

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
SUCR 2000-10975
SUCR 2000-10777

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COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL
DAY SIX

JASON ROBINSON
TANZERIOUS ANDERSON

* * * * *

TRANSCRIPT OF PROCEEDINGS

BEFORE: ROUSE, J

APPEARANCES:

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

MICHAEL DOOLIN, Esquire, for Defendant Robinson

TIMOTHY FLAHERTY, Esquire, for Defendant Anderson

March 26, 2002
Boston, Massachusetts

Mary M. Wrighton
Official Court Reporter

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1 (Whereupon, the proceedings were
2 reconvened at 9:10 o'clock a.m., without the
3 jury.)

4 THE COURT: May I see counsel, please?

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

7 THE COURT: Mr. Freedman?

8 MR. FREEDMAN: Your Honor, Mark
9 Freedman. I represent the witness, Heather
10 Coady. Good morning, Your Honor. I had a call
11 from Heather Coady's mother at approximately
12 quarter of eight this morning that Miss Coady was
13 being transported, I assume by ambulance, to St.
14 Elizabeth's Hospital. Apparently she had taken
15 some substantial quantity of Tylenol which
16 required medical treatment. Because of that, she
17 is not here this morning.

18 THE COURT: Okay. And that's the only
19 information that you have at this time?

20 MR. FREEDMAN: That is the only
21 information I have at this time. Her mother
22 called my office and left word with one of the
23 staff who paged me. My understanding is that --
24 I don't know whether the district attorney has

1 independently corroborated that or not through
2 the police but that's the best that I know at
3 this point in time.

4 THE COURT: Okay. So you have not
5 called the hospital yourself?

6 MR. FREEDMAN: I have not called the
7 hospital myself.

8 THE COURT: Mr. Tochka?

9 MR. TOCHKA: My information, Your
10 Honor, was that at about eight ten or thereabouts
11 I received a call from the Boston Police saying
12 that a police officer in Brighton, that he had
13 responded to her house, the ambulance driver was
14 there, that they had transported her to the
15 hospital, that she had taken an overdose of, I
16 believe it was Advil, I was told.

17 THE COURT: Of what?

18 MR. TOCHKA: Advil, and that she had
19 left a note behind -- I'm not sure if it's a note
20 or it's something -- I know she spoke to the
21 police officer and it was about how she was
22 concerned about testifying in this case, she
23 couldn't handle the stress, she said.

24 THE COURT: Okay. So what would you

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like to do?

MR. TOCHKA: Well, at this point I'm trying to get ahold of another witness to start and I have the police looking into this in terms of her condition in the hospital and whether or not she's going to be released and what the story is.

THE COURT: Okay.

MR. FREEDMAN: Your Honor, I would make an observation. I had the opportunity last night to read Commonwealth versus Lewin Martin and there was a recent case last June in the matter of enforcement of a subpoena. As I read these cases, a hearing is not one hundred percent necessary to the Court if the Court can determine that the Fifth Amendment -- that the assertion of the Fifth Amendment right is reasonable and that there are underlying facts --

THE COURT: I'm familiar with that.

MR. FREEDMAN: I'm sorry.

THE COURT: It's a very analogous case in terms of the facts but the other person was the alleged target of the assault and was concerned that he had given testimony at the

1 grand jury which was going to be inconsistent
2 with trial testimony.

3 MR. FREEDMAN: I agree, Judge. My only
4 perception of the possible difference is that if
5 -- I did give an offer of proof yesterday with
6 regard to my sense of what -- where the
7 discrepancies might lie and I would suggest that
8 that might -- in Martin there was nothing before
9 the judge at the time from which he or she could
10 have made that decision, and I would suggest that
11 you could, if you so choose, accept my offer of
12 proof and make a ruling based upon that, and I
13 say that partially because she's not here and
14 partially because I think it's possible, and I'm
15 doing my best to protect her rights at each and
16 every step of the process.

17 THE COURT: All that I understood was
18 represented to me yesterday was that there could
19 well be variances between testimony that Ms.
20 Coady gave at the grand jury and testimony that
21 she might give at trial or that she was concerned
22 about that. I think it's fair to say we didn't
23 get into any details or specifics about that.

24 I reviewed her grand jury testimony and

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I will say this, leaving aside the intimidation of a witness charge, that I think in the main it's generally consistent with the testimony that's been proffered so far in the case. Obviously it's grand jury testimony so, by its nature, fairly sketchy and not as specific at trial testimony so I'm not left with any sense of, if I were to compare her grand jury testimony with what Ms. Tate has said or other witnesses, leaving aside the intimidation of a witness because there's been -- leaving that aside, that's what I would observe about her grand jury testimony. So I am unable at this time to determine exactly where the concern for perjurious testimony might be in the absence of more.

