scrub-  
5 A-Dub.

6 Q And you told him about the conversation, right?

7 A No. I just told him we went for a ride and what  
8 was going on in the car and that stuff, not what  
9 was said on the outside of the car.

10 Q You'll agree with me, sir, that you never said to  
11 Detective Coleman immediately after this  
12 conversation anything about police, police,  
13 right?

14 A Correct.

15 Q Now, is it also, sir, true that according to your  
16 testimony here today, you lied to Tanzerius  
17 Anderson and Jason Robinson about what you said  
18 to the police?

19 A Yes, it is.

20 Q And is it also true, sir, according to your  
21 testimony here today, that you lied to a Globe  
22 reporter or a Herald reporter about your  
23 observations?

24 A Correct.

- 1 Q And is it also true, sir, that you lied to  
2 Heather Coady about what you said to the police?
- 3 A No.
- 4 Q Didn't you tell Heather Coady that everything was  
5 going to follow through, you're going to stick to  
6 the story?
- 7 A Yes, yes. I did tell her that.
- 8 Q That wasn't true, right?
- 9 A No.
- 10 Q So you lied to Heather Coady, too, right?
- 11 A Yes.
- 12 Q And isn't it true, sir, that you had planned to  
13 lie with Heather Coady for some reason, right?
- 14 The story about having sex that night,  
15 right?
- 16 A Yes. That's what we came up with.
- 17 Q You came up with a story, right? On your walk  
18 back from Joleena Tate's house?
- 19 A Correct.
- 20 Q And, sir, it's your testimony here today that you  
21 had nothing at all to do with what happened at  
22 the rear of 89 Faneuil Street, right?
- 23 A Correct.
- 24 Q Yet you found -- you feel as though it was

1 important for you to come up with a story for  
2 your whereabouts on March 28, 2000, right?

3 A Correct.

4 Q And you felt it was important to come up with a  
5 story that matched the story of Heather Coady  
6 regarding her whereabouts on March 28, 2000?

7 A Correct.

8 Q And it's your testimony that your good friend,  
9 Heather Coady, had nothing to do with what took  
10 place on March 28, 2000 at 89 Faneuil Street,  
11 right?

12 A Correct.

13 Q In fact, doesn't the story that you and Heather  
14 came up with also serve to protect Joleena Tate?  
15 Right?

16 A No.

17 MR. TOCHKA: Objection, Your Honor, to  
18 the form of the question.

19 THE COURT: Sustained. The answer is  
20 stricken.

21 BY MR. FLAHERTY:

22 Q Well, when you told the police on March 28 you  
23 didn't see Heather Coady outside with another  
24 female, that wasn't true, right?

1 A It wasn't true.

2 Q You did see Heather out there with Joleena Tate,  
3 didn't you?

4 A Correct.

5 Q Now, sir, you talked to the police at your house  
6 on the twenty-eighth, right?

7 A Correct.

8 Q You talked to the police at headquarters on the  
9 thirtieth at one a.m., right?

10 A Correct.

11 Q You talked to the police in the afternoon on the  
12 thirtieth by the telephone, correct?

13 A Correct.

14 Q And you talked to the police on April 7, 2000, in  
15 the afternoon for a second time, right?

16 A Correct.

17 Q And that second statement was also recorded, or  
18 at least portions of it were recorded, right?

19 A Correct.

20 Q And during those four times that you spoke to the  
21 police, at no time did you ever mention what you  
22 said here today that you saw Mr. Yazbek's body  
23 behind 89 Faneuil Street, right?

24 A Correct.

1 Q And you were asked whether or not you had seen  
2 it, correct?

3 A Correct.

4 Q And at every time you were asked, you said, no, I  
5 didn't see it, right?

6 A Correct.

7 Q On April 7 when you were being interviewed and  
8 your interview was being tape recorded, at page  
9 twelve, sir, you were asked, going back to the  
10 twenty-eighth, okay, and again much of this has  
11 been covered on the prior tape but at some time  
12 do you see Jason and Tee leave the area of 89  
13 Faneuil heading in the direction of the parking  
14 lot?

