

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

\* \* \* \* \*

COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL  
DAY FIVE

JASON ROBINSON and  
TANZERIUS 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 25, 2002  
Boston, Massachusetts

Mary M. Wrighton  
Official Court Reporter

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1 (Whereupon, the proceedings were  
2 reconvened at 9:46 o'clock a.m., without the  
3 jury.)

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

6 THE COURT: I'm willing to order a  
7 short voir dire of Joleena Tate on the issue of  
8 whether one or both of the defendants were  
9 intoxicated at the time they made allegedly  
10 inculpatory statements to her. So only on that  
11 issue and I believe it's only on that one  
12 occasion right around the time of the murder, not  
13 the ones subsequent over the next several days.

14 MR. TOCHKA: If I could be heard on  
15 that, I strongly would suggest there is no need  
16 for a voir dire because it's precisely the same  
17 that you heard from Eddie Gauthier.

18 THE COURT: You just told me, sir, you  
19 didn't know. Maybe I misunderstood what you  
20 said.

21 MR. TOCHKA: She had only seen him for  
22 an hour and a half, Tanzerius Anderson, so the  
23 alcohol consumption -- my understanding what she  
24 did was, when she was at the restaurant, Joleena

1 Tate was drinking alcohol, she was intoxicated as  
2 a result of drinking alcohol. That does not go  
3 as to the voluntariness of the defendant's  
4 statement.

5 THE COURT: I understand that. That  
6 isn't what we're talking about. What I  
7 understood you to say was you did not know what  
8 Tate was going to say about observations of one  
9 or both of the defendants and their state of  
10 sobriety.

11 MR. TOCHKA: Okay. I should rephrase  
12 it a little better. What I meant is, unless  
13 defense counsel has more information than I have  
14 which I suspect that they don't, I have no  
15 information that there is anything more than what  
16 you're heard from Eddie Gauthier so when defense  
17 counsel says you're going to hear that they were  
18 drunk and the like, there is no information --  
19 there is no evidence that he was drunk, that he  
20 was even drinking.

21 THE COURT: Mr. Anderson?

22 MR. TOCHKA: Yes. There was no  
23 evidence at all to what my brother is referring  
24 to. She does say in the statement that she was

1 drunk and that she was smoking but that's from  
2 the Wadi's, as a result of drinking at Wadi's.

3 There is no evidence, obviously  
4 Tanzerius Anderson wasn't at Wadi's so there is  
5 going to be no evidence of him other than smoking  
6 marijuana which you've heard from Eddie Gauthier.  
7 That's it.

8 THE COURT: And Tate was not in  
9 Gauthier's room?

10 MR. TOCHKA: Right.

11 MR. DOOLIN: Tate was at Gauthier's  
12 house.

13 THE COURT: For a very short period of  
14 time.

15 MR. TOCHKA: When they were smoking for  
16 an hour and a half. She was with them for an  
17 hour and a half in the room. Joleena Tate was  
18 with Tanzerius Anderson for an hour and a half  
19 along with Eddie Gauthier and the other  
20 individuals, smoking, so there is no additional  
21 evidence that's coming in about Tanzerius  
22 Anderson drinking or being intoxicated or the  
23 like.

24 THE COURT: Okay.

1 MR. TOCHKA: The only additional  
2 evidence is that after the murder and after they  
3 leave McKinley Park, while they're driving  
4 around, they smoke a blunt, they all share a  
5 blunt, that's it. But you have already heard  
6 from Eddie Gauthier in terms of the amount of  
7 marijuana.

8 THE COURT: Anything, Mr. Flaherty, Mr.  
9 Doolin, you would like to say on the record?

10 MR. DOOLIN: No, Your Honor, I would  
11 just like to explore it, Judge, for the voir  
12 dire, just to satisfy the Court on humane  
13 practice.

14 THE COURT: Alright. I'll let you know  
15 after Vega if we are going to do a voir dire of  
16 Tate on this. Alright. Thank you.

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

19 (Whereupon, the jury was escorted into  
20 the courtroom at 9:50 o'clock a.m.)

21 THE COURT: Ladies and gentlemen, I'd  
22 like to welcome you back this morning. I'll  
23 explain the delay in getting started. Sometimes  
24 it's necessary for the Court and the lawyers to

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resolve certain issues before we have you out.  
So we appreciate your patience during those  
times.

Before we resume the trial once again,  
I just ask whether there is any among you who has  
not complied with any of my instructions  
including not discussing the case, revisiting any  
of the sites that we saw on the view, or  
consulting any outside source? If you have not  
so complied, would you raise a hand?

Thank you. The record should reflect  
no juror has.

We are ready for the next Commonwealth  
witness.

MR. TOCHKA: Your Honor, the  
Commonwealth would call Oscar Vega. May I  
proceed, Your Honor?

THE COURT: Yes, sir.

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OSCAR VEGA,

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

DIRECT EXAMINATION

BY MR. TOCHKA:

Q Sir, can you please tell us your name?

A Oscar Vega.

Q You have got to speak up loudly.

A I'm trying. I lost my voice over the weekend.

Q If you can speak into the microphone. Can you spell your first and last name for the reporter, please?

A O-s-c-a-r, Vega, V-e-g-a.

Q How old are you, sir?

A Twenty-three.

Q Do you work?

A Yes.

Q And what type of work do you do?

A I work for AT&T Broadband. I do sales and service, customer service relationships.

THE COURT: Can you make sure you try to speak directly into the microphone as clearly as you can? Thank you.

THE WITNESS: Okay.



1 BY MR. TOCHKA:

2 Q How long have you worked for AT&T?

3 A I just started January.

4 Q And before that where did you work?

5 A I was working for Auto Zone.

6 THE COURT: I'm sorry, sir?

7 THE WITNESS: Auto Zone.

8 THE COURT: Could you spell that,  
9 please?

10 THE WITNESS: A-u-t-o, Z-o-n-e, auto  
11 parts store.

12 BY MR. TOCHKA:

13 Q Where is that located?

14 A 485 Arsenal Street.

15 Q That's in Watertown?

16 A Yes, correct.

17 Q How long did you work for them?

18 A About two years.

19 Q And, sir, have you gone to college?

20 A Yes.

21 Q How much college education have you gotten?

22 A Two and a half years now.

23 Q And are you now going to continue with AT&T?

24 A Correct.

1 Q While going to college?

2 A Correct.

3 Q Actually where are you living now?

4 A 284 Beacon Street, apartment fifteen.

5 Q Apartment fifteen?

6 A (Nodded head.)

7 Q You have to say yes or no for the record.

8 A Oh, yes.

9 Q And that's located where? Where is that located?

10 A In Brighton.

11 Q Is that the Faneuil developments?

12 A Correct.

13 Q How long have you lived in the Faneuil  
14 developments for?

15 A Nineteen years.

16 Q Nineteen years. Do you know a person by the name  
17 of Eddie Gauthier?

18 A Yes, sir.

19 Q What's your relationship with Eddie Gauthier?

20 A We went to middle school together at the William  
21 Howard Taft School and we became close friends  
22 from there and we're basically really good  
23 friends.

24 Q And do you know a person by the name of Heather

1 Coady?

2 A Yes, sir.

3 Q Do you know where she lives?

4 A Yes, sir.

5 Q Where is that?

6 A She's the next door neighbor of mine.

7 Q And do you know what building that's is that she  
8 lives in?

9 A The corresponding building to --

10 Q Okay. And as you're looking from the North  
11 Beacon side, is she the first building in and  
12 you're the building behind her?

13 A Yes.

14 Q How long have you known her for?

15 A A good fifteen years, maybe.

16 Q And do you know a person by the name of Yaz?

17 A Yes.

18 Q How did you know Yaz?

19 A I know him mostly by reputation. I mostly know  
20 his family members from, they own garages and his  
21 family lived across the way in North Beacon  
22 Street and they worked on my car and I know him  
23 mostly by reputation, of how highly they speak of  
24 him.

1 Q And did you ever have any personal dealings  
2 yourself with Yaz?

3 A No, no personal dealings.

4 Q Now, let me take you back to March of the year  
5 2000. Where were you then? In March of 2000,  
6 where were you living?

7 A At 284 Beacon Street.

8 Q And I want to specifically take you to March 27  
9 which is Monday night leading into Tuesday night,  
10 March 28, and it's fair to say at some point in  
11 time you gave a taped statement relative to what  
12 you knew on that particular night, correct?

13 A Yes, sir.

14 Q And you have had an opportunity to review that  
15 prior to coming into court, correct?

16 A Yes, sir.

17 Q Now, on March 27 in the evening, can you tell the  
18 jurors, late in the evening, where you were?

19 A I was at home in my room talking to my girlfriend  
20 and doing some homework at the same time.

21 Q And when you say doing homework, is that when you  
22 were going to Framingham State College?

23 A Correct, sir.

24 Q And you have a computer in your room?

- 1 A Yes, sir.
- 2 Q And you were working on your computer, right?
- 3 A Yes, sir.
- 4 Q Now, your room, does it have windows?
- 5 A Yes.
- 6 Q And what do the windows overlook?
- 7 A I have three windows. One is a corner window,  
8 one looking towards the trash, like the trash  
9 area of our development, another one looking out  
10 towards the corresponding building on Faneuil  
11 Street and one looking closer to an area that  
12 goes up to Faneuil Street near the play area.
- 13 Q Now, that third window that you talked about, is  
14 there a tree in front of that window?
- 15 A Yes, sir.
- 16 Q Does that tree in any way obstruct your view of  
17 the area?
- 18 A Yes, sir.
- 19 Q Now, from those three windows that you had, that  
20 you can look out from, can you see the play area  
21 from those windows?
- 22 A Very vaguely, just minimal because of the tree.
- 23 Q Sir, I'm going to show you this photograph and  
24 ask if you can tell me what that depicts.

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First off, does it depict your  
apartment building?

A Yes, sir.

Q Does it depict the window that you have just  
spoken about to this jury?

A Yes.

Q And is that a fair and accurate representation as  
to how the building and the windows overlooked on  
the day of March 27?

A Yes.

MR. TOCHKA: Your Honor, I move to  
introduce this photograph.

MR. DOOLIN: No objection.

MR. FLAHERTY: No objection.

THE COURT: It may be marked and  
admitted.

(Exhibit No. 28, being a photograph, as  
described above, was marked and admitted into  
evidence.)

MR. TOCHKA: And may I put this on the  
screen, Your Honor?

THE COURT: Yes, sir. Can the members  
of the jury see it? There is a glare sometimes  
on the monitor.

1 BY MR. TOCHKA:

2 Q Sir, I'm going to ask you, with the Court's  
3 permission, if you could step down to the  
4 diagram.

5 THE COURT: You may, sir. You may step  
6 down.

7 BY MR. TOCHKA:

8 Q Step down, please, and I'm going to give you a  
9 pointer. What I'm going to ask you to do, sir,  
10 is step over here.

11 Can you, with this pen, point to the  
12 windows that you referred to that are in your  
13 bedroom?

14 A This one here, this one here, and this one.

15 Q Thank you, sir. Now, sir, you told us that you  
16 were home that night.

17 And at some point did you have an  
18 occasion to see, late in the evening, Heather  
19 Coady?

20 A Yes, sir.

21 Q And about what time did you see Heather Coady?

22 A I can give an approximate time. Probably like  
23 round eleven o'clock because that's usually the  
24 time my girlfriend hangs up the phone with me.

- 1 Q Were you wearing a watch on this date?
- 2 A No.
- 3 Q And when you saw Heather Coady, about what time
- 4 was it, would you say?
- 5 A I'd say about eleven only because that's when I
- 6 was doing my homework.
- 7 Q And when you saw Heather Coady, was she alone or
- 8 was she with anybody the first time?
- 9 A She was alone.
- 10 Q When you saw her that first time when she was
- 11 alone, can you tell us which direction -- where
- 12 you saw her from? Which window first?
- 13 A I saw her from the third window I pointed to, the
- 14 side, the corner -- sorry, the second, the corner
- 15 window.
- 16 Q And is it this window?
- 17 A No, the second one. Number two.
- 18 Q This one?
- 19 A Correct.
- 20 Q So just so I'm sure, we're talking about this
- 21 window here, correct?
- 22 A Yes.
- 23 Q And which direction was she going in?
- 24 A If you're looking at the screen, going towards



1 the left.

2 Q So she's going from right to left?

3 A Correct.

4 Q And where did you see her? Where was she?

5 A She was in the walkway.

6 Q Now, there are two walkways, right? There's this  
7 walkway that's in the foreground and there is a  
8 walkway right underneath your window?

9 A That one.

10 Q The one right underneath your window?

11 A Correct.

12 Q Just so that we're clear, and this walkway, the  
13 one under your window, the one that's in the  
14 foreground leads you -- do you know building 89?

15 A Yes.

16 Q Is that the building it leads you to?

17 A Yes.

18 Q Did you continue working on your computer? Did  
19 you attempt to get -- did you attempt in any way  
20 to contact her as she is walking back?

21 A Me and Heather was friends so I was psst, psst,  
22 trying to get her attention. It didn't happen.

23 Q Were your windows down at the time?

24 A The one in the corner, I always keep it open a

1           little bit for fresh air. The other window has  
2           an air conditioner in it.

3       Q     Were the windows clear or did you have Venetian  
4           blinds?

5       A     I had Venetian blinds.

6       Q     Were they up or down?

7       A     They were closed, they were down.

8       Q     They were down?

9       A     Yes.

10      Q     When you say they were down --

11      A     They were completely down, completely shut.

12      Q     Okay. If they're completely closed, how is it  
13           you saw her walking past here?

14      A     I heard footprints. Every time I hear  
15           footprints, there's been a lot of break-ins in  
16           our parking lot, I always open the individual  
17           blinds with my finger, just to get a quick  
18           glimpse of who's out there.

19      Q     So you saw Heather Coady at some point. Did a  
20           period of time pass when you saw Heather Coady  
21           again?

22      A     Yes.

23      Q     When you saw Heather Coady again which window did  
24           you see her, looking out of?

1 A The same window.

2 Q Were the blinds again down?

3 A Correct.

4 Q Why did you look? What caused you to look out  
5 the second time?

6 A Her footprints again.

7 Q And when you looked out the second time, tell the  
8 jurors what you saw, please.

9 A I saw Heather walking towards the opposite way  
10 with another female.

11 Q When you say towards the opposite way, is that  
12 towards the play area way?

13 A Correct.

14 Q And just so we're clear on this exhibit here, you  
15 saw Heather Coady walking in which direction? To  
16 the right or to the left?

17 A The way pointing to the right.

18 Q This way?

19 A Yes.

20 Q And you saw her. Looking out which window? The  
21 same window?

22 A Correct.

23 Q So that's this window we're walking about,  
24 correct?

1 A Yes.

2 Q Now, she is with another person. Did you get a  
3 good look at the other person she was with?

4 A No.

5 Q How long of an opportunity did you see Heather  
6 Coady and this other person as they're walking  
7 past you?

8 A Very short. Just glimpsed to see who it was,  
9 noticed it was Heather with someone else. I went  
10 back to doing my work.

11 Q Now, shortly after seeing Heather Coady and this  
12 other person walking in the direction of the play  
13 area, did something else attract your attention?

14 A Yes. I heard a loud sound, sort of like a  
15 firecracker sound.

16 Q And when you heard the loud sound, did you do  
17 anything?

18 A Yes. I looked out the window again....

19 Q And why did you look out the window at that time?

20 A Usually just to see -- in our development a lot  
21 of kids, younger kids use firecrackers just to  
22 scare us. They're always doing it and usually I  
23 go outside just to see what was there and, you  
24 know, to see if she was scared.

1 Q To see if who was scared?

2 A Heather, to see if somebody was attempting to  
3 scare Heather.

4 Q So when you looked out this time, did you see  
5 anybody out the window?

6 A No, no one at all.

7 Q And can you tell us, what's the view that you  
8 have when you look out that particular window  
9 that you're referring to?

10 A The corner window?

11 Q Yes, the one you looked out.

12 A Just, I see the -- if you move the picture a  
13 little bit you can see the walkway. That's  
14 basically the view I have, corresponding to the  
15 end of the picture and then a little -- I see a  
16 little bit, I don't see that far up going toward  
17 the play area. I see more of the building in  
18 front of me. It's a little grassy area. There's  
19 another walkway coming up the other way that you  
20 can see clearly from that window.

21 Q From your window that you were looking out, could  
22 you see the play area?

23 A Yes, but you can only see a certain area on the  
24 right side because there is a tree in front of my

1 window.

2 Q And that's the tree that's depicted here,  
3 correct? In this picture? Or can you see it  
4 actually? That tree is --

5 A It's closer to the third window.

6 Q And when you say the third window, you're  
7 referring to the third window -- why don't you  
8 show us?

9 MR. TOCHKA: With the Court's  
10 permission, if he could step down and show us?

11 BY MR. TOCHKA:

12 Q The tree is where?

13 A There is a tree over here closer, there's a  
14 window here, and there is a window here that's  
15 not my room, and right there there is a big tree  
16 in the middle of the grass area.

17 Q Okay. So these three windows are your room,  
18 correct?

19 A Correct.

20 Q This window is what?

21 A My mom's room.

22 Q And this window here is what?

23 A My mom's room. That's the corner window over  
24 there. Again, there is a tree right in the

1 middle.

2 Q Your mom's room is right here?

3 A Correct.

4 Q Okay. Thank you. In any case when you saw  
5 Heather Coady and this other female -- did you  
6 say it was a female?

7 A Yes.

8 Q When you saw Heather Coady and this other female  
9 walking past, again did you lift up your blinds?

10 A Yes. At that time I looked out the third window  
11 that I was pointing to.

12 Q Okay. And the third window is which window? Not  
13 the corner, the one next to it on the right?

14 A Yes, sir.

15 Q And were your blinds down again?

16 A Yes.

17 Q And you lifted up the blinds as you did on the  
18 other occasion?

19 A Yes. Actually I rolled it up because I have an  
20 air conditioner there.

21 Q And you didn't see Heather Coady?

22 A No, I didn't.

23 Q Nor the other person?

24 A No.

1 Q How much time, sir, passed between the time that  
2 you saw Heather Coady and this other female  
3 walking past your window and you heard what you  
4 believed to be a firecracker?

5 A Very short time. I can't give you an estimate.  
6 I really don't remember. Probably close to two  
7 minutes, if that.

8 Q Now, sir, did you speak with the police that  
9 night?

10 A Yes. They actually woke me up.

11 Q And about what time did they wake you up?

12 A Close to seven thirty in the morning.

13 Q And did you give the police -- did you give the  
14 police a statement? Did they ask you what you  
15 had seen?

16 A Yes.

17 Q And after that did a detective come and tape  
18 record -- interview you and put you on tape?

19 A They didn't come to my home, they took me to the  
20 police headquarters on Schroeder Street.

21 Q And do you recall if it was Sergeant Coleman who  
22 is sitting at the table right there, if that was  
23 the gentleman that you spoke to?

24 A At the taped, right?



1 Q The person that was questioning you?

2 A I don't remember.

3 Q Okay. In any case you gave a taped statement,  
4 correct?

5 A Yes.

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

8 THE COURT: Thank you. Mr. Doolin?

9 MR. DOOLIN: Thank you, Your Honor.

10

11 CROSS EXAMINATION

12 BY MR. DOOLIN:

13 Q Mr. Vega, you've also been nice enough to let Mr.  
14 Flaherty and myself into your house, haven't you?

15 A Yes, sir.

16 Q Now, your bedroom is over here at the corner of  
17 the building, is that right?

18 A Yes.

19 Q And your bed is right under this window and right  
20 under that window, is that right?

21 A Yes. It's facing the corner.

22 Q Okay. Now, you have a computer in your room, is  
23 that right?

24 A Yes, sir.

1 Q And it's fair to say that your computer is over  
2 on the other wall?

3 A It's opposite of the bed.

4 Q So your computer is not on one of the windows, is  
5 that right?

6 A Correct.

7 Q Now, your testimony is that on that night your  
8 best memory is that it's around eleven o'clock  
9 that you're in your bedroom and that you're  
10 working on a paper for school, is that right?

11 A Yes, sir.

12 Q Now, I think you said on direct examination of  
13 Mr. Tochka that you had Venetian blinds that were  
14 on this window, that window and this window as  
15 well, is that right?

16 A Yes.

17 Q And it's also fair to say that on the night in  
18 question the Venetian blinds were in the down  
19 position, is that right?

20 A Yes.

21 Q And when you made these observations that you've  
22 described, it's fair to say that as a result of  
23 hearing some footsteps that you would pick up the  
24 Venetian blinds and look out, is that right?

1 A Yes, sir, but actually I just lifted the  
2 Venetians.

3 Q Just lifted it?

4 A Right, and not actually rolled it up.

5 Q Now, you know Mr. Gauthier, is that correct?

6 A Yes, sir.

7 Q And Mr. Gauthier is an individual who grew up in  
8 that development, is that right? .

9 A Yes.

10 Q Do you also know a Jeffrey Fitzgerald?

11 A Yes, I do.

12 Q Is Mr. Fitzgerald a friend of Mr. Gauthier's?

13 A Yes, sir.

14 Q On the night in question at any point in time  
15 when you saw Heather Coady walk by, did you see  
16 Eddie Gauthier with her?

17 A No.

18 Q Now, I think what you said on direct examination...  
19 of Mr. Tochka is that when you looked out this  
20 window which would be the window that's closest  
21 in your bedroom to the play area, that there is  
22 a tree that blocks your view, is that correct?

23 A Yes, sir.

24 Q And that's a pretty big tree that's over there

1           that's just not shown in the photo, is that  
2           right?

3       A     Correct.

4       Q     Now, this window would have the best view of the  
5           play area except there's a tree there, is that  
6           right?

7       A     Yes.

8       Q     But is it also fair to say that from this window  
9           you at least have some view of the play area? Is  
10          that correct?

11      A     Yes, sir.

12      Q     When you looked out the window into the play area  
13          that night, at any point in time did you see Mr.  
14          Gauthier there?

15                   MR. TOCHKA:  Objection, Your Honor.

16                   THE COURT:  He may answer that.

17                   MR. TOCHKA:  May I be heard on that?

18                   THE COURT:  Yes.

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

21                   MR. TOCHKA:  There is no evidence from  
22          this witness that he looked out into the play  
23          area.  He did not say he looked out in the play  
24          area.

1 THE COURT: So the grounds for the  
2 objection is that the question calls for facts  
3 which are not in evidence nor will be?

4 MR. TOCHKA: Nor will be.

5 THE COURT: What do you say to that,  
6 sir?

7 MR. DOOLIN: I'll rephrase it.

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

10 BY MR. DOOLIN:

11 Q Just so we're clear, Mr. Vega, at any point that  
12 night did you look into the play area?

13 A Yes, sir.

14 Q Okay. When you looked into the play area, it's  
15 fair to say that you were not able to see the  
16 entirety of the play area because of the tree, is  
17 that right?

18 A Yes, sir.

19 Q But when you did look into the play area did you  
20 see Mr. Gauthier there?

21 A No, I haven't.

22 Q And at any point that night did you see Jason  
23 Robinson?

24 A No.

1 Q Sir, your testimony is that when you heard noises  
2 or footprints, that you would look out the  
3 window, is that right?  
4 A Yes.  
5 Q And it's fair to say that there is a parking lot  
6 that's off here to the side, is that right?  
7 A Yes.  
8 Q And it's also fair to say that you would keep the  
9 window open to at least some level, is that  
10 right?  
11 A Yes.  
12 Q And that, as a result of having that window open,  
13 that you could hear different things, is that  
14 right?  
15 A Yes.  
16 Q Was there anything that night that caught your  
17 attention over in that area where the dumpsters  
18 are?  
19 A No.  
20 Q Did you hear any rattling of the fence over  
21 there?  
22 A No.  
23 Q And, sir, is it also fair to say that the next  
24 morning when you were spoken to by the police,

1 that you told them that you had seen Heather  
2 Coady out that night with a female? Is that  
3 right?

4 A I told them I seen a neighbor, correct.

5 Q Did you tell them it was Heather Coady?

6 A After further questioning, yes.

7 Q And you told them that you saw her out there with  
8 a female, is that right?

9 A On the way back, right.

10 MR. DOOLIN: Alright. I don't have any  
11 further questions of Mr. Vega.

12 MR. FLAHERTY: May I, Your Honor?

13

14 CROSS EXAMINATION

15 BY MR. FLAHERTY:

16 Q Good morning, Mr. Vega. As you know, my name is  
17 Timothy Flaherty. I represent Mr. Anderson.

18 If I ask you anything you don't  
19 understand, just let me know and I'll try and  
20 rephrase it. Okay?

21 A Sure.

22 Q This is March of 2000 when you were in your  
23 bedroom?

24 A Yes.

- 1 Q And you testified that you keep an air  
2 conditioner in the window, right?
- 3 A Yes.
- 4 Q But you didn't need the air conditioner on,  
5 right? So the air conditioner was not running,  
6 correct?
- 7 A Correct.
- 8 Q And you were working on a paper for Framingham  
9 State?
- 10 A Correct.
- 11 Q You had just gotten off the telephone with your  
12 girlfriend, right?
- 13 A Correct.
- 14 Q And so there was no TV playing, no radio playing  
15 in your room, right?
- 16 A No.
- 17 Q As a matter of fact, it was quiet enough in your  
18 room that you could hear someone walking by  
19 outside your window, correct?
- 20 A Yes.
- 21 Q Now, what kind of a car did you then own, Mr.  
22 Vega?
- 23 A A '95 Honda Accord.
- 24 Q And you had installed some off market



1 modifications on it, right?

2 A Yes, sir.

3 Q That's the car that you had pictures in your  
4 bedroom wall of, right?

5 A Yes, sir.

6 Q Nice car. And you liked it, right?

7 A Yes, sir.

8 Q That's the reason why whenever you heard somebody  
9 walking by or you heard something outside, you  
10 looked out the window because you're concerned  
11 about your car, right?

12 A Yes.

13 Q Okay. Now, on March 27, 2000, you never heard  
14 any rattling or rustling along the fenced area?

15 If you direct your attention to the  
16 monitor, I'm referring to Exhibit 28, this fenced  
17 area, that green fenced area. Right?

18 A Correct.

19 Q And you've heard that in the past, living where  
20 you live at 282 Beacon Street, right? You've  
21 heard what it sounds like when something smacks  
22 against that fence, right?

23 A I have never experienced anything hitting the  
24 fence before so I can't answer that question for

1           you.

2           Q     You've never heard anything bounce against the  
3           fence?

4           A     No, sir.

5           Q     Okay. You also, when you're out there, and  
6           correct me if I'm wrong, you never heard a  
7           whistle that drew your attention outside, right?

8           A     No.

9           Q     And this female that you saw meeting up with  
10          Heather Coady, she came from this walkway,  
11          correct?

12          A     Correct.

13          Q     You never heard a whistle coming from that  
14          direction prior to her meeting with Heather  
15          Coady?

16          A     Not that I can recall, no.

17          Q     And it's fair to say, is it not, Mr. Vega, that  
18          your bedroom windows depicted here in Exhibit 28  
19          are between this location by the fence and the  
20          picnic table that is over past the tree, right?

21          A     I don't know what you're referring to.

22          Q     Your window is here, closer to this location,  
23          this walkway, than the picnic table over here?  
24          Sort of in between them, isn't it?

1 MR. TOCHKA: Objection, Your Honor.

2 A Correct.

3 MR. TOCHKA: I withdraw it.

4 BY MR. FLAHERTY:

5 Q Did you ever hear those two, Heather Coady and  
6 the other woman, speaking outside? Did you ever  
7 hear their conversation?

8 A No.

9 Q And shortly after you heard what you thought was  
10 a firecracker, you never heard the slamming of  
11 doors shutting, right? Like a car door shutting?

12 A No.

13 Q You never heard one door shut, right?

14 A Not that I can recall.

15 Q And you never heard three doors shut, right?

16 A No.

17 Q Now, I think you testified on direct examination  
18 that this first window, the one closest to the  
19 picnic table, was the one that you looked out  
20 after you heard the bang, right?

21 A Yes.

22 Q Now, that third window, that gives you a view  
23 sort of across the play area to those cement  
24 steps going into the parking lot over by 85

1 Faneuil? Isn't that a straight shot out your  
2 window?

3 A Yeah, fair to say.

4 Q And when you looked out that window you didn't  
5 see Heather?

6 A Right.

7 Q Right?

8 A Correct.

9 Q You didn't see the other female that you saw  
10 outside with Heather, right?

11 A Correct.

12 Q At no time when you looked out the windows, any  
13 of those windows, did you ever see Eddie  
14 Gauthier, right?

15 A Correct.

16 Q And you never saw anyone up in the parking lot  
17 area and you never heard any doors shutting to an  
18 automobile, correct?

19 A Correct.

20 Q Now, if I may just for a minute -- do you know  
21 where the building 51 Faneuil is?

22 A I don't know the buildings, mostly my -- 51, are  
23 you referring to the corresponding building to  
24 55?

1 Q With the Court's permission, sir, would you step  
2 down for a minute and just take a look at that  
3 aerial photograph?

4 THE COURT: He may step down.

5 A Okay.

6 BY MR. FLAHERTY:

7 Q Does that make sense to you when you look at it?

8 A Yes.

9 Q Okay. Now, would this building here be 51  
10 Faneuil Street, if you know?

11 A No, I don't know.

12 Q Okay. Is it fair to say, sir, from the window --  
13 and this building is your building, right?

14 A Correct.

15 Q Okay. And from your vantage point at your  
16 bedroom window, can you see all the way over to  
17 55?

18 A No. There's no possible way.

19 Q Okay. Alright. You can resume the witness  
20 stand.

21 A (Complying.)

22 Q Now, Mr. Vega, the tree that's out in front of  
23 your window, there's a trunk, right? Pretty wide  
24 trunk for the tree, right?

1 A Yes.

2 Q But that trunk isn't as wide as the picnic table,  
3 correct?

4 A Correct.

5 Q And there are branches to the tree, right?

6 A Correct.

7 Q And the branches to the tree are about eye level,  
8 is that fair to say?

9 A No.

10 Q How low do the branches come?

11 A They're higher than my window.

12 Q Higher than your window? So above your head?

13 A Yes.

14 Q And it's fair to say that the picnic table is  
15 located lower than the branches, right?

16 A Yes.

17 Q And it's your testimony when you looked out the  
18 windows, you never saw Eddie Gauthier on March  
19 27, 2000, right?

20 A Yes, sir.

21 Q And incidentally, when you saw Heather Coady  
22 outside, you never saw her walking her dogs,  
23 correct?

24 A No.

1 MR. FLAHERTY: No further questions,  
2 Your Honor.

3 THE COURT: Mr. Tochka?

4 MR. TOCHKA: Very briefly.

5

6 REDIRECT EXAMINATION

7 BY MR. TOCHKA:

8 Q Sir, it's fair to say Heather Coady's house is  
9 around the corner from here, correct?

10 A Yes.

11 Q And there is a courtyard next to her house,  
12 correct?

13 A There's a courtyard between the buildings, yes.

14 Q And you can't see there from that, from that  
15 particular window where you are, correct?

16 A Correct.

17 Q When Mr. Flaherty, the last gentleman, asked you,  
18 isn't it the same distance from the window to the  
19 walkway here as it is to the benches in the park  
20 -- remember him asking you that question?

21 A Yes.

22 Q It's fair to say, sir, this is one dimensional,  
23 correct? This particular picture?

24 A Yes.

1 Q The view that you have looking out from your  
2 window here of 89 is looking straight up,  
3 correct?

4 A Straight, yes.

5 Q And the benches on the play area would be at a  
6 diagonal down that way, correct?

7 A Absolutely.

8 Q Okay. So although it might be equidistant  
9 distance-wise, you have a different view from  
10 your window, a clearer view of straight up than  
11 you would to the left, correct?

12 A Also there is no lighting over there.

13 Q There's no lighting by that play area --

14 A No.

15 Q -- by the benches? And, sir, on that particular  
16 night were you looking by the benches when you  
17 heard that shot?

18 A No.

19 Q You weren't looking there at all, correct?

20 A Correct. I was looking more toward the left  
21 because, you know, she lives towards the other  
22 building. I was seeing if she was crossing the  
23 other way.

24 Q And, sir, when they asked you about whether or



1 not you heard any rattling earlier in the night,  
2 it's fair to say that you've testified that you  
3 saw Heather Coady at a point shortly before --  
4 well, let me ask you, rather.

5 When you saw Heather Coady -- were you  
6 on the phone with your girlfriend at the time you  
7 saw Heather Coady?

8 A No.

9 Q How soon -- had you just gotten off the phone?

10 A Probably a minute after I hung up.

11 Q And finally, sir, that particular air  
12 conditioner, where is that air conditioner that's  
13 in your bedroom?

14 A I take it out usually in the winter time.

15 Q Was it on there March 27 and 28?

16 A Yes, it was.

17 Q Okay. And which window was it on?

18 A The third window.

19 Q This window here?

20 A Yes.

21 Q And just so this jury has an idea, in terms of  
22 when you look out the window after you heard the  
23 shot, firecracker, after you heard that  
24 firecracker, how long a period of time did you

1 look out that window?

2 A Right away.

3 Q And after -- in terms of right away, how long a  
4 period of time were you continuing to look out  
5 the window?

6 A Just a glimpse.

7 MR. TOCHKA: Thank you. No further  
8 questions.

9 THE COURT: Anything more, Mr. Doolin?

10

11

RE CROSS EXAMINATION

12 BY MR. DOOLIN:

13 Q Mr. Vega, how long were you in your room that  
14 night before you saw Heather Coady?

15 A I don't remember, to be honest with you. I  
16 usually get out of work at nine so I go straight  
17 home. I don't go anywhere else.

18 Q Okay. When you went home that night, do you  
19 remember going into your room?

20 A Yes.

21 Q And when you went into your room, did you talk to  
22 your girlfriend at that point in time?

23 A Yes.

24 Q Did you talk to your girlfriend on the phone in

1 your room?

2 A Yes.

3 Q And how long did you talk to your girlfriend that  
4 night?

5 A I can't give you an exact time. We were actually  
6 broken up at the time, trying to mend things so I  
7 can't give you the exact time.

8 Q Was it a conversation that would have been longer  
9 than five or ten minutes?

10 A Yes, sir.

11 Q And you testified that when you heard that  
12 firecracker type sound, what direction did you  
13 look in? Did you look in to the right from your  
14 window or did you look to the left?