MR. FREEDMAN: I would add to my offer of proof that the focus would, in all likelihood, be with regard to the testimony that involves possible intimidation of witnesses. That's what the focus would be.

THE COURT: Then I can't evaluate this in the context of any trial testimony because we really haven't gotten to that. She is the one

1 who has to give that testimony.

2 Mr. Tochka, what is your proposal, sir?

3 MR. TOCHKA: As I said, Your Honor, I'm
4 at this point in time trying to obtain another
5 witness to start off with this jury. I'm going
6 to look into, in terms of her availability,
7 whether -- what the situation is at the hospital.

8 THE COURT: And when do you think you
9 might get a report from the hospital?

10 SERGEANT DETECTIVE COLEMAN: Just got
11 one.

12 THE COURT: Do you want to come over,
13 sir? Just for the record, if you would give your
14 name?

15 SERGEANT DETECTIVE COLEMAN: For the
16 record, Sergeant Detective Daniel Coleman, Boston
17 Police homicide unit. I just spoke with Officer
18 Lando Pelligrini who left the hospital. He has
19 spoken with Ms. Coady and her mother briefly. He
20 indicated to me that she was able to speak with
21 him.

22 THE COURT: Miss Coady was?

23 SERGEANT DETECTIVE COLEMAN: Miss Coady
24 was, yes, and I actually am going to ask one of

1 my own detectives to try and go up and evaluate
2 the rest of the situation so I wouldn't put that
3 on Officer Pelligrini based on his limited
4 knowledge of the case right now.

5 THE COURT: So no one has spoken to any
6 medical personnel?

7 SERGEANT DETECTIVE COLEMAN: Not in
8 terms of her status, whether she will be released
9 immediately or what time she would be released
10 today. That's what I'm hopeful to determine with
11 one of my detectives.

12 MR. FREEDMAN: For the record, Your
13 Honor, I would, as Ms. Coady's attorney and where
14 there perhaps is some personal jeopardy involved
15 in this situation, I would, for the record, ask
16 that she not be questioned at all without my
17 being present.

18 THE COURT: Okay.

19 MR. FREEDMAN: I can't wipe up spilt
20 milk but I don't want any further questioning of
21 her without me being present.

22 SERGEANT DETECTIVE COLEMAN: Could I
23 get an idea of what your availability is in the
24 next hour?

1 MR. FREEDMAN: I'm being held by you,
2 Judge. If you want me to go with him in a car,
3 I'll do whatever is appropriate. I just can't
4 let her be --

5 THE COURT: I think that we have to
6 ascertain as soon as we possibly can her mental
7 condition, whether she is going to be released,
8 whether she is going to be physically and
9 mentally available to testify here in court, and
10 that's really what we need to know for purposes
11 of making decisions about the trial.

12 MR. FREEDMAN: And I would think that
13 could be done without questioning her about the
14 specifics of this morning's incident.

15 THE COURT: Well, someone has to speak
16 to the person who is in charge of her medical
17 care.

18 MR. FREEDMAN: And I have no problem
19 with that.

20 THE COURT: So, Mr. Freedman, if you
21 would do whatever you need to cooperate with
22 Sergeant Detective Coleman --

23 MR. FREEDMAN: Absolutely.

24 THE COURT: And is someone there at the

1 hospital now?

2 SERGEANT DETECTIVE COLEMAN: There was
3 one officer just left is my understanding but I'm
4 trying to contact one of my other detectives from
5 my unit to help out in this.

6 MR. FREEDMAN: I'll do whatever has to
7 be done, Judge.

8 THE COURT: So maybe, I wonder if we
9 could get a report back --

10 MR. FREEDMAN: As soon as we know
11 something.

12 THE COURT: -- sometime this morning.

13 MR. FREEDMAN: As soon as, yes.

14 THE COURT: Thank you very much.

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

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

19 MR. DOOLIN: Judge, I have previously
20 filed a motion in limine I think that the Court
21 had acted upon. Tanzerius Anderson, in his
22 statement, does mention Jason Robinson under
23 circumstances, he says that the police were
24 looking for Jason Robinson in connection with

1 this case.