15 Answer: Yes. Prior to the shots they  
16 came out of -- comma, I didn't see them come out  
17 of the building.

18 A I didn't see them come out of the building. I  
19 seen them by that building, right at the front  
20 entrance.

21 Q And here today, sir, did you testify you saw them  
22 come out of 89?

23 A No, I didn't say I seen them come out of the  
24 building.



1 Q Let's be straight then.

2 MR. TOCHKA: Objection, Your Honor.

3 Objection.

4 THE COURT: That shall be stricken. I

5 caution you again, Mr. Flaherty. Just a

6 question, please.

7 MR. FLAHERTY: Okay.

8 BY MR. FLAHERTY:

9 Q Today, sir, as you testify here, is it a fair

10 statement that you ever saw either Tanzerius

11 Anderson or Jason Robinson leave 89 Faneuil

12 Street?

13 A I never seen them come out of that building,

14 correct.

15 Q Okay. And, in fact, sir, you never saw Tanzerius

16 Anderson in the area of the maintenance, where

17 the fence is, correct?

18 A Correct.

19 Q You never saw them get into a car either, did

20 you?

21 A No. I seen them near the car, I heard the doors

22 shut. I couldn't see the car because there was

23 cars in front of it.

24 Q What's your best memory, sir, how many doors you

1 heard shut?

2 A I heard three doors shut.

3 Q Now, on April 7 during your taped interview,  
4 didn't you say --

5 MR. TOCHKA: Could I have the page?

6 MR. FLAHERTY: Page thirteen.

7 BY MR. FLAHERTY:

8 Q Didn't you say you heard the door shut?

9 A Yeah. I heard the doors, the door shut, yeah. I  
10 heard the door shut.

11 Q Is there a difference between the door and three  
12 doors in your mind, sir?

13 A Yeah. There's an obvious difference, yeah.

14 Q Okay. And on April 7 you told them, the police,  
15 during your taped interview you heard the door  
16 shut, right? At page thirteen?

17 A I heard the door shut, yeah.

18 Q Now, you spoke to the police on the twenty-  
19 eighth, the thirtieth, twice on the thirtieth,  
20 the seventh, and then also on the way home on the  
21 seventh so I think five separate times you spoke  
22 to the police, correct?

23 A Correct.

24 Q And at no time in speaking with the police did

1 you mention, as you mentioned here today in your  
2 direct examination, that Tanzerius Anderson went  
3 to the Pig and Whistle to make a telephone call,  
4 right?

5 A I believe I did. No, not to the Pig and Whistle,  
6 directly to make that phone call, I did, yes.

7 Q So that fact, the Pig and Whistle -- you also  
8 testified before the grand jury, correct?

9 A Yes, I did.

10 Q And before the grand jury when you were placed  
11 under oath, you never testified that Tanzerius  
12 Anderson went to the Pig and Whistle to make a  
13 phone call, right?

14 A Correct.

15 Q Okay. So that fact, would you agree with me, is  
16 that different from the five statements you made  
17 to the police and your testimony at the grand  
18 jury?

19 A Repeat the question?

20 Q Your testimony today that Tanzerius Anderson went  
21 to the Pig and Whistle, is that different from  
22 the five statements that you gave to the police  
23 and your statement at the grand jury?

24 A Correct.

1 Q On March 27 into the twenty-eighth, you had been  
2 smoking marijuana, right?

3 A Correct.

4 Q And you started smoking marijuana at five o'clock  
5 in the afternoon?

6 A Correct.

7 Q And is it your testimony, sir, that everybody at  
8 75 Faneuil Street was smoking marijuana?

9 A I believe so.

10 Q When you say you believe so, are you including  
11 Jason Robinson and Tanzerius Anderson as smoking  
12 marijuana?

13 A Yes, correct.

14 Q And could you give us your best estimate as to  
15 how much marijuana was smoked at 75 Faneuil  
16 Street?

17 A Three, four blunts. Three, four blunts.

18 Q And it's your testimony that, and correct me if  
19 I'm wrong, Tanzerius Anderson and Joleena Tate  
20 left the apartment together, right?

21 A Correct.

22 Q And Jason Robinson remained in the apartment?

23 A Correct.

24 Q And then it's your testimony, correct me if I'm

1 wrong, that Tanzerius Anderson returned to the  
2 apartment, right?

3 A Correct.

4 Q And then you never saw him again, right?

5 A He returned to the apartment and then he left to  
6 go make a phone call. I didn't see him again,  
7 that's correct.

8 Q You never saw him again on March 28, correct?

9 A I didn't see him at all on the twenty-eighth,  
10 correct.

11 Q Okay. And during the time that the group was at  
12 75 Faneuil Street, your testimony, correct me  
13 again if I'm wrong, you heard no discussion about  
14 any robbery, right?