15 A To the left.

16 Q To the left which would be over this way, is that  
17 right?

18 A Correct.

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

21 MR. FLAHERTY: Just one.  
22  
23  
24



1 A J-o-l-e-e-n-a.

2 Q And please spell your last name.

3 A T-a-t-e.

4 Q How old are you, Ms. Tate?

5 A Eighteen.

6 Q Back in March of the year 2000, can you tell us  
7 where you were living?

8 A In Brighton, Mass.

9 Q And where in Brighton were you living?

10 A With my grandmother.

11 Q What's your grandmother's name?

12 A Zenia Alvarez.

13 Q Could you spell her name, please?

14 A Z-e-n-i-a, A-l-v-a-r-e-z.

15 Q Spell the last name, please?

16 A A-l-v-a-r-e-z.

17 Q And you were living with your grandmother on what  
18 street?

19 A Dunboy.

20 Q And what number Dunboy?

21 A 74.

22 Q Is that a two-family?

23 A Yes.

24 Q And 74 is the upstairs?

- 1 A Yes.
- 2 Q Who lived in the downstairs?
- 3 A My mother.
- 4 Q And what's your mom's name?
- 5 A Ana Culgini.
- 6 Q Could you spell her first name?
- 7 A A-n-a.
- 8 Q And her last name, please?
- 9 A C-u-l-g-i-n-i.
- 10 Q While you were living with your grandmother  
11 upstairs, was there anyone else living with you  
12 and your grandmother upstairs back in March of  
13 2000?
- 14 A My grandfather, my sister.
- 15 Q Back in March of 2000?
- 16 A Yes.
- 17 Q And downstairs, who was living downstairs with  
18 your mother?
- 19 A Her boyfriend.
- 20 Q And back in March do you recall what his name  
21 was?
- 22 A Jim Walsh.
- 23 Q Now, how long had you lived -- back in March of  
24 2000, how long had you lived in Brighton?

1 A My whole life.

2 Q And living in Brighton, at some point did you go  
3 to middle school in Brighton?

4 A Yes.

5 Q What middle school was that?

6 A Edison.

7 Q And the Thomas Edison, is that located near  
8 Roger's Park?

9 A Behind.

10 Q Behind Roger's Park?

11 A Yes.

12 Q And when you left -- by the way, what elementary  
13 school had you gone to?

14 A Garfield.

15 Q And Garfield, is that by the Kiwi's Market on  
16 Faneuil Street?

17 A Yes.

18 Q So when you left the Garfield to go to the Edison  
19 School, what year did you start in the Edison?

20 A Sixth grade.

21 Q And when you went to the Edison School, did you  
22 meet new friends?

23 A Yes.

24 Q Was one of those persons that you met Heather

1 Coady?

2 A Yes.

3 Q And do you recall what grade you met Heather  
4 Coady in?

5 A Seventh.

6 Q And at some point when you met Heather Coady in  
7 the seventh grade, did the two of you strike up a  
8 friendship in school?

9 A Yes.

10 Q And did that friendship continue outside of the  
11 school as well?

12 A Yes.

13 Q Do you know where Heather Coady lived when you  
14 were in the seventh grade?

15 A Faneuil Street development.

16 Q About how far away is Faneuil Street development  
17 from where you lived on Dunboy Street?

18 A A mile and a half.

19 Q Would you visit Heather Coady in the Faneuil  
20 development outside of school?

21 A Yes.

22 Q At some point did you visit her more frequently?

23 A Yes.

24 Q And how would you get to the development from



1 your home?

2 A I would walk or take the 64 bus.

3 Q And that's the Oak Square bus?

4 A Yes.

5 Q That goes by North Beacon Street, right?

6 A Yes.

7 Q And does that let you out in front of her house?

8 A Yes.

9 Q Now, you went to the Edison. At some point did  
10 you leave the Edison -- Edison goes from how many  
11 grades? Sixth, seventh and --

12 A And eighth.

13 Q Did you go to sixth, seventh and eighth at the  
14 Edison?

15 A No.

16 Q At some point did you leave the Edison?

17 A Yes.

18 Q What grade was it you left the Edison?

19 A Seventh grade.

20 Q And when you left the seventh grade, where did  
21 you go to school then?

22 A St. Anne's.

23 Q And St. Anne's, is that a middle school?

24 A Yes.

1 Q And where is St. Anne's located?

2 A In Allston.

3 Q And not why, did your father have you enroll in  
4 St. Anne's?

5 A Yes.

6 Q And how long did you go -- how did you get from --  
7 -- actually from 88 Dunboy Street over to Edison?  
8 Was that a walk?

9 A Yes.

10 Q Going to St. Anne's, how would you get there?

11 A I would also walk or my mother would drive.

12 Q Now, how long did you stay in St. Anne's for?

13 A Eighth grade.

14 Q And you said that Edison goes to sixth, seventh  
15 and eighth, right?

16 A Yes.

17 Q So does St. Anne's go to the eighth grade, too?

18 A Yes.

19 Q Is there a high school at St. Anne's?

20 A No.

21 Q So it was time to go to another school, correct?

22 A Yes.

23 Q And did your father enroll you in another school?

24 A Yes.

1 Q What school was that?

2 A Mount St. Joseph's.

3 Q And that's located where?

4 A In Brighton.

5 Q And how long did you go to Mount St. Joseph's  
6 for?

7 A One semester.

8 Q Now, while you were at the Edison in seventh  
9 grade, you went to St. Anne's, did you continue  
10 to associate with Heather Coady?

11 A Yes.

12 Q While you were at St. Anne's?

13 A Yes.

14 Q Does that including going over to her house?

15 A Yes.

16 Q Did she ever come over to your house?

17 A Yes.

18 Q How would you describe for the jurors your  
19 friendship with Heather Coady in seventh and  
20 eighth grade?

21 A Close, drug-related, boys, parties.

22 THE COURT: Ms. Tate, I'm going to ask  
23 you to keep your voice up and speak directly into  
24 the microphone, please.

1 BY MR. TOCHKA:

2 Q So at some point in time when you went to Mount  
3 St. Joseph's, did you continue to associate or  
4 hang around, for lack of a better word, in the  
5 Faneuil Street development?

6 A Yes.

7 Q Now, you said you were only one semester at Mount  
8 St. Joseph's and, just yes or no, was there a  
9 reason why you left Mount St. Joseph's?

10 A Yes.

11 Q And was that at your father's request?

12 A Yes.

13 Q And where did your father have you enroll now?

14 A Fryberg Academy.

15 Q Fryberg Academy is located where?

16 A In Maine.

17 Q And so you went to a boarding school?

18 A Yes.

19 Q How long did you go -- and what grade were you in  
20 when you went to Fryberg Academy?

21 A Ninth.

22 Q How long did you go to Fryberg Academy for?

23 A My first semester of eleventh grade.

24 Q And your first semester of eleventh grade, did

1           you leave Fryberg Academy?

2    A       December of '99.

3    Q       At that point you were in the first semester of  
4           your eleventh grade?

5    A       Yes.

6    Q       And when you left Fryberg Academy where did you  
7           come to live?

8    A       Brighton.

9    Q       You came back home?

10   A       Yes.

11   Q       And how old were you when you left -- when you  
12           were in the eleventh grade at Fryberg Academy and  
13           when you came back home to live?

14   A       Sixteen years old.

15   Q       And now while you're sixteen years old, living at  
16           home and going into January of the year 2000, did  
17           you go to school?

18   A       No.

19   Q       Did you go to school in February of 2000?

20   A       No.

21   Q       Did you go to school in March of 2000?

22   A       No.

23   Q       When you left Fryberg Academy and came back to  
24           Brighton, can you describe your relationship with

1 your father at that time?

2 MR. DOOLIN: I object, Your Honor.

3 THE COURT: Overruled.

4 A We, we didn't talk.

5 BY MR. TOCHKA:

6 Q Had you talked before that while you were in  
7 Fryberg Academy?

8 A From December of '99 until May of 2000, I hadn't  
9 spoken to my father.

10 Q When you came back to Brighton, did you begin to  
11 associate with your friends?

12 A Yes.

13 Q Did that include Heather Coady?

14 A Yes.

15 Q Did that include going to the Faneuil  
16 development?

17 A Yes.

18 Q Back in the year 2000, January of 2000, at some  
19 point did Heather Coady introduce to you an  
20 individual named Jason Robinson?

21 A Yes, she did.

22 Q Do you see Jason Robinson in court today?

23 A Yes, I do.

24 Q Is he the person I'm standing behind?

1 A Yes.

2 MR. TOCHKA: Your Honor, if the record  
3 could reflect the identification of the  
4 defendant, Jason Robinson?

5 THE COURT: Yes.

6 BY MR. TOCHKA:

7 Q And do you know, back in January, based upon your  
8 observations, what Heather Coady's relationship  
9 was with Jason Robinson?

10 A They were boyfriend and girlfriend.

11 Q Now, at some point when you came back to Brighton  
12 and would associate in the Faneuil development,  
13 did you come in contact with a person by the name  
14 of Tee?

15 A Yes.

16 Q Is that the person I'm standing behind right now?

17 A Yes.

18 MR. TOCHKA: And, Your Honor, if the  
19 record could reflect the identification of the  
20 defendant, Tanzerius Anderson?

21 MR. FLAHERTY: No objection.

22 THE COURT: Yes.

23 BY MR. TOCHKA:

24 Q And how did you -- who introduced you to

1 Tanzerius Anderson?

2 A Heather.

3 Q And did you know what, if any, relationship  
4 Tanzerius Anderson had to Jason Robinson?

5 A They were best friends.

6 Q And do you know how they referred to each other?  
7 Do you know whether or not they referred to each  
8 other as cousins? If you know.

9 A No.

10 Q Okay. But you knew them to be best friends? And  
11 do you know, back in -- when you met the  
12 defendant, Tanzerius Anderson, did you learn at  
13 some point where he lived? What part of Boston  
14 he lived in?

15 A Dorchester.

16 Q When you came back to Brighton at some point and  
17 met Tanzerius Anderson, at some point did you  
18 develop a relationship with him?

19 A Yes.

20 Q How often had you seen him? In the months of  
21 January, February and March, how often would you  
22 see the defendant, Tanzerius Anderson?

23 A Five or six times.

24 Q Did you know back then whether or not the



1           defendant, Tanzerius Anderson, had a car?

2       A     Yes.

3       Q     What type of car was it?

4       A     A Mazda.

5       Q     Do you know whether or not Jason Robinson owned a  
6           car back then?

7       A     No, he didn't.

8       Q     Do you know whether or not Heather Coady owned a  
9           car back then?

10      A     No.

11     Q     Did you know a person or do you know a person by  
12          the name of Eddie Gauthier?

13     A     Yes.

14     Q     And when did you meet Eddie Gauthier?

15     A     January 7, 2000.

16     Q     And can you describe in terms of Eddie Gauthier,  
17          what your relationship was with him?

18                   By that I mean, were you friends, were  
19                   you associates? I mean, did you see him on a  
20                   regular basis? Describe for the jurors your  
21                   relationship with him.

22     A     We were good friends. I was at his house maybe  
23           four times out of a week to --

24                   THE COURT: Keep your voice up, please.

1 BY MR. TOCHKA:

2 Q When you would be at his house in the past those  
3 four times a week, who else would be in the house  
4 with you and Mr. Gauthier?

5 A Heather, Jeffrey Fitzgerald, Jason, Tanzerius,  
6 Eddie's girlfriend was there once.

7 Q And what's Eddie's girlfriend's name?

8 A I don't know.

9 Q Now, at some point you said you developed a  
10 relationship with the defendant, Tanzerius  
11 Anderson -- by the way, Eddie Gauthier, do you  
12 know whether or not he owned a car himself?

13 A No.

14 Q You don't know or he didn't?

15 A He didn't.

16 Q Now, at some point you developed a relationship  
17 with the defendant, Tanzerius Anderson.

18 At any point did you go to New  
19 Hampshire with the defendant?

20 A Yes.

21 Q And when did you go to New Hampshire with the  
22 defendant?

23 A March of 2000.

24 Q And when you went to New Hampshire with the

1           defendant, how did you get there?

2    A       In a Mazda.

3    Q       Whose Mazda?

4    A       Tanzerius Anderson's.

5    Q       Who drove?

6    A       The first or the second time?

7    A       How many times did you go to New Hampshire?

8    A       Twice.

9    Q       Let's talk about the first time. The first time  
10           you went to New Hampshire, who drove?

11   A       Tanzerius.

12   Q       And when you went to New Hampshire where were you  
13           going?

14   A       North Conway.

15   Q       Where specifically in North Conway?

16   A       My father's condo.

17   Q       And what was the intention of yourself and  
18           Tanzerius Anderson going to your father's condo  
19           in North Conway?

20   A       To retrieve firearms.

21   Q       When you say retrieve firearms, what were you  
22           going to do?

23   A       Break into the condo and rob him.

24   Q       Did you know your father to carry firearms?

1 A Yes.

2 Q And you know that he's an investigator, correct?

3 A Yes.

4 Q And when you went there the first time, did you  
5 get into the house?

6 A No.

7 Q Why not?

8 A Because the lock on the sliding door that I  
9 thought would be open was not. He had fixed the  
10 lock.

11 Q So what did you do?

12 A Apologized for the three hour drive and got back  
13 into the car.

14 Q You apologized. Who did you apologize to?

15 A Tanzerius.

16 Q Why did you feel you had to apologize --

17 MR. DOOLIN: Your Honor, I object.

18 MR. FLAHERTY: Objection.

19 THE COURT: Sustained.

20 BY MR. TOCHKA:

21 Q Why did you apologize?

22 MR. DOOLIN: I object.

23 MR. FLAHERTY: Objection.

24 THE COURT: Sustained.

1 BY MR. TOCHKA:

2 Q What did you say to him?

3 MR. FLAHERTY: Objection.

4 THE COURT: Overruled.

5 A I told him that I was sorry that we drove up here  
6 for nothing and I would make it up to him.

7 MR. FLAHERTY: Objection. Motion to  
8 strike.

9 THE COURT: Denied.

10 BY MR. TOCHKA:

11 Q And who gave him the directions?

12 A I did.

13 Q How did you get up there? What route did you  
14 take?

15 A 95 up to Route 16.

16 Q Is that the same way you came back?

17 A Yes.

18 Q At some point thereafter you said you went up a  
19 second time, correct?

20 A Yes.

21 Q And when you went up the second time who did you  
22 go up with?

23 A Tanzerius.

24 Q And whose decision was it to go up at that time,

1 the second time?

2 A He had called.

3 Q And when he called you, where were you when he  
4 called you?

5 A In my bedroom.

6 Q Do you remember, was it in the morning or the  
7 afternoon or the evening?

8 A It was in the afternoon.

9 Q And when he called you what was the conversation  
10 you had with him?

11 MR. DOOLIN: I object, Your Honor.

12 THE COURT: Do you want the instruction  
13 now, sir?

14 MR. DOOLIN: Yes, Your Honor.

15 THE COURT: Ladies and gentlemen, you  
16 have heard and will be hearing testimony about  
17 evidence of various acts and statements made by  
18 one or more of the individuals who were allegedly  
19 involved in this incident. The Commonwealth is  
20 proceeding here against these defendants on a  
21 theory of alleged joint venture. Now, it is  
22 important you understand before -- how you may  
23 consider any statements allegedly made by one or  
24 both of these defendants.

1           It's going to be up to you to decide or  
2           to determine during the course of your  
3           deliberations whether or not the Commonwealth has  
4           proved there was a joint venture in this case.  
5           Before you reach that determination you must  
6           first be satisfied beyond a reasonable doubt that  
7           one or more individuals committed the crimes  
8           alleged in this case. If you are so satisfied  
9           beyond a reasonable doubt as to the identity, as  
10          to the identification of the individuals who  
11          committed those crimes, then you may consider any  
12          evidence of acts done or statements made by each  
13          such individual against the defendants.

14                 However, you may consider -- before you  
15          can consider any evidence of acts or statements  
16          allegedly made by one of the participants against  
17          the defendants here under a theory of joint  
18          venture, you first need to determine whether the  
19          Commonwealth has presented sufficient evidence  
20          which is independent of those acts or statements  
21          to support a fair inference that there was a  
22          joint venture between the participants and the  
23          defendants. You may not use any of these  
24          statements in making that determination. The

1 determination is going to be yours to make as  
2 part of the determinations you will be asked in  
3 this case to make at the end in rendering your  
4 verdict.

5 If you find that there was sufficient  
6 evidence to support a fair inference that a joint  
7 venture existed, then you can consider evidence  
8 of the acts and statements of each of the  
9 participants against the defendants. You may do  
10 so, however, only with respect to acts and  
11 statements occurring while the joint venture  
12 exists or made when the joint venturers were  
13 acting to conceal the crime, and that are  
14 relevant to the joint venture of which you have  
15 found the defendants or defendant an actor or  
16 declarant or member.

17 Thank you. You may continue, sir.

18 MR. FLAHERTY: May we approach, Your  
19 Honor? Very briefly.

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

22 THE COURT: Yes, sir?

23 MR. FLAHERTY: In an overabundance of  
24 caution, Your Honor, I haven't been provided with



1 any statements allegedly made by Tanzerius  
2 Anderson during a telephone conversation with  
3 this witness so I would ask that this telephone  
4 conversation --

5 THE COURT: That was just testified  
6 about?

7 MR. FLAHERTY: That is about to be  
8 testified to. I would ask you to allow Mr.  
9 Tochka some leeway to lead the witness, thereby  
10 not introducing any statements allegedly made by  
11 Tanzerius Anderson during this conversation.

12 THE COURT: Mr. Tochka?

13 MR. TOCHKA: I would just ask her -- in  
14 terms of my understanding, what she is going to  
15 say, she had a conversation with Anderson about  
16 going back up there. He stated that he wanted to  
17 go back up there and that he purchased some  
18 things including, which I told my brother, he  
19 went up there with a glass cutter, a, I think  
20 it's a crow bar, and a flashlight and gloves.

21 MR. FLAHERTY: Well, I'd object to the  
22 statement, Judge.

23 THE COURT: On what grounds?

24 MR. FLAHERTY: In the course of

1 discovery Mr. Tochka had explained to me that  
2 there were some items that he purchased but it  
3 wasn't explained to me nor was it provided me in  
4 a written form that Mr. Anderson supposedly told  
5 this witness that he had purchased those items.  
6 That would be my grounds.

7 THE COURT: Okay. Anything more, Mr.  
8 Tochka?

9 MR. TOCHKA: No.

10 MR. DOOLIN: If I may just be heard as  
11 to the statements of Tanzerius Anderson that are  
12 coming in, I understand and I appreciate that the  
13 Court has just given the instruction I requested  
14 but I also would object to the admission of these  
15 statements based upon my previously filed motion  
16 in limine and my previously filed motion to  
17 sever.

18 THE COURT: Thank you.

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

21 MR. TOCHKA: May I proceed, Your Honor?

22 THE COURT: You may, sir.

23 BY MR. TOCHKA:

24 Q Ms. Tate, I believe we left off, you had a phone

1 call from the defendant, Tanzerius Anderson,  
2 about going to New Hampshire and I asked you,  
3 what did he say in that phone conversation.

4 A He told me that a friend of his told him the  
5 tools necessary to be able to cut glass, that he  
6 had --

7 MR. FLAHERTY: Objection, Your Honor.

8 THE COURT: Rephrase your question,  
9 sir.

10 BY MR. TOCHKA:

11 Q The conversation that you had with the defendant,  
12 did it involve going up to New Hampshire?

13 A Yes.

14 Q And did he tell you that he had acquired certain  
15 items in order to go back up to New Hampshire?

16 A Yes.

17 Q And what items did he tell you that he had  
18 acquired?

19 A A glass cutter, gloves, a crow bar and a mini  
20 flashlight.

21 Q And what was the conversation about going back up  
22 there after he told you?

23 A That if we were able, we would get into the condo  
24 and then spend the night up there.

1 Q So what did you say when he said that?

2 A I said I would.

3 Q And did you go up to New Hampshire a second time?

4 A Yes.

5 Q How did you get up to New Hampshire?

6 A The Mazda.

7 Q Same route?

8 A Yes.

9 Q Who drove?

10 A I drove.

11 Q And where did you drive? Where did you drive to?

12 A To North Conway.

13 THE COURT: Ms. Tate, I'm going -- I'm  
14 sorry. You must keep your voice up.

15 THE WITNESS: I'm sorry.

16 THE COURT: Please move closer to the  
17 microphone, if you will. Can you do that?

18 THE WITNESS: Yes.

19 THE COURT: Thank you very much.

20 BY MR. TOCHKA:

21 Q Was there anyone in the car other than you and  
22 the defendant?

23 A No.

24 Q When you drove up to North Conway, where in

1 particular did you drive up to?

2 A We stopped at a friend of mine's house, Megan, in  
3 North Conway.

4 Q And after you stopped at your friend's house, did  
5 you see your friend?

6 A Yes.

7 Q And then where did you go?

8 A A hotel.

9 Q And what's the name of that hotel?

10 A The Yankee Clipper.

11 Q And did you go to your father's condo?

12 A Yes.

13 Q Okay. And how did you get -- I'm sorry. The  
14 road to your father's condominium, can you  
15 describe it to the jury? By that, is it like on  
16 the street? Is it in the back?

17 A No, there is no lights on the road. It's very  
18 winding, residential homes, other condos. It's  
19 up a hill past the base of a ski resort.

20 Q And did you drive the car --

21 A Yes.

22 Q -- to the condominium as well?

23 A Yes.

24 Q And when you got out of the car, did the

1 defendant get out of the car with you?

2 A Yes.

3 Q And did you see him do anything as he got out of  
4 the car?

5 A He took a bracelet of his off of his wrist.

6 Q What type of bracelet was it?

7 A It said his name across the bracelet. I believe  
8 it was sterling silver and he changed his  
9 sneakers.

10 Q He took the bracelet off and what did he do with  
11 the bracelet?

12 A Put it in the console.

13 Q And tell us the efforts that you and the  
14 defendant made to get into the condominium?

15 How was entrance made into the  
16 condominium?

17 A We went to the sliding glass door on the side of  
18 the condo and tried to cut the glass and it  
19 wouldn't cut.

20 Q Now, when you say we tried to cut the glass, what  
21 was used to try to cut the glass?

22 A I don't remember the name of the tool. It was  
23 made of plastic and metal.

24 Q And who had that tool?

1 A Tanzerius.

2 Q And who tried to cut the glass? You or the  
3 defendant?

4 A Tanzerius.

5 Q What happened next? Could you get through the  
6 glass?

7 A No.

8 Q So what happened next?

9 A We tried the crow bar. We went to the sliding  
10 glass door on the back side of the condo, tried  
11 to cut the glass there and also didn't work. We  
12 tried the crow bar again. We went down to the  
13 basement windows to see if any of them were open.  
14 None of them were, and we ended up on the  
15 balcony, second floor, with a sliding glass  
16 window or door to my room.

17 Q At some point in time or at any point in time did  
18 you use a ladder to get inside?

19 A No.

20 Q Was a ladder outside at all in the development,  
21 did you see outside your father's condo?

22 A No.

23 Q Okay. As you're trying to get in, you said that  
24 there is a crow bar. Describe the crow bar,

1 please.

2 A It was black, the end was curled. I don't --

3 Q In terms -- when you say the crow bar, how was it  
4 used?

5 First off, who used it in trying to  
6 open up the door?

7 A Tanzerius.

8 Q And how did he try to use it?

9 A To wedge it between the door frame and the door  
10 itself and he -- excuse me. The door came off  
11 the runners, the wheels, and it popped open.

12 Q Now, while the defendant was doing this -- you've  
13 told us that you had a conversation, he told you  
14 what he was bringing up and he was bringing up  
15 gloves.

16 Did he have gloves on while he was in  
17 the condominium or not, do you recall?

18 A Yes.

19 Q Did you eventually get into the house?

20 A Yes.

21 Q And you got in through your bedroom?

22 A Yes.

23 Q What did you do? What did you and the defendant  
24 do inside the condominium?



1 A Outside my bedroom there is a hallway, to the  
2 left is my father's bedroom. We went straight  
3 into the bedroom.. I went into the drawer of my  
4 father's bureau that he kept his gun and put the  
5 gun on the bed. There was also a bag in the  
6 closet that I took out full of ammunition and I  
7 also put that on the bed.

8 Q Was there another gun inside that bag?

9 A Yes.

10 Q So you had the gun that was in your father's  
11 drawer, right?

12 A Yes.

13 Q And you had another bag full of ammunition. What  
14 type of bag was it? Like a shopping bag?

15 A Army barracks bag.

16 Q Army bag?

17 A Barracks.

18 Q I didn't hear you?

19 A Barracks, like an army valise, big duffle bag.

20 Q And inside that duffle bag was the ballistics  
21 evidence and the other firearm?

22 A Yes.

23 Q And what did you do with those two items?

24 A We put them both into the bag.

1 Q You put what both into the bag?

2 A The handgun and the larger gun was already in the  
3 bag. After Tanzerius looked at all the items we  
4 would put them back in the bag.

5 Q Okay. And then did you take anything else out of  
6 the house?

7 A A bottle of champagne.

8 Q And where was that bottle of champagne?

9 A In the kitchen.

10 Q Where did you then go with the defendant?

11 A Back into the car.

12 Q And at this point who was driving?

13 A Tanzerius.

14 Q Where did the defendant drive?

15 A To the hotel.

16 Q And what's the name of the hotel?

17 A The Yankee Clipper.

18 Q And how far away is that hotel from the  
19 condominium?

20 A A mile, two at the most.

21 Q When you got to the Yankee Clipper motel, who  
22 went inside to the -- you know, when you check  
23 in, who went inside?

24 A Tanzerius.

1 Q What did you do when Tanzerius went inside?

2 A I waited in the car.

3 Q And did he come back out?

4 A Yes.

5 Q After having checked in?

6 A Yes.

7 Q Did he say anything to you when he came back into  
8 the car?

9 A He said that he hoped that breaking and entering  
10 wouldn't come back on him because he had to leave  
11 his signature at the desk.

12 Q Where did you then go after having the defendant  
13 checking in with the hotel? Where did you go?

14 A We went to the motel room.

15 Q Where was that located?

16 A In the back of the hotel, an individual building  
17 aside from the main building.

18 Q And which floor was that?

19 A The first floor.

20 Q This is Exhibit 25. Do you recognize that?  
21 What's that?

22 A That's the hotel.

23 Q I have Exhibit 25 on the monitor. Is that the  
24 Yankee Clipper you went to?

1 A Yes.

2 Q I'm going to show you now Exhibit 26. You said  
3 you went into a room in the back?

4 A Yes.

5 Q On the first floor, do you see -- do you  
6 recognize what that's a photograph of?

7 A The building that we stayed in.

8 Q And do you remember what room it was?

9 A On the right side.

10 Q And can you point to it, please?

11 A Right here.

12 MR. TOCHKA: I'm putting Exhibit 26 on  
13 the monitor and I'm going to ask, with the  
14 Court's permission, if the witness can step to  
15 the monitor?

16 THE COURT: She may.

17 BY MR. TOCHKA:

18 Q And why don't you step over here? Step over here  
19 to my right. Over here, please. Let me give you  
20 this pen.

21 Can you point on the picture itself  
22 which room it was?

23 A Right there.

24 Q And that's the second door from the right?

1 A Yes.

2 Q Why don't you have a seat, please?

3 A (Complying)

4 Q How long did you -- I'm sorry. After you went  
5 into the hotel room, what was done with the bag,  
6 the duffle bag and the like?

7 A It was left in the motel room.

8 Q And who had brought it into the hotel room?

9 A Tanzerius.

10 Q You mentioned that you saw Tanzerius when you got  
11 to the condominium taking off his shoes and  
12 putting on what?

13 A Sneakers.

14 Q What did you see him do when he got back in the -  
15 - when he got into the hotel room relative to his  
16 footwear?

17 A He had changed back into his original footwear  
18 and the sneakers that he had on were put back in  
19 a bag.

20 Q Were put into the bag with the guns while you  
21 were in the condominium?

22 A No. They were put in the bag that the crowbar  
23 and the gloves and the glass cutter were put in  
24 after we left the condo.

1 Q Do you remember what day of the week you were at  
2 the Yankee Clipper?

3 A On a weekend.

4 Q And do you remember when you checked -- did you  
5 check out the following day?

6 A Yes.

7 Q Do you remember what day of the week that was, if  
8 you recall?

9 A I believe a Sunday.

10 Q When you checked out, how did you get back to  
11 Boston?

12 A We drove.

13 Q And what route did you take driving?

14 A 16 to 95.

15 Q Who drove back?

16 A Tanzerius.

17 Q When you drove back did you have any conversation  
18 with the defendant, Tanzerius Anderson, about  
19 what was going to be done with the guns?

20 A Yes.

21 Q What was the conversation?

22 A He said that --

23 MR. DOOLIN: I object.

24 THE COURT: Overruled.

1 A (continued) He said that he knew a few people  
2 who would find the gun valuable and that he would  
3 be able to sell it.

4 BY MR. TOCHKA:

5 Q And did he say where these people were, where  
6 they lived?

7 A He said that he knew people in Boston and there  
8 was a cousin in Rhode Island or Connecticut.

9 Q Did you have any conversation driving back with  
10 him into Boston about what either of you would  
11 say or what he would say should anyone ask him  
12 about what happened?

13 A That he didn't know me, that he had a cousin in  
14 Manchester if it was regarding the hotel that he  
15 stayed at.

16 Q I'm sorry. I don't understand that. First of  
17 all, let me ask you this one question.

18 Did you have a conversation on the way  
19 back from the hotel driving to Boston, when the  
20 defendant was driving, about if he were ever  
21 questioned, did he say to you what he would say?

22 MR. FLAHERTY: Objection, Your Honor.

23 Asked and answered.

24 THE COURT: She may answer it.

1 A That he was visiting his cousin in New Hampshire.

2 BY MR. TOCHKA:

3 Q Did he say what part of New Hampshire?

4 A in Manchester.

5 Q Now, when you got back to Boston, what did you  
6 do?

7 A He dropped me off at my house. .

8 Q Did he say what he was going to do?

9 A He was going to the barber's.

10 Q He was going to where? You have to speak up.

11 A To the barber's.

12 Q Now, I want to take you to Monday, March 27 going  
13 into March 28, the night of the incident.

14 That Monday night, at some point in  
15 time did you see the defendant, Tanzerius  
16 Anderson?

17 A Yes.

18 Q And can you tell the jurors how you came to see  
19 him, how that happened?

20 A I received a phone call. It was the evening.

21 Q Where were you when you got the phone call?

22 A At my house.

23 Q And did you pick up the phone?

24 A Yes.



- 1 Q And did you recognize the voice on the other end?
- 2 A Yes.
- 3 Q And who was it?
- 4 A Tanzerius.
- 5 Q And what did he say to you?
- 6 A He asked me if I wanted to go out.
- 7 Q And what did you say?
- 8 A I said yes.
- 9 Q And what happened next?
- 10 A He told me that he would pick me up shortly and
- 11 to meet him on Brooks Street at a convenience
- 12 store.
- 13 Q This is going into that Monday night?
- 14 A Yes.
- 15 Q And did you meet him?
- 16 A Yes.
- 17 Q And where -- did he pick you up?
- 18 A Yes.
- 19 Q What type of car? Same car?
- 20 A Yes.
- 21 Q Where did you go?
- 22 A We went to Eddie Gauthier's house on Faneuil
- 23 Street.
- 24 Q When you went to Eddie Gauthier's house on

1 Faneuil Street, do you remember about what time  
2 it was that he picked you up?

3 A It was the night. It was late.

4 Q When you went to Eddie Gauthier's house on  
5 Faneuil Street, who was there?

6 A Eddie, Heather, Jason, Jeffrey was in and out of  
7 the apartment.

8 Q And Jeffrey is Jeffrey Fitzgerald?

9 A Yes.

10 Q And Jeffrey Fitzgerald lives where?

11 A Upstairs.

12 Q Upstairs from Eddie Gauthier's house?

13 A Yes.

14 Q Was Eddie Gauthier's mom home?

15 A No.

16 Q Where did you go in Eddie Gauthier's apartment?

17 A In Eddie's room.

18 Q And when you went in Eddie's room, were all the  
19 persons that you just named in Eddie's room?

20 A Yes.

21 Q And when you were in Eddie's room, tell the  
22 jurors what you were doing.

23 Q We were smoking weed, playing video games, the  
24 radio was on. We were crammed together. It's a

1 very small room.

2 Q Now, when you were in Eddie Gauthier's room, you  
3 said we're smoking, who was smoking marijuana?

4 A Eddie, Heather, Tanzerius, Jason and I.

5 Q Now, while you were in that particular room you  
6 said it's a very small room. How big of a room  
7 is it? Strike that.

8 Let me ask you in terms of when you're  
9 in Eddie's apartment. When you were in Eddie  
10 Gauthier's apartment, can you describe the layout  
11 for the jurors? As you walk into Eddie  
12 Gauthier's apartment, what's the first thing you  
13 enter into?

14 A Into the living room.

15 Q Where's the bedroom?

16 A If you walk through the living room to the right  
17 there is a short hallway. His bedroom is on the  
18 left. The bathroom is in the center and his  
19 mother's bedroom is to the right.

20 Q How about the kitchen?

21 A If you walk through the living room to the left  
22 you can walk into the kitchen.

23 Q Okay. So you, as I understand your testimony, if  
24 you walk through the door, the first thing you're

1 going to hit is the living room?

2 A Yes.

3 Q If you continue to walk down the hallway on my  
4 left is whose bedroom?

5 A Eddie's.

6 Q On the right is whose bedroom?

7 A His mother's.

8 Q And if I go on through the living room on the  
9 left over here is what? The kitchen?

10 A The kitchen.

11 Q Do you remember when you were in Eddie Gauthier's  
12 room with the defendants, Tanzerius Anderson and  
13 Jason Robinson, Heather, Eddie Gauthier's bedroom  
14 door, was it open or closed?

15 A Closed.

16 Q How long did you stay in the apartment for?

17 A Over an hour.

18 Q And when you left was there -- was there a reason  
19 for leaving at that point in time? Well, no,  
20 strike that.

21 At some point in time did the  
22 defendant, Tanzerius Anderson, say to you that he  
23 was going to leave?

24 A Yes.

1 Q And that was about -- you had been there for  
2 about an hour?

3 A Yes.

4 Q And where did he say to you that he was going to  
5 leave?

6 A He said it out loud in the bedroom and I had  
7 followed him into the living room where he was  
8 getting his coat.