2 THE COURT: That the police what?

3 MR. DOOLIN: The police were looking
4 for Jason Robinson in connection with this case,
5 that Jason Robinson, through several question,
6 was essentially homeless, that he was trying to
7 get his life back together, and, respectfully, I
8 would ask the Court not to allow the Commonwealth
9 to elicit information given to them during the
10 course of this interview about Jason Robinson by
11 Tanzerius Anderson.

12 MR. TOCHKA: Your Honor, with all due
13 respect, I think Mr. Doolin has changed the
14 statements as they appear on the transcript, not
15 intentionally. I think you have to read the
16 exact quote from the transcript.

17 THE COURT: May I have the transcripts?
18 Would you specifically direct the Court's
19 attention to those statements to which you're
20 referring?

21 MR. DOOLIN: Yes, Your Honor. Page
22 eight, down at the bottom. He said, he next
23 needed to pick up some papers so he would get a
24 job. The reason he went -- I went to go meet him

1 was because I felt he was getting his life
2 together.

3 THE COURT: Let's take them one by one.
4 Yes?

5 MR. TOCHKA: I suggest that's not a
6 Bruton issue. It does not incriminate Jason
7 Robinson in any way. It shows a relationship
8 between Tanzerius Anderson and Jason Robinson.
9 It's not at all incriminating of him.

10 THE COURT: Okay. Anything more?

11 MR. DOOLIN: Not on that one, no.

12 MR. TOCHKA: I think it's page twenty.

13 MR. DOOLIN: Page twenty, yes.

14 THE COURT: One moment, please. Okay,
15 sir.

16 MR. DOOLIN: Down at the bottom, yup,
17 she said some detectives came by.

18 THE COURT: This is -- who is the
19 reference to?

20 MR. DOOLIN: Mr. Anderson's mother, and
21 I said concerning what she said, Jason, and she
22 said that there was a detective and they think
23 you have something to do with it. They want to
24 know where he's at or if you knew anything about

1 it and what's when I came in. I was like, okay,
2 call him up --

3 MR. TOCHKA: And once again, with
4 respect to that particular one, Your Honor, the
5 initial concern that I understood from everybody
6 was, it was talking about just the police are
7 looking for Jason as well as Tanzerius and by him
8 stating that there was a detective and they think
9 that you have something to do with it, obviously
10 they give Tanzerius Anderson Miranda warnings at
11 the time he's questioned. I suggest it's obvious
12 at this point the police are out there looking
13 for both individuals to question them.

14 THE COURT: Well, I don't see -- she
15 said Jason, how that -- this is like a double
16 level hearsay. We've got the mother telling
17 Anderson who is telling the police what the
18 police told the mother. I think "she said Jason"
19 could be excised there and should be and the rest
20 of it can stay in.

21 MR. TOCHKA: I'm going to have to
22 excise it on the tape as well.

23 THE COURT: She said Jason, those three
24 words, and I said concerning what, and she said

1 there was a death and they think you have
2 something to do with it.

3 MR. DOOLIN: What I'd ask the Court
4 also is that next part, they want to know if you
5 know where he's at. That gives, I would suggest,
6 the jury the impression that my client is on the
7 run, that the police can't find him, and it goes
8 to a consciousness of guilt, I would suggest.

9 THE COURT: What do you say to that,
10 sir?

11 MR. TOCHKA: Your Honor, it's -- it
12 does not go as to consciousness of guilt that he
13 is simply on the run. They are simply asking
14 Tanzerius, do you know where Jason Robinson is.
15 They proceed to ask him that, do you know where
16 Jason Robinson is. He proceeds to tell them he
17 has had conversation with Jason Robinson, so it
18 doesn't suggest at all that he's on the run.
19 It's the relationship between the defendants, if
20 you know where he is at, because they want to
21 question him as well as you.

22 THE COURT: Well, if we exclude, she
23 said Jason, then there is no antecedent for "he".
24 They want to know if you know anything about it.

1 MR. TOCHKA: Then they pick up, they
2 ask about, on page twenty-one, they proceed to
3 ask him if he knows -- when was the last time he
4 talked to Jason. It seems to me that could
5 proceed and the problem is then the statement
6 will be out of context and then when Mr. Flaherty
7 begins his cross examination, as he did at the
8 motion to suppress, and he suggested to the
9 police when they went -- there were no questions
10 about, in terms of voluntariness of his
11 statement, there is no question that Tanzerius
12 Anderson was informed by his mother that the
13 police were looking for him to question him about
14 his involvement or if he knew anything about
15 this, this particular case.

16 If you excise that, then it's fair game
17 for Mr. Flaherty to come in and to attack the
18 detectives in terms of, when you brought him to
19 the station, you didn't tell him for what he was
20 a possible suspect when you questioned him
21 because now you've excised that.