15 A Correct.

16 Q And is it your best estimate, sir, correct me if  
17 I'm wrong, Heather Coady decides to walk her dogs  
18 before midnight?

19 How much prior to midnight would you  
20 say?

21 A A little after eleven. I know it was before  
22 twelve because Heather's mother came out and said  
23 it was eleven o'clock after Heather walked the  
24 dog.

1 Q Okay. And that's about eleven o'clock she  
2 decided to go out and walk the dogs? That was  
3 the purpose for her leaving the apartment?

4 A Yes.

5 Q And the purpose for your leaving the apartment  
6 was now to smoke a joint outside?

7 A Smoke a blunt, yes.

8 Q And it's at that point you make observations from  
9 the picnic table of the dumpster area, right?

10 A Correct.

11 Q Now, isn't it fair to say between the picnic  
12 area, between the picnic table area and the  
13 dumpster, there is a tree?

14 A No.

15 Q There's not a tree?

16 A Yes, by the building.

17 Q The tree is by the building?

18 A Correct.

19 Q Is there also some shrubbery between you and the  
20 fenced in area, the maintenance area?

21 A No.

22 Q Is there a pine, sort of like a Christmas tree  
23 there?

24 A That's by the building.

1 Q That's by the building, and there is a large oak  
2 tree or something to your right?

3 A Correct.

4 Q You'll agree with me, sir, that there is  
5 absolutely no lighting there by the maintenance  
6 area where the fences are, right?

7 A It's pretty dark, correct.

8 Q You'll agree with me, sir, that there is  
9 absolutely no lighting there, correct?

10 A There's lighting on the building.

11 Q Okay. The building across from the fence? The  
12 auto building or whatever it is outside the  
13 projects?

14 A No. There's a light on 89.

15 Q Alright. Now, how far away is 89?

16 A 89 is right, like it's right across from where I  
17 am.

18 Q Does the light on 89 illuminate the area --

19 A No.

20 Q -- of the maintenance and the chain link fence  
21 where the maintenance trucks are parked?

22 You can't see through the fence, right?

23 A No, you can't.

24 Q Because there's that green siding to the fence?

- 1 A Correct.
- 2 Q And does the green siding cause your view to be  
3 somewhat obstructed at night of what takes place  
4 in there?
- 5 A Yes.
- 6 Q And would you agree with me, sir, from where you  
7 were sitting at the picnic table looking in the  
8 dark towards the green siding, the fenced in  
9 area, you don't have a view, a good view, right?
- 10 A There's a slight space from in between the three  
11 fences where I seen him.
- 12 Q Would you agree with me, sir, as you were  
13 sitting at the picnic table looking at the dark  
14 area where this green siding is on the chain link  
15 fence, that your view was not very good?
- 16 A Yes, correct.
- 17 Q And it's your testimony, sir, that you don't  
18 remember what the person you say was Jason  
19 Robinson was wearing? Correct?
- 20 A Correct.
- 21 Q And your testimony is, sir, that at some point  
22 you discovered the Boston Red Sox hat on the  
23 picnic table, right?
- 24 A Correct.



1 Q Now, sir, on March 30 of 2000, a couple of days  
2 after this, you spoke to the police, right?

3 A That's correct.

4 Q Incidentally, sir, how old are you?

5 A Twenty-five.

6 Q You were twenty-three at the time, correct?

7 A Correct.

8 Q Older than Jason Robinson?

9 A Correct.

10 Q Older than Tanzerius Anderson?

11 A I don't know how old he is.

12 Q Older than Joleena Tate and Heather Coady?

13 A Correct.

14 Q You were asked on March 30, page six of your  
15 first statement, your first recorded statement to  
16 the police, what Mr. Robinson was wearing, right?

17 A Yes.

18 Q And you said a wave cap?

19 A Yes, I did.

20 Q A wave cap, correct?

21 A Yes.

22 Q On March 30 you never said anything about a  
23 Boston Red Sox cap, did you, sir?

24 A No.

1 Q On April 7 you never said anything about a Boston  
2 Red Sox cap, did you?

3 A No.

4 Q At the grand jury you never said anything about a  
5 Boston Red Sox cap, sir, right?

6 A No.

7 Q As a matter of fact, today is the first time you  
8 have ever said anything about a Boston Red Sox  
9 cap, right?

10 A On record, yes.

11 Q In the days following the twenty-seventh or the  
12 twenty-eighth, there was an increased police  
13 presence at 89 Faneuil Street, right? In that  
14 area, the housing development?