9 Q And when you followed him into the living room  
10 where he's getting his coat, Ms. Tate, did he say  
11 why he was leaving?

12 A Because he had to work in the morning.

13 Q What did you say to him when he said he was  
14 leaving, he had work in the morning?

15 A I asked him if he would stay if we would rob  
16 someone.

17 Q What did he say?

18 MR. FLAHERTY: Objection.

19 THE COURT: Overruled.

20 A He said that he would.

21 THE COURT: I'm sorry. May I see  
22 counsel a moment, please?

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

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THE COURT: The grounds for the objection, sir?

MR. FLAHERTY: My objection is that the Court should conduct a voir dire, Your Honor.

THE COURT: I'm going to excuse the jurors and conduct a voir dire at this point, sir. Thank you.

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

THE COURT: Ladies and gentlemen, we are going to take the morning recess at this time. We will have some coffee brought in for you. Please leave your notes in your seats and do not discuss the case during the recess, and we'll see you after that time.

(Whereupon, the jury was escorted from the courtroom at 11:03 o'clock a.m.)

MR. TOCHKA: May we be heard at side bar? I think Mr. Flaherty has gone to use the restroom, Your Honor.

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

MR. TOCHKA: I'm just looking for parameters on this voir dire. My understanding,

1 it is only as to what observations she made about  
2 Tanzerius Anderson in terms of how much he might  
3 have consumed or smoked in terms of marijuana.

4 THE COURT: And what effect, if any, it  
5 had on him.

6 MR. TOCHKA: It's not in terms of what  
7 the exact statements were or anything like that?

8 THE COURT: That's right, sir, and you  
9 have got the burden here so you may proceed.

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

12  
13 VOIR DIRE EXAMINATION

14 BY MR. TOCHKA:

15 Q Ms. Tate, while you were in Eddie Gauthier's  
16 apartment for that hour, did you see how much --  
17 let me ask you.

18 You said that the four individuals, the  
19 four of you were smoking marijuana or the five of  
20 you were smoking marijuana, correct? How many --  
21 you know what a blunt is, correct?

22 A Yes.

23 Q How many blunts were being smoked during that  
24 hour period?

1 A Three.

2 Q And when you say three, were they being shared by  
3 all the individuals in the room?

4 A Yes.

5 Q And do you have an opinion, ma'am, in terms of --  
6 after this particular incident, you said that you  
7 did drive somewhere with Tanzerius Anderson.

8 Did you drive to your house on Dunboy  
9 Street with Tanzerius Anderson?

10 A Yes.

11 Q Can you tell us whether or not your observations  
12 of the amount of marijuana that he -- the intake  
13 of marijuana, did that have any effect on his  
14 ability to drive?

15 A I don't remember.

16 Q Your conversations with him during that night,  
17 did you understand -- did he appear to understand  
18 the questions that you asked him?

19 A Yes.

20 Q Did you understand what he was saying to you?

21 A Yes.

22 Q When you saw the defendant -- at any point when  
23 you saw the defendant, is it fair to say you had  
24 observations of the defendant walking, correct?



1 At various times during the evening?

2 A Yes.

3 Q At any point in time, ma'am, did he seem to be  
4 impaired while he was walking?

5 A No.

6 Q At any point in time, ma'am, did he appear to be  
7 under the influence of any type of alcohol or  
8 narcotics that would impair his ability?

9 A No.

10 MR. TOCHKA: Thank you.

11 MR. FLAHERTY: May I, Your Honor?

12 THE COURT: Mr. Flaherty.

13

14 VOIR DIRE EXAMINATION

15 BY MR. FLAHERTY:

16 Q Ms. Tate, you testified during that hour time  
17 period while you were at Eddie Gauthier's house,  
18 there were three blunt marijuana cigarettes  
19 smoked, correct?

20 A Yes.

21 Q And a blunt is a large marijuana cigarette, is it  
22 not?

23 A Depending on how much weed is inside the blunt.

24 Q And on March 27 how much weed was inside each one

1 of the blunts? Would you say several joints?

2 A Half a dime.

3 Q Half a dime for each blunt?

4 A Yes.

5 Q And a blunt is the size of a cigar, correct?

6 It's a holed out cigar?

7 A Yes.

8 Q And there were three of these cigars smoked

9 between yourself, Tanzerius Anderson, Jason

10 Robinson, Eddie Gauthier and Heather Coady,

11 right?

12 A Right.

13 Q All during the hour time period at Eddie

14 Gauthier's while you were playing video games and

15 listening to the radio, right?

16 A Yes.

17 Q Was there alcohol consumed during that time as

18 well?

19 A No.

20 Q No alcohol whatsoever?

21 A No.

22 Q Your memory is certain of that, right?

23 MR. TOCHKA: Objection, Your Honor.

24 Asked and answered.

1 THE COURT: It has been asked and  
2 answered, sir.

3 BY MR. FLAHERTY:

4 Q You were under the influence, weren't you? You  
5 were high, weren't you? From smoking those three  
6 blunts?

7 A Yes.

8 Q And it's fair to say that Tanzerius Anderson was  
9 high, too?

10 A Yes.

11 Q So wasn't Jason Robinson, Heather Coady and Eddie  
12 Gauthier, right?

13 A Yes, they were.

14 Q As a matter of fact, you were so high you can't  
15 remember whether or not he had difficulty driving  
16 the car back to Dunboy Street, right?

17 A Yes.

18 Q And, in fact, he was high to such a degree that  
19 he exhibited signs of being high, right?

20 You know what he looks like when he's  
21 been smoking marijuana, when he's high, right?

22 A Yes.

23 Q His demeanor had changed from the time prior to  
24 smoking the three blunts to after the time he

1 smoked the three blunts, right? He was  
2 different?

3 A Yes.

4 Q Because he was high, right?

5 A Yes.

6 Q The way he spoke was different, right?

7 A No, his voice doesn't change.

8 Q Well, not his voice, not the tone of his voice,  
9 but the things that were said, right?

10 MR. TOCHKA: Objection, Your Honor.

11 THE COURT: Rephrase the question, sir.

12 BY MR. FLAHERTY:

13 Q Well, the conversation changed after Tanzerius  
14 that night had been smoking the three blunts,  
15 right?

16 MR. TOCHKA: Objection to the form of  
17 the question.

18 THE COURT: Rephrase the question, sir.

19 BY MR. FLAHERTY:

20 Q It's fair to say that some of the things that he  
21 said during the conversation after smoking the  
22 blunts were stupid, right?

23 MR. TOCHKA: Objection, Your Honor.

24 THE COURT: Rephrase the question, Mr.

1 Flaherty.

2 BY MR. FLAHERTY:

3 Q Well, what he said, the way that he spoke and the  
4 words that he chose and the topics of  
5 conversation were influenced in your opinion by  
6 the amount of marijuana that he had smoked?

7 MR. TOCHKA: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. FLAHERTY:

10 Q Well, there was no question in your mind that he  
11 was high during the time you and he had a  
12 conversation right after smoking marijuana?

13 A Yeah.

14 Q And it's fair to say that the conversation was  
15 affected, in your opinion, by the amount of  
16 marijuana that he smoked, correct?

17 A Yeah.

18 MR. FLAHERTY: Nothing, Your Honor.

19 THE COURT: Anything?

20 MR. DOOLIN: Just briefly.

21

22 VOIR DIRE EXAMINATION

23 BY MR. DOOLIN:

24 Q Mr. Robinson was also in the room while that

1 marijuana was being smoked, is that right?

2 A Yes.

3 Q And he was also using those blunts, is that  
4 right?

5 A Yes.

6 Q Mr. Robinson was also high, wasn't he?

7 A Yes.

8 Q And it's fair to say that you were able to make  
9 observations of him smoking those three blunts  
10 over the hour that you were in the room with him,  
11 is that right?

12 A Yes.

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

15 THE COURT: Anything, Mr. Tochka?

16 MR. TOCHKA: Just very briefly .

17

18 CONTINUED VOIR DIRE EXAMINATION

19 BY MR. TOCHKA:

20 Q Ma'am, prior to -- at the time you had the  
21 conversation about leaving, about him saying why  
22 he was leaving, did you understand the  
23 conversation? Did you understand what he was  
24 saying to you?

1 A Yes.

2 Q Okay. When you had the conversation about  
3 robbing an individual, did he participate in that  
4 conversation while you were at Dunboy Street?

5 A Yes.

6 Q Did you understand what he was saying to you?

7 A Yes.

8 Q Did you have any difficulty understanding what he  
9 was saying to you?

10 A No.

11 Q Did his words seem coherent to you?

12 A Yes.

13 Q When you told him that you wanted him to meet you  
14 at a certain location, did he meet you at that  
15 location?

16 A Yes.

17 MR. TOCHKA: No further questions.

18 THE COURT: Thank you. Anything more?

19 MR. DOOLIN: No, Your Honor.

20 MR. FLAHERTY: No more questions, Your  
21 Honor.

22 THE COURT: Thank you very much. You  
23 may step down. I'll see you at side bar.

24 (Whereupon, the following discussion

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occurred at side bar:)

THE COURT: Okay.

MR. FLAHERTY: Your Honor, under the humane practice doctrine, I suggest this Court must exclude all statements attributed to Tanzerius Anderson by this witness based on her testimony at the voir dire. She testified that, in her opinion, Tanzerius Anderson was high, under the influence of marijuana, after having consumed his portion of three half dime bags in one half hour. She testified that his demeanor changed in a perceptible way from the time prior to smoking the marijuana to the time afterwards, and she testified that the conversation was affected by his ingestion of marijuana.

I would suggest, Your Honor, that that fact, in and of itself, that he was high, that his conversation changed, that his demeanor changed, and that he was affected in the conversation, the conversation itself was affected by his ingestion of marijuana, should cause this Court to conclude to exclude all statements attributed to Tanzerius Anderson on the twenty-seventh into the twenty-eighth.



1                   And, as the Court, I am positive, is  
2                   well aware, the highest burden under the American  
3                   jurisprudence system is applied to the  
4                   Commonwealth in this situation. They must prove  
5                   beyond a reasonable doubt and the introduction in  
6                   this prosecution for murder in the first degree  
7                   of very incriminating, very damaging statements  
8                   being attributed to Mr. Anderson that are being  
9                   offered to show his intent, his motive, the  
10                  conspiracy at hand in this case, I would suggest,  
11                  Your Honor, under that very high burden that,  
12                  based on the testimony of this witness, Joleena  
13                  Tate, that the Commonwealth under the present  
14                  state of the evidence and applying the law as  
15                  well cannot meet that burden and, therefore, this  
16                  Court is required to exclude all statements  
17                  attributed to Tanzerius Anderson on the twenty-  
18                  seventh and the twenty-eighth, respectfully.

19                  MR. DOOLIN: Just as to Mr. Robinson, I  
20                  also join in that. Mr. Robinson was also  
21                  described as being high by this witness, smoking  
22                  the same amount of marijuana and Mr. Tanzerius  
23                  Anderson, and I join in with Mr. Flaherty.

24                  MR. TOCHKA: Very briefly, Your Honor.

1 I believe she said, unless I'm mistaken, that  
2 they consumed a five dollar bag of weed,  
3 basically a half a dime bag, I suggest, within an  
4 hour, five individuals in that particular room.  
5 Anyone who smokes marijuana is obviously going to  
6 get high, is what she was referring to, anyone.  
7 Obviously that's the purpose of smoking the  
8 marijuana, but the question is, what was the  
9 effect on him in a short time or period where he  
10 then is talking with her, is coherent, she  
11 understands what he's saying, he understands her  
12 responses, she observes him walking, he is not  
13 impaired in any way in terms of what he is doing,  
14 his thought processes.

15 She has a conversation about meeting at  
16 a certain location, he is at that location that  
17 she tells him to meet her hours later and, I  
18 suggest also that just, de bene, the Court is  
19 going to hear that after this particular incident  
20 they then drove on the Mass. Turnpike, the  
21 defendant was driving the car on the  
22 Massachusetts Turnpike during that time. I  
23 suggest there is no evidence of being --

24 THE COURT: You didn't elicit that,

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sir.

MR. TOCHKA: I didn't. I said, de bene. I could put the witness back on if the Court wants but as a de bene, and both counsel know that that is going to come out, that there is no impairment as he is driving on the Massachusetts Turnpike.

I suggest to the Court what the defense is saying, basically whenever anyone smokes marijuana within a short period of time that, therefore, any statements they made are not voluntarily made and I suggest you have to go beyond that knee jerk of a sixteen year old, you know, a sixteen year old saying he's high, that he basically smoked, to what his actions were and they are coherent.

THE COURT: Other than this testimony about the sharing of three blunts of marijuana in Eddie Gauthier's room, is there going to be any other evidence that one or both of these defendants used drugs or alcohol after they left?

MR. TOCHKA: There is going to be the additional, after they left Eddie Gauthier's room, when they are at the park, McKinley Park,

1 after the shooting takes place, after they come  
2 back from the Massachusetts Turnpike.

3 THE COURT: This is after the shooting?

4 MR. TOCHKA: After the shooting, that  
5 there's additional statements that the defendants  
6 make and they go -- they are smoking marijuana at  
7 this point in time, that they share marijuana at  
8 that point in time but I think actually when they  
9 get into the car, they just start to roll the  
10 marijuana, they're not really smoking it, but in  
11 any case, they're not smoking marijuana on the  
12 Turnpike.

13 THE COURT: How far into her testimony  
14 is that going to be elicited?

15 MR. TOCHKA: Probably in the next ten  
16 minutes.

17 THE COURT: Okay. Bring her back to do  
18 that because I want to make all the findings at  
19 the same time about that.

20 MR. TOCHKA: That's fine.

21 THE COURT: And that's the only other  
22 evidence that will be proffered concerning the  
23 ingestion of drugs and alcohol?

24 MR. TOCHKA: On that night.

1 THE COURT: On that night. Are there  
2 any other occasions to which you expect her to  
3 testify about statements by one or more or both  
4 of the defendants where there is any evidence of  
5 ingestion of drugs or alcohol?

6 MR. TOCHKA: No. They go get a --  
7 right in the Arsenal Mall, when they go to the  
8 Arsenal Mall, they just picked up like a  
9 Heineken, two forty-ounces of Heineken and they  
10 had just gone into the Arsenal park.

11 MR. DOOLIN: Just to say that that's  
12 the evidence that we know about. We don't know  
13 whether they were smoking that day because Mr.  
14 Flaherty and I haven't been able to interview her  
15 so I don't know what she'll say about marijuana.  
16 There seems to be a lot of pervasive use of  
17 marijuana during all these occasions.

18 THE COURT: Would you call her back and  
19 ask her with respect to that, please?

20 Could we have Ms. Tate back, please?  
21 Alright. She is upstairs. We have to wait until  
22 she returns. Thank you.

23 (Whereupon, the proceedings were  
24 recessed at 11:18 o'clock a.m., and reconvened at

1 11:27 o'clock a.m., without the jury.)

2 THE COURT: Thank you. Mr. Tochka?

3  
4 VOIR DIRE EXAMINATION

5 BY MR. TOCHKA:

6 Q Ms. Tate, let me ask you, further on into that  
7 night, March 27 into March 28, at some point  
8 after the shots were fired, you went with  
9 Tanzerius Anderson, Jason Robinson on a route  
10 taken down Faneuil Street to Market Street. Do  
11 you remember that?

12 A Yes.

13 Q And who was driving the car?

14 A Tanzerius.

15 Q Can you describe in terms of his driving, did his  
16 driving seem to be affected at all by having an  
17 intake of marijuana earlier in the evening?

18 A No.

19 Q At some point in time he left -- at some point  
20 it's fair to say that he actually got out of the  
21 car and did something with a handgun, correct?

22 A Yes.

23 Q And you saw him walking at that point in time,  
24 correct?

1 A Yes.

2 Q Did he seem to be under the influence of any  
3 marijuana or the like?

4 A No, he didn't.

5 Q Did he seem to be impaired in any way?

6 A No.

7 Q At some point in time you came and you went to  
8 the McKinley Park that night, correct?

9 A Yes.

10 Q Did you see him walk into the park along with  
11 yourself and Jason Robinson?

12 A Yes.

13 Q Did he seem or did Jason Robinson at any point  
14 during that time walking into the park, did they  
15 seem to be impaired or under the influence or the  
16 like?

17 A No.

18 Q It's fair to say that at some point prior to  
19 coming into McKinley Park that you were on the  
20 Massachusetts Turnpike, right?

21 A Yes.

22 Q And who was driving the car on the Turnpike?

23 A Tanzerius.

24 Q And at that point while he was driving the car on

1 the Turnpike, for how long a period of time were  
2 you on the Turnpike with the defendant, Jason  
3 Robinson?

4 A Fifteen minutes.

5 Q At any point while he was driving the car, does  
6 he seem to be impaired at all while he is driving  
7 that car?

8 A No.

9 Q And while you are in that car are there  
10 conversations going back and forth between Jason  
11 Robinson and Tanzerius Anderson and yourself?

12 A Yes.

13 Q At any point -- and did you respond to what they  
14 were saying?

15 A Yes.

16 Q And did it appear to you whether or not they  
17 understood what you were saying?

18 A Yes.

19 Q At some point in time you left the park, right?

20 A Yes.

21 Q And when you left the park, you went back in the  
22 car, Tanzerius Anderson's car, right?

23 A Yes.

24 Q And at some point in time were you smoking



1 marijuana in the car with Tanzerius Anderson and  
2 Jason Robinson?

3 A Yes.

4 Q And in terms of -- I might have the pronunciation  
5 wrong, were you smoking a blunt or what were you  
6 smoking?

7 A Yes.

8 Q Was it a blunt?

9 A Yes.

10 Q Okay. And how long a period of time were you in  
11 a car smoking -- was it one blunt?

12 A Yes.

13 Q And was that being shared?

14 A Yes.

15 Q And how long a period of time was that being  
16 smoked in the car? Well, no, strike that.

17 How long were you in the car for at  
18 that time?

19 A After the incident?

20 Q Yes. From the time you left McKinley Park until  
21 the time you were dropped off.

22 A Thirty, thirty-five minutes.

23 Q And while you were in that car is the defendant  
24 making statements?

1 A Yes.

2 Q And again do you understand what he is saying to  
3 you?

4 A Yes.

5 Q Does he in any way seem to be affected by the  
6 consumption of the marijuana?

7 A No.

8 Q And we're already talked about how he was  
9 driving.

10 Does the defendant, Jason Robinson,  
11 make statements to you in that car?

12 A Yes.

13 Q Does he in any way appear to be under the  
14 influence of drugs?

15 A No.

16 Q Does he in any way appear to be impaired?

17 A No.

18 Q Do you understand what he's saying to you?

19 A Yes.

20 Q Does he appear to understand what you're saying  
21 to him?

22 A Yes.

23 Q Now, I want to take you to the Arsenal Mall, the  
24 time that you went to the Arsenal Mall a few days

1 later. Do you remember that?

2 A Yes.

3 Q Okay. Now, when you had gone to the Arsenal  
4 Mall, up until the time you were in the Arsenal  
5 Mall, do you know whether or not the defendant  
6 had consumed any alcohol or drugs?

7 The day we're talking about is the  
8 Scrub-a-Dub, the Store Twenty-Four and the  
9 Arsenal Mall. Do you know whether or not the  
10 defendant had consumed any alcohol or drugs on  
11 that date?

12 A Not until we reached the park.

13 Q How about the defendant, Jason Robinson? Do you  
14 know whether or not that day he had consumed any  
15 alcohol or drugs?

16 A Not until we reached the park.

17 Q When you reached the park, that's the Arsenal  
18 park you're talking about?

19 A Yes.

20 Q And how long were you at the Arsenal park for?

21 A Close to an hour.

22 Q Did the defendant make any statements to you?

23 A Yes.

24 Q And while you're at the Arsenal park for that

1 close to an hour, what was consumed?

2 A Alcohol.

3 Q And during that hour do you know how much is  
4 being consumed? Let's say by the defendant, do  
5 you know how much?

6 A Eleven ounces.

7 Q Did he appear to be under the influence of  
8 alcohol while he was talking to you?

9 A No.

10 Q Did you understand what he was saying to you?

11 A Yes.

12 Q Did his speech seem to be slurred in any way  
13 while he's talking to you?

14 A No.

15 Q Did he appear to understand the questions that  
16 you were asking him?

17 A Yes.

18 Q Did he respond appropriately to the questions  
19 that you were asking?

20 A Yes.

21 MR. TOCHKA: Thank you. I have no  
22 further questions.

23 THE COURT: Mr. Flaherty?  
24



1           you were under the influence of drugs and alcohol  
2           at that time?

3       A     Yes.

4       Q     And at that point, Miss --

5                           THE COURT:   Ms. Tate.

6       BY MR. FLAHERTY:

7       Q     At that point, Ms. Tate, could you tell us, had  
8           the defendant's demeanor, in your opinion,  
9           changed at all?

10      A     No.

11     Q     He seemed the same as he did before, right?  
12           Still high?

13     A     I don't understand.   If he was still high?

14     Q     Yeah.    You testified earlier that he was high  
15           after smoking the marijuana, right?   The three  
16           blunts?

17     A     The next time I saw him after the restaurant was  
18           when we got into the car after the shooting.

19     Q     And he didn't appear any different to you then  
20           than he had earlier?

21     A     Oh, excuse me, he did.   He seemed sober.

22     Q     He seemed sober?

23     A     Yes.

24     Q     And you made that conclusion after yourself

1           having drank three drinks and previously smoking  
2           three blunts, right?

3       A     Yes.

4       Q     And then while you were driving down Faneuil and  
5           Market Street is when you had some conversation,  
6           right?

7       A     Yes.

8       Q     Then you came back to the McKinley Park and I  
9           believe you bought a ten dollar bag of marijuana  
10          from Heather Coady. Is that fair to say?

11      A     Yes.

12      Q     And a ten dollar bag of marijuana, that's a dime  
13          bag, right?

14      A     Yes.

15      Q     There's enough for two blunts?

16      A     Yes.

17      Q     So when you smoked the blunts in the car when you  
18          were on the Turnpike, is it fair to say that this  
19          was a couple blunts?

20      A     We didn't smoke on the Turnpike.

21      Q     Where did you smoke?

22      A     After we left the park.

23      Q     Before you got onto the Turnpike you smoked?

24      A     No, this is after the Turnpike.

1 Q Oh, after the Turnpike. Excuse me. So after you  
2 left the park, after you had been on the  
3 Turnpike, you smoked the blunt that was, in  
4 essence, double the amount of marijuana that's in  
5 a normal blunt?

6 Is that fair to say? Because it was a  
7 ten dollar bag?

8 A We didn't put the whole bag in the blunt.

9 Q Okay. How much was in the blunt? Regular size  
10 blunt?

11 A Yes.

12 Q And after smoking that, I think your testimony  
13 was, and correct me if I'm wrong, that Mr.  
14 Anderson was not affected by smoking that  
15 marijuana?

16 A No, he wasn't.

17 Q And again you're forming this conclusion after  
18 you had previously smoked three blunts or  
19 portions of three blunts, had three drinks at  
20 Wadi's and now smoked a portion of a fourth  
21 blunt?

22 A Yes.

23 Q And it's your testimony before this Court that  
24 you formed the opinion that Mr. Anderson was not



1 affected in any way whatsoever by smoking the  
2 blunt in the car that you had purchased at  
3 McKinley Park?

4 A My opinion would be he was mildly high.

5 Q So he was affected then?

6 THE COURT: I'm sorry. I didn't hear  
7 you. That he was what?

8 THE WITNESS: He was mildly high.

9 THE COURT: Go ahead. Anything else,  
10 Mr. Flaherty?

11 BY MR. FLAHERTY:

12 Q At the Arsenal Mall the day you met up at Scrub-  
13 a-Dub, you stopped and you bought how much  
14 alcohol prior to going to the Arsenal Mall, if  
15 you recall, Ms. Tate?

16 A Two twenty-two ounces.

17 Q And it's your opinion or your memory that Mr.  
18 Anderson drank half of one of those twenty-two  
19 ounces?

20 A Yes.

21 Q And what kind of alcohol was it?

22 A Heinekens.

23 Q Was there any marijuana smoked that day?

24 A No.

1 Q Heather Coady was present that day, correct?

2 A Yes, she was.

3 Q And you're positive there's no marijuana smoked  
4 that day at the Arsenal park?

5 A Yes.

6 Q That's your memory?

7 A Yes.

8 Q And after having consumed half of twenty-two  
9 ounces, did you note any change in Mr. Anderson?  
10 Did you note that the alcohol that he drank that  
11 day had any impact on him?

12 A No.

13 Q None whatsoever?

14 A No.

15 MR. FLAHERTY: Okay. No further  
16 questions.

17 THE COURT: Anything?

18

19 FURTHER VOIR DIRE EXAMINATION

20 BY MR. DOOLIN:

21 Q These blunts that you're talking about, it's fair  
22 to say that a blunt is a cigar, is that right?

23 A Yes.

24 Q And you put the marijuana in the cigar, is that

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right?

A The paper of the cigar.

Q And you roll it over again, is that right?

A Yes.

Q And it keeps the marijuana within the cigar, is that right?

A Yes, it does.

Q And it gives you a more intense high than a joint, doesn't it?

A Yes.

Q And your testimony is that the three blunts that you talked about, each of those blunts had half a dime bag, is that right?

A Yes.

Q So in total at Gauthier's house, you smoked a dime bag and half a dime bag in those blunts, is that right?

A Yes.

Q And when you got into the car and you drove -- well, did you smoke any marijuana in McKinley Park with Heather Coady and Mr. Gauthier?

A No, we didn't.

Q Did you have a joint going?

A No.

1 Q When you got into the car and drove away, it's  
2 your testimony that there was another blunt that  
3 was smoked, is that right?

4 A Yes.

5 Q And that this would have been the fourth blunt  
6 that Mr. Robinson participated in, is that right?

7 A Yes.

8 Q And that Mr. Robinson was high at the end of  
9 that, wasn't he?

10 A Yes, he was.

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

13 THE COURT: Thank you. Anything more,  
14 Mr. Tochka?

15 MR. TOCHKA: No.

16 THE COURT: I'll see counsel at side  
17 bar.

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

20 THE COURT: Okay. Anything more that  
21 has not already been said?

22 MR. FLAHERTY: Just that on both  
23 instances, at Eddie Gauthier's apartment and  
24 while driving and leaving McKinley Park, this

1 witness has testified in her opinion, and I think  
2 the record is clear that her opinion may be  
3 affected somewhat by her own ingestion of alcohol  
4 and narcotics, but in her opinion, even in her  
5 impaired state, her opinion is that Mr. Anderson  
6 was high on both occasions.

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

9 THE COURT: Ms. Tate, would you just  
10 step down and stand by the door, please? Just  
11 have her stand by.

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

14 THE COURT: Yes, sir?

15 MR. FLAHERTY: In her opinion he is  
16 high on both occasions and because of that, Your  
17 Honor, this Court should apply the very high  
18 standard, beyond a reasonable doubt, and under  
19 the humane practice doctrine, conclude that this  
20 defendant, Mr. Anderson, due to his voluntary  
21 ingestion of narcotics, could not make a  
22 voluntary statement and, therefore, exclude all  
23 statements attributed to him by this witness at  
24 those relevant times.

1 THE COURT: Thank you. Mr. Doolin,  
2 anything more?

3 MR. DOOLIN: I just add, it applies to  
4 Mr. Robinson, it's the same level of drug use.

5 THE COURT: Anything more, Mr. Tochka?

6 MR. TOCHKA: No, Your Honor.

7 THE COURT: Okay. Out of an abundance  
8 of caution, the Court had conducted a voir dire  
9 in the absence of the jury with respect to the  
10 defendant Anderson's request that one be  
11 conducted under the humane practice rule.

12 After listening to her testimony, I  
13 make the following findings that, with respect to  
14 the gathering in Eddie Gauthier's apartment on  
15 the evening of March 27, there were present in  
16 Gauthier's room this witness, Joleena Tate, each  
17 of the two defendants, Jason Robinson and  
18 Tanzerius Anderson, and Heather Coady; that, at  
19 that time over a period that spanned an hour or a  
20 little more, those individuals smoked among them  
21 three blunts of marijuana. The testimony which I  
22 credit of this witness was that, notwithstanding  
23 this ingestion of marijuana by the defendants,  
24 that she had no difficulty communicating with

1           them, in particular defendant Anderson, that he  
2           spoke clearly, that he expressed himself clearly,  
3           that he was coherent. In her words, she does say  
4           that he was high. I take that to mean that he  
5           was experiencing the effects of the marijuana,  
6           that with respect to the driving which occurred  
7           thereafter on the Turnpike, she said that he was  
8           not impaired while driving or affected.

9                        There was additional ingestion of  
10           smoking of marijuana in McKinley Park. She  
11           stated clearly that he was not under the  
12           influence or impaired at that time although she  
13           said he continued in her view to be high, that  
14           is, experiencing the effects of marijuana.

15                      With respect to the third incident at  
16           Arsenal Mall, she said that there was consumed by  
17           the defendant Anderson - there was no specific  
18           evidence as relates to Robinson - that he  
19           consumed approximately eleven ounces of alcohol  
20           but that he was not under the influence, his  
21           speech was not slurred, and she said, "seemed  
22           sober," after the incident.

23                      As to Robinson, there is fewer  
24           observations made by this witness but she also

1 expressed her opinion that she had no difficulty  
2 communicating with him at any time. There is no  
3 evidence that he was impaired, otherwise under  
4 the influence, so as to incapacitate or to affect  
5 mental capacity which seems to me the central  
6 concern here.

7 Based on the evidence, I find that as a  
8 preliminary matter under the humane practice rule  
9 that the jury may hear statements made by either  
10 one of these two defendants at the three relevant  
11 times that have been referenced in the voir dire.  
12 I do not find that being high is the equivalent  
13 of having impaired capacity so that -- there is  
14 no evidence that the will was overcome or that  
15 the statements made were not the product of  
16 rational intellect. There is no evidence here on  
17 this record that any defendant at any time was  
18 tricked into making statements, was coerced into  
19 making statements, just that there was an  
20 ingestion of marijuana and the ingestion of  
21 marijuana, the evidence is, with respect to the  
22 first incident, that there was not an impairment  
23 of mental capacity even though they may have been  
24 high.



1 Her sobriety, it seems to me at that  
2 time that she is having these communications,  
3 conversations with one or both of the defendants  
4 certainly should be and will be subject to cross  
5 examination. It's going to be up to the jury to  
6 determine whether or not the statements made by  
7 these defendants were made voluntarily. I will  
8 put it to them with respect to the charge and the  
9 legal instruction, but at this time I find that I  
10 am satisfied that there is no credible evidence  
11 that they, either one of these two defendants,  
12 made those statements involuntarily or outside of  
13 any rational intellect.

14 Your objections are noted. You may  
15 continue.

16 MR. TOCHKA: Thank you.

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

19 (Whereupon, the jury was escorted into  
20 the courtroom at 11:45 o'clock a.m.)

21 THE COURT: Ladies and gentlemen,  
22 welcome back. Thank you for your patience during  
23 the recess. We are ready to continue at this  
24 time.

1 Mr. Tochka, we are still with Ms. Tate.

2 MR. TOCHKA: Thank you.

3 BY MR. TOCHKA:

4 Q Ms. Tate, I believe we left off -- I believe that  
5 we left off with, I'd asked you -- or that you  
6 had testified the defendant said that he wanted --  
7 - he was going to go home. He was going home  
8 early, correct?

9 A Yes.

10 Q And did he say why?

11 A He said he had to work in the morning.

12 Q And when he said that, you asked him if he wanted  
13 to do a robbery?

14 A Yes.

15 Q Now, had you had any conversations with him in  
16 the past about conducting robberies?

17 A Yes.

18 Q And can you tell us when those conversations  
19 were?

20 A We were together one night smoking by ourselves.  
21 We had talked about -- he told me about a system  
22 he wanted to run through the public high schools  
23 in Boston, about a service, the commission was  
24 the name of it, and they were to have commission

1 on the back of leather jackets and they would rob  
2 drug dealers or men with large amounts of money.  
3 The high schools would have five or six youths in  
4 each high school who would sell drugs out of the  
5 high school.

6 MR. DOOLIN: Move to strike,  
7 respectfully.

8 THE COURT: Denied. Another question,  
9 please.

10 BY MR. TOCHKA:

11 Q When you asked him on that night if he wanted to  
12 do a robbery, did you tell him who you had in  
13 mind?

14 A Yes.

15 Q And who did you tell him?

16 A That I had an associate, Yaz.

17 THE COURT: Keep your voice up, please.

18 A (continued) That I knew a man named Yaz.

19 BY MR. TOCHKA:

20 Q And did you tell him what you knew about Yaz?

21 A I told him that he always carried a large amount  
22 of cash on him, that I knew him not to put up a  
23 fight if ever approached, that he was passive.

24 Q Describe Yaz in terms of his height to the jury?

1 How tall was he?

2 A Five six.

3 Q And about how much would you say he weighed?

4 A One eighty.

5 Q And when you had this conversation with the  
6 defendant about doing the robbery in connection  
7 to Yaz, what did he say?

8 MR. DOOLIN: Your Honor, I object.

9 THE COURT: Overruled.

10 A He said that he would.

11 BY MR. TOCHKA:

12 Q What happened next?

13 A He called Jason into the living room of Eddie's  
14 house.

15 Q Where had Jason been while you were having this  
16 conversation? Where had Jason been?

17 A In Eddie's room.

18 Q Was the door closed or open?

19 A Closed.

20 Q When he called Jason in, did he go into the  
21 living room? Did he go into the bedroom? Or  
22 how did he call Jason?

23 A He hollered Jason.

24 Q What did Jason do?

1 A He came.

2 Q What happened.

3 A He asked Jason if he was down for a robbery.

4 Q What did Jason say?

5 A That he was.

6 Q Where did you then go?

7 A We left to go to Dunboy Street.

8 Q Who is we?

9 A Jason, Tanzerius and I.

10 Q In whose car did you go?

11 A Tanzerius's Mazda.

12 Q Who drove?

13 A Tanzerius.

14 Q Who was in the front passenger seat?

15 A I was.

16 Q Who was in the back seat?

17 A Jason.

18 Q How long did it take to drive to Dunboy Street?

19 A Five minutes at the most. Less than five

20 minutes.

21 Q And when you got to Dunboy Street, did you have

22 any conversations with the defendant or Jason?