22 THE COURT: Sir, I'm not following you
23 at all. I'm not talking about Jason, I'm talking
24 about Mr. Anderson.

1 MR. TOCHKA: Right. Mr. Flaherty is
2 going to then bring out, as he did at the motion
3 to suppress before this Court and as he asked
4 Detective McLaughlin, that when you brought
5 Tanzerius Anderson to the police station, you did
6 not inform him at any point in time that he was a
7 potential suspect in this case.

8 THE COURT: Sir, I'm not suggesting we
9 excise it. I don't know what you're talking
10 about.

11 MR. TOCHKA: But if you excise the
12 portion that you're suggesting to excise, then it
13 doesn't make sense that Anderson was told he was
14 a suspect, when you excise that portion, and
15 there was a death and they think you had
16 something to do with it, they want to know --

17 THE COURT: They want to know if you
18 know --

19 MR. TOCHKA: I'm sorry. I didn't even
20 see that sentence before. I'm wrong.

21 THE COURT: All I'm suggesting is, is
22 that Jason, is multiple levels of hearsay.

23 MR. TOCHKA: So you're saying knock
24 out, she said Jason, and then it's the second

1 line after?

2 THE COURT: And just excise where he's
3 at and the rest of it would stay in. That's what
4 I was proposing.

5 MR. TOCHKA: Okay.

6 THE COURT: Anything else?

7 MR. DOOLIN: Yes, Your Honor. On page
8 twenty-one, in the middle of the page, the answer
9 that begins, um, probably once or twice last
10 week, in reference to going to the Faneuil
11 housing project, but not Thursday because I was
12 off Thursday, and, you know, I tried to look for
13 him, called around, called some of the other
14 older numbers, no one has seen him, no one has
15 heard of him. That was it.

16 THE COURT: What is your reason to have
17 that taken out?

18 MR. DOOLIN: Again, it goes to suggest,
19 I would suggest, Jason's consciousness of guilt,
20 coming in through Tanzerius Anderson, no one can
21 find him. It has to do with him being homeless.
22 I would also suggest to the Court that it has to
23 do with someone who has apparently uprooted
24 himself after a homicide.

1 MR. TOCHKA: I would suggest to the
2 Court that's a very important part of the
3 Commonwealth's case because that Thursday is the
4 day you heard testimony from the witnesses that
5 Jason and Tanzerius were together going to the
6 Scrub-a-Dub, going to Store Twenty-Four, and it
7 shows Tanzerius Anderson's consciousness of
8 guilt, I don't know where he is that Thursday,
9 when he says I have not seen Jason on Thursday, I
10 don't know where he's at, I have been looking for
11 him. It shows Tanzerius Anderson's consciousness
12 of guilt that the witnesses have testified that
13 they were all together that Thursday.

14 THE COURT: That can stay in. Anything
15 else?

16 MR. DOOLIN: Judge, I just ask that my
17 objection be noted as to the Court's ruling as
18 noted in my motion to sever.

19 THE COURT: Page twenty that you
20 referenced, there will be two excisions at the
21 bottom. One is, she said Jason, and the second
22 is, where he's at. The other references to Jason
23 that you have directed my attention to will
24 remain in the transcript and may be testified

1 about. Anything else?

2 MR. DOOLIN: As to Detective
3 McLaughlin, no. Mr. Tochka told me yesterday
4 that he intends to call some police officers who
5 would deal with my client's arrest. I filed this
6 morning a motion in limine to prohibit him from
7 doing that.

8 THE COURT: Where would I find it if I
9 were looking for it? Okay. This is a motion in
10 limine to prohibit evidence of alleged
11 consciousness of guilt relating to the defendant
12 Robinson's arrest for a warrant out of Roxbury.

13 MR. DOOLIN: No, it's a motion, Your
14 Honor, that has to do with his arrest on July 17
15 of the year 2000 by members of the Boston Police
16 Department youth violence strike force who come
17 to a location in Roxbury and my client is
18 arrested on the warrant that was issued, I
19 believe, that day on this case. I believe that
20 the evidence that the government would elicit,
21 based upon my reading of the police report, is
22 that they knocked on the door, that they heard a
23 male voice, that when they said Boston Police
24 that no one came to the door for a period of

1 twenty minutes, that they came into the house,
2 that they find my client who is allegedly hiding
3 in a corner with a blanket over his head and that
4 then a struggle ensues.

5 My point, and the reason why