15 A Correct.

16 Q As a matter of fact, you said that you decided to  
17 get into that car and drive away when you saw  
18 police driving around, right?

19 A When?

20 Q When you have this conversation at the Scrub-A-  
21 Dub.

22 A Oh, yes, correct.

23 Q Alright. And that's a decision that you made  
24 because you were nervous about the police driving

1 around?

2 A Not that I made.

3 Q Didn't you say that we all made the decision to  
4 go?

5 A Yes, we all made, not I.

6 Q Does that include you, Mr. Gauthier?

7 A Correct.

8 Q And is it fair to say, sir, that in the days  
9 following this you realized you had lied to the  
10 police, right?

11 MR. TOCHKA: Objection, Your Honor.

12 THE COURT: He may answer that.

13 A Would you repeat the question?

14 BY MR. FLAHERTY:

15 Q Well, you realized, as you realized here today,  
16 sir, that you had lied to the police during the  
17 investigation, correct?

18 A Correct.

19 Q And at some point you decided to go in and talk  
20 to the police?

21 A Correct.

22 Q Sir, when you talked to the police, again you  
23 didn't tell them what you said here today, is  
24 that fair to say?

1 MR. TOCHKA: Objection.

2 THE COURT: Sustained.

3 BY MR. FLAHERTY:

4 Q You testified, sir, that you went to Joleena  
5 Tate's house and you saw Heather and Joleena  
6 speaking, right?

7 A Yes.

8 Q And you don't know what they talked about but you  
9 saw them speaking?

10 A Right.

11 MR. TOCHKA: Objection, Your Honor.  
12 Asked and answered.

13 THE COURT: Sustained.

14 BY MR. FLAHERTY:

15 Q After that, that's when you have your  
16 conversation with Heather, right?

17 After seeing Heather and Joleena  
18 together, you have a conversation with Heather on  
19 the way back to the projects?

20 A Correct.

21 Q And that's when you and Heather come up with a  
22 story about you and Heather having sex that  
23 night, right?

24 MR. TOCHKA: Objection, Your Honor.

1           Asked and answered.

2                         THE COURT: Sustained.

3     BY MR. FLAHERTY:

4     Q     Well, I'll ask you again. Sir, when did you come  
5           up with that story?

6                         MR. TOCHKA: Objection, Your Honor.

7                         THE COURT: Sustained.

8     BY MR. FLAHERTY:

9     Q     Sir, the only reason you came up with an alibi is  
10           because you didn't want the police to know the  
11           truth, correct?

12    A     No.

13    Q     Well, you came up with an alibi to protect what  
14           really happened, right, sir?

15    A     To protect myself.

16                         MR. FLAHERTY: Thank you, Your Honor.

17                         No further questions.

18                         THE COURT: Anything more, Mr. Tochka?

19                         MR. TOCHKA: Yes.

20

21                                 REDIRECT EXAMINATION

22    BY MR. TOCHKA:

23    Q     Sir, why do you need to protect yourself?

24    A     Sorry?

1 Q What do you mean, to protect yourself?

2 MR. DOOLIN: I object.

3 THE COURT: Overruled.

4 BY MR. TOCHKA:

5 Q What do you mean?

6 A What do I mean? I mean, I know people are  
7 looking out the window and --

8 THE COURT: Another question, please.

9 BY MR. TOCHKA:

10 Q And when you say that you did it to protect  
11 yourself, what do you mean when you say you knew  
12 people were looking out the window?

13 A There was a big bang. Of course people go to  
14 look out the window.

15 Q That particular night, sir, how many blunts --  
16 you said about five blunts were smoked, correct?

17 A Correct.

18 Q Did you smoke five blunts totally by yourself?

19 A No.

20 Q How were the blunts smoked, sir?

21 A Between everybody.

22 Q So everybody was on that five cigarettes that  
23 you're talking about? Everyone was smoking those  
24 five cigarettes?

1 A Except for the one me and Heather smoked in the  
2 play area.

3 Q Except for that one, the persons that you're  
4 referring to that were smoking were Tanzerius  
5 Anderson, Jason Robinson and Joleena Tate,  
6 correct?