23 A Yes.

24 Q And did the conversation involve a robbery?

1 A Yes.

2 Q And what was the conversation?

3 A Where would we meet, how I would reach them, at  
4 what time, that I would be able to punch in a  
5 time into Jason's pager, that I would bring the  
6 victim into Faneuil Street down the entrance  
7 driveway and they would meet me in the hallway of  
8 89 Faneuil Street.

9 Q And then what would happen?

10 A And they would be there and I would just pretend  
11 that we were getting robbed and turn around and  
12 walk away.

13 Q When you got to your house on Dunboy Street, did  
14 you go inside the house?

15 A Yes.

16 Q What did these two defendants do?

17 A They stayed outside in the car.

18 Q What did you do when you got into the house?

19 A I called Yaz.

20 Q And when you called him, did you have -- had you  
21 had his number?

22 A We went to the house because the number was on my  
23 bureau on a little piece of white paper.

24 Q When you called him did he answer the phone?

1 A Yes.

2 Q Did he say where he was?

3 A He was already at Wadi's restaurant.

4 Q And did you have a conversation with him? Just  
5 yes or no.

6 A Yes.

7 Q As a result of the conversation did he agree to  
8 come by and pick you up?

9 A Yes.

10 Q After you had that conversation with Yaz -- about  
11 how long a period of time was that conversation?

12 A Two minutes.

13 Q What did you do after you had that conversation  
14 with him?

15 A I returned outside to the car and confirmed with  
16 them that he was picking me up.

17 Q And did you have any other conversations with the  
18 defendants, Tanzerius Anderson and Jason  
19 Robinson?

20 A That I would page Jason and punch in a certain  
21 number, that they would meet me on 89 Faneuil  
22 Street, and they said they would.

23 Q Who said they would?

24 A Jason and Tanzerius.

1 Q At this time when you came out of the car -- I'm  
2 sorry, when you came out of the house, was  
3 Tanzerius Anderson still in the driver's seat?  
4 A Yes.  
5 Q Where was Jason Robinson at that time? Had he  
6 moved to the front seat or was he still in the  
7 back seat, if you know?  
8 A I don't remember.  
9 Q After you had the conversation with the two  
10 defendants, what did they do?  
11 A They left.  
12 Q What did you do?  
13 A I waited outside to be picked up.  
14 Q And who picked you up?  
15 A Yaz.  
16 Q What type of car -- do you remember the car?  
17 A Four door, large, soft top. I'm not sure.  
18 Q And when he picked you up, did you go somewhere  
19 with him?  
20 A Yes.  
21 Q Where was that?  
22 A Wadi's restaurant.  
23 Q And Wadi's restaurant is located where?  
24 A In Watertown.



1 Q So let me ask you, from the time that you left  
2 the apartment of Edward Gauthier with these two  
3 defendants to the time that they left you at  
4 Dunboy Street and they left in their car, how  
5 much time had passed between the time you left to  
6 the time they then left in their car before Yaz  
7 picked you up?

8 A Over an hour, close to two hours.

9 Q No. What I'm asking you is this, when -- you  
10 left Edward Gauthier's house, correct?

11 A Yes.

12 Q You left with these two defendants, you testified  
13 to?

14 A Yes.

15 Q You then went to your house, correct?

16 A Yes.

17 Q And then at some point in time at your house --  
18 how long were you in your house for?

19 A Five, seven minutes.

20 Q So it took about five minutes to drive from Eddie  
21 Gauthier's house to your house, correct?

22 A Yes.

23 Q You were in your house for about five minutes,  
24 correct?

1 A Yes.

2 Q So that's ten minutes. How long was the  
3 conversation you had with these two defendants  
4 outside your house confirming that Yaz was going  
5 to pick you up before you left?

6 A Five minutes.

7 Q So approximately fifteen minutes?

8 A Yes.

9 Q When Yaz picked you up, he took you to Wadi's,  
10 you testified. Right?

11 A Yes.

12 Q And Wadi's restaurant, was it crowded when you  
13 went there that night?

14 A No.

15 Q And when you say no like that, describe it for  
16 us.

17 A It was almost desolate. There were a couple of  
18 people at the bar. We were the only people in  
19 the dining room.

20 Q Okay. How long were you at Wadi's restaurant  
21 for?

22 A Over an hour.

23 Q And while at Wadi's restaurant, did you have  
24 anything to eat?

1 A Yes.

2 Q Who paid for it?

3 A Yaz.

4 Q Did you have anything to drink?

5 A Yes.

6 Q Who paid for it?

7 A Yaz.

8 Q Did Yaz have a cell phone that you know of?

9 A Yes, he did.

10 Q Did he have it on him that evening?

11 A Yes.

12 Q Do you recall whether or not you used that cell  
13 phone that evening?

14 A Yes, I did.

15 Q Tell the jurors how many times you used Yaz's  
16 cell phone and for what reason.

17 A I used the cell phone twice, once to call Heather  
18 Coady and the second time to punch in a time into  
19 Jason's pager.

20 Q When you used the phone the first time to call  
21 Heather Coady, did she call you back? Was she  
22 there when you called her?

23 A No, she wasn't.

24 Q What number did you call? Her home number?

1 A Her home.

2 Q At some point did you speak to her that night on  
3 Jason's cell phone?

4 A Yes.

5 Q How soon after you called when you didn't get in  
6 touch with her did you then get a call back from  
7 her?

8 A Minutes.

9 Q After that you said you used the phone to punch  
10 in the time?

11 A Yes.

12 Q Do you remember what time you punched in?

13 A Eleven forty-five.

14 Q And did you leave Wadi's with Yaz, Iman Yazbek?

15 A Yes.

16 Q And did you ask him to take you somewhere?

17 A Yes.

18 Q Where?

19 A To a friend's house on Faneuil Street.

20 Q And how far away is Wadi's in driving distance to  
21 the Faneuil development?

22 A Oh, minutes.

23 Q And when you got to Faneuil Street, did you go  
24 down -- where did you turn?

- 1 A Onto a driveway of 89 Faneuil Street.
- 2 Q As you're driving down that driveway, does he
- 3 park the car somewhere?
- 4 A Yes.
- 5 Q Where did Yaz park the car?
- 6 A Facing the building.
- 7 Q What did you do?
- 8 A I asked him if he would walk me into the hallway.
- 9 Q What did he say?
- 10 A That he would.
- 11 Q What did he do?
- 12 A He got out of the car and accompanied me into the
- 13 hallway.
- 14 Q Who did you expect to see in that hallway?
- 15 A Jason and Tanzerius.
- 16 Q Were they in the hallway?
- 17 A No.
- 18 Q What did you do?
- 19 A I knocked on a dummy door.
- 20 Q When you say a dummy door, what do you mean?
- 21 A No one was living behind the door.
- 22 Q When you knocked on the dummy door, what was the
- 23 purpose in doing that?
- 24 A To stall for time.

- 1 Q What happened next? And that door, which door is  
2 that? As soon as you walk into --
- 3 A The first door on your left.
- 4 Q When you knocked on that door, where was Yaz  
5 standing, if you know?
- 6 A Behind me.
- 7 Q After you knocked on the door, what did you do?
- 8 A I left the hallway.
- 9 Q Did you say anything to Yaz?
- 10 A That they must not be home.
- 11 Q And so you let the walkway. You went where?
- 12 A Outside.
- 13 Q Did Yaz follow you?
- 14 A Yes.
- 15 Q What did Yaz then do?
- 16 A He walked to the driver's side door.
- 17 Q What were you doing?
- 18 A I was walking with him. I hollered Heather's  
19 name out a bit and I whistled.
- 20 Q Had you seen Heather at this point?
- 21 A No.
- 22 Q When you whistled -- excuse me. When you  
23 hollered Heather's name out, where were you  
24 looking at the time?

1 A Towards the building, up at the windows.

2 Q In other words, the same building, the windows of  
3 the door that you had knocked on?

4 A No.

5 Q What building? The building of 89?

6 A Yes.

7 Q And why were you looking at the building of 89 as  
8 you were calling Heather's name?

9 A To pretend like I was trying to get the people's  
10 attention in the house.

11 Q What happened next? After you did that, knocked,  
12 whistled, called Heather's name, what did you see  
13 happen next?

14 A I was standing in front of Yaz with my back  
15 towards the dumpster and I heard footsteps and I  
16 turned around and saw Jason and Tanzerius behind  
17 us.

18 Q When you saw Jason and Tanzerius behind you, what  
19 did you see Jason and Tanzerius do?

20 A They walked up to us and I looked at Yaz and  
21 said, we're being robbed and then he turned  
22 around and --

23 Q Who said, we're being robbed?

24 A I did.

1 Q And then you turned around and did what?

2 A I walked away.

3 Q Which direction were you walking?

4 A Towards the playground.

5 Q What did you see these two defendants do to Iman

6 Yazbek before you turned?

7 A They were on either side of him, leading him by

8 the arms toward the building.

9 Q Towards the same hallway that you had just come

10 out of?

11 A Yes.

12 Q And which path do you now take, Ms. Tate? Which

13 path did you take as you're going?

14 A Parallel to a fence leading into a park, the

15 playground.

16 Q Did you see anybody as you were doing that?

17 A Yes. Towards the end of the fence I saw Heather

18 approaching.

19 Q What did you say to Heather when you saw her?

20 A I acknowledged her, I waved, she waved, and we

21 met and I told her to turn around and walk with

22 me.

23 Q Do you remember when you first saw Heather as you

24 were walking away down that pathway, did you say



1 anything to her? Did you call out to her?

2 A Well, I acknowledged her. I said, hi. I might  
3 have said hi, Heather. I don't remember.

4 Q As you're walking down there, you said you had --  
5 you met up with Heather. Where did you meet up  
6 with her?

7 A Almost at the playground.

8 Q Now, as you're walking down that pathway, which  
9 way is she walking?

10 A Towards me.

11 Q And as you met Heather, which direction do you  
12 then go into? What direction do you then go to?

13 A We take a corner which brings us into the  
14 playground on the other side of the building.

15 Q Now, as you're doing this, what do you hear?

16 A A very loud noise.

17 Q What did you say, if anything, when you heard  
18 that very loud noise?

19 A We flinched and I said, oh, shit.

20 Q How much time had passed before -- between the  
21 time that you last saw Iman Yazbek and you heard  
22 that noise, if you remember?

23 A Minutes. five minutes, four minutes.

24 THE COURT: Keep your voice up, please.

1 BY MR. TOCHKA:

2 Q When you saw Heather Coady and you're walking  
3 with her, what do you do next after you hear that  
4 sound?

5 A I told her to keep walking with me.

6 Q Where did you walk to?

7 A Up into the parking lot of 75.

8 Q And what observations do you make as you're  
9 walking up to the parking lot?

10 A Heather was on my right up until the stairway,  
11 the stairway leading up into the parking lot and  
12 as I was at the top of the stairs, I could hear  
13 scuffling behind me and I turned to my left and  
14 Tanzerius was up at the stairs.

15 Q Was he walking? Was he running?

16 A He was walking fast.

17 Q What did you do?

18 A I followed him.

19 Q Where did you follow him?

20 A To the Mazda.

21 Q Where was the Mazda parked?

22 A On the left side of the parking lot.

23 Q What did you do?

24 A I got into the passenger's side.

1 Q What did he do?

2 A He was in the driver's seat.

3 Q What happened next?

4 A Jason got into the back seat.

5 Q Did you see where Jason came from?

6 A Diagonal to 75, diagonal to the car, up towards  
7 Faneuil Street.

8 Q When you got into the car, Jason got into which  
9 side? The back seat, you said?

10 A Yes.

11 Q What happened next?

12 A Tanzerius put the car into reverse and we drove  
13 off out of the parking lot.

14 Q Which direction were you going? Which direction  
15 was he driving?

16 A We took a left onto Faneuil, left onto North  
17 Beacon Street and right onto Market Street into  
18 Union Square -- excuse me. After Faneuil Street,  
19 it was a left on Market and a right on North  
20 Beacon.

21 Q While in the car with the defendant, Tanzerius  
22 Anderson, did he say something to you?

23 A I was screaming at him --

24 MR. FLAHERTY: Objection, move to

1 strike, Your Honor.

2 THE COURT: Listen to the question,  
3 please.

4 BY MR. TOCHKA:

5 Q Did you say something to Tanzerius Anderson in  
6 the car?

7 A Yes, I did.

8 Q And what's the first thing you were saying to  
9 him?

10 MR. FLAHERTY: Objection.

11 THE COURT: Overruled.

12 A I was saying, what's going on, Tanzerius, what  
13 did you just do, what happened.

14 BY MR. TOCHKA:

15 Q What did he respond?

16 MR. DOOLIN: I object.

17 THE COURT: Overruled.

18 A He looked towards me and said he's murked.

19 BY MR. TOCHKA:

20 Q What else did he say?

21 A He said, I got my body for the summer.

22 Q That term, "murked," did you know what he meant  
23 by that?

24 A Dead.

1 Q Where was Jason Robinson when he said that?

2 A He was in the back seat.

3 Q And based on his statement that, I got my body  
4 for the summer, he's murked, meaning he's dead,  
5 did you know who he was referring to?

6 MR. FLAHERTY: Objection to the form,  
7 Your Honor.

8 THE COURT: Another question, sir.

9 BY MR. TOCHKA:

10 Q Where did you go with the defendant and Jason  
11 Robinson?

12 A Into Union Square.

13 Q Okay. So you go left on Faneuil Street, you  
14 said, and left on Market Street, right?

15 A Yes.

16 Q And then you said on Market Street you did what?

17 A We took a right into North Beacon Street.

18 Q And you drove up North Beacon Street into Union  
19 Square?

20 A Yes.

21 Q Then what did the defendant, Tanzerius Anderson,  
22 do in terms of driving the car when he got to  
23 Union Square?

24 A He turned onto a residential street.

1 Q And when he turned onto a residential street, can  
2 you describe that particular area that you went  
3 in? Do you know where the street is?

4 A No.

5 Q Can you describe the area? You said residential.  
6 Is it all residential?

7 A There was an industrial parking lot building.

8 Q So is it mixed residential and industrial?

9 A Yes.

10 Q Where did he drive to?

11 A To a vacant lot.

12 Q Now, prior to you seeing that lot, at any point  
13 in time in the car did you observe a gun?

14 A Yes.

15 Q And at what point in time did you observe the gun  
16 when you got in the car back on Faneuil Street?

17 A After we left the parking lot.

18 Q And who did you observe with the gun?

19 A Tanzerius.

20 Q And where was the gun when you observed it?

21 A His hand was in his right vest pocket and he took  
22 it out.

23 Q And when it took it out what did he do with it?

24 A He passed it in back to the back seat with Jason.

1 Q Did you recognize that gun or did you believe  
2 that you recognized that gun when you saw it?

3 A Yes.

4 Q What did you recognize that gun to be?

5 A The revolver I gave him.

6 Q The revolver that you gave him?

7 A (Nodded head.)

8 Q Is that a yes?

9 A Yes.

10 Q Is that the same gun that was taken from your  
11 father's house?

12 A Yes.

13 Q Now, when you drove in this industrial,  
14 residential area, you said he drove into a  
15 parking lot?

16 A Yes.

17 Q What did he do? What did the defendant,  
18 Tanzerius Anderson, do when he drove into that  
19 parking lot?

20 A He pulled up to a bobcat, the car was facing the  
21 bobcat, parked the car, and got the gun back from  
22 Jason. He got out of the car and put the gun  
23 under the shovel of the bobcat.

24 Q What did he do next?

1 A He got back into the car.

2 Q And where did he drive?

3 A Back to Faneuil Street.

4 Q Can you tell us --

5 A Excuse me. We went on the Mass. Pike.

6 Q And where on the Mass. -- where did he go on the  
7 Mass Pike? Do you know what entrance?

8 A In Allston.

9 Q And how long was he driving on the Mass. Pike?

10 A Fifteen minutes.

11 Q And tell us what happened while driving on the  
12 Mass. Pike?

13 A Jason was -- leaned into the console between  
14 Tanzerius and my seat and he had a wallet and a  
15 cell phone in his hand and I watched him go  
16 through the wallet. He counted the cash that was  
17 in the wallet.

18 Q And how much did he count out, did he say?

19 A He said forty-six dollars.

20 Q And when he said forty-six dollars, did the  
21 defendant, Tanzerius Anderson, respond in any  
22 way?

23 A He repeated forty-six dollars, looking at me.

24 Q What was his demeanor?



1 A Disappointed, angry.

2 Q Disappointed and angry at who?

3 A At me.

4 MR. FLAHERTY: Objection.

5 THE COURT: I'll sustain it. Another  
6 question, sir.

7 BY MR. TOCHKA:

8 Q After Jason Robinson counted the money and he had  
9 the wallet and the cell phone, what did he do  
10 with the cell phone? Did you see or -- what did  
11 he do with any of the items, actually?

12 A They were kept in back with him. He gave cash up  
13 to Tanzerius.

14 Q He gave the cash, the forty-six dollars, to  
15 Tanzerius, and what did Jason Robinson do with  
16 the wallet and the phone?

17 A He kept it.

18 Q Where did the three of you then go?

19 A We then went back to Faneuil Street.

20 Q And was there a conversation about going back to  
21 Faneuil Street?

22 A Yes.

23 Q And whose idea was it to go back to Faneuil  
24 Street?

- 1 A Jason's.
- 2 Q And when you went back to Faneuil Street, did you  
3 see anybody there? Did you stop the car  
4 somewhere? Did he stop the car somewhere?
- 5 A Yes.
- 6 Q Where did Tanzerius Anderson stop the car?
- 7 A On Faneuil Street in front of the building.
- 8 Q And do you know why he stopped the car there?
- 9 A No.
- 10 Q When he stopped the car, did you get out of the  
11 car?
- 12 A Yes.
- 13 Q Did the three of you get out of the car?
- 14 A Yes.
- 15 Q And where did you go?
- 16 A We crossed the street into the park.
- 17 Q That's McKinley Park?
- 18 A Yes.
- 19 Q Now, before you get out of the car and go into  
20 McKinley Park, is there any conversation about  
21 anybody being in the park?
- 22 A Not that I remember.
- 23 Q Okay. You got in the park and which direction  
24 did you go into the park? How did the three of

1           you walk to the park?

2           A       There is an opening beside the basketball court.

3           Q       And did you walk into the basketball court or  
4           beside the basketball court?  Where did the three  
5           of you go?

6           A       We followed a path which leads behind the park to  
7           a set of benches.

8           Q       And who was there?

9           A       Heather and Eddie.

10          Q       Now, did you know that they were going to be  
11          there or how --

12                       MR. TOCHKA:  Objection.

13                       THE COURT:  She may answer that.

14          A       I didn't know.

15          BY MR. TOCHKA:

16          Q       Did you know, based on any conversations in the  
17          car, whether Jason Robinson or Tanzerius Anderson  
18          driving by knew that they were there?

19          A       Yes.

20          Q       And what was that conversation?

21          A       Jason said that he needed to go back and talk to  
22          Heather because he had lost his watch.

23          Q       As you go inside that park, how long are you  
24          inside the park?

1 A Seven minutes.

2 Q And while you're in that particular park, you  
3 said that -- who was in the park? It was  
4 yourself and the defendants, Jason Robinson and  
5 Tanzerius Anderson. Who else is in the park?

6 A Heather and Eddie.

7 Q And is there any conversation that you observed  
8 that you were present for relative to that watch?

9 By that, my question is, did you hear  
10 any conversation between or amongst the  
11 defendants and anyone relative to the watch?

12 A Jason had just said that he had lost his watch.

13 Q And who did he say that to in the park?

14 A Heather.

15 Q Did he describe -- did he say what type of watch  
16 it was?

17 A A Timberland watch with a leather wrist band.

18 Q Did you leave the park?

19 A Yes.

20 Q Who did you leave the park with?

21 A Tanzerius and Jason.

22 Q Before leaving the park, did you purchase  
23 something from Heather?

24 A Yes.

1 Q What was that?

2 A Weed.

3 Q And how much was that?

4 A Ten dollars worth.

5 Q When you went into the park -- I mean, when you  
6 left the park and went to the car, was there a  
7 reason why you purchased that ten dollars worth  
8 of weed at that time?

9 A Yeah, because I had sobered up pretty quick.

10 Q What do you mean?

11 A After I was told that Yaz was dead, after I  
12 realized the occurrences of that night, I wasn't  
13 drunk any more.

14 Q And so what did you purchase the marijuana for?

15 A So I didn't have to think about what happened, to  
16 relax me.

17 Q When you got into the car with Tanzerius Anderson  
18 and Jason Robinson, was there any conversation in  
19 the car?

20 A Yes.

21 Q And what was the conversation?

22 A That Tanzerius told me that the cops were going  
23 to ask me about that night, that they would have  
24 my fingerprints in Yaz's car and because I was at

1 the restaurant with him. I would have to say  
2 that I was with him that night and he dropped me  
3 off on Faneuil Street and I don't know what  
4 happened after that to him, after I left him, and  
5 that there was no witness and no weapon so that  
6 the police would have no case so that if I stick  
7 to the story, no one would be in trouble.

8 Q So you were to say that Yaz picked you up and  
9 dropped you off?

10 A Yes.

11 Q Where did you then go with the defendants in the  
12 car?

13 A We smoked and then we went back to the parking  
14 lot where the bobcat was.

15 Q Ms. Tate, what happened -- what did the  
16 defendant, Tanzerius Anderson, do when you went  
17 back, when you drove back to the bobcat?

18 A He parked in front of the bobcat again and got  
19 out of the car and retrieved the gun and got back  
20 into the car.

21 Q When he got back in the car with that gun, was it  
22 the same gun?

23 A Yes.

24 Q What did he do with the gun?

1 A He handed it into the back seat to Jason.

2 Q And did you continue to drive around with both  
3 defendants for a period of time?

4 A No. I asked him to drive me home.

5 Q And did the defendant Anderson drop you off?

6 A Yes, he did.

7 Q And where did he drop you off?

8 A On the side of my house.

9 Q When you went into the house, did they go into  
10 the house with you?

11 A No.

12 Q When you went into the house, did you see anybody  
13 in the house?

14 A Yes.

15 Q Who did you see?

16 A Well, I went into my mother's house.

17 Q And who did you see in your mother's house?

18 A My mother, Heather, Eddie, my mother's boyfriend.

19 Q And when you saw Eddie Gauthier, where was he?

20 A He was sitting with Heather on a love seat.

21 Q And did you have a conversation at any point in  
22 time with Heather in your mother's apartment?

23 A Yes.

24 Q And not what was said, but what did the subject

1 of that conversation involve?

2 A What they had seen when she went to look for the  
3 watch.

4 Q At some point did Heather and Eddie Gauthier  
5 leave your mother's apartment? Who left first  
6 actually?

7 A I went upstairs to sleep before they had left.

8 Q Now, I want to take you back, take you --  
9 actually move you forward a couple days later.

10 At some point did you see Tanzerius  
11 Anderson again?

12 A Yes.

13 Q And can you tell us how you came in contact with  
14 him or how he came in contact with you?

15 A He had called me one morning.

16 Q And about what time did he call you?

17 A Nine thirty.

18 Q And when he called you in the morning, were you  
19 home at that time when he called?

20 A Yes.

21 Q And you recognized his voice, correct?

22 A Yes.

23 Q And the voice was the defendant Anderson's?

24 A Yes.



1 Q What was the conversation you had with him?

2 A He told me that he wanted to pick me up, that we  
3 needed to talk to everyone that was there that  
4 night.

5 Q And did he say specifically who he wanted to talk  
6 to?

7 A To Heather and Eddie and Jason.

8 Q And did you agree to have him pick you up?

9 A Yes.

10 Q What were the plans, where you were going to meet  
11 him?

12 A At the same convenience store on Brooks Street.

13 Q The Brooks Variety Store?

14 A Yes -- excuse me. On the phone it wasn't  
15 mentioned yet what we were planning to do that  
16 day or talk to. He just --

17 Q What was mentioned on the phone?

18 A He just asked if he could pick me up, if I wanted  
19 to go out.

20 Q And he picked you up where?

21 A On Brooks Street.

22 Q And is that Brooks Variety?

23 A Yes.

24 Q Alright. And then was there any conversation

1 about where you were going to at that point in  
2 time with the defendant?

3 A Once I was in the car.

4 Q And what did he say?

5 MR. DOOLIN: I object.

6 THE COURT: Who is he, sir?

7 BY MR. TOCHKA:

8 Q What did the defendant, Tanzerius Anderson -- I'm  
9 sorry. What did the defendant Anderson way to  
10 you when he picked you up in the car at the  
11 bottom of Brooks Street at the variety store?

12 MR. DOOLIN: Again I object.

13 THE COURT: The objection is overruled.

14 A He asked me if I could call Heather to ask her to  
15 get Jason and Eddie to meet us.

16 BY MR. TOCHKA:

17 Q Did you do that?

18 A Yes.

19 Q Where did you call Heather from?

20 A A pay phone.

21 Q Where is the pay phone?

22 A Outside of Brooks convenience store.

23 Q Did you get in contact with Heather?

24 A Yes.

- 1 Q Did you have a conversation with her?
- 2 A Briefly.
- 3 Q Where did you then go with the defendant,
- 4 Tanzerius Anderson?
- 5 A We drove to a street across from Heather's
- 6 building on North Beacon Street.
- 7 Q Do you know the name of that street?
- 8 A Grapevine or Grapeland. I'm not sure.
- 9 Q Are you familiar with a street named Vineland?
- 10 A Vineland.
- 11 Q And when you drove to that street with the
- 12 defendant driving the car, who did you meet
- 13 there?
- 14 A Heather and Jason.
- 15 Q And did they get into the car?
- 16 A Yes.
- 17 Q Where did the defendant, Tanzerius Anderson, then
- 18 drive?
- 19 A To Store Twenty-four.
- 20 Q Where is Store Twenty-four? Is that on Market
- 21 Street, on the corner of Market and Faneuil?
- 22 A Yes.
- 23 Q When you drove around the corner to Store Twenty-
- 24 four, did the defendant, Tanzerius Anderson, say

1 anything in the car at that point while he parked  
2 the car at Store Twenty-four?

3 Let me ask you this. Did he have a  
4 conversation with Heather Coady?

5 A Yes, he did.

6 Q Did he ask her to do something?

7 A Yes.

8 Q What did he ask her to do?

9 A If she would walk down Faneuil to get Eddie.

10 Q And what did she say?

11 A She said that she would.

12 Q And what did she do?

13 A She walked down Faneuil Street towards Eddie's  
14 apartment.

15 Q And where were you? Did you continue to stay in  
16 the car at Store Twenty-four?

17 A Yes.

18 Q And how -- and who was in the car still?

19 Tanzerius Anderson and Jason Robinson?

20 A Yes.

21 Q At some point did they leave the car?

22 A Yes.

23 Q And where did they go?

24 A Into the store.

- 1 Q Store Twenty-four?
- 2 A Yes.
- 3 Q They came back out?
- 4 A Yes.
- 5 Q What did they do when they came back out?
- 6 A They got back in the car.
- 7 Q At some point did you leave Store Twenty-four?
- 8 A Yes.
- 9 Q And was there a conversation as to why?
- 10 A Tanzerius didn't want to stay in the parking lot
- 11 so we pulled out to the lights and we saw Heather
- 12 and Eddie coming down Faneuil Street so we pulled
- 13 into the car wash.
- 14 Q And when Tanzerius Anderson pulled the car into
- 15 the car wash, which stall was it that he pulled
- 16 it into?
- 17 A One of the first to the left.
- 18 Q The first on the left as you're standing on
- 19 Market Street?
- 20 A Yes.
- 21 Q When he pulled the car into that first stall,
- 22 what did you see Heather and Eddie Gauthier do?
- 23 A They approached the car, Heather got into the
- 24 car, Jason and Tanzerius got out. While they

1           were walking up to the car, Eddie, Jason,  
2           Tanzerius greeted each other with handshakes.

3   Q        Could you hear what they were saying?

4   A        No.

5   Q        You were in the car with Heather Coady?

6   A        Yes.

7   Q        At some point did the three of them get into the  
8           car?

9   A        Yes.

10   Q       Tell us the position as to where people were  
11           sitting in the car now.

12   A        Tanzerius was in the driver's seat, I was in the  
13           passenger's seat, Eddie, Heather and Jason were  
14           in the back seat.

15   Q        Where did the defendant, Tanzerius Anderson,  
16           drive the car to?

17   A        Burger King.

18   Q        How long did you -- did any of you get out of the  
19           car at Burger King?

20   A        Yes.

21   Q        How many of you?

22   A        All of us.

23   Q        And what did you do at Burger King?

24   A        We sat at a back table near the bathrooms while

1 Tanzerius ate.

2 Q How long were you in the Burger King for?

3 A Fifteen minutes.

4 Q Where did you then go?

5 A We drove back to Vineland Street and --

6 Q What happened there?

7 A We dropped Eddie off.

8 Q And where did you then go to from there?

9 A I asked Tanzerius if he could drive Heather and I  
10 to my house.

11 Q And that's on Dunboy Street?

12 A Yes.

13 Q Did you do that?

14 A Yes.

15 Q And what happened when you got to Dunboy Street?

16 A Heather and I went to my house and I received a  
17 phone call.

18 Q And who did you receive the phone call from?

19 A A girlfriend, Veronica.

20 Q Do you know what her last name is?

21 A No.

22 Q And this call that you got from Veronica, what  
23 was the subject matter of that call?

24 A She asked me if I knew who was dead and I told

1 her I didn't and she told me that Yaz was dead  
2 and it was really messed up and I said, yeah, it  
3 is, and she said that Yaz's cousin gave the  
4 police a list of females that he could have been  
5 with, that she had spoken to the police and they  
6 were making their way down the list.

7 Q She told you that she had spoken to the police?

8 A Yes.

9 Q After you got off the phone with her, what did  
10 you do?

11 A I told Heather that I wasn't going to stay at my  
12 house, that I had to leave.

13 Q And so what happened next?

14 A She paged Jason.

15 Q And when she paged Jason, did you get a call  
16 back?

17 A Yes.

18 Q And who called back?

19 A Jason.

20 Q Did you talk to him on the phone?

21 A I answered the phone, gave it to Heather.

22 Q When the person called back, did you recognize  
23 the voice as Jason's?

24 A Yes.



- 1 Q And you gave the phone to Heather?
- 2 A Yes.
- 3 Q Did Heather say anything on the phone that you
- 4 heard?
- 5 A She told Jason that I would like for us to be
- 6 picked up because I wasn't staying at my house,
- 7 that I received a phone call and that she would
- 8 tell him the details later.
- 9 Q Did you speak to anyone on the phone other than
- 10 Jason at the beginning?
- 11 A No.
- 12 Q Okay. And did you talk with Heather about where
- 13 they should meet with you?
- 14 A Yes.
- 15 Q And what did you tell Heather to say?
- 16 A Rogers Park.
- 17 Q And did you hear her say that over the phone to
- 18 Jason Robinson?
- 19 A Yes.
- 20 Q Where did you and Heather then go?
- 21 A To Rogers Park.
- 22 Q Now, how did you go there? Walk?
- 23 A We walked.
- 24 Q Where did you go when you went inside Rogers

1 Park.

2 A We sat near the batter's area on an aluminum  
3 bench.

4 Q So is that Rogers Park, you said, in the area --  
5 on the corner of Washington Street, and is it  
6 Foster Street or Lake Street, do you know?

7 A A one-way street.

8 Q Right. Is it closest to the entrance on  
9 Washington Street?

10 A Yes. Lake Street.

11 Q Lake Street?

12 A It's Lake Street.

13 Q So it's on the corner of Lake and Washington?

14 A Yes.

15 Q You sat, and how long did you wait for them?

16 A Almost an hour.

17 Q And who came?

18 A Jason and Tanzerius.

19 Q And in the same car?

20 A Yes.

21 Q And is that Tanzerius Anderson's car?

22 A Yes.

23 Q Where did Tanzerius -- who was driving?

24 A Tanzerius.

- 1 Q Where did he park the car?
- 2 A In the parking lot of the YMCA.
- 3 Q How far is the YMCA from Rogers Park?
- 4 A The back yard is attached to the park.
- 5 Q When he parked the car, did you go over to the
- 6 car?
- 7 A You can't see the parking lot from where we were
- 8 sitting. We --
- 9 Q So what did you do?
- 10 A We saw them walking towards us down a slope in
- 11 back of the YMCA which leads into the park.
- 12 Q And what happened?
- 13 A And we walked up and met them.
- 14 Q Where did you go then?
- 15 A We walked back into the parking lot of the YMCA.
- 16 Q Did you get in the car?
- 17 A Yes.
- 18 Q What was the conversation you had in the car?
- 19 A I told them what Veronica had said to me and I
- 20 told them that I was going to go on the run and I
- 21 asked Tanzerius if he wanted to get any weed and
- 22 he said he wasn't buying any weed that day but
- 23 that he would purchase alcohol.
- 24 Q Did you have any conversation at this point in

1 time about -- did you have any further  
2 conversation with Tanzerius Anderson and Jason  
3 Robinson in the car?

4 A No.

5 Q Where did you then -- where did the defendant  
6 then drive you to?

7 A We drove to, I believe Commonwealth Ave. to a  
8 sandwich shop.

9 Q What did you do there?

10 A Tanzerius and Jason were parked behind the  
11 building, Heather and I walked over to the  
12 sidewalk in front of the shop and she flagged a  
13 guy down, asked him if he would purchase alcohol  
14 for us.

15 Q When you say she flagged a guy down, what do you  
16 mean?

17 A Like we would go to the sidewalk, wait for  
18 someone who looked approachable to ask to get  
19 alcohol.

20 Q And did you have a conversation with this person?

21 A I did not.

22 Q Did Heather have a conversation with the person?

23 A Yes.

24 Q As a result did that person go into the liquor

1 store?

2 A Yes.

3 Q And did he come out with something?

4 A Yes.

5 Q What did he come out with?

6 A Two twenty-two ounces of Heineken.

7 Q And what did you and Heather do?

8 A We went back to the car.

9 Q And are both defendants still in the car at this  
10 time?

11 A Yes.

12 Q Where did the defendant, Tanzerius Anderson,  
13 drive to then?

14 A To Watertown to a park behind the Arsenal Mall.

15 Q And when you got to Watertown, the park behind  
16 the Arsenal Mall, where did you go to sit?

17 A Tanzerius and I went on the swings and Jason and  
18 Heather stayed on a bench.

19 Q While you were on the swings with the defendant,  
20 Tanzerius Anderson, did you have a conversation  
21 about what happened on March 27 into March 28?

22 A Yes.

23 Q And tell the jurors what that conversation was.

24 MR. DOOLIN: I object. I object, Your

1 Honor.

2 THE COURT: Put the question again,  
3 sir. Rephrase it.

4 BY MR. TOCHKA:

5 Q While you were sitting where, ma'am?

6 A On the swings.

7 Q And how close were you to Tanzerius Anderson?

8 A Right next to him.

9 Q Jason Robinson was where?

10 A With Heather.

11 Q And sitting where?

12 A On the bench.

13 Q How far away were they from you?

14 A Twenty feet.

15 Q And did you have a conversation with Tanzerius  
16 Anderson about what happened on the night of  
17 March 27 into March 28?

18 MR. DOOLIN: I object.

19 THE COURT: Okay. The objection is  
20 overruled.

21 A I told him I wanted to know exactly what happened  
22 that night and he said that Jason and he led Yaz  
23 up into the hallway and he was asking Yaz to keep  
24 his hands up and not to look around behind him

1           because they didn't have masks on and he said Yaz  
2           kept putting his hands up and down hesitantly and  
3           he said that he told Yaz that he was just going  
4           to be frisked for a wallet, money, and he said  
5           Yaz kept saying that he was a good person and he  
6           didn't want any trouble but he knew a lot of  
7           people in the area. He said that Yaz kept  
8           reaching for the door knob and he kept telling  
9           him, stop reaching, and Yaz continued talking,  
10          saying that he had family and friends in the area  
11          and he said that he wasn't a cop and Tanzerius  
12          said that he got nervous and shot him in the back  
13          of the head.

14                       MR. FLAHERTY: I move to strike that,  
15                       respectfully.

16                       THE COURT: Denied.

17 BY MR. TOCHKA:

18 Q       How long did you stay in that Arsenal park with  
19       the defendants?

20 A       Over an hour.

21 Q       Where did you then go?

22 A       We dropped Heather off on Vineland Street.

23 Q       And then where?

24 A       And then I asked him to drop me off at a friend's

1 house that I was going to stay at.

2 Q And who did you ask to drop you off?

3 A Tanzerius.

4 Q Did he say anything to you prior to dropping you  
5 off?

6 A He reminded me that as long as we stick to the  
7 story no one was going to be in trouble, if we  
8 didn't know each other.

9 Q What do you mean, we don't know each other?

10 A That Tanzerius and I don't know each other.

11 Q That's what he told you?

12 A Yeah.

13 Q Did he drop you off at your friend's house?

14 A Yes.

15 Q Did you hear from him later on that night?

16 A No, I don't think so.

17 Q Was that the last conversation that you recall  
18 that you had with Tanzerius?

19 A He called me at my friend's house a few days  
20 later and said that his brother was coming into  
21 town, that he was going to pick his brother up  
22 from the airport and his brother was having a  
23 birthday party and that he might be able to pick  
24 me up to go with him.



1 Q Did you ever hear from him again?

2 A No.

3 MR. TOCHKA: Can I have just one  
4 second, Your Honor?

5 BY MR. TOCHKA:

6 Q Ms. Tate, I'm going to show you this particular  
7 aerial photograph which is a smaller version of  
8 the diagram which has already been previously  
9 marked as Exhibit 1.

10 Do you recognize this to be the general  
11 area of the Faneuil development?

12 A Yes.

13 MR. TOCHKA: Your Honor, I'd move to  
14 introduce this at this point in time.

15 THE COURT: Any objection?

16 MR. DOOLIN: No objection.

17 MR. FLAHERTY: No, not from me.

18 THE COURT: Thank you. It may be  
19 marked.

20 (Exhibit No. 29, being a photograph, as  
21 described above, was marked and admitted into  
22 evidence.)

23 MR. TOCHKA: With the Court's  
24 permission, if I can ask the witness to step

1 down?

2 THE COURT: Yes, sir.

3 MR. TOCHKA: Your Honor, could I just  
4 ask the Court to inquire of the jurors whether  
5 they can all see?

6 THE COURT: Can each member of the jury  
7 see? If not, raise your hand.

8 THE JURY: (No response.)

9 THE COURT: Thank you.

10 BY MR. TOCHKA:

11 Q I'm going to ask you if you are orientated to  
12 this, this being Faneuil Street, this being  
13 Beacon Street, this being Market Street, are you  
14 familiar with the area that I'm pointing out  
15 here?

16 A Yes.

17 Q And this being the back of 89 here and this being  
18 a play area, can you tell us, in terms of using  
19 this pen, can you show us the area where Iman  
20 Yazbek drove his car down?

21 A It should be along back of here.

22 THE COURT: Please keep your voice up.

23 A (continued) There's a driveway right here  
24 parallel to the buildings.

1 BY MR. TOCHKA:

2 Q And the dumpsters that you were referring to,  
3 where are those located?

4 A Right here.

5 Q And you said that -- when you started walking  
6 away from Iman Yazbek after the defendants  
7 approached him, which direction were you going  
8 in?

9 A Past the dumpsters. Past the dumpsters, around  
10 this corner.

11 Q And approximately, can you show us where you met  
12 up with Heather Coady?

13 A At this corner.

14 Q From that corner -- could you point out that  
15 again, please?

16 A (Complying.)

17 Q And which direction did you then walk with  
18 Heather Coady?

19 A Into the playground area.

20 Q And as you walked to the playground area, at some  
21 point -- where were you when you heard the shot  
22 approximately?

23 A Around the corner.

24 Q And then which direction did you go in?

1 A Just straight.

2 Q And you said that you went into a -- you saw the  
3 defendant, Tanzerius Anderson. Where did you  
4 then see Tanzerius Anderson after you heard the  
5 shot? Can you point that out?

6 A There should be stairs right here.

7 Q And where did you see him?

8 A At the top of the stairs.

9 Q And you said the car that you got into was parked  
10 where?

11 A Over here.

12 Q And you said you saw Jason Robinson coming from  
13 which direction?

14 A Around here.

15 Q And you said that then you left, the defendant,  
16 Tanzerius Anderson drove the car and went in  
17 which direction?

18 A Left on Faneuil Street.

19 THE COURT: Please keep your voice up.

20 THE WITNESS: Left on Faneuil Street.

21 BY MR. TOCHKA:

22 Q Okay. Why don't you resume the stand. Thank  
23 you.

24 A (Complying.)

1 Q Ma'am, let me show you what has already been  
2 marked as Exhibit 4.

3 I ask you if you recognize what's in  
4 that photograph? Is that the dumpsters in the  
5 back of 89?

6 A Yes.

7 Q Does that show -- tell me whether or not it shows  
8 the area from which you saw the defendants coming  
9 from after Iman Yazbek -- right before they  
10 grabbed Iman Yazbek by the forearms.

11 A Yes.

12 MR. TOCHKA: Okay. Can I put this on  
13 the screen, Your Honor? And with the Court's  
14 permission, if the witness could step to the  
15 screen?

16 THE COURT: Yes.

17 BY MR. TOCHKA:

18 Q Could you point out -- and I'll give you the pen  
19 once again. Could you point out the area that  
20 you saw the defendants coming from at the time  
21 right before they approached Iman Yazbek?

22 A This area here.

23 MR. TOCHKA: Thank you. I have no  
24 further questions, Your Honor.

1 THE COURT: Thank you. Mr. Doolin?

2 MR. DOOLIN: Thank you.

3

4 CROSS EXAMINATION

5 BY MR. DOOLIN:

6 Q Ms. Tate, you left Fryberg Academy in December,  
7 is that right?

8 A Yes.

9 Q And you came back to live in Brighton thereafter,  
10 is that right?

11 A Yes.

12 Q And when you lived at Brighton, you lived at 76  
13 Dunboy Street, is that right?

14 A 74 Dunboy Street.

15 Q And you lived in that apartment with your  
16 grandmother, is that right?

17 A Yes.

18 Q And your testimony, I think, is that your mother  
19 had an apartment that was on the first floor and  
20 your grandmother and you were up on the second  
21 floor? Is that your testimony?

22 A Yes.

23 Q Now, during this period of time, did you date a  
24 person by the name of Duane Johnson?

1 A Yes.

2 Q When did you begin dating Duane Johnson?

3 A Seventh grade.

4 Q Okay. Did you date him for a -- how long a  
5 period of time?

6 A A few years.

7 Q You were also friends with a person by the name  
8 of Jeffrey Fitzgerald?

9 A Yes.

10 Q When you went to Fryberg Academy did either Duane  
11 Johnson or Jeffrey Fitzgerald ever visit you at  
12 that institution?

13 MR. TOCHKA: Objection, Your Honor, as  
14 to relevancy.

15 THE COURT: Let me see counsel, please.

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

18 MR. DOOLIN: He was investigated by the  
19 police, at least, Duane Johnson, and I think we  
20 have a police report that says that someone by  
21 the name of Jeffrey went up to visit her who I  
22 suggest would be Jeffrey Fitzgerald. Those are  
23 people who were suspects --

24 MR. TOCHKA: There is no evidence that

1 they were ever suspects, that the police went up  
2 to Fryberg Academy, and they asked who visited  
3 her in the past. There is no evidence that the  
4 police ever had either one of them as a suspect  
5 in the case.

6 THE COURT: What evidence is there,  
7 sir?

8 MR. DOOLIN: There is evidence that  
9 Fitzgerald, respectfully, is a friend of  
10 Gauthier's, that he lived upstairs, that he is  
11 around during this period of time. I would  
12 suggest, especially on March 27, that he lived  
13 upstairs, that there is a close friendship. I  
14 would suggest to the Court that Mr. Fitzgerald  
15 was interviewed by the police in conjunction with  
16 this investigation. He went before the grand  
17 jury.

18 Duane Johnson is an individual that we  
19 have police reports on, his fingerprints were  
20 some of the fingerprints that were used as  
21 elimination prints. The police used the name,  
22 Duane Johnson, as one of the individuals they  
23 wanted to compare the prints on some of these  
24 various items. I would suggest to the Court that



1 at least in some fashion or other, Fitzgerald or  
2 Duane Johnson and Joleena Tate in various ways  
3 were suspects in the investigation.

4 MR. TOCHKA: With respect to  
5 Fitzgerald, I had him testify to the grand jury  
6 only because the defendant, Joleena Tate, said  
7 that he was in the apartment that particular  
8 night. He was in the apartment that night along  
9 with everyone else. That's why he came to the  
10 grand jury. Nothing nefarious or suggestible  
11 about that. Actually, I'm not aware that the  
12 fingerprint eliminations were done --

13 MR. DOOLIN: It's in the police  
14 reports.

15 THE COURT: I'm going to sustain the  
16 objections at this time. Over lunch or recess,  
17 you can give me the grand jury minutes.

18 MR. TOCHKA: Sure.

19 THE COURT: And whatever else there is,  
20 but based on what you've told me there is  
21 apparently no credible evidence that they were  
22 ever suspects. But I will revisit that after I  
23 have had a chance to look at the documents over  
24 the luncheon hour. Thank you.

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

3 BY MR. DOOLIN:

4 Q And your testimony is that you knew Eddie  
5 Gauthier, is that right?

6 A Yes.

7 Q And Mr. Fitzgerald was a friend of Eddie  
8 Gauthier's, is that correct?

9 A Yes.

10 Q In fact, Mr. Gauthier and Mr. Fitzgerald live in  
11 the same apartment building, is that right?

12 A Yes.

13 Q Now, your testimony is that at some point in time  
14 in the year 2000 that you came to know a person  
15 by the name of Tanzerius Anderson? Is that your  
16 testimony?

17 A Yes.

18 Q And your testimony is that you also knew Jason  
19 Robinson, is that right?

20 A Yes.

21 Q And you came to know a person by the name of Iman  
22 Yazbek, is that right?

23 A Yes.

24 Q When did you begin -- when did you meet Mr.

1 Yazbek?

2 A In January of 2000.

3 Q You were interviewed by Detective Sergeant  
4 Coleman, is that right? In conjunction with this  
5 investigation?

6 A Yes.

7 Q When you were interviewed by Detective Sergeant  
8 Coleman sometime in the month of May of 2000, did  
9 you tell Detective Sergeant Coleman that you had  
10 known Mr. Yazbek for a long time?

11 A Yes.

12 Q And now you're telling us that you met him in  
13 January of 2000, is that right?

14 MR. TOCHKA: Objection to the form of  
15 that question.

16 THE COURT: Overruled.

17 BY MR. DOOLIN:

18 Q Is that your testimony?

19 A Yes.

20 Q But you firmly told Sergeant Coleman it was in --  
21 that you had known him for a long time, is that  
22 right?

23 MR. TOCHKA: Objection, Your Honor.

24 THE COURT: She may answer the

1 question.

2 A Yes.

3 BY MR. DOOLIN:

4 Q Now, Mr. Yazbek was a individual who you had met  
5 through some young women that you were friendly  
6 with, is that right?

7 A Yes.

8 Q And those women were Jennifer Stacey, is that  
9 right?

10 A Yes.

11 Q And Veronica, is that correct?

12 A Yes.

13 Q Now, is Veronica's last name Blyakhman?

14 A I don't remember.

15 Q Is it your testimony that you would go out with  
16 Mr. Yazbek and these other women and that you  
17 would go to various places? Is that right?

18 A Yes.

19 Q And that you knew Mr. Yazbek was an individual  
20 who always paid, is that correct?

21 A Yes.

22 Q And that Mr. Yazbek always had a lot of money on  
23 him, is that right?

24 A Yes.

1 Q Now, Mr. Yazbek was in his mid thirty's at the  
2 time, is that right?

3 A Yes.

4 Q You were sixteen, is that correct?

5 A Yes.

6 Q And when you would go to these various places  
7 with him, is it fair to say that he would pay for  
8 the alcohol that you consumed?

9 A Yes.

10 Q Did you have a fake ID?

11 A No, I didn't.

12 Q And it's your testimony that over the course of  
13 the -- your testimony is that the several months  
14 that you knew Mr. Yazbek, that you would go out  
15 with him frequently, is that right?

16 A Five or six times.

17 Q So your testimony is that you went out with him  
18 five or six times between January of 2000 and the  
19 end of March of 2000? Is that right?

20 A Yes.

21 Q Would you always go out with him in a group?

22 A Yes.

23 Q Did you ever go out with him, just the two of  
24 you?

1 A That night.

2 Q And your testimony was that you began to make  
3 observations that Mr. Yazbek was carrying money,  
4 is that right?

5 A Yes.

6 Q And your testimony is that you came in your own  
7 mind to the conclusion that Mr. Yazbek would be  
8 somebody that you could set up and rob, is that  
9 right?

10 A Yes.

11 Q And you knew that he was passive, is that right?

12 A Yes.

13 Q And you knew that he wouldn't put up a fight, is  
14 that right?

15 A Yes.

16 Q And you knew that he would be someone who you  
17 could get people that you were friendly with to  
18 assist you in robbing Mr. Yazbek, is that right?  
19 Is that your testimony?

20 A Would you rephrase the question? I don't  
21 understand.

22 Q Well, you knew that Mr. Yazbek would be someone  
23 that you and your friends could rob, is that  
24 right?

1 MR. TOCHKA: Objection, Your Honor. At  
2 what point in time are we talking about?

3 THE COURT: Rephrase the question.

4 MR. DOOLIN: I'm sorry.

5 BY MR. DOOLIN:

6 Q In March of 2000 did you come to the conclusion  
7 that Mr. Yazbek was someone that you and your  
8 friends could rob?

9 A Yes.

10 Q And your testimony is that in March of 2000 you  
11 were friendly with Eddie Gauthier, weren't you?

12 A Yes.

13 Q And you were friendly with Mr. Fitzgerald, is  
14 that right?

15 A Yes.

16 Q And your testimony is that as a result of the  
17 friendship with these people and plus an  
18 individual named Heather Coady, that you came to  
19 be familiar with the area of the Faneuil  
20 development, is that right?

21 A Yes.

22 Q Now, showing you what's been marked Exhibit No.  
23 1, you know where Mr. Gauthier lived, do you not?

24 A Yes.

1 Q He lived at 75 Faneuil, is that right?

2 A Yes.

3 Q And as a result of being friends with Mr.  
4 Gauthier and Ms. Coady, you would frequently go  
5 into that, this area of the Faneuil development,  
6 is that right?

7 A Yes.

8 Q Prior to March 27 had you ever been inside of 89  
9 Faneuil Street?

10 A Yes.

11 Q You have been in that building, is that right?  
12 Is that correct?

13 A Yes.

14 Q And it's your testimony that somewhere along the  
15 line in your efforts to set up Mr. Yazbek for a  
16 robbery, that you had a conversation, you say,  
17 with Mr. Anderson about going to New Hampshire  
18 and getting a gun. Is that right?

19 MR. TOCHKA: Objection, Your Honor.

20 THE COURT: She may answer that.

21 BY MR. DOOLIN:

22 Q Is that correct?

23 MR. TOCHKA: Might I be heard at side  
24 bar?



1 THE COURT: No.

2 BY MR. DOOLIN:

3 Q Is that right?

4 A Yes.

5 Q And the person who you decided to steal from this  
6 time was your father, is that right?

7 A Right.

8 Q You decided to go up to your father's condominium  
9 in New Hampshire and break into it, is that  
10 correct?

11 A I did.

12 Q And you decided to go up there and to steal your  
13 father's gun, is that your testimony?

14 A Yes.

15 Q And you went up to New Hampshire and you went  
16 into your father's apartment, is that right?

17 A Yes.

18 Q And you stole your own father's gun, is that  
19 correct?

20 MR. TOCHKA: Objection, Your Honor.

21 Asked and answered.

22 THE COURT: Overruled.

23 BY MR. DOOLIN:

24 Q Is that correct?

1 A That's correct.

2 Q And you didn't think anything of stealing from  
3 your father, did you?

4 MR. TOCHKA: Objection, Your Honor, to  
5 the form of the question.

6 THE COURT: Sustained.

7 BY MR. DOOLIN:

8 Q It didn't matter to you that you were stealing  
9 your father's gun, did it?

10 A No.

11 Q It didn't matter that you were breaking into your  
12 father's condominium, did it?

13 A No.

14 THE COURT: Mr. Doolin, we are going to  
15 break for the luncheon recess. Would you step  
16 down, please, Ms. Tate?

17 Ladies and gentlemen, please leave your  
18 notes in your seats. We'll take the luncheon  
19 recess until two p.m. We'll see you at that  
20 time. Do not discuss the case over the luncheon  
21 hour.

22 (Whereupon, the jury was escorted from  
23 the courtroom at 12:58 o'clock p.m.)

24 (Whereupon, the following discussion

1 occurred at side bar:)

2 THE COURT: As I understand it, Mr.  
3 Doolin, you wish to inquire of this witness of  
4 any relationship she had with a Jeffrey  
5 Fitzgerald and a Duane Johnson. Is that right,  
6 sir?

7 MR. DOOLIN: Yes, Your Honor.

8 THE COURT: And the reason you say this  
9 is relevant is because --

10 MR. DOOLIN: Other suspects who were  
11 involved in the investigation and if I could make  
12 as record as to why I think that. The Court has  
13 in front of you a police report that's authored  
14 by Detective McLaughlin on April 13 of 2000 and  
15 it's a request that certain people's prints be  
16 eliminated to Detective Sharon Wong in the latent  
17 print bureau. One of them who is listed in there  
18 along with my client and Mr. Flaherty's client,  
19 Joleena Tate, Jonathan Simms, was another  
20 individual and also Duane Johnson.

21 I would suggest to the Court, Your  
22 Honor, that Duane Johnson, it's her former  
23 boyfriend or at least was a boyfriend, I should  
24 say, is an individual - I could lay a foundation

1 with Ms. Tate - who lived in that development.  
2 We also are in possession of a police report that  
3 linked Mr. Duane Johnson to possession, I believe  
4 it's in February 2000, correct me if I'm wrong,  
5 of having ammunition.

6 As to Mr. Fitzgerald, it was testified  
7 to by Mr. Gauthier as to his being a friend of  
8 his, he lives upstairs from Mr. Gauthier. He  
9 certainly lives near the scene of the homicide.  
10 I would suggest, Your Honor, also Mr. Gauthier,  
11 as the Court knows, was called in front of the  
12 Suffolk County grand jury -- I mean, Fitzgerald,  
13 was questioned by Mr. Tochka, and I suggest to  
14 you he, at least, has a friendship with Gauthier,  
15 is linked with him, lived in that proximity, and  
16 there is also other police reports that we have  
17 that link Mr. Fitzgerald with activity, I  
18 believe, that involves a gun as well.

19 THE COURT: Mr. Doolin, I don't think  
20 you need to go on any further. I took a look at  
21 the grand jury minutes. In addition to what you  
22 said, Mr. Fitzgerald was in the apartment on the  
23 night of the twenty-seventh, Gauthier's  
24 apartment. I took a look at these Boston Police

1 reports. It seems to me that the defendants have  
2 great latitude on this issue of possible third  
3 party culprits on the credibility of Ms. Tate. I  
4 think they can be -- they can proceed with the  
5 questions. If you feel it's getting into  
6 attenuated relevance, you can bring it to my  
7 attention.

8 MR. TOCHKA: Your Honor, I would just  
9 refer the Court to Commonwealth versus Reynolds.  
10 I think they have to have some type of basis for  
11 the questions. Mr. Doolin, he's saying because I  
12 called him in the grand jury --

13 THE COURT: Let me get straight what  
14 the basis of my ruling is which is that Mr.  
15 Fitzgerald, on the basis of my reading of the  
16 grand jury minutes, gave somewhat inconsistent  
17 statements to the police officers vis a vis his  
18 grand jury testimony. In his grand jury  
19 testimony he does say that he was in and out of  
20 Gauthier's apartment on the night of the twenty-  
21 seventh.

22 MR. TOCHKA: Right.

23 THE COURT: And so it places him at the  
24 scene, at a minimum.

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MR. TOCHKA: At a minimum.

THE COURT: And that, coupled with his inconsistent statements, his credibility is certainly at issue.

MR. TOCHKA: I'm sorry. Where are the inconsistent statements?

THE COURT: He gave inconsistent statements at the grand jury, statements that were inconsistent with the grand jury testimony, to the police.

MR. TOCHKA: In terms of what?

THE COURT: You can review it.

MR. TOCHKA: I'll review it. With respect to Mr. Fitzgerald, the reason he was brought in was for the simple purpose as to when he is in the house that day and to corroborate, to link the other witnesses, not because he was a suspect. Clearly if he was a suspect, I wouldn't be bringing him into the grand jury in order to have him incriminate himself about being involved in the case. It was simply that he was a potential witness to corroborating or denying other witnesses, not making him a target in there, and not suggesting any participation. So

1 he was never a suspect, number one.

2 With respect to Duane Johnson, all they  
3 have is the elimination prints that are on record  
4 of the Boston Police, because of the New  
5 Hampshire incident, not any connection to the  
6 murder at all. Because he was the past boyfriend  
7 of Joleena Tate's, they figured he could possibly  
8 have been in that apartment as well at some point  
9 in time so it made sense to do elimination prints  
10 on him. That was the reason, not because he was  
11 a suspect in the murder. It must made sense to  
12 do.

13 Finally with respect to the three  
14 fifty-seven magnum, when you read that report,  
15 Your Honor, that is a hearsay statement from a  
16 police officer saying rumors are that -- it's  
17 basically to alert the police officer that the  
18 rumors are out there that he might have a three  
19 fifty-seven. There is no evidence, there is no  
20 way, if that's allowed to come in, there is no  
21 way I can rebut that, Your Honor.

22 THE COURT: There is a difference  
23 between being a suspect and having enough  
24 evidence to go to the jury. There is a third

1 party culprit. Now, at this time, other than  
2 asking what the relationship of Ms. Tate was with  
3 respect to these individuals, what else were you  
4 going to do on this issue, sir?

5 MR. DOOLIN: Well, I'd like to get out  
6 the proximity of where Duane Johnson lives in  
7 comparison to this. I believe him to live on  
8 Faneuil Street.

9 THE COURT: Just give me the parameters  
10 of the questions on that issue, that you propose  
11 to elicit.

12 MR. DOOLIN: I would also suggest to go  
13 into more detail of when Fitzgerald was at the  
14 apartment, when he was out of the apartment,  
15 whether she has ever seen Fitzgerald or Duane  
16 Johnson with guns, specifically three fifty-seven  
17 magnums.

18 THE COURT: And what basis do you have  
19 to ask that question?

20 MR. DOOLIN: I have the basis to say,  
21 as to Duane Johnson, that we have a police report  
22 that says, I believe it's in February, in this  
23 proximity, he has the three fifty-seven and he  
24 lives on that street.



1 THE COURT: I'm asking you, what is the  
2 good faith basis for your question.

3 MR. DOOLIN: The police report.

4 THE COURT: What police report?

5 MR. DOOLIN: Report of Officer Timothy  
6 Stanton who we have under subpoena, who --

7 THE COURT: One moment, please. I  
8 thought you were talking about Fitzgerald.  
9 You're talking about Duane Johnson?

10 MR. DOOLIN: Duane Johnson has the  
11 three fifty-seven magnum and the police generated  
12 a report that during this period of time, a  
13 person who has a relationship to Joleena Tate who  
14 lives in that area and has the same type of  
15 weapons that the government is alleging --

16 THE COURT: Are you talking about --  
17 this is not a one one report?

18 MR. DOOLIN: It's classified as a form  
19 twenty-six, I think.

20 THE COURT: Okay. In which it says  
21 that Duane is due back in court, realizes he will  
22 most likely be heading back to jail, he was in  
23 possession of the stolen three fifty-seven  
24 magnum. This is dated in February, 2000.

1 Anything more that you are going to elicit from  
2 her on this issue?

3 MR. DOOLIN: No, Your Honor.

4 THE COURT: Okay. Anything more that  
5 hasn't been said that you would intend to elicit  
6 on cross examination?

7 MR. FLAHERTY: I just direct the Court  
8 to Commonwealth versus Graziano which allows the  
9 defendant the opportunity to cross examine  
10 Commonwealth witnesses as to opportunity, intent  
11 and motive on a third party culprit defense and  
12 that this falls squarely with Graziano.

13 THE COURT: I'm going to review the law  
14 over luncheon and, Mr. Tochka, if there is  
15 anything more you want to argue when we come  
16 back, I'll hear you. Thank you.

17 (Whereupon, the proceeding were  
18 recessed at 1:10 o'clock p.m., and reconvened at  
19 2:05 o'clock p.m., without the jury.)

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

22 THE COURT: Okay. Anything more that  
23 any of you haven't said on this issue? Okay. As  
24 I understand, your argument is that you wish to

1 inquire of Ms. Tate about her relationship with  
2 Duane Johnson and Fitzgerald -- first name?

3 MR. DOOLIN: Jeffrey.

4 THE COURT: Because you argue it is  
5 relevant as to their possible involvement in the  
6 murder and armed robbery of Iman Yazbek, is that  
7 right?

8 MR. DOOLIN: With particularity towards  
9 Fitzgerald.

10 THE COURT: So you don't want -- you  
11 don't include Duane Johnson?

12 MR. DOOLIN: I think Duane Johnson,  
13 he's out there, but I would argue for Mr.  
14 Fitzgerald.

15 THE COURT: It's not a matter of  
16 relativity, what you're trying to do.

17 MR. FLAHERTY: For purposes of Mr.  
18 Anderson, include Mr. Johnson in your analysis,  
19 Your Honor.

20 THE COURT: Okay. As I understand the  
21 grounds upon which you want to develop this  
22 issue, is that Mr. Fitzgerald lived above Eddie  
23 Gauthier at the Faneuil development?

24 MR. DOOLIN: Yes, Your Honor.

1 THE COURT: That they were friends,  
2 that Mr. Fitzgerald was in Mr. Gauthier's  
3 apartment on March 27?

4 MR. DOOLIN: That is correct.

5 THE COURT: Okay. Beyond that, is  
6 there anything more, sir, that you would argue  
7 with respect to Mr. Fitzgerald?

8 MR. DOOLIN: Yes. Mr. Fitzgerald went  
9 up to Fryberg Academy to visit Ms. Tate. The  
10 reason is that, I would suggest to the Court, he  
11 would know the directions up there, he would know  
12 where the Tate condominium is relative to Fryberg  
13 Academy. There's been a document that has been  
14 put into evidence, a map, that shows the relative  
15 proximity of Fryberg Academy to the Tate  
16 condominium in North Conway, New Hampshire. I  
17 would suggest to the Court that if Fitzgerald  
18 went up there with her, that would give him  
19 knowledge of where this condominium was, perhaps  
20 at some point in time they could have returned  
21 there or it's more likely that he would have  
22 returned there because he's been in that area  
23 before. Also, I think he's more closely linked  
24 with Gauthier through friendship, that he lives

1 in that area, that he was there during this  
2 period of time.

3 THE COURT: You've said all that, sir.  
4 Is there anything you haven't said? Just to make  
5 sure I have fully in mind your entire argument.

6 MR. DOOLIN: That's my entire argument.

7 THE COURT: Now, with respect to Duane  
8 Johnson, your argument is that he, sometime in  
9 February, was found by the police to be in  
10 possession of two three fifty-seven magnums, is  
11 that right?

12 MR. DOOLIN: I think that Johnson, that  
13 is correct, but I intend to argue more on  
14 Fitzgerald, quite frankly.

15 THE COURT: We're not talking about  
16 relativity because I want to make sure I  
17 understand clearly your argument with respect to  
18 each.

19 Mr. Flaherty, was there anything more  
20 you wanted to say about either one of these two?

21 MR. FLAHERTY: Well, on behalf of Mr.  
22 Anderson, the analysis as to the admissibility of  
23 his information related to Duane Johnson in my  
24 mind is under both third party culprit and

1 Bowden, number one, that Mr. Johnson shared the  
2 same intent, motive and opportunity and is  
3 substantially connected to similar offenses that  
4 are not remote in time and distance as to the  
5 ones that are the subject of the indictments  
6 before this trial jury. So I would submit that  
7 all the evidence about Duane Johnson with the  
8 proximity and in possession of firearms at or  
9 about the time of the homicide, in addition to  
10 the relationship --

11 THE COURT: Let me make sure I  
12 understand that, sir.

13 MR. FLAHERTY: Um-hum.

14 THE COURT: The only basis upon which  
15 you argue that is that in February Mr. Johnson  
16 was found to be in possession of two three fifty-  
17 seven magnums. Is there anything more in that  
18 regard? You say proximity, motive and intent?

19 MR. FLAHERTY: That he was, I believe,  
20 a resident of the Faneuil projects, that he was a  
21 boyfriend of Joleena Tate, that he was known by  
22 the police to be in possession of two three  
23 fifty-seven magnums at or about the time of the  
24 homicide and that his prints were placed in a

1 series of elimination prints with respect to  
2 items secured from the crime scene and items  
3 secured from the Tate condominium in New  
4 Hampshire.

5 THE COURT: And his fingerprints were  
6 excluded?

7 MR. FLAHERTY: I'm sorry?

8 MR. TOCHKA: His prints were not  
9 compared to anything at the crime scene. What I  
10 understand, it was compared to the New Hampshire  
11 incident. There were no prints tied to anybody.

12 THE COURT: Okay. Anything more, Mr.  
13 Tochka, you want to say?

14 MR. TOCHKA: Nothing.

15 THE COURT: Alright. The issue on  
16 third party culprit is whether or not there is a  
17 sufficient link to allow counsel to explore this  
18 so as not to confuse the jury. I would direct  
19 you -- and the links have to be substantial  
20 connecting links to the crime.

21 With respect to Mr. Fitzgerald, all we  
22 have is him living in the same complex, being a  
23 friend of Gauthier's, who was not charged nor  
24 ever has been charged with any crime arising out

1 of this incident, and that Fitzgerald was in Mr.  
2 Gauthier's apartment sometime on the evening of  
3 the twenty-seventh. With respect to him, I find  
4 that those are not substantial connecting links  
5 permitting counsel to explore a third party  
6 culprit defense with respect to him.

7 With respect to Mr. Johnson, we have  
8 him in possession of firearms more than a month  
9 before the incident. The fact that the police  
10 included his prints for purposes of comparison  
11 with others does not provide any substantial  
12 connecting links. There was no match found  
13 between his latent prints and the ones -- between  
14 his prints and the latent prints.

15 In Commonwealth versus O'Brien, which  
16 is the most recent articulation by the SJC on  
17 this issue that I was able to find in the ten  
18 minutes I had to do this, there was more  
19 involvement there by the person who the  
20 defendants wanted to show motive, intent and the  
21 opportunity. In O'Brien that person's blood was  
22 found at the scene, and furthermore, he did  
23 appear at the crime scene later and the Court  
24 said the judge did not abuse his discretion in



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excluding that individual as a possible third party culprit.

So, based on my assessment of the evidence -- if it should change, obviously one or both of you should approach side bar because I'm not forever excluding it but based on the record thus far and your proffers, I am excluding it.

MR. FLAHERTY: And with respect to the analysis on Johnson, Your Honor, I'd ask the Court to consider --- I don't have the cite in front of me but it's Commonwealth versus Graziano. I think the rationale in that case was, the SJC reversed, stating that the court in that case precluded the defense --

THE COURT: You're talking about third party culprit?

MR. FLAHERTY: Third party culprit, precluded the defense from cross examining a witness who was connected to the crime and was a cooperating witness.

THE COURT: Where's the cite for that case? No one has given me any case cites.

MR. FLAHERTY: I don't have it right off the top of my head.

1 (Whereupon, a discussion occurred off  
2 the record at side bar, after which the following  
3 discussion occurred at side bar:)

4 MR. FLAHERTY: Your Honor, Graziano is  
5 368 Mass. 325 and that was a cooperating witness  
6 for the government who, similar to this case,  
7 testified about the involvement of co-defendants.  
8 Through cross examination the defense was  
9 precluded from showing that the cooperating  
10 witness had shared the in depth motive and  
11 opportunity to commit the crime under third party  
12 culprit and the SJC ruled that it was reversible  
13 error to restrict the cross examination under the  
14 facts in that case.