7 A Correct.

8 Q Both counsel kept on asking you about the  
9 particular statements that you gave the police  
10 and what you told them or what you did not tell  
11 them, that you saw the body in 89.

12 Do you remember them asking the  
13 questions that you did not tell the police that  
14 in those taped statements?

15 A Yes.

16 Q Well, let's talk about the first, the March 30  
17 statement that you gave to the police.

18 Did you tell the police that you saw  
19 Jason Robinson and Tanzerius Anderson in your  
20 apartment?

21 MR. DOOLIN: Judge, I object.

22 THE COURT: I'll see you at side bar.

23 (Whereupon, the following discussion  
24 occurred at side bar:)

1 MR. DOOLIN: Judge, he's trying to put  
2 in prior consistent statements that have nothing  
3 to do with inconsistencies that were brought out.

4 THE COURT: Prior consistent statements  
5 can be admitted if there has been on cross  
6 examination some sort of suggestion of a  
7 fabrication or recent contrivance.

8 MR. TOCHKA: Your Honor, my response to  
9 that is that they can't put in part of it in  
10 terms of what was not said and leave it with this  
11 jury that he was basically lying so it's in terms  
12 of completeness of a particular statement and --

13 THE COURT: Okay. The objection is  
14 overruled.

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

17 BY MR. TOCHKA:

18 Q Sir, in the March 30 taped statement, did you  
19 tell the police that Jason Robinson and Tanzerius  
20 Anderson were in your apartment?

21 A Yes.

22 Q In the March 30 statement, did you tell the  
23 police that you saw Jason Robinson by the fence  
24 running back and forth?



1 MR. DOOLIN: I object.

2 THE COURT: Sustained.

3 BY MR. TOCHKA:

4 Q Did you tell the police, sir, in your March 30  
5 statement that you saw Tanzerius Anderson and  
6 Jason Robinson coming out from the back of the  
7 Faneuil development, the 89 area that you pointed  
8 to on that aerial photograph?

9 MR. DOOLIN: I object.

10 THE COURT: Sustained.

11 MR. TOCHKA: If I could be heard on  
12 that point at side bar? Just that point?

13 (Whereupon, the following discussion  
14 occurred at side bar:)

15 THE COURT: There was no impeachment of  
16 the witness on that point.

17 MR. TOCHKA: As to the April 7, Mr.  
18 Flaherty asked him, did you say to the police on  
19 the seventh, the taped statement, that you saw  
20 these individuals coming out of the back of the  
21 development. He referred to page twelve. It's a  
22 prior consistent statement.

23 THE COURT: Anyone want to respond to  
24 that? Okay. The objection is overruled.

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

3 BY MR. TOCHKA:

4 Q Sir, Mr. Flaherty read to you a statement, a  
5 portion of a statement that was given by you on  
6 April 7 as to whether or not you had seen the  
7 individuals, Jason Robinson and Tanzerius  
8 Anderson, leaving the back of 89..

9 Do you recall him asking you that  
10 question?

11 A Yes, I do.

12 Q And do you recall that on March 30, the week  
13 before the statement that you gave to the police  
14 - on page ten, counsel, into page eleven - where  
15 you told in a taped statement that you had seen  
16 the two individuals who you later identified as  
17 Jason Robinson and Tanzerius Anderson walk out of  
18 the back of the 89 Faneuil Street towards 85  
19 after you heard the shot?

20 Is that what you told them on the taped  
21 statement, sir?

22 A Correct.

23 Q Is that what you told them, sir, just seventy-two  
24 hours after this particular shot you heard, on

1 April 30 at one o'clock in the morning with your  
2 mother?

3 A Correct.

4 MR. FLAHERTY: I'd object to the form,  
5 Your Honor.

6 THE COURT: Sustained.

7 BY MR. TOCHKA:

8 Q Well, let me ask you this question. Were you  
9 asked then. While you were walking through the  
10 play area, can you tell us what happened next?

11 Answer: I was walking through the play  
12 area and I heard a bang.

13 MR. DOOLIN: Judge, I object.

14 THE COURT: I don't believe there was a  
15 question. I'm going to strike that, sir. Would  
16 you put a question, please?

17 BY MR. TOCHKA:

18 Q And, sir, let me also ask you, on that March 30  
19 statement, did you tell the police about what  
20 happened in McKinley Park between Jason Robinson  
21 and Tanzerius Anderson, yourself, Heather Coady  
22 and Joleena Tate?