15 THE COURT: We are not talking about  
16 Ms. Tate, sir. We're talking about this other  
17 individual.

18 MR. FLAHERTY: It may become relevant  
19 with other witnesses.

20 THE COURT: I'm not making a ruling  
21 with respect to that.

22 MR. FLAHERTY: I'm stating at this  
23 stage, based upon the proffer of the evidence,  
24 it's relevant to ask Ms. Tate's relationship with

1 Johnson and then later -- de bene, and later with  
2 additional witnesses and the police involvement  
3 with Johnson, I think the cross examination on  
4 Johnson's connection to the crime, his intent,  
5 opportunity and motive is relevant to both third  
6 party culprit and Bowden, the failure of the  
7 Commonwealth to do normal police procedures and  
8 conduct any scientific tests which may have been  
9 reasonable under the circumstances.

10 So I think for both reasons, I think  
11 this information about Johnson is admissible and  
12 I think the same rationale and reasoning applies  
13 to Fitzgerald as well under third party and  
14 Bowden.

15 THE COURT: Well, as I said, I'm  
16 evaluating the proffer at this time on the state  
17 of the evidence and I said that each of you can  
18 revisit this if the evidence changes. If it  
19 does, I'm not restricting your cross examination  
20 of this witness on her involvement in the case.  
21 Obviously that's central to the trial and so at  
22 this time that ruling stands subject to be  
23 revisited upon further invitation by anyone.

24 (Whereupon, the discussion at side bar

1 was concluded.)

2 THE COURT: If I may have the jurors,  
3 please?

4 (Whereupon, the jurors were escorted  
5 into the courtroom at 2:20 o'clock p.m.)

6 THE COURT: Ladies and gentlemen,  
7 welcome back. We are ready to continue, Mr.  
8 Doolin.

9 BY MR. DOOLIN:

10 Q Ms. Tate, what weekend in March did you go up to  
11 your father's house to steal the gun?

12 A The last weekend.

13 Q So it would have been the weekend right before  
14 this incident happened?

15 A Yes.

16 Q And your testimony -- how did you know that your  
17 father wasn't going to be there that weekend?

18 A After the end of February he's not up there much.  
19 He goes up for ski season.

20 Q Did you call the house to find out whether he was  
21 going to be there?

22 A I don't remember.

23 Q Now, your testimony is that on the date of March  
24 27 that at some point that day you went over to

1 the Faneuil development, is that right?

2 A Yes.

3 Q What time was that?

4 A In the evening.

5 Q What time in the evening?

6 A I don't remember the exact time.

7 THE COURT: Please keep your voice up.

8 THE WITNESS: I don't remember the  
9 exact time.

10 BY MR. DOOLIN:

11 Q And your testimony is that you went over to Eddie  
12 Gauthier's apartment, is that right?

13 A Yes.

14 Q And when you went into Mr. Gauthier's apartment,  
15 how long did you stay there for?

16 A Over an hour.

17 Q And it's your recollection that an individual  
18 named Jeffrey Fitzgerald was there, is that  
19 right?

20 A Yes.

21 Q How long was Jeffrey Fitzgerald at Eddie  
22 Gauthier's apartment that afternoon or that  
23 evening?

24 A Sporadically.

1 Q When you say sporadically, is it your testimony  
2 that he came into the apartment and then he left  
3 the apartment? Is that correct?

4 A A few times.

5 Q And during the time that you were there, did you  
6 observe Mr. Gauthier having conversations with  
7 Jeffrey Fitzgerald?

8 A I don't remember.

9 Q Well, Gauthier was in the apartment at all times,  
10 wasn't he?

11 A Yes.

12 Q So he's in the apartment when Fitzgerald came  
13 into the apartment, wasn't he?

14 A Yes.

15 Q So he would have had the same opportunity to view  
16 his friend, Mr. Fitzgerald, come into the  
17 apartment that you did, is that correct?

18 A Yes.

19 Q Now, your testimony is that at some point that  
20 night you decide that you want to participate in  
21 the robbery of Mr. Yazbek, is that right?

22 A Yes.

23 Q And that this conversation takes place in  
24 Gauthier's apartment, is that right?

1 A Yes.

2 Q Is Gauthier in the apartment at the time?

3 A Yes.

4 Q Is Fitzgerald in the apartment at the time?

5 A I don't remember.

6 Q The conversation that you say that you had with  
7 Tanzerius Anderson, what room does that take  
8 place in?

9 A In the living room.

10 Q Was Ms. Coady there during the conversation?

11 A In the living room?

12 Q Yes.

13 A No.

14 Q Was Mr. Gauthier there?

15 A No.

16 Q And your testimony is that at some point you  
17 leave the Faneuil development, is that right?

18 A Yes.

19 Q And your testimony is that you leave 75 Faneuil  
20 and you go to your house, is that right?

21 A Yes.

22 Q What time was that?

23 A Around nine, between nine and ten.

24 Q And your testimony is that it's Mr. Anderson who

1           you leave with, is that right?

2     A     Yes.

3     Q     And that my client, Jason Robinson, leaves  
4           Gauthier's apartment and goes to your place with  
5           you, is that right?

6     A     They didn't enter my house.

7     Q     Do they get into the car with you?

8     A     Yes.

9     Q     Do they drive to your house together?

10    A     Yes.

11    Q     So your testimony is that Jason Robinson leaves  
12           Gauthier's apartment and goes to Dunboy Street  
13           with you and Tanzerius Anderson, is that right?

14    A     Yes.

15    Q     And your testimony is that Eddie Gauthier was in  
16           the apartment when Jason Robinson left to go with  
17           you, is that right?

18    A     Yes.

19    Q     Did you say goodbye to Mr. Gauthier as yourself,  
20           Mr. Anderson and Mr. Robinson left the apartment?

21    A     I don't remember.

22    Q     But certainly he was there, though, is that  
23           correct?

24    A     Yes.



- 1 Q And your testimony is that when you had the  
2 conversation in Gauthier's apartment about  
3 setting up Mr. Yazbek, that it was your idea to  
4 have the robbery happen down here at the end of  
5 89 Faneuil? Wasn't it?
- 6 A Yes.
- 7 Q And you were the one who wanted to lure Mr.  
8 Yazbek down to this area, is that correct?
- 9 A Yes.
- 10 Q This Mr. Yazbek who had been nice to you, is that  
11 correct?
- 12 A Yes.
- 13 Q Mr. Yazbek who had paid for your meals, is that  
14 correct?
- 15 A Yes.
- 16 Q And that this Mr. Yazbek, your idea that night  
17 was that you were going to go out and you were  
18 going to trick Mr. Yazbek into coming back to  
19 this area, is that right?
- 20 A Yes.
- 21 Q So that this person who had been nice to you, you  
22 were going to rob, is that correct?
- 23 A Yes.
- 24 Q And your testimony is that you drive back to your

1 house at Dunboy Street and that you call Mr.  
2 Yazbek on the phone, is that right?

3 A Yes.

4 Q Now, you said, I think, on direct examination  
5 that you had Mr. Yazbek's number on your bureau?  
6 Is that correct?

7 A Yes.

8 Q So you go to your house. Do you go into your  
9 mother's apartment or into your grandmother's  
10 apartment?

11 A My grandmother's.

12 Q And when you went into your grandmother's  
13 apartment, is it at that point in time that you  
14 call Mr. Yazbek or that you page Mr. Yazbek?

15 A That I call him, yes.

16 Q Did you call him on his cell phone or did you  
17 page him?

18 A I wasn't aware he had a beeper.

19 Q Okay. So you called him on his cell phone?

20 A Yes.

21 Q And when you talked to him on his cell phone, you  
22 had a conversation with Mr. Yazbek, is that  
23 right?

24 A Yes.

1 Q And you told Mr. Yazbek that you wanted to meet  
2 him, is that right?

3 A Yes.

4 Q You told him that you wanted to talk to him about  
5 something, is that correct?

6 A Yes.

7 Q One of the things that you did during your  
8 conversation with Mr. Yazbek was that you  
9 deceived him, didn't you?

10 A Yes.

11 Q And during the course of the conversation that  
12 you had with Mr. Yazbek, you wanted to make him  
13 think that you wanted to go out with him that  
14 night, didn't you?

15 A Yes.

16 Q And that you wanted to spend time with him, isn't  
17 that correct?

18 A Yes.

19 Q And what you really wanted to do was, you wanted  
20 to rob him, isn't that true?

21 A Yes.

22 Q So you made plans that you were going to go meet  
23 Mr. Yazbek and that he was going to come by your  
24 house, is that right?

- 1 A Yes.
- 2 Q And that you were going to go over to a  
3 restaurant in Watertown called Wadi's, is that  
4 right?
- 5 A Yes.
- 6 Q You had been to Wadi's before?
- 7 A Yes.
- 8 Q And you had been there with Mr. Yazbek, is that  
9 right?
- 10 A Yes.
- 11 Q And what time of night did he pick you up?
- 12 A Around ten.
- 13 Q So you were with him in Wadi's for more than an  
14 hour, is that right?
- 15 A Yes.
- 16 Q And during the course of the time that you were  
17 in Mr. Gauthier's apartment, it's fair to say  
18 that you had smoked three blunts, is that  
19 correct?
- 20 A Yes.
- 21 Q Now, it's fair to say that a blunt is -- it's a  
22 cigar with marijuana that's poured into it, is  
23 that right?
- 24 A Yes.

1 Q It's also fair to say that when you went to  
2 Wadi's that night, that you had three drinks,  
3 didn't you?

4 A Yes.

5 Q What type of drinks did you have?

6 A Long Island teas.

7 Q That's an alcoholic drink, is that correct?

8 A Yes.

9 Q And, in fact, that's a pretty strong drink, isn't  
10 it?

11 A Yes.

12 Q And your testimony was that while you were at  
13 Wadi's, it was just you and Mr. Yazbek, isn't  
14 that true?

15 A Yes.

16 Q And during this period of time you were seen by  
17 all of the people who were at Wadi's? The  
18 waiter, the bartender, and the people who owned  
19 it? Weren't you?

20 A Yes.

21 Q Because you were basically the only people that  
22 were in the bar, weren't you?

23 A Yes.

24 Q And during the course of the period that you were

1 with Mr. Yazbek, you made believe that you were  
2 nice to him, didn't you?

3 A Yes.

4 Q And again you tried to get Mr. Yazbek to believe  
5 that the reason that you were there was to have a  
6 friendship with him, isn't that correct?

7 A Yes.

8 Q So you tricked him, didn't you?

9 A Yes.

10 Q And after you left Wadi's with Mr. Yazbek, your  
11 idea was to bring him back to the Faneuil Street  
12 development, is that right?

13 A Yes.

14 Q Now, how many times did you use Mr. Yazbek's cell  
15 phone that night?

16 A Twice.

17 Q And one of the times your testimony was that you  
18 called a pager number, is that correct?

19 A Yes.

20 Q And that pager was being carried by Heather  
21 Coady, wasn't it?

22 A It was shared between Heather and Jason.

23 Q But Heather Coady had access to that pager,  
24 didn't she?

1 A Yes.

2 Q And Heather Coady was your long time friend,  
3 wasn't she?

4 A Yes.

5 Q And your testimony is that when you punched in  
6 some numbers on that pager, that you punched in  
7 the time, eleven forty-five, is that right?

8 A Yes.

9 Q And the only other call that you made, is it your  
10 testimony that you called Heather Coady's house?  
11 Is that right?

12 A Yes.

13 Q When you called Heather Coady's house, was she  
14 there?

15 A No.

16 Q At some point did Heather call you back?

17 A Yes.

18 Q And she talked to you while you were on Mr.  
19 Yazbek's cell phone, is that right?

20 A Yes.

21 Q And you had a conversation, did you not, with  
22 Heather Coady while Mr. Yazbek was there with  
23 you, is that right?

24 A Yes.

1 Q Did you have a conversation with Heather Coady  
2 about going over and picking up some marijuana  
3 from her?

4 A Yes.

5 Q So you had a conversation with Heather Coady  
6 about you coming back to this area to buy  
7 marijuana, is that correct?

8 A Yes. Well, there was not a specific area said.

9 Q But you said in front of Mr. Yazbek that you  
10 wanted to go back there and buy some marijuana,  
11 is that right?

12 A Yes.

13 Q And Heather Coady lived over here at 282 North  
14 Beacon, is that right?

15 A Yes.

16 Q And you told Ms. Coady that you were on Mr.  
17 Yazbek's phone, didn't you?

18 A She did not ask.

19 Q Did you tell her that?

20 A No.

21 Q Did she ask whose phone you were calling from?

22 A No.

23 Q Did you tell Mr. Yazbek that you wanted to go  
24 back to 89 Faneuil to buy marijuana from Ms.



1 Coady?

2 A No.

3 Q That's not what you said?

4 A No.

5 Q That's not how you lured him back here?

6 A No.

7 Q But you admit that you had a conversation with  
8 Coady over the phone for a period of several  
9 minutes, isn't that correct?

10 A I don't believe the conversation was as long as  
11 several minutes.

12 Q Okay. How long was it?

13 A Five at the most.

14 Q So you had a five-minute conversation with Coady,  
15 and part of the conversation was your coming back  
16 to this area and meeting with Coady, is that  
17 right?

18 A I asked her to be around the projects.

19 Q Now, it's your testimony that when you come back  
20 to the area of Faneuil Street that you have Mr.  
21 Yazbek drive his car down the alley that's next  
22 to 89 Faneuil, didn't you?

23 A Yes.

24 Q And you tell Mr. Yazbek that you want to go

1           inside to see a friend of yours? Is that your  
2           testimony?

3           A     Yes.

4           Q     And that wasn't true, was it?

5           A     No.

6           Q     And you asked Mr. Yazbek to get out of the car to  
7           assist you in going into the area of 89 Faneuil,  
8           isn't that true?

9           A     Yes.

10          Q     Now, your testimony is that you went over to a  
11          door inside the hallway and you knocked on it, is  
12          that right?

13          A     Yes.

14          Q     Now, you have been familiar with 89 Faneuil, is  
15          that right?

16          A     Yes.

17          Q     Did you know that that was a maintenance room you  
18          were banging on?

19          A     No.

20          Q     Did you think that somebody lived in that  
21          apartment?

22          A     I didn't think about that.

23          Q     So your testimony is that when you banged on that  
24          door, that you thought that there may be somebody

1 who actually lived inside that apartment?

2 A It didn't come to my mind.

3 Q Didn't you say it was a dummy door?

4 A Yes.

5 Q By a dummy door, you mean that there is nobody  
6 who lives back there, though, don't you?

7 A Right.

8 Q So it did come to your mind, didn't it?

9 A A lot of the apartments are vacant in that  
10 building.

11 Q So your testimony is that you had knowledge that  
12 a lot of apartments in 89 were vacant?

13 A Yes.

14 Q So you thought you were just hitting a vacant --  
15 the door of a vacant apartment, is that right?

16 A Yes.

17 Q And that door didn't say maintenance room, is  
18 that your testimony?

19 MR. TOCHKA: Objection, Your Honor.

20 It's not what she said.

21 THE COURT: It will be for the jury to  
22 decide what was said. Another question, please.

23 BY MR. DOOLIN:

24 Q Sorry. Did it say maintenance room?

1 A I didn't read it if there was any letters on the  
2 door.

3 Q Well, would you have noticed if there were  
4 letters on the door?

5 A It's very dark in that hallway.

6 Q There were no lights on in that hallway?

7 A I don't remember specifically.

8 Q How long were you in that hallway for?

9 A Two minutes, a minute and a half.

10 Q And it's your testimony that you get out of that  
11 hallway after two minutes or a minute and a half,  
12 that you went back outside near where Mr.  
13 Yazbek's car was --

14 A Yes.

15 Q -- is that right?

16 A Yes.

17 Q And then you went around and began to yell out  
18 Heather's name, is that right?

19 A Yes.

20 Q And you whistled?

21 A Yes.

22 Q And you yelled out Heather's name in a good loud  
23 voice, is that correct?

24 A Yes.

1 Q So that you would make Mr. Yazbek think that you  
2 were trying to get in touch with Heather or you  
3 were trying to get him to believe she lived in  
4 the apartment building, is that correct?

5 A Yes.

6 Q So again you were trying to trick Mr. Yazbek,  
7 isn't that correct?

8 A Yes.

9 Q And it's your testimony, is it not, that at some  
10 point in time, from what you say, that Mr.  
11 Anderson and Mr. Robinson come out of that area  
12 over by where the dumpsters are, is that correct?

13 A Yes.

14 Q Both of them at the same time, is that right?

15 A Yes.

16 Q And they're over there by where that fence is  
17 that encases the dumpsters, isn't that right?

18 A Yes.

19 Q Now, your testimony is that at this point in time  
20 that you walk down the path and you meet up with  
21 Heather Coady, is that right?

22 A Yes.

23 Q And when you meet up with Heather Coady you have  
24 a short conversation with her, don't you?

1 A I said a word to her.

2 Q Okay. Did she seem surprised to see you?

3 A I don't remember her expression.

4 Q Okay. But you just talked to her on the phone  
5 several minutes beforehand, hadn't you?

6 A Maybe twenty minutes beforehand.

7 Q And you told her that you were going to come back  
8 to this area and that you were going to buy  
9 marijuana from her, didn't you?

10 A The complex, yes, I did.

11 Q So Ms. Coady wouldn't have been surprised to see  
12 you, would she have been?

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: Is that an objection, sir?

15 MR. TOCHKA: Yes.

16 THE COURT: Rephrase the question, sir.

17 BY MR. DOOLIN:

18 Q Ms. Coady didn't express surprise to you that the  
19 two of you met up, did she?

20 A No.

21 Q When you came down this way towards -- down the  
22 walkway from 89 Faneuil heading towards North  
23 Beacon, did you see Eddie Gauthier?

24 A No.

1 Q When you walked across from the back pathway of  
2 89 Faneuil into the play area, did you see Eddie  
3 Gauthier?

4 A No.

5 Q Did you see Eddie Gauthier at all that night in  
6 the play area?

7 A No.

8 Q Did you see where Heather came from when she met  
9 you over here?

10 A She was walking along the side of the fence.

11 Q She was walking by herself, wasn't she?

12 A Yes.

13 Q There was nobody with her, was there?

14 A No.

15 Q And your testimony is that after you hear a bang,  
16 that you and Ms. Coady walk into the play area,  
17 is that right?

18 A On the corner of that fence is the play area so  
19 the play area, right at that corner.

20 Q Well, it's fair to say that in back of where Mr.  
21 Gauthier lived at 75 Faneuil, that there was a  
22 big open space, is that right?

23 A Yes.

24 Q And that there's picnic tables there, is that

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right?

A Yes.

Q And there's some park benches, is that right?

A I don't remember.

Q When you walked from the area where you first met Ms. Coady and walked across to end ultimately at the car, as you say, did you have to walk through an open space?

A Yes.

Q Now, when you walked through that open space, your testimony is that at some point in time you see Mr. Anderson and he comes up behind you, is that right?

A Yes.

Q So if you're in that play area your testimony is that Anderson comes up behind you in the play area, isn't that true?

A Yes.

Q So Anderson doesn't come around from Faneuil Street, does he?

A No.

Q At this point in time, Anderson and Robinson aren't together, are they?

A No.



- 1 Q They weren't walking out of 89 Faneuil together,  
2 were they?
- 3 A I can't see 89 Faneuil from the stairs.
- 4 Q But they weren't together when you first see --  
5 as you see Mr. Anderson, were they?
- 6 A No.
- 7 Q Tanzerius Anderson is by himself from what you're  
8 saying here, isn't that true?
- 9 A Yes.
- 10 Q And your testimony is that at this point in time  
11 you go up those steps, is that right?
- 12 A Yes.
- 13 Q Does Heather Coady go up those steps?
- 14 A I never physically saw her go up the stairs.
- 15 Q Where did you see -- what was the furthestest  
16 place that you saw Heather Coady go into that  
17 play area?
- 18 A Towards the back of the stairs.
- 19 Q She never went up the stairs, did she?
- 20 A I don't know.
- 21 Q You didn't see her go up the stairs, did you?
- 22 A I don't remember.
- 23 Q And your testimony, I think, is that you see Mr.  
24 Robinson and he appears in the parking lot

- 1           between 65 and 75 Faneuil, is that right?
- 2    A       Yes.
- 3    Q       Robinson doesn't come up those stairs under your  
4           version of events, does he?
- 5    A       No.
- 6    Q       Do you see Heather Coady and Mr. Robinson share a  
7           kiss at the top of those stairs?
- 8    A       No.
- 9    Q       And it's your testimony, is it not, that you get  
10           into the car and that you drive off and you take  
11           a left and you come down Faneuil Street, is that  
12           right?
- 13   A       Yes.
- 14   Q       Ant at somewhere along the way, from your version  
15           of events, there is a gun that's placed in back  
16           of a bobcat, is that right?
- 17   A       Yes -- not in back of the bobcat, underneath the  
18           shovel of the bobcat.
- 19   Q       Okay. At some point in time did you see a shell?
- 20   A       I didn't see a shell.
- 21   Q       Was there conversation about a shell?
- 22   A       Yes.
- 23   Q       Did you see anybody with a shell in their hand?
- 24   A       No.

1 Q Did you ever see that gun opened up?

2 A No.

3 Q The gun that was taken from your father's house,  
4 that was a revolver, wasn't it?

5 A Yes.

6 Q How big was it? Can you describe to us how big  
7 it was?

8 A About that size.

9 Q How many inches would you say that is?

10 A Seven, eight.

11 Q And your testimony was, that gun was taken from  
12 New Hampshire. Was there a holster that was  
13 taken with it?

14 A Yes.

15 Q Did you see a holster that night on the twenty-  
16 seventh?

17 A No.

18 Q Your testimony was that someone was putting it in  
19 their vest, wasn't it?

20 A Yes.

21 Q In a vest pocket, is that right?

22 A Yes.

23 Q A seven inch gun, is that your testimony? In a  
24 vest pocket, is that your testimony, ma'am?

1 A If it was seven inches?

2 Q Well, that's what you just said, didn't you?

3 A Yes.

4 Q And your testimony is that at some point you go  
5 back to the area of the McKinley playground, is  
6 that right?

7 A Yes.

8 Q And when you go back to McKinley playground, you  
9 meet up with your friend, Heather Coady, don't  
10 you?

11 A Yes.

12 Q And when you meet up with Heather Coady, you buy  
13 a bag of marijuana from her, is that right?

14 A Yes.

15 Q And at some point in time you smoke another one  
16 of these blunts, isn't that right?

17 A Yes.

18 Q So during the course of the night you had been  
19 smoking four blunts and you had had three drinks,  
20 is that right?

21 A Yes.

22 Q And now I think what you said with Mr. Tochka on  
23 direct examination is that at some point that  
24 night you go back to Dunboy Street, is that

1 right?

2 A Yes.

3 Q And when you go back to Dunboy Street, clearly  
4 the people that you meet there are Heather Coady  
5 and Eddie Gauthier, aren't they?

6 A Yes.

7 Q Your mother was there that night, wasn't she?

8 A Yes.

9 Q And her boyfriend, an individual named Mr. Walsh,  
10 is that right?

11 A Yes.

12 Q So present in front of your mother and her  
13 boyfriend would have been yourself, Gauthier, and  
14 Coady, is that right?

15 A Yes.

16 Q Based upon your version of events, Anderson and  
17 Robinson don't go into the house, do they?

18 A No.

19 Q And while you're at your mother's house there is  
20 a conversation that goes on between you and  
21 Heather Coady, is that right?

22 A Yes.

23 Q About what Ms. Coady had seen, isn't that right?

24 A Yes.

1 Q Where does that conversation take place?

2 A In the bathroom.

3 Q In the bathroom. So it didn't take place in the  
4 living room, did it?

5 A No.

6 Q It didn't take place in front of Eddie Gauthier,  
7 did it?

8 A No.

9 Q The conversation that you have with Coady is  
10 between the two of you in the bathroom of your  
11 mother's house, isn't that right?

12 A Yes.

13 Q And it's at this point in time that you and Ms.  
14 Coady begin to talk about alibis, don't you?

15 A What's an alibi to your definition?

16 Q To say that you were somewhere else or to explain  
17 what happened that night. Isn't that what you  
18 and Coady talked about?

19 A No.

20 Q Well, how long did you talk to Coady for?

21 A A few minutes.

22 Q And you have known Coady since you were in the  
23 seventh grade, is that right?

24 A Yes.

1 Q She was one of your best friends, wasn't she?

2 A Yes.

3 Q And she was there with her good friend, Eddie  
4 Gauthier, wasn't she?

5 A Yes.

6 Q And then when Coady and Gauthier left your  
7 mother's house, they walked home together, didn't  
8 they?

9 A I don't know.

10 Q Did you see them leave the house?

11 A No.

12 Q Were you smoking more marijuana at your mother's  
13 house that night?

14 A Yes.

15 Q Is that another blunt?

16 A No.

17 Q Were you smoking what might be described as a  
18 joint?

19 A Yes.

20 Q How many joints did you smoke at your mother's  
21 house?

22 A One.

23 Q Now, the next day, March 28, did you see Ms.  
24 Coady that day?

1 A Yes.

2 Q Where did you see her?

3 A At her house.

4 Q At any point in time on March 28 did you go to  
5 Jeffrey Fitzgerald's house?

6 A I don't remember.

7 Q Isn't that something that you'd remember, ma'am?  
8 Whether you went to Mr. Fitzgerald's house?

9 MR. TOCHKA: Objection.

10 THE COURT: Sustained as to form.

11 BY MR. DOOLIN:

12 Q You don't have any present memory of going to  
13 Fitzgerald's house that day, is that right?

14 A That's right.

15 Q Did you see Mr. Jeffrey Fitzgerald on either the  
16 twenty-eighth or the twenty-ninth?

17 A I don't remember.

18 Q Did you have a conversation with Heather Coady in  
19 the vicinity of 75 Faneuil Street on either the  
20 twenty-eighth or the twenty-ninth?

21 A I don't know.

22 Q Did you have a conversation with Eddie Gauthier  
23 on either the twenty-eighth or the twenty-ninth?

24 MR. TOCHKA: Objection, Your Honor, as



1 to which. Can we specify as to one particular  
2 day?

3 THE COURT: Rephrase the question.

4 BY MR. DOOLIN:

5 Q Did you have a conversation with Eddie Gauthier  
6 in the vicinity of 75 Faneuil on March 28?

7 A I don't remember.

8 Q Did you have a conversation with Gauthier on the  
9 twenty-ninth?

10 A Yes.

11 Q Where did you have that conversation with him?

12 A In Tanzerius's car.

13 Q Is that the conversation that you're going to say  
14 happened at Scrub-a-Dub?

15 MR. TOCHKA: Objection, Your Honor, as  
16 to the form of that question.

17 THE COURT: Rephrase it, sir.

18 BY MR. DOOLIN:

19 Q Was that at Scrub-a-Dub?

20 A I didn't talk to him at Scrub-a-Dub. I stayed in  
21 the car.

22 Q Is that what you're referring to is seeing Mr.  
23 Gauthier at the Scrub-a-Dub?

24 A Yes.

- 1 Q Before that, the day or two before that, did you  
2 have a conversation with Gauthier in the vicinity  
3 of 75 Faneuil?
- 4 A I don't remember.
- 5 Q So you have no memory of either a meeting with  
6 Gauthier or Fitzgerald at 75 Faneuil in the days  
7 after this incident happened, do you?
- 8 A No.
- 9 Q But you did have a conversation with Ms. Coady,  
10 didn't you?
- 11 A Yes.
- 12 Q And in the conversation that you had with Coady,  
13 again you and Coady talked about yourselves,  
14 didn't you?
- 15 A Yes.
- 16 Q And you talked about what type of stories that  
17 you'd have, isn't that true?
- 18 A I don't remember a specific conversation.
- 19 Q Well, you knew, did you not, at the time that you  
20 had been seen with Mr. Yazbek at Wadi's?
- 21 A Yes.
- 22 Q And you knew that you had left a cigarette  
23 lighter at Wadi's, didn't you?
- 24 A Yes.

1 Q And that the cigarette lighter had your  
2 fingerprints on it, didn't you?

3 A Yes.

4 Q You knew that you had been in Yazbek's car,  
5 didn't you?

6 A Yes.

7 Q And you knew that you would have left your  
8 fingerprints in Yazbek's car, didn't you, ma'am?

9 A Yes.

10 Q And that was part of the conversation you had  
11 with Heather Coady, wasn't it?

12 MR. TOCHKA: Objection, Your Honor.  
13 What point of time are we talking about?

14 THE COURT: Rephrase your question.

15 BY MR. DOOLIN:

16 Q In the days after the incident happened, either  
17 the twenty-eighth or the twenty-ninth, when you  
18 talked to Coady, you were aware of all of those  
19 things, weren't you?

20 MR. TOCHKA: Objection, Your Honor,  
21 again.

22 THE COURT: Sustained.

23 BY MR. DOOLIN:

24 Q At some point in time you decide that you are

1 going to leave town, don't you?

2 A Yes.

3 Q Because you didn't want to be linked into  
4 anything that happened that night, isn't that  
5 correct?

6 A Yes.

7 Q Because you wanted to avoid the police coming  
8 down and questioning you, didn't you?

9 A Yes.

10 Q Because you didn't want to get in trouble and get  
11 arrested, isn't that correct?

12 A Yes.

13 Q And, in fact, in April of the year 2000, in the  
14 days and nights after this incident happened, did  
15 you leave the 74 Dunboy Street address?

16 A Yes.

17 Q And you went to live somewhere else, didn't you?

18 A Yes.

19 Q In fact, on April 28 you were arrested inside of  
20 Boston, weren't you?

21 A Yes.

22 Q You were charged with the crime of what's called  
23 sex for a fee, isn't that correct?

24 A Yes.

1 Q And that happened down somewhere in the area of  
2 Chinatown, isn't that right?

3 A Yes.

4 Q Now, you knew an individual by the name of Amy  
5 Harr, isn't that correct?

6 A Yes.

7 Q And Amy Harr is an individual who you grew up  
8 with, isn't that right?

9 A Yes.

10 Q She was a friend of yours, is that correct?

11 A Yes.

12 Q And just like your father and just like Mr.  
13 Yazbek, she had always been nice to you, hadn't  
14 she?

15 A Yes.

16 Q And when you got arrested on April 29, it's fair  
17 to say that you didn't tell them your name was  
18 Joleena Tate, did you?

19 A No.

20 Q What did you tell them your name was?

21 A Amy Lee Harr.

22 Q So this person who you had grown up with, this  
23 girl who had always been nice to you, you lied  
24 and you said that you were Amy Harr, didn't you?

1 A Yes.

2 Q When the police officers arrested you, you told  
3 them that you were Amy Harr, isn't that right?

4 A Yes.

5 Q When you were before the bail commissioner, you  
6 told the bail commissioner you were Amy Harr,  
7 didn't you?

8 A Yes.

9 Q You told the person who booked you at the police  
10 station that your name was Amy Harr, didn't you?

11 A Yes.

12 Q When they showed you a booking sheet and asked  
13 you to sign it, that you had been advised of your  
14 rights, you wrote down the name, Amy Harr, didn't  
15 you?

16 A Yes.

17 Q When you had to sign a bail recognizance to say  
18 that you were going to appear in court, you wrote  
19 down Amy Harr's name, isn't that correct?

20 A Yes.

21 Q So to avoid trouble, to avoid the consequences of  
22 your actions, you linked a friend of yours who is  
23 completely innocent to being arrested for sex for  
24 a fee, didn't you?

1 MR. TOCHKA: Objection, Your Honor.

2 THE COURT: Overruled.

3 BY MR. DOOLIN:

4 Q Isn't that correct?

5 A Yes.

6 Q You put a person's name into a crime that they  
7 had nothing to do with, didn't you?

8 A Yes.

9 Q And how long had you known Amy Harr before that  
10 you did to her?

11 A Since elementary.

12 Q She was a young woman who was just trying to  
13 raise a child, wasn't she?

14 MR. TOCHKA: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. DOOLIN:

17 Q Well, after you gave Ms. Harr's name, it's fair  
18 to say that the days thereafter, bringing your  
19 attention to, I believe it's May 5, you were  
20 arrested again, weren't you?

21 A Yes.

22 Q And again you were arrested in the area of the  
23 Combat Zone, isn't that right?

24 A Yes.

1 Q When you were arrested on May 5, did you tell  
2 them your name was Joleena Tate?

3 A Yes.

4 Q That was because there were some people there who  
5 were private investigators who knew who you were,  
6 isn't that true?

7 A Yes.

8 Q And then you were brought into Boston Municipal  
9 Court and you were held on bail, is that right?

10 A Yes.

11 Q And at some point in time you were appointed an  
12 attorney named Doyle, is that right?

13 A Yes.

14 Q And Mr. Doyle and you made a deal with the  
15 government, didn't you?

16 A Yes.

17 Q Now, Ms. Tate, you made a deal with the  
18 government and pursuant to that deal you are not  
19 charged with the homicide, are you? Are you,  
20 ma'am?

21 A I'm not sure exactly what my charge reads, to  
22 tell you the --

23 Q So your testimony is that you have no idea what  
24 your charge is? Is that what you're telling us?



1 A I believe accessory before the fact.

2 Q Before the fact of robbery, isn't that right?

3 A Yes.

4 Q So you weren't charged with an armed robbery,  
5 were you?

6 A No.

7 Q You weren't charged with a murder, were you?

8 A No.

9 Q And the deal that you made with the government is  
10 that the government is going to recommend eight  
11 to ten years in jail, is that right?

12 A Yes.

13 Q But that's not what your attorney is going to  
14 recommend, is that what your understanding is?

15 A I don't know what my lawyer is doing with that.

16 Q You know that the government is just going to be  
17 recommending eight to ten and that your lawyer  
18 can recommend anything, isn't that correct?

19 A Yes.

20 Q Your lawyer can recommend probation, can't he?  
21 Under the deal that you have with the government?

22 A I'm not sure on the laws.

23 Q But isn't that what you know the basis of your  
24 deal to be, that your lawyer can recommend what

1 he wants?

2 A Yes.

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

5 THE COURT: Thank you. Cross  
6 examination.

7 MR. FLAHERTY: Thank you, Your Honor.

8  
9 CROSS EXAMINATION

10 BY MR. FLAHERTY:

11 Q Ma'am, how many names do you go by?

12 MR. TOCHKA: Objection, Your Honor.

13 THE COURT: Overruled

14 BY MR. FLAHERTY:

15 Q You testified here to --

16 THE COURT: I'm sorry. Was there an  
17 answer to that question? The question, ma'am, if  
18 you have forgotten, is, how many names do you go  
19 by.

20 A I have given Amy's name once.

21 BY MR. FLAHERTY:

22 Q Okay? So you used the name, Amy Harr when you  
23 were arrested for prostitution in the Combat  
24 Zone, correct?

1 A Yes.

2 Q Do you go by the name Joleena Culgini as well?  
3 Have you ever used that name?

4 A I don't think so.

5 Q You've never used that name at all with anyone in  
6 your entire life, Joleena Culgini?

7 A I might have. I don't remember.

8 Q Ever used the name, Joleena Gonzales?

9 A That's on my birth certificate.

10 Q And you use the name Joleena Tate, right?

11 A Yes.

12 Q So by your estimate, three names?

13 A Yeah.

14 Q Ms. Tate, in March of 2000 you were then sixteen  
15 years odd, correct?

16 A Yes.

17 Q And in March of 2000 Iman Yazbek was thirty-four  
18 years, old, correct?

19 A Yes.

20 Q Iman Yazbek was single, right?

21 A Yes.

22 Q And you and Iman Yazbek developed a relationship,  
23 isn't that fair to say?

24 A Yes.

1 Q And the nature of your relationship with Iman  
2 Yazbek was romantic, was it not, Miss?

3 A No.

4 Q It was never romantic?

5 A No.

6 Q He took you out for drinks, right?

7 A Yes..

8 Q Took you out for dinner, correct?

9 A Yes.

10 Q Gave you money on occasion, right?

11 A Yes.

12 Q You spent time with him, correct?

13 A Yes.

14 Q As a matter of fact, didn't you tell the grand  
15 jury that you knew him well?

16 A Yes.

17 Q And your testimony before this jury today, ma'am,  
18 is, your relationship with Iman Yazbek was never  
19 romantic?

20 A Yes.

21 Q 89 Faneuil Street, that driveway, had you ever  
22 been there prior to March 27, 2000 with Iman  
23 Yazbek?

24 A No.

1 Q You were familiar with the area of 89 Faneuil  
2 Street?

3 A Yes.

4 Q On March 27, ma'am, you called Iman Yazbek, did  
5 you not?

6 A Yes.

7 Q And the purpose of calling him was because you  
8 had decided to rob him, right?

9 A Yes.

10 Q Your decision, your plan. Isn't that fair to  
11 say?

12 A Yes.

13 Q And when you called him your intention was to  
14 fool him into thinking that you wanted to go out,  
15 maybe to have a drink or three Long Island teas  
16 with him, was it not?

17 A Can you repeat the question?

18 Q Your intention when you called Iman Yazbek on  
19 March 27, 2000 was to fool him into believing you  
20 simply wanted to go out for a few drinks with  
21 him, right?

22 A Yes.

23 Q And you did drink with him, didn't you?

24 A Yes.

1 Q You went to Wadi's restaurant in Watertown, is  
2 that right?

3 A Yes.

4 Q And when you went to Wadi's you had been there  
5 prior to March 27, 2000, right?

6 A Yes.

7 Q The waiters knew you, did they not, Ms. Tate?

8 A I don't know.

9 Q Well, you knew that the bartender recognized you,  
10 didn't you?

11 MR. TOCHKA: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. FLAHERTY:

14 Q Well, did you know that the bartender recognized  
15 you?

16 A No.

17 Q In the days after March 27, 2000 you realized,  
18 Ms. Tate, did you not, that the bartender, waiter  
19 and owner of Wadi's restaurant recognized you on  
20 March 27?

21 MR. TOCHKA: Objection.

22 THE COURT: She may answer that.

23 A I knew that they would be able to identify me.

24 BY MR. FLAHERTY:

1 Q And they had seen you in the past prior to March  
2 27, 2000, right?

3 A Yes.

4 Q Wadi's is a nightclub restaurant, right?

5 A Yes.

6 Q On how many occasions had you been to Wadi's  
7 prior to March 27 with Iman Yazbek?

8 A Twice.

9 Q You had been there with Veronica Blyakman?

10 A Yes.

11 Q Also Jennifer Stacey, is that fair to say?

12 A Yes.

13 Q Did you also socialize with Pierre Nassif?

14 A Yes.

15 Q And on those occasions prior to March 27, 2000,  
16 Mr. Yazbek displayed cash, right?

17 A Yes.

18 Q And you figured in your mind on March 27, 2000,  
19 he was a good target for a robbery? That's why  
20 you chose him?

21 A Yes.

22 Q Now, on March 27 after he picked you up, you  
23 confirmed that he had cash on him, right?

24 A Yes.

1 Q And then you called Heather Coady at the Faneuil  
2 projects to let Heather know that Mr. Yazbek had  
3 cash on him, didn't you?

4 A No.

5 Q You called her twice, right? From his cell  
6 phone?

7 A No.

8 Q You didn't call Heather Coady's apartment twice  
9 on March 27, 2000?

10 A No.

11 Q Are you positive about that, ma'am?

12 MR. TOCHKA: Objection, Your Honor.

13 Asked and answered.

14 THE COURT: Sustained. Another  
15 question, sir.

16 BY MR. FLAHERTY:

17 Q Didn't you just testify that you called Heather  
18 Coady's apartment twice?

19 A No.

20 Q What's Heather Coady's telephone number at the  
21 Faneuil housing project?

22 A I don't remember. I haven't dialed it in over  
23 two years.

24 Q At some point you spoke with Heather Coady on the



1 telephone, right?

2 A Yes.

3 Q And your testimony here today is that the reason  
4 why you spoke to Heather Coady was because you  
5 wanted to order a bag of pot, is that right?

6 A Yes.

7 Q Isn't it fair to say that Heather Coady's  
8 apartment telephone number is 254-7512?

9 A That sounds like my mother's.

10 Q I'm sorry. Excuse me. 562-0262?

11 A Yes.

12 Q And you used Mr. Yazbek's cell phone to call her,  
13 right?

14 A Yes.

15 Q You also paged Heather Coady, correct?

16 A No.

17 Q Well, didn't you dial in a pager number trying to  
18 reach Heather Coady?

19 A No.

20 Q You telephone a pager number that you knew  
21 Heather Coady had in her possession, correct?

22 A It was supposed to be with Jason.

23 Q But that pager, Ms. Tate, was in Ms. Coady's  
24 possession, was it not? Not Mr. Robinson's?

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MR. TOCHKA: Objection, Your Honor.

THE COURT: Sustained as to form.

BY MR. FLAHERTY:

Q You know that Ms. Coady had the pager, don't you?

MR. TOCHKA: Objection.

A No.

BY MR. FLAHERTY:

Q And it is your testimony you punched in eleven  
forty-five, not eleven thirty? Eleven forty-  
five, right?

A Yes.

Q Mr. Yazbek was murdered on March 27, 2000 after  
you lured him to 89 Faneuil Street, right?

A Yes.

Q A few days later you disappeared, right?

A Yes.

Q Next time you surface you're arrested for  
prostitution in the Combat Zone, correct?

A Yes.

Q And that's when you give the name, Amy Harr,  
right?

A Correct.

Q And you're doing that because you don't want  
anyone to know it's really Joleena Tate Gonsalves

1 Culgini who's been arrested for prostitution,  
2 right?

3 A Yes.

4 Q And that's because you know that the police are  
5 looking for you in connection with the death of  
6 Mr. Yazbek, right?

7 A Yes.

8 Q Not only did you lie about Amy Harr's name but  
9 you lied about her mother's name, right? You  
10 told them who Ms. Harr's mother's name was,  
11 didn't you, in the booking?

12 A Yes.

13 Q And you also knew enough to tell Ms. Harr's  
14 address, right?

15 A Yes.

16 Q And you got away with it, didn't you?

17 A Yes.

18 Q Now, a couple days later you're caught again in  
19 the Combat Zone getting out of a taxicab, right?

20 A Yes.

21 Q And this time you can't lie and say your name is  
22 Amy Harr, right?

23 A Yes.

24 MR. TOCHKA: Objection, Your Honor.

1 THE COURT: The objection is sustained  
2 and a motion to strike is allowed. Another  
3 question, please.

4 BY MR. FLAHERTY:

5 Q Did you attempt to lie and say your name was Amy  
6 Harr initially?

7 A The night of the taxicab?

8 Q The night of the taxicab.

9 A No.

10 Q No. Right away you told the truth?

11 A I don't remember that night.

12 Q Eventually it was discovered that you were  
13 Joleena Tate, right?

14 A Yes.

15 Q Because there were people there who know who you  
16 were, right?

17 A Yes.

18 Q And you were placed in custody, correct?

19 A Yes.

20 Q Shortly there afterwards you spoke with your  
21 father, isn't that right, Ms. Tate?

22 A Yes.

23 Q Your father is a private eye, right?

24 A Yes.

1 Q Your father is experienced, is he not?

2 MR. TOCHKA: (Stood up.)

3 THE COURT: Sustained as to the form,  
4 the objection which counsel is rising to make.

5 BY MR. FLAHERTY:

6 Q Well, you know that your father testifies in  
7 court?

8 A Yes.

9 Q And do you know that your father has an  
10 understanding about the criminal justice system  
11 in his profession as a private eye?

12 MR. TOCHKA: Objection, Your Honor, as  
13 to relevancy.

14 THE COURT: She may answer that.

15 BY MR. FLAHERTY:

16 Q The question is, do you know that your father has  
17 an understanding of the criminal justice system,  
18 how the courts work, in his profession as a  
19 private eye?

20 A I've never been involved with his work.

21 Q You were also appointed an attorney named James  
22 Doyle, right?

23 A Yes.

24 Q He has done a very good job for you, has he not?

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MR. TOCHKA: Objection, Your Honor.

THE COURT: Sustained.

BY MR. FLAHERTY:

Q Is Mr. Doyle here today, Ms. Tate?

A No.

Q He was here earlier, was he not?

A Yes.

Q And that's because he's representing you as you sit on the stand and testify before this jury, correct?

A Yes.

Q And it wasn't until after you spoke with your father and after you spoke with Mr. Doyle that you talked to the government, right?

A Yes.

Q You knew prior to speaking to the government and entering into this deal that there were witnesses who placed you at Wadi's restaurant prior to the robbery of Mr. Iman Yazbek?

A I assumed. I assumed.

Q You knew, didn't you, ma'am?

A I didn't know.

Q You knew that you had left your cigarette lighter at Wadi's, didn't you?

1 A Yes.

2 Q You knew you had left a water bottle in Mr.  
3 Yazbek's car, didn't you?

4 A No.

5 Q You knew that you were in Mr. Yazbek's car and  
6 touched items inside Mr. Yazbek's car, didn't  
7 you?

8 A Yes.

9 Q You knew that Heather Coady had been spoken to by  
10 the police, correct?

11 A Yes.

12 Q You knew that Eddie Gauthier had spoken to and  
13 been spoken to by the police?

14 MR. TOCHKA: Objection, Your Honor, as  
15 to what time are we referring to.

16 THE COURT: Rephrase the question.

17 BY MR. FLAHERTY:

18 Q Prior to speaking to the government and entering  
19 into the deal that you have entered into, you  
20 knew that Eddie Gauthier had spoken to the  
21 police, right?

22 A Yes.

23 Q You also discussed with your father the  
24 condominium in New Hampshire, did you not?

1 A I don't remember.

2 Q Ms. Tate, don't you recall speaking and having a  
3 conversation with your father about what took  
4 place up in New Hampshire prior to entering into  
5 a deal with the government?

6 A I don't remember exact words. The day I talked  
7 to him --

8 Q You talked to your father on a couple of  
9 occasions before you talked to the government and  
10 entered into a deal, isn't that fair to say?

11 A Yes.

12 Q You also spoke with Mr. Doyle extensively before  
13 you entered into a deal with the government,  
14 right?

15 A Yes.

16 Q And you were familiar with the Conway, New  
17 Hampshire police department and the investigation  
18 that they conducted on the condo, right?

19 A I did not know the details of that.

20 Q You knew they took pictures and took  
21 fingerprints, right?

22 A Yes.

23 Q Faced with all that, that's when you decided to  
24 make a deal, right?



1 A Yes.

2 Q And that's the second time you mentioned people's  
3 names in connection with the crimes that you were  
4 involved in, right?

5 MR. TOCHKA: Objection, Your Honor, to  
6 the form of that question.

7 THE COURT: Overruled.

8 BY MR. FLAHERTY:

9 Q This is now the second time that you've mentioned  
10 people's names in a crime that you're involved  
11 with, right?

12 MR. TOCHKA: Objection, Your Honor, as  
13 to the form of that question.

14 THE COURT: The objection is overruled.

15 A Yes.

16 BY MR. FLAHERTY:

17 Q Only this time it's Tanzerius Anderson and Jason  
18 Robinson, right, Ms. Tate?

19 A Yes.

20 Q But there is no question in anybody's mind it was  
21 your idea to rob Iman Yazbek, right?

22 A Yes.

23 Q Your plan to lure him into the rear of 89 Faneuil  
24 Street, right?

1 A Yes.

2 Q You're the one who provided this weapon  
3 supposedly, right?

4 A The weapon was supposed to be sold.

5 Q Well, you're the one, according to your  
6 testimony, who suggested the theft of a weapon in  
7 New Hampshire, right?

8 A Yes.

9 Q You're the one who selected Mr. Yazbek as a  
10 target because he had a lot of cash on him,  
11 right?

12 A Yes.

13 Q You're the one who had the relationship with Mr.  
14 Yazbek that's not romantic, right?

15 A Yes.

16 Q And you're the one who mentioned Tanzerius  
17 Anderson and Jason Robinson, right?

18 A Yes.

19 Q Your testimony is that you met Jason -- you met  
20 Tanzerius Anderson in January of 2000, right?

21 A Yes.

22 Q And you developed a relationship after being with  
23 him five or six times, is that your testimony  
24 here today?

1 A Yes.

2 Q Did you know that he's a graduate of Balfor  
3 Academy (phonetic spelling) and had a scholarship  
4 to Northeastern University?

5 MR. TOCHKA: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. FLAHERTY:

8 Q Well, you developed a close relationship with  
9 him?

10 A Yes.

11 Q And you became very close. Is that your  
12 testimony here today?

13 A Yes.

14 Q Did you know that about him, that he earned a  
15 scholarship to Northeastern University through  
16 the Balfor Academy?

17 MR. TOCHKA: Objection, Your Honor.

18 THE COURT: Side bar, please.

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

21 THE COURT: What is your good faith  
22 basis to ask the question?

23 MR. FLAHERTY: He did, Judge, and it's  
24 going into whether or not he had a relationship

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with --

THE COURT: Whether or not he did is not the question, sir. If your client is not going to testify, I would like to know if there is some other way in which this is going to be put before the jury other than this witness.

MR. FLAHERTY: It's not your decision whether or not my client testifies, respectfully.

THE COURT: Sir, listen carefully to what I'm saying.

MR. FLAHERTY: I'm listening.

THE COURT: The fact that you're asking this question suggests to the jury that it is a fact. In other words, for you to ask the question permissibly there has to be a good faith basis other than your asking it. So what I'm asking you, sir, and I'm not suggesting that you need to tell us whether your client is testifying, but I want to know how you are going to get that before the jury other than the fact that you've asked it.

MR. FLAHERTY: Your Honor, this witness has testified that, according to her trial testimony, she has a relationship with my client.

1 I'd like to test the parameters here. She's  
2 saying he has this private conversation with her  
3 about supposedly developing this thing called the  
4 commission. I would like to know whether he has  
5 private conversations with her about his family  
6 and I would like to determine whether or not  
7 that's also a subject matter of conversation  
8 between the two of them. I think it's very  
9 relevant on the relationship between the two of  
10 them.

11 THE COURT: That's not the issue, sir.  
12 Is there anything you want to say?

13 MR. TOCHKA: No. I object, Your Honor.

14 THE COURT: If she says no, she doesn't  
15 know it, then how are you going to get this  
16 before the jury that, in fact, he is a recipient  
17 of the Balfor scholarship?

18 MR. FLAHERTY: He is, Your Honor. I  
19 can have direct evidence to that.

20 THE COURT: And what would that be?

21 MR. FLAHERTY: His mother can take the  
22 stand and testify to it.

23 THE COURT: So you're saying that your  
24 good faith basis to put before the jury the

1 content of that question is that you are going to  
2 call his mother?

3 MR. FLAHERTY: I haven't decided  
4 whether it's necessary or not. It depends on  
5 this witness's answer to my question.

6 THE COURT: What other questions do you  
7 have along those lines?

8 MR. FLAHERTY: Well, I'd like to know  
9 whether or not she knew that he was fully  
10 employed. She says he left, he had to go to  
11 work. I'd like to know if she knows what he did  
12 for a living. I would like to know whether or  
13 not she knew that he had a girlfriend, whether  
14 she knew that he had a child he was supporting.  
15 I would like to know if she knew whether he was a  
16 member of the carpenter's union. I would like to  
17 know if she knew that he had applied for and been  
18 placed on the list to be a member of the Boston  
19 Fire Department. I think that's all proper cross  
20 examination.

21 THE COURT: It's not if she has no  
22 knowledge, sir, and I'm asking you -- what we can  
23 do is interrupt this and take a voir dire.

24 MR. FLAHERTY: Well, I think, Your

1 Honor, that my basis for asking her these  
2 questions is, she has testified to a close  
3 relationship with Mr. Anderson. Now, if her  
4 responses are in the negative to this, then I  
5 would submit I will call Mrs. Anderson,  
6 Tanzerius's mother, to testify in the affirmative  
7 to all this.

8 THE COURT: Okay.

9 MR. FLAHERTY: To discredit her on the  
10 basis of what she said their relationship is.

11 THE COURT: On the basis of that  
12 representation, I'll allow you to continue.

13 MR. TOCHKA: If I can add to that, all  
14 this is, Your Honor, is an attempt to back door  
15 statements in terms of the defendant's reputation  
16 through this witness. This witness can't say  
17 that the defendant told me he went to college,  
18 the defendant told he worked, the defendant told  
19 me he had a child, the defendant told me what  
20 type of work he does and how he is going to the  
21 Boston Fire Department. All this is is  
22 statements from the defendant being offered not  
23 against him but self-serving statements and  
24 that's the reason why they are being offered. It

1 does not go into a determination of how well she  
2 knew him. You can know a person and not the  
3 details of the person's background in terms of  
4 his life. He's trying to get this out before the  
5 jury.

6 THE COURT: Let me send the jury on a  
7 short recess.

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

10 THE COURT: Ladies and gentlemen, if  
11 you would, I'm just going to give you a short  
12 recess. If you would leave your notes on your  
13 seats, please.

14 (Whereupon, the jury was escorted from  
15 the courtroom at 3:25 o'clock p.m.)

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

18 THE COURT: Counsel? Anything more,  
19 Mr. Tochka?

20 MR. TOCHKA: No.

21 THE COURT: Mr. Flaherty?

22 MR. DOOLIN: I'm sorry, Your Honor?

23 THE COURT: As I understand his  
24 argument, that it's a back door attempt to



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introduce reputation evidence --

MR. FLAHERTY: Well, frankly, Your Honor, I don't think his argument really merits a response. The defendant, it's not an attempt to put any reputation before the jury. It's simply an attempt to test the parameters and her knowledge of the relationship she has testified to. If she has no knowledge of this, Your Honor, I think it's proper impeachment for us to get that evidence before the jury through the mother.

THE COURT: What I will permit you to do is this, you may ask general questions about her relationship without suggesting these particular facts. Depending on her answer, you may pursue them or not. In other words, if you want to test the parameters of the relationship, then you may ask what she knew about his work, what she knew about his attendance at Northeastern University, and that sort of thing.

MR. FLAHERTY: Well, Your Honor, it's cross examination.

THE COURT: You have latitude, sir, to do that, the parameters of the relationship are permissible. Mr. Tochka's point is well taken

1 that much of this goes to reputation.  
2 MR. FLAHERTY: Well, Your Honor,  
3 without addressing the argument by the  
4 government, I should say there's been an  
5 abundance of testimony before this trial jury  
6 about the good and kind character of Mr. Yazbek  
7 and I understand the case law, that there are  
8 instances where a single photograph can be  
9 introduced before a trial jury to humanize the  
10 victim of a homicide, but quite frankly, with the  
11 balancing that any court must undergo in  
12 accepting evidence before a trial jury, even if  
13 we are to credit the argument on that basis, the  
14 line of questioning is not improper.

15 THE COURT: I'm not precluding the  
16 questioning, sir, but I'm going to ask you to be  
17 careful so as not to cross the line into  
18 impermissible reputation evidence.

19 While we are here at side bar, I want  
20 to make clear, if I did not at the last  
21 conference, that your argument was that the  
22 Fitzgerald and Johnson persons were relevant not  
23 only to third party culprit but to Bowden. I  
24 haven't excluded anything on Bowden.

1 MR. FLAHERTY: Right.

2 THE COURT: And you are certainly free  
3 to explore Bowden, both of you, and if sufficient  
4 connections were made with respect to the police  
5 investigation, lack of investigation, that would  
6 require this witness returning, that also can be  
7 arranged.

8 MR. FLAHERTY: Okay. Thank you.

9 THE COURT: And just for the record  
10 also, with respect to third party culprit  
11 evidence, the findings are crystal clear, in  
12 order for that to be admissible there has to be  
13 both a showing of relevant evidence, there has to  
14 be a showing that the evidence will not tend to  
15 prejudice or unduly confuse the jury, and there  
16 has to be substantial connecting links between,  
17 in this instance again, Johnson and the crime and  
18 Jeffrey Fitzgerald and the crime. I find that  
19 there were insufficient links based on the  
20 proffer that was made to me. Thank you. Let's  
21 take five minutes.

22 (Whereupon, the proceedings were  
23 recessed at 3:30 o'clock p.m., and reconvened at  
24 3:35 o'clock p.m.)

1 MR. FLAHERTY: May I inquire, Your  
2 Honor?

3 THE COURT: Yes, please.

4 BY MR. FLAHERTY:

5 Q Ms. Tate, when we left off we were discussing  
6 your relationship with Mr. Anderson. And you  
7 knew him well, is that fair to say?

8 A Yes.

9 Q You spoke often, is that fair to say?

10 You have to answer the question. You  
11 spoke often?

12 A There were the times that he was physically in  
13 front of me and the few times that he had called.

14 Q And based on these conversations and the time  
15 that you spent together, you became close, right?

16 A Yes.

17 Q Did you meet his girlfriend?

18 A I wasn't aware he had one.

19 Q Did you meet his son?

20 A Yes.

21 Q And you weren't aware that he had a girlfriend?

22 A No.

23 Q Did you know how he supported his son?

24 A His job.

1 Q And do you know where he worked, what he did for  
2 a living at that time?

3 A Yes.

4 Q And that was working as a machinist at Rent-All  
5 of Boston, is that right?

6 A Yes.

7 Q You knew how many hours a week he worked?

8 A No.

9 Q Is it fair to say he worked a whole week, forty  
10 hours a week, as far as you know?

11 A Yes.

12 Q He wasn't out hanging around and dawdling at 89  
13 Faneuil or in the area of the Faneuil housing  
14 projects, right?

15 A Right.

16 Q He wasn't out with Eddie Gauthier, waking up at  
17 one o'clock in the afternoon, was he?

18 MR. TOCHKA: Objection, Your Honor.

19 THE COURT: She may answer that.

20 A No.

21 BY MR. FLAHERTY:

22 Q You know that he entered the carpenter's union?

23 A No.

24 Q Do you know that he tested to be on the Boston

1 Fire Department?

2 A No.

3 Q You testified that you went up to New Hampshire  
4 twice, right?

5 A Yes.

6 Q You didn't testify that way in the grand jury,  
7 though, did you?

8 A I wasn't asked.

9 Q You weren't asked?

10 A I only answered the questions asked of me.

11 Q You only answered questions asked of you, right?

12 A Yes.

13 Q How about when you were interviewed by the  
14 police, Detective Sergeant Coleman with your  
15 attorney? Did you tell him you went up to New  
16 Hampshire twice then?

17 MR. TOCHKA: Objection, Your Honor.

18 THE COURT: She may answer that.

19 A No.

20 BY MR. FLAHERTY:

21 Q Isn't it fair to say that today is the first time  
22 you said on the record you went up to New  
23 Hampshire twice?

24 MR. TOCHKA: Objection, Your Honor, to

1 the form of that question.

2 THE COURT: She may answer that.

3 MR. TOCHKA: On the record, Your Honor?

4 THE COURT: Rephrase the question.

5 BY MR. FLAHERTY:

6 Q Is this the first time you told anybody you went  
7 to New Hampshire twice?

8 A No.

9 Q Who did you tell?

10 A I've told my lawyer and Bob Tochka.

11 Q It's your testimony today, is it not, that the  
12 first time you went up there you couldn't get  
13 into the condominium, right?

14 A Yes.

15 Q And that's because you thought the door was  
16 unlocked and it wasn't unlocked so you weren't  
17 able to get in that time, right?

18 A Yes.

19 Q And on that first time that you went up there,  
20 did you stay in a motel?

21 A No.

22 Q On that first time that you went up there, did  
23 you visit any of your friends?

24 A No.

1 Q The condominium is right near Fryberg Academy,  
2 right?

3 A Yes.

4 Q That's where you went from ninth grade to the  
5 eleventh grade, right?

6 A Yes.

7 Q You were expelled from Fryberg Academy?

8 A No.

9 Q You were not expelled from Fryberg Academy?

10 A No.

11 Q You left of your own volition? It was your  
12 choice?

13 A Yes.

14 Q You weren't kicked out because of grades, that's  
15 for sure, right?

16 A No, I wasn't.

17 Q You described Mr. Yazbek as passive? Isn't that  
18 the word you used?

19 A Yes.

20 Q And you described the interior of Wadi's as  
21 desolate, right?

22 A Yes.

23 Q The second time, according to your testimony,  
24 that you went up to New Hampshire you were able



1 to break into your father's condominium, right?

2 A Yes.

3 Q And this was in March, right?

4 A Yes.

5 Q Now, your father is a ski instructor or a ski  
6 patrol volunteer?

7 A Yes.

8 Q What's the name of the mountain he volunteers on?

9 A Mount Cranmore.

10 Q It's open in March, right?

11 A Yes.

12 Q March is part of the ski season, is it not?

13 A Yes.

14 Q As a matter of fact, isn't March, as far as you  
15 know, a busy month at Mount Cranmore?

16 A No.

17 Q Oh, it's not? Do they have ski patrols there at  
18 Mount Cranmore in March?

19 A Yes.

20 Q Now, you decided, according to your testimony, to  
21 go up to the condominium and break in for the  
22 purpose of stealing a firearm, right?

23 A Yes.

24 Q This is after you said Mr. Anderson told you that

1 he needed firearms to start this criminal  
2 conspiracy, this group called -- what you're  
3 telling us is called, according to him, the  
4 commission, right?

5 A Yes.

6 Q And how many hours is it driving up to Conway,  
7 New Hampshire?

8 A Two and a half, three hours.

9 Q And you told Mr. Anderson, according to your  
10 testimony, there's one gun, two and a half hour  
11 ride from Dorchester to New Hampshire?

12 MR. TOCHKA: Objection, Your Honor. I  
13 don't believe that's what the testimony has been.

14 THE COURT: It will be for the jury to  
15 decide what it was. Put another question.

16 BY MR. FLAHERTY:

17 Q No question in your mind it's a two and a half  
18 hour ride from Boston to Conway, New Hampshire,  
19 right?

20 A Yes.

21 Q And it's your testimony that the man obtained a  
22 glass cutter, right?

23 A Yes.

24 Q Obtained a crow bar, right?

1 A Yes.

2 Q Obtained gloves, right?

3 A Yes.

4 Q Changed his shoes, right?

5 A Yes.

6 Q What efforts did he undertake in this burglary to  
7 prevent all the neighbors in the condominium  
8 association from seeing what the two of you did  
9 according to your testimony?

10 A There's rarely neighbors.

11 Q Even took his bracelet off? He was that careful?

12 A Yes.

13 Q But when you left, your testimony is that this  
14 man who gets the crow bar, gets the gloves, gets  
15 the glass cutter, changes his sneakers, takes his  
16 bracelet off, stops at the Yankee Clipper motel  
17 and signs his own name?

18 A Yes.

19 Q This is after stealing a firearm?

20 A Before.

21 Q Before?

22 A Yes.

23 Q What time did you check into the Yankee Clipper  
24 motel, Ms. Tate?

1 A Late.

2 Q What time is late? What's your definition of  
3 late, please?

4 A I don't remember the time.

5 Q Your best estimate? Your best estimate of what  
6 time it was?

7 MR. TOCHKA: Objection, asked and  
8 answered.

9 THE COURT: If she can answer that  
10 question, she may.

11 A After ten.

12 BY MR. FLAHERTY:

13 Q After ten o'clock. What time did you leave  
14 Boston?

15 A In the evening.

16 Q Was it dark when you left?

17 A Yes.

18 Q And you drove this time to New Hampshire  
19 according to your testimony, correct?

20 A Yes.

21 Q And it was a two, two and a half hour ride?

22 A Yes.

23 Q So you left sometime shortly after dinner? An  
24 hour or two after dinner?

1 A Yes.

2 Q And when you got to Conway, New Hampshire, then  
3 you went to the Yankee Clipper motel and checked  
4 in, right? Sometime after ten?

5 A Yes.

6 Q And it's after you checked in to the Yankee  
7 Clipper motel, then you went to the condo, right?

8 A Yes.

9 Q Under cover of darkness, right?

10 A Yes.

11 Q On one of the occasions going to New Hampshire,  
12 did you stop to visit a friend named Megan  
13 Gibney?

14 A Yes.

15 Q That's with this man, Mr. Anderson, you say?

16 A Yes.

17 Q She met him?

18 A Yes.

19 Q Spent some time speaking with him and speaking  
20 with you?

21 A Yes.

22 Q Incidentally, you mentioned in direct examination  
23 that in addition to the gun and duffle bag, there  
24 was a bottle of champagne stolen?

1 A Yes.

2 Q Today is the first time you've mentioned the  
3 bottle of champagne, is it not?

4 A No.

5 Q Well, you didn't testify to it in the grand jury,  
6 right?

7 MR. TOCHKA: Objection, Your Honor.

8 THE COURT: She may answer that.

9 MR. TOCHKA: May I be heard on that  
10 question?

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

13 MR. TOCHKA: It's misleading to the  
14 jury. She was not asked about the champagne in  
15 the grand jury so to suggest, you didn't testify  
16 to something when she had not been asked about it  
17 is unfair all the way around.

18 MR. FLAHERTY: I asked her if she  
19 testified about the champagne in the grand jury.

20 THE COURT: She has already answered  
21 that question. She said she was not asked about  
22 it so you may ask the question.

23 MR. FLAHERTY: Okay.

24 (Whereupon, the discussion at side bar

1 was concluded.)

2 BY MR. FLAHERTY:

3 Q As a matter of fact, Ms. Tate, in any statement  
4 you have given to police investigators you've  
5 never mentioned this bottle of champagne, right?

6 A I have mentioned it in conversation.

7 Q In conversation with whom?

8 A One of the men I was questioned by.

9 Q Now, on March 27, 2000, according to your  
10 testimony, you're smoking pot at Eddie Gauthier's  
11 house, right?

12 A Yes.

13 Q And also according to your testimony here today,  
14 you and Eddie Gauthier are friends, right?

15 A Yes.

16 Q Better friends than you and Tanzerius Anderson,  
17 right?

18 A I wouldn't compare the friendships.

19 Q Well, didn't you testify on direct examination  
20 you spent about four days a week at Eddie  
21 Gauthier's apartment, 75 Faneuil Street?

22 A Yes.

23 Q And didn't you also testify you met Tanzerius  
24 Anderson five or six times?

1 A Yes.

2 Q At four times a week in the months of January,  
3 February and March is about just around forty  
4 times?

5 A My interest in Eddie wasn't the same as my  
6 interest in Tanzerius.

7 Q My question to you is, isn't four times a week in  
8 the months of January, February and March just  
9 under forty times?

10 A Yes.

11 Q You also had some close friendship with Heather  
12 Coady since seventh grade, right?

13 A Yes.

14 Q I think you testified on direct examination you  
15 were into drugs and guys and partying, right?

16 Heather Coady supplied you with  
17 marijuana, is that right?

18 A Yes.

19 Q She also sold it to your mother, right?

20 A Yes.

21 Q She sold to lots of people in the Faneuil  
22 development, right?

23 A Yes.

24 Q And on March 27, according to your testimony, she



1 is the source of the blunts that you smoked at  
2 Eddie Gauthier's house?

3 A I didn't ask.

4 Q But you smoked -- was it three blunts?

5 A Yes.

6 Q And a blunt is around how many joints? How many  
7 joints went into a blunt?

8 A I don't know.

9 Q More than two?

10 A Yes.

11 Q More than three?

12 A Maybe.

13 Q A blunt is a cigar of marijuana, right?

14 A Yes.

15 Q You smoked it and, according to your trial  
16 testimony, Tanzerius, Jason smoked it, Eddie  
17 smoked it, and Heather Coady smoked it, right?

18 A Yes.

19 Q And this is a cramped apartment, you're playing  
20 video games in?

21 A Yes.

22 Q Then you have this conversation you testified to  
23 about doing a robbery, right?

24 A Yes.

1 Q And it's your testimony in the cramped apartment  
2 that only Tanzerius hears the conversation about  
3 the robbery, right?

4 A Yes.

5 Q Heather knows nothing about it, right?

6 A No.

7 Q Eddie Gauthier knows nothing about it, right?

8 A Right.

9 Q Jeffrey Fitzgerald knows nothing about it, right?

10 A Right.

11 Q Is Duane a former boyfriend of yours?

12 A Yes.

13 Q Duane Johnson know anything about it on March 27,  
14 2000?

15 A No.

16 Q And that's when you put your plan, according to  
17 you, into action where you contact Mr. Yazbek,  
18 correct?

19 A Yes.

20 MR. TOCHKA: Objection, Your Honor.  
21 Asked and answered.

22 THE COURT: He may have it.

23 BY MR. FLAHERTY:

24 Q Now, you saw Mr. Anderson, according to your

1 trial testimony, you saw Mr. Anderson's Mazda  
2 parked in here, parked in the parking lot area,  
3 right?

4 A Yes.

5 Q You saw it over at the Brooks Variety, right?

6 A Yes.

7 Q You rode in it to Dunboy Street, right?

8 A Yes.

9 Q You drove in it in the Mass. Pike, right?

10 A Yes.

11 Q And describe the damage you saw on the front end  
12 of Mr. Anderson's car.

13 A I didn't notice any damage to the car.

14 Q You never saw any damage to the front of the car?

15 A No.

16 Q And this is March 27, 2000?

17 A Yes.

18 Q You returned to Dunboy Street -- before we get  
19 into that, you say that you go to Wadi's with Mr.  
20 Yazbek, right?

21 And you have three Long Island teas,  
22 right?

23 A Yes.

24 Q And that's on top of a portion of the three

1 blunts you had already smoked, right?

2 MR. TOCHKA: Objection, asked and  
3 answered.

4 THE COURT: I think we have had this,  
5 sir. Another question.

6 MR. DOOLIN: I don't think I've asked  
7 the question, Your Honor.

8 THE COURT: Ask another question.

9 BY MR. FLAHERTY:

10 Q A Long Island tea has five liquors in it, if you  
11 know?

12 A I don't know.

13 Q Did you feel under the influence when you left  
14 Wadi's?

15 A Yes.

16 Q When you got back to 89 Faneuil Street and you  
17 drove down the driveway, were you under the  
18 influence?

19 A Yes.

20 Q When you walked into that hallway and you knocked  
21 on the maintenance door, were you under the  
22 influence?

23 A Yes.

24 Q Did you see the maintenance sign on the door?

1 A No.

2 Q And that's when you came out and you whistled,  
3 right?

4 A Yes.

5 Q And you looked up at the window again trying to  
6 fool Mr. Yazbek, right?

7 A Yes.

8 Q And then, according to your testimony, that's  
9 when Mr. Anderson and Mr. Robinson came out,  
10 correct?

11 A Yes.

12 Q And then you leave with Heather Coady, right?

13 A No, I leave by myself.

14 Q Okay. But you meet Ms. Coady? You yell to her,  
15 right?

16 A Yes.

17 Q And you tell her, Heather, where you going, or  
18 words to that effect, right?

19 A No.

20 Q Well, do you recall what you said to Heather?

21 A I said, turn around and walk with me.

22 Q Okay. But you wanted to get away from there?

23 A Yes.

24 Q Were you trying to trick Heather at that point?

1 A I was trying to have her avoid what was behind  
2 me.

3 Q Now, it's your testimony at that point you hear a  
4 loud noise, I think is how you described it,  
5 right?

6 A Yes.

7 Q Where is Eddie Gauthier at this point?

8 A I don't know.

9 Q There is a picnic table -- are you familiar with  
10 the play area where the picnic table is?

11 A Yes.

12 Q You're facing the play area as you're walking  
13 with Heather Coady, right?

14 A Yes.

15 Q You have a full, unobstructed view of the play  
16 area and the steps doing up into the parking lot,  
17 right?

18 A Yes.

19 Q It's your testimony you never see Eddie Gauthier,  
20 right?

21 A No.

22 Q And it's your testimony, is it not, that when you  
23 go up into the parking lot area, you then see  
24 Jason Robinson coming from Faneuil Street, right?

1 A I see him in the parking lot closer to Faneuil  
2 Street.

3 Q Okay. Did you see him coming into the parking  
4 lot or leaving the parking lot?

5 A I didn't see him at the entrance at all.

6 Q And the next time -- you didn't see Tanzerius  
7 Anderson coming from Faneuil Street, right?

8 A Right.

9 Q Your testimony is, you see Tanzerius Anderson at  
10 some point coming up from behind you through the  
11 play area, right?

12 A Right.

13 Q And at that point do you see Eddie Gauthier?

14 A No.

15 Q The next time you see Eddie Gauthier is at 74  
16 Dunboy Street with Heather Coady, right?

17 A Yes, right.

18 Q Now, it's your testimony that you get into the  
19 Mazda, Mr. Anderson's Mazda, right?

20 A Yes.

21 Q And you drive away, right?

22 A Right.

23 Q As a matter of fact, you corrected yourself.

24 When you said, you gave the directions, you said

1           you took a left on Faneuil and then a left on  
2           Market and a right on North Beacon, right?

3           A     Right.

4           Q     Did you ever show the police where the bobcat was  
5           located?

6           A     No.

7           Q     Is it your testimony it was on a construction  
8           site in the area of the Faneuil housing project  
9           on March 17, 2000?

10          A     No.

11          Q     Well, tell us exactly where the bobcat was  
12          located?

13          A     I don't know exactly where it was located. I  
14          told the police I didn't know exactly where. I  
15          knew it was in Allston closer to Union Square.

16          Q     You lived in Brighton your whole life, right?

17          A     Until I moved away when I was fourteen.

18          Q     And the Faneuil development to Union Square is  
19          about a mile, right?

20          A     Right.

21          Q     And the Allston ramp to go on the Turnpike is a  
22          block from Union Square, right? Two blocks from  
23          Union Square?

24          A     Yes.



1 Q And at some place in that immediate area that you  
2 testified there is an industrial location, right?

3 A Yes.

4 Q Ms. Tate, wouldn't you agree with me that it's  
5 all apartment buildings in that location?

6 A Yes.

7 Q There is the Jackson Mann school there, right?

8 A Yes.

9 Q There is the Twin Donuts there, right?

10 A Yes.

11 Q There is a Burger King there, right?

12 A Yes.

13 Q There is the Allston Sports Depot there, correct?

14 A I don't know where that is.

15 Q There's Harvard Street, a main thoroughfare from  
16 the intersection of Comm. Ave. and Beacon Street,  
17 right?

18 And it comes out to Cambridge Street  
19 which leads to the Mass. Turnpike, right?

20 A I'm not familiar with the street names.

21 Q You're familiar with the neighborhood though,  
22 right?

23 A I don't know anyone in the neighborhood.

24 Q Well, you're familiar with the general

1 neighborhood?

2 A Yes.

3 Q Correct? And it's fair to say, is it not, there  
4 is no construction site or industrial area in  
5 that location of Allston?

6 A I don't know.

7 Q But it's your testimony that Mr. Anderson  
8 attempted to put this gun underneath the bobcat  
9 shovel, right?

10 A Yes.

11 Q Isn't it also your testimony that at one point he  
12 threw some napkins out the window?

13 A Yes.

14 Q Right? And in throwing the napkins out the  
15 window, is it your testimony that he dropped a  
16 shell?

17 A He said that he had dropped a shell. He said,  
18 shit, I dropped a shell as he threw the napkins  
19 out the window.

20 Q Now, you testified that he then put the car in  
21 reverse, right?

22 A Yes.

23 Q And he got out of the car, looking around, right?

24 A Yes.

1 Q And then he picked something up, right?

2 A Yes.

3 Q And this thing he picked up, he brought back in

4 the car, right?

5 A I don't know what he did with it.

6 Q Did you testify he said I have it, gets back in

7 the car, puts it in his pocket and continues to

8 drive down the same street?

9 A Yes.

10 Q Did you see what he had?

11 A No.

12 Q You never saw it?

13 A No.

14 Q But you saw the gun?

15 A Yes.

16 Q And this is this seven-inch gun that you said was

17 in the pocket of a vest?

18 A Yes.

19 Q Are you familiar with the difference between a

20 revolver and an automatic weapon, ma'am?

21 A The revolver is thicker at the chambers.

22 Q The revolver has the cylinder, right?

23 A Right.

24 Q And do you know that -- well, tell me if you know

1 that when you fire a revolver a shell doesn't  
2 come out?

3 A No.

4 Q You don't know that?

5 A No.

6 Q Do you know when you fire an automatic that a  
7 shell pops out?

8 A No.

9 Q But it's your testimony that Mr. Anderson stopped  
10 the car, put it in reverse and got out looking  
11 for a shell as you were driving away from Faneuil  
12 projects, right?

13 A Right.

14 Q And the gun that you say was stolen from your  
15 father's apartment, that's a revolver, right?

16 A Yes.

17 Q You then returned to McKinley Park and Mr.  
18 Gauthier and Heather Coady are all the way in  
19 here by the benches, right? Over by the broken  
20 fountain, right?

21 A Yes.

22 Q And they're smoking pot?

23 A I didn't see them smoking in the park.

24 Q You bought a bag of pot from Heather that night,

1 right?

2 A Yes.

3 Q A ten dollar bag?

4 A Right, yes.

5 Q Smoked it right afterwards?

6 A Some of it.

7 Q Because you didn't want to remember what had just

8 happened or words to that effect, was that your

9 testimony?

10 A Yes.

11 Q Now, you say at some point in the drive, I guess

12 it was prior to going to McKinley Park, you said

13 that Mr. Anderson said he's murked, right?

14 A Yes.

15 Q And you're familiar with that phrase?

16 A Yes.

17 Q You understood that phrase to mean that a person

18 was dead?

19 A Yes.

20 Q And then you say this person, Mr. Anderson, says

21 words to the effect of, I got my body for the

22 summer?

23 A Yes.

24 Q You leave McKinley, you go for a ride, and you

1 smoke some marijuana, right?

2 A Yes.

3 Q And then you return to Dunboy Street and get  
4 dropped off?

5 A After we leave the parking lot of the bobcat.

6 Q Okay. When you get back to Dunboy, Heather and  
7 Eddie are there, right?

8 A Yes.

9 Q You and Heather get together and talk, correct?

10 A Yes.

11 Q And you and Heather talk about what you are going  
12 to tell people if anybody starts asking you  
13 questions, isn't that fair to say?

14 A I don't remember our conversation.

15 Q Is that because you were under the influence of  
16 alcohol and drugs?

17 A I think it was because it was two years ago.

18 Q Well, you do have a specific memory of some of  
19 the events from two years ago?

20 A Yes.

21 Q And it's fair to say you went over some of the  
22 events from two years ago prior to testifying  
23 here today, right?

24 A Yes.

1 Q Fair to say you went over it with your lawyer?

2 A He was present.

3 Q And it's fair to say that you went over it with  
4 Mr. Tochka, right?

5 A Yes.

6 Q And you can't remember whether or not you and  
7 Heather talked about getting a story together  
8 when you went back to Dunboy Street?

9 A No. I remember her explaining what she saw that  
10 night.

11 Q The next day you and Heather speak, right?

12 A Yes.

13 Q You go to the Faneuil projects, isn't that true?

14 A Yes.

15 Q And you go there because you went to know what  
16 information everyone has about this, right?

17 A Because I didn't want to be alone in my house.  
18 She was my best friend.

19 Q Well, you also wanted to know whether or not  
20 Heather had been spoken to by the police,  
21 correct?

22 A She had told me.

23 Q And you wanted to know whether or not Eddie had  
24 been spoken to by the police, right?

1 A Yes.

2 Q And you wanted to know whether or not they had  
3 started telling your name to the police, right?

4 A Yes.

5 Q And after that Veronica calls you and tells you  
6 your name had been mentioned to the police,  
7 right?

8 A Yes.

9 Q And that's when you decide to, I think as you put  
10 it, go on the run, right?

11 A Yes.

12 Q And the next time anyone sees you, you've been  
13 arrested, right?

14 A Yes.

15 Q And after you're arrested is when you enter into  
16 this agreement that's negotiated between your  
17 lawyer and the District Attorney's office, right?

18 A Yes.

19 Q And that agreement doesn't charge you with the  
20 murder you set up, according to your testimony?

21 A I did not set up a murder.

22 Q Well, it doesn't charge you with the armed  
23 robbery you set up, right?

24 A I did not know anyone was armed. I set up a



1 robbery.

2 Q Ms. Tate, you want the jury to believe you didn't  
3 know that there was a robbery taking place at 89  
4 Faneuil?

5 MR. TOCHKA: Objection, argumentative.

6 THE COURT: Rephrase the question, sir.

7 BY MR. FLAHERTY:

8 Q Isn't it your testimony, ma'am -- is it your  
9 testimony that you went up to New Hampshire for  
10 the purpose of stealing a firearm?

11 A Yes.

12 Q Isn't it your testimony that, according to you,  
13 Mr. Anderson had told you he wanted these  
14 firearms to do robberies?

15 A No. The firearm, the purpose of it was to be  
16 sold.

17 Q Isn't it your testimony that he was starting some  
18 group called the commission?

19 A Yes.

20 Q Isn't it your testimony that he was going to use  
21 girls as bait to lure guys with cash? Isn't that  
22 your testimony?

23 A I don't know if he had in mind girls as plural.

24 I know he mentioned that I would be of good use

1 for that.

2 Q And you want the jury to accept the testimony  
3 here that you didn't know that you were setting  
4 up an armed robbery on March 27, 2000?

5 MR. TOCHKA: Objection.

6 THE COURT: The objection is sustained.

7 BY MR. FLAHERTY:

8 Q Well, you were never charged with an armed  
9 robbery, were you?

10 A No.

11 Q You were never charged with the murder, were you?

12 A No.

13 Q You were never charged with the theft of the  
14 firearm in New Hampshire, were you?

15 A No.

16 Q You were never charged with carrying a dangerous  
17 weapon, were you?

18 A I never carried it.

19 Q You're only charged, presently charged with  
20 accessory before the fact of robbery, right?

21 A Yes.

22 Q And you haven't pled guilty to anything, right?

23 A I'm guilty to breaking into the condo, taking the  
24 gun.

1 Q As you sit here today you have not pled guilty to  
2 any indictments charging you with any crime  
3 surrounding March 27, 2000, right?

4 A Right.

5 Q And your agreement, your deal is that there will  
6 just be a recommendation made by the government  
7 not to exceed eight years, right?

8 A Yes.

9 Q And it's your understanding, is it not, that if  
10 you comply with your deal, they will not exceed  
11 that recommendation, right?

12 A Right.

13 Q And part of that deal is to make yourself  
14 available to come here and testify against these  
15 defendants in front of this jury, right?

16 A Yes.

17 Q And part of that deal also is that your lawyer,  
18 Mr. Doyle, who was here earlier, can make any  
19 recommendation he wants to a judge like Judge  
20 Rouse sitting here, right?

21 A Yes.

22 Q He can ask for eight years or he can ask for  
23 seven years, right?

24 A Yes.

1 Q He can ask for five years?

2 A Yes.

3 Q He can ask for no years, isn't that right?

4 A Yes.

5 Q He can ask for probation, right?

6 A Yes.

7 Q And that's why he was here, to make sure that  
8 everything was working according to the deal that  
9 he worked out for you after you spoke to him and  
10 you spoke to your father, right?

11 A Yes.

12 Q Ms. Tate, it's your testimony, according to your  
13 trial testimony, that the same man who gets  
14 gloves, changes shoes, changes his bracelet, gets  
15 a crow bar and glass cutter, commits an armed  
16 robbery and murder behind 89 Faneuil Street,  
17 right?

18 MR. TOCHKA: Objection, Your Honor.

19 THE COURT: Rephrase the question, sir.

20 BY MR. FLAHERTY:

21 Q Well, is it your testimony that Mr. Anderson  
22 drove two and a half hours to Conway, New  
23 Hampshire and procured all these tools to effect  
24 the burglary of a firearm?

1 A Yes.

2 Q But this is the same person who, according to  
3 your trial testimony, shoots a man behind 89  
4 Faneuil Street?

5 MR. TOCHKA: Objection, Your Honor.

6 THE COURT: Rephrase the question, sir.

7 BY MR. FLAHERTY:

8 Q Well, is it your testimony that Mr. Anderson  
9 committed these acts that you say he committed  
10 with Eddie Gauthier in the immediate area, you in  
11 the immediate area, Heather Coady in the  
12 immediate area, Jason Robinson in the immediate  
13 area?

14 A No.

15 Q That's not your testimony?

16 A I did not see everything that was asked. I said  
17 the exact thing that I saw.

18 Q It's part of your deal -- as part of your deal,  
19 were you ever asked to submit to a fingerprint  
20 examination?

21 A I don't think so.

22 Q Were you ever asked to submit to a blood  
23 examination?

24 A I don't think so.

1 Q Your trial testimony is, as I understand it, you  
2 set up the robbery, you picked the place for the  
3 robbery, you lured Mr. Yazbek to the robbery, you  
4 provided the weapon for the robbery, but you  
5 didn't commit the robbery, right?

6 A I did not provide a weapon for a robbery.

7 Q Is it your testimony you didn't commit the  
8 robbery?

9 MR. TOCHKA: Objection, Your Honor.

10 THE COURT: She may answer that  
11 question.

12 A I did not physically rob him.

13 BY MR. FLAHERTY:

14 Q Okay. Is it your testimony that you didn't have  
15 a gun behind 89 Faneuil Street?

16 A Yes.

17 Q Is it your testimony that you're not the one that  
18 pulled the trigger?

19 A Yes.

20 Q Is it your testimony that Eddie Gauthier was not  
21 the one at 89 Faneuil Street with you, at the  
22 rear of 89 Faneuil Street?

23 A Yes.

24 Q There is no question that you got together with

1 Heather and Eddie and came up with stories in the  
2 days following this event, right?

3 A Stories of what?

4 Q That would prevent the police from questioning  
5 you, Heather and Eddie, isn't it fair to say?

6 A I don't remember any specific conversations  
7 making up any stories.

8 Q There is no question, no question that  
9 immediately after this event you went on the run,  
10 right?

11 A Right.

12 MR. FLAHERTY: No further questions of  
13 this witness, Your Honor.

14 THE COURT: How long do you have?

15 MR. TOCHKA: Probably ten minutes, Your  
16 Honor.

17 THE COURT: Ladies and gentlemen, we're  
18 going to go a little bit longer. We appreciate  
19 your patience with us.

20

21 REDIRECT EXAMINATION

22 BY MR. TOCHKA:

23 Q Ms. Tate, you were asked a number of questions by  
24 Mr. Flaherty as to how well you knew the

1 defendant, Tanzerius Anderson, and you answered  
2 that you knew him to work, correct?

3 A Yes.

4 Q And you answered that you believed that he worked  
5 forty hours a week, right?

6 A Yes.

7 Q And you answered -- let me ask you, in terms of  
8 him getting ahold of you, did he have your phone  
9 number?

10 A Yes.

11 Q Did you ever have his phone number?

12 A No.

13 Q Ms. Tate, let me ask you about Amy Harr. You  
14 were asked by Mr. Doolin and Mr. Flaherty about  
15 Amy Harr.

16 She was a friend of yours, correct,  
17 back then?

18 A Yes.

19 Q And you gave her name when you were arrested,  
20 right?

21 A Yes.

22 Q Did you give her name in order to get her into  
23 trouble?

24 A She was the only one I knew all the information



1 about.

2 Q My question is, did you give the police her name  
3 in order to get her into trouble for something  
4 she did not do?

5 A No.

6 Q What was the reason why you gave the name of Amy  
7 Harr during those months when you were on the  
8 run?

9 A Because I knew the police were looking for me  
10 because a murder had happened.

11 Q Did you think at any point when you gave the name  
12 of Amy Harr to the police that would get her into  
13 any specific trouble?

14 A No.

15 Q Did you think that Amy Harr would then be charged  
16 with a crime of nightwalking or prostitution when  
17 you gave them that name?

18 A No.

19 Q The questions that were asked of you about on the  
20 way when you left the Faneuil development with  
21 these two defendants and the defendant, Tanzerius  
22 Anderson, rolled down the window -- and what did  
23 he do as he rolled down the window?

24 A He threw out napkins.

1 Q Now, you've testified that the gun that he took  
2 out was in which pocket?

3 A The right.

4 Q And when he rolled down the window and threw that  
5 napkin out, where did he get the napkin from?

6 Which pocket?

7 A I don't remember which pocket.

8 Q Do you know the difference -- do you know what a  
9 shell is?

10 A No.

11 Q Do you know what the difference is between a  
12 spent shell and a bullet and the like?

13 Do you have any experience in terms of  
14 ballistics evidence?

15 A I know what type of bullet goes into a revolver.

16 Q But do you know the difference between a shell, a  
17 shell casing, a spent bullet and a bullet?

18 Do you know the difference between any  
19 of those things?

20 A No.

21 Q And when you went to New Hampshire with this  
22 defendant a few days before and went to your  
23 father's condominium and took out a bag, what was  
24 in that bag?

1 A Assorted ammunition.

2 Q That particular night, the defense counsel asked  
3 you whether or not you committed a murder. Did  
4 you murder Iman Yazbek?

5 A No.

6 Q Do you know who this man is?

7 MR. DOOLIN: I object.

8 MR. FLAHERTY: Objection, Your Honor.

9 THE COURT: I'll see counsel, please.

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

12 THE COURT: Grounds for the objection.

13 MR. DOOLIN: Judge, it's the same thing  
14 in a different way as what happened with  
15 Gauthier, putting a picture of the victim in  
16 front of her. It's established that she knows  
17 him. By putting this in front of the witness,  
18 just to get a reaction from her, I suggest that's  
19 not permissible.

20 THE COURT: The objection is sustained.

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

23 BY MR. TOCHKA:

24 Q How well did you know Iman Yazbek? How long did

1           you know him for?

2     A     Since January.

3     Q     That particular night when you asked the  
4           defendant if he wanted to commit a robbery, did  
5           you see a gun in the defendant's hand that night?

6                     MR. DOOLIN: I object.

7                     THE COURT: She may answer that.

8     A     After the robbery?

9     BY MR. TOCHKA:

10    Q     No, that night when you were in Eddie Gauthier's  
11           apartment and you asked the defendant if he --  
12           first off, why did you ask the defendant if he  
13           wanted to do a robbery that night?

14    A     So he would stay.

15    Q     What do you mean, so he would stay?

16    A     He wanted to leave.

17    Q     He wanted to leave and go where?

18    A     Home.

19    Q     And so you asked him if he wanted to do a robbery  
20           so that he would stay that night?

21    A     Yes.

22    Q     Stay that night with who?

23    A     With me.

24    Q     When you asked him about doing that robbery, did

1 he have a gun?

2 Did you see a gun on his person at that  
3 time?

4 A No.

5 Q Did you have any conversations with him about a  
6 gun at that time?

7 A No.

8 Q The last time you had seen that gun was when,  
9 ma'am?

10 A In New Hampshire.

11 Q And when you left him that morning after -- when  
12 you arrived in Boston with this defendant, what  
13 did he say he was going to do with the gun?

14 A Sell it.

15 Q When you went to the restaurant -- when you  
16 telephoned Iman Yazbek, did you know when you  
17 telephoned Iman Yazbek that this defendant had a  
18 gun?

19 A No.

20 Q When you went to the Wadi's restaurant so the  
21 bartender saw you, did you know at that time that  
22 this defendant intended to commit an armed  
23 robbery with a gun?

24 MR. FLAHERTY: Objection, Your Honor.

1 THE COURT: Sustained.

2 MR. TOCHKA: May I be heard, Your  
3 Honor, at side bar?

4 THE COURT: No. You may ask another  
5 question, sir.

6 BY MR. TOCHKA:

7 Q When you were in the restaurant at that time and  
8 the waitress came over and served you, did you  
9 know at that time whether or not this defendant  
10 had a gun?

11 MR. FLAHERTY: Objection.

12 THE COURT: She may answer that.

13 A No, I didn't.

14 BY MR. TOCHKA:

15 Q When you then picked up the cell phone, Iman  
16 Yazbek's cell phone, and called on his cell  
17 phone, did you know whether or not this defendant  
18 had a gun?

19 A No.

20 Q When you went back into his car and supposedly  
21 put your fingerprints all over that particular  
22 car, did you know that the defendant had a gun?

23 MR. DOOLIN: Your Honor, I object.

24 THE COURT: It's been asked and

1 answered, sir.

2 BY MR. TOCHKA:

3 Q When you went down to that alleyway with Iman  
4 Yazbek, what did you think these defendants were  
5 going to do?

6 MR. DOOLIN: I object.

7 MR. FLAHERTY: Objection.

8 THE COURT: Sustained.

9 MR. TOCHKA: May I be heard at side  
10 bar, Your Honor?

11 THE COURT: No.

12 BY MR. TOCHKA:

13 Q When you went down to the alleyway, ma'am, and  
14 you saw these two defendants approach Iman  
15 Yazbek, did you see a gun at that time?

16 A No.

17 Q Did you know of any information at that point in  
18 time that either one had a gun?

19 MR. FLAHERTY: Objection.

20 THE COURT: She may answer that.

21 A No, I didn't.

22 BY MR. TOCHKA:

23 Q When you then walked down the pathway and you saw  
24 Heather Coady, how soon after did you hear that

1 gunshot?

2 A Seconds.

3 Q Where were you when you heard that gunshot?

4 A Around the corner of the fence.

5 Q When you heard that gunshot, what was your first  
6 reaction in terms of what you wanted to do?

7 MR. DOOLIN: Your Honor, I object.

8 MR. FLAHERTY: Objection.

9 THE COURT: Sustained.

10 BY MR. TOCHKA:

11 Q Were you looking around when you heard that  
12 gunshot as to who might be in the development at  
13 that time?

14 MR. DOOLIN: Your Honor, I object.

15 THE COURT: She may answer that.

16 A I don't understand the question.

17 BY MR. TOCHKA:

18 Q When you heard the gunshot, I'm asking you, Ms.  
19 Tate, did you look around the development in  
20 terms of the play area to try to see who might be  
21 around at that point in time?

22 A No.

23 Q What was your first reaction that you wanted to  
24 do?



1 A To get out of the area.

2 Q Mr. Flaherty asked you about Eddie Gauthier and  
3 described the relationship between Eddie Gauthier  
4 and yourself versus Tanzerius Anderson and  
5 yourself and you said that you can't describe the  
6 relationship.

7 Why can't you describe it?

8 A Because I wasn't interested in Eddie.

9 Q And your relationship with Eddie Gauthier was  
10 what?

11 A We smoked weed together.

12 Q Mr. Flaherty asked you about going to his house  
13 four times a week.

14 Were you going to Eddie Gauthier's  
15 house four times a week to smoke weed?

16 A Yes.

17 Q And did you have any relationship with him at  
18 this point in time other than that?

19 A No.

20 Q And who else would be in those apartments when  
21 you would be there, when you'd go there?

22 MR. DOOLIN: Your Honor, I object.

23 THE COURT: Sustained.

24 BY MR. TOCHKA:

1 Q When you'd go to Eddie Gauthier's apartment to  
2 smoke weed in the past, were either of these  
3 defendants in the apartment?

4 MR. DOOLIN: Your Honor, I object.

5 THE COURT: She may answer that.

6 A Yes.

7 BY MR. TOCHKA:

8 Q So when you'd be in the apartment with Eddie  
9 Gauthier in the past would it be just you and  
10 Eddie Gauthier or would it be other people?

11 A Other people.

12 Q You were asked about the agreement that you  
13 entered into with the Commonwealth in this case  
14 and specifically you were asked by Mr. Doolin  
15 about your father -- I'm sorry.

16 Mr. Flaherty asked about, questioned  
17 about your father's background in criminal  
18 justice. Do you recall that?

19 A Yes.

20 Q Did you have a conversation with your father  
21 before you entered into an agreement in this  
22 case? Did you speak to your father?

23 A Yes.

24 Q And what did he tell you to do?

1 MR. DOOLIN: Judge, I object.

2 THE COURT: Sustained.

3 BY MR. TOCHKA:

4 Q And you entered into that agreement with the  
5 Commonwealth, isn't that true?

6 A Yes.

7 Q And you understood that the Commonwealth is going  
8 to recommend that -- you understand that you're  
9 going to plead guilty to the charge of accessory  
10 before the fact of a robbery, correct?

11 A Yes.

12 Q And you understand the Commonwealth will stand up  
13 before a judge and will recommend that you go to  
14 state prison for eight to ten years of your life,  
15 correct?

16 A Yes.

17 Q And you know that your attorney can ask for less  
18 than that, right?

19 A Correct.

20 Q And you know from your conversation with your  
21 attorney that the judge can give you more,  
22 correct?

23 MR. FLAHERTY: Objection.

24 THE COURT: Sustained.

1 MR. TOCHKA: May I be heard at side  
2 bar, Your Honor?

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

5 THE COURT: Yes, sir?

6 MR. TOCHKA: That is clearly -- they  
7 asked her about the plea agreement. They asked  
8 her a thousand times over, she can get lesser  
9 than the recommendation. She knows, in my  
10 conversation with her attorney, that she can  
11 actually get more than that. The judge is not  
12 bound whatsoever. The judge determines that.

13 THE COURT: It's a leading question,  
14 Mr. Tochka. You have to rephrase it.

15 MR. TOCHKA: Okay.

16 THE COURT: Off the record.

17 (Whereupon, a discussion occurred off  
18 the record at side bar, after which the  
19 discussion at side bar was concluded.)

20 BY MR. TOCHKA:

21 Q Ms. Tate, defense counsel asked you whether or  
22 not you realized that your attorney can ask for  
23 less than eight to ten years, correct?

24 A Yes.

1 Q And you are aware that the Commonwealth will  
2 stand up and will recommend eight to ten years,  
3 correct?

4 A Yes.

5 Q And do you understand whether or not you can  
6 actually get more than that?

7 MR. DOOLIN: Your Honor, I object.

8 THE COURT: She may answer that  
9 question.

10 A Yes.

11 BY MR. TOCHKA:

12 Q And it's up to -- who decides what your sentence  
13 is going to be?

14 A The judge.

15 MR. TOCHKA: No further questions.

16 Thank you.

17 THE COURT: Anything more?

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

20

21 RECROSS EXAMINATION

22 BY MR. FLAHERTY:

23 Q You're not standing up and saying I'll take eight  
24 to ten, are you?

1 A I signed saying I would take eight to ten.

2 Q You signed saying they wouldn't recommend more  
3 but your lawyer can ask for less, right?

4 A Yes.

5 MR. FLAHERTY: Okay. Nothing further.

6 THE COURT: Anything more, sir?

7 MR. TOCHKA: I just have a response in  
8 connection to that last question.

9

10 FURTHER REDIRECT EXAMINATION

11 BY MR. TOCHKA:

12 Q Ma'am, you signed, and let me show you this.

13 Is that the agreement that you  
14 signed? If you can turn the next page over.

15 A Yes.

16 MR. TOCHKA: Your Honor, the  
17 Commonwealth would move to introduce this into  
18 evidence.

19 MR. FLAHERTY: No objection from  
20 defendant Anderson, Your Honor.

21 MR. DOOLIN: May we be heard, Judge?

22 THE COURT: It may be marked for  
23 identification. Any more questions for the  
24 witness?

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MR. TOCHKA: That's it.

THE COURT: Alright. Anything more, counsel?

MR. DOOLIN: No.

THE COURT: Thank you, Ms. Tate. You may step down.

Ladies and gentlemen, we are going to adjourn for the evening. The schedule tomorrow will again be about nine to four. We're moving to the conclusion of the evidence. We hope to do that tomorrow. The latest that will happen is Wednesday. I can't forecast beyond that. Tomorrow we will know precisely when we're getting the case to you. Hopefully it will be Wednesday. I cannot promise that but at least we're coming to the close of the evidence no later than Wednesday.

We want to thank you again for your continued patience and attention with us. Leave your notes in the envelope. Before you go, it's my responsibility to make sure that you understand your continuing obligation not to discuss the case with anyone, not to consult any outside source of whatever kind, whether it be

1 book, treatise, internet, not to revisit any of  
2 the scenes you saw on the view, and otherwise to  
3 keep these proceedings confidential until it  
4 becomes time for you to deliberate the case.

5 We thank you again for your attention  
6 and we'll see you tomorrow at nine o'clock. Have  
7 a good evening.

8 (Whereupon, the jury was escorted from  
9 the courtroom at 4:25 o'clock p.m.)

10 (Exhibit I, being a document, as  
11 described above, was produced and marked for  
12 identification.)

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

15 MR. FREEDMAN: For the record my name  
16 is Mark Freedman. I represent a protective  
17 witness in the matter, Heather Coady.

18 THE COURT: Okay. For the record, Mr.  
19 Freedman, we, you and I, once collaborated on an  
20 evidence paper at law school?

21 MR. FREEDMAN: That is correct.

22 THE COURT: We have not really had much  
23 contact since then?

24 MR. FREEDMAN: That is correct, but I



1 do have faith in your evidentiary rulings.

2 THE COURT: There is no reason why this  
3 should in any way impact on any impartiality I  
4 have with respect to rulings on Ms. Coady. You  
5 wanted to see the Court, sir?

6 MR. FREEDMAN: I do, Your Honor. It  
7 has come to my attention subsequent to our last  
8 time in court that, upon reflection and upon her  
9 recollection being aided by a letter which was  
10 given to us as a piece of prospective evidence  
11 and a prior statement of hers that, in fact,  
12 there may be certain aspects of her testimony  
13 before the grand jury with regard to matters that  
14 took place subsequent to the evening in question  
15 that may not be completely true.

16 So I now have unfortunately a potential  
17 Fifth Amendment problem that I need to let the  
18 Court and let counsel know about. It has to do  
19 with, as I understand it now, her testimony as to  
20 statements of Mr. Anderson some days subsequent  
21 to the incident wherein there was perhaps an  
22 alleged -- something that might be construed as  
23 an alleged threat.

24 THE COURT: Have you shared this with

1 counsel?

2 MR. FREEDMAN: I shared it with Mr.  
3 Tochka. I didn't have a chance to share it with  
4 counsel because it's something that came up over  
5 the weekend.

6 THE COURT: Are there specifics that  
7 you can discuss with them that would not breach  
8 any attorney-client confidences?

9 MR. FREEDMAN: I think basically, I  
10 have basically outlined what the situation is. I  
11 believe that, now in terms of representing her, I  
12 believe that there is enough of a question as to  
13 the materiality of the issue that I felt as  
14 though I needed to bring it to everyone's  
15 attention.

16 THE COURT: The issue would be, does  
17 this lead the Commonwealth to take any action or  
18 to --

19 MR. TOCHKA: Well, at first not  
20 necessarily because from what I understand -- I'm  
21 not sure if it's a legitimate claim, if the  
22 witness is just simply saying that because she is  
23 trying to get out from under testifying.

24 THE COURT: So that means that the

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Court needs to conduct a voir dire, an in camera hearing?

MR. TOCHKA: I would say so.

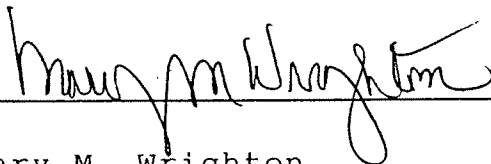
MR. FREEDMAN: I brought it -- I wanted it brought up before she is called.

THE COURT: Alright.

(Whereupon, the proceedings were adjourned at 4:40 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  
324, is a complete, accurate and true record of  
my stenographic notes as taken by me in the  
aforementioned matter to the best of my skill and  
ability.

  
\_\_\_\_\_  
Mary M. Wrighton