23 MR. DOOLIN: I object.

24 THE COURT: Sustained.

1 MR. TOCHKA: I move to introduce into  
2 evidence the March 30 taped statement at this  
3 time.

4 THE COURT: Move on. Do you have any  
5 other questions of the witness at this time?  
6 I'll take that up later, sir.

7 MR. TOCHKA: I do, Your Honor.

8 BY MR. TOCHKA:

9 Q Sir, with respect to the April 7 statement that  
10 you gave to the police, did you tell them who was  
11 in your apartment that night?

12 MR. DOOLIN: I object.

13 THE COURT: Sustained.

14 BY MR. TOCHKA:

15 Q Sir, did you tell the police that you saw -- did  
16 you tell the police on the April 7 statement you  
17 saw Jason Robinson by the maintenance area?

18 MR. DOOLIN: Judge, I object.

19 MR. FLAHERTY: Objection.

20 THE COURT: The objections are  
21 sustained.

22 BY MR. TOCHKA:

23 Q Sir, did you tell the police that you saw Jason  
24 Robinson and Tanzerius Anderson in the McKinley

1 Park with Joleena Tate and Heather Coady?

2 MR. FLAHERTY: Objection.

3 MR. DOOLIN: I object.

4 THE COURT: I'll see counsel.

5 (Whereupon, a discussion occurred off  
6 the record at side bar.)

7 BY MR. TOCHKA:

8 Q Sir, defense counsel asked you whether or not --  
9 the reason why you didn't tell the police as to  
10 what you saw on that particular night in back of  
11 89.

12 As a matter of fact, didn't you at some  
13 point tell the police on your own what you saw?

14 A Yes.

15 Q And did you volunteer that to the police while  
16 you were driving home?

17 A Yes.

18 Q And, sir, defense counsel asked you if you had  
19 anything to do with the death of Iman Yazbek.

20 Did you have anything to do with the  
21 death of that man?

22 A I'm sorry?

23 MR. DOOLIN: Judge, I object.

24 THE COURT: He may answer that

1 question.

2 BY MR. TOCHKA:

3 Q Did you, sir?

4 A Repeat the question.

5 MR. DOOLIN: I object, Your Honor.

6 BY MR. TOCHKA:

7 Q Sir, is this the man that you saw lying in the  
8 back of 89?

9 THE COURT: Mr. Tochka, this is the  
10 last question.

11 MR. TOCHKA: It's the last question.

12 THE COURT: Take that away, please.  
13 Counsel, please sit down. The objections are  
14 overruled.

15 BY MR. TOCHKA:

16 Q Did you have anything to do with the death of  
17 Iman Yazbek, the man that you knew as Yaz?

18 A No, I didn't.

19 MR. TOCHKA: Thank you. No further  
20 questions.

21 THE COURT: Thank you, sir. You may  
22 step down. May I see counsel, please?

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

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THE COURT: Ladies and gentlemen, we are going to adjourn for the day. Thank you for your continued patience with us and if you would please put your notes in your envelopes and leave them on your seats.

Before you depart, it's again my duty to remind you of your continuing obligations in this case. Those obligations include not discussing the case with anyone, not allowing anyone to talk to you. You are also not permitted to return to the scene of the locations that you saw on the view yesterday, the ones in Brighton and in Watertown, intentionally, that is. If you find yourself driving by because that's the way you get back and forth to where you're going, that doesn't matter but you are not to revisit those scenes for the purpose of making any independent investigation. Also, you are not to consult any outside source, treatise or book, Internet, whatever, about any issue that has been raised in the case. Everything you will need to decide the case and base your verdict on will be given to you in the courtroom through what the witnesses tell you and the exhibits.

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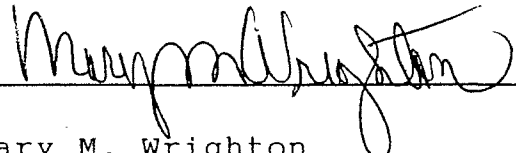
Thank you again for your attention on  
this long day. We'll see you tomorrow at nine  
o'clock. We expect the schedule tomorrow to be  
about nine until four. Thank you.

(Whereupon, the proceedings were  
adjourned at 4:23 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 332, 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.

  
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Mary M. Wrighton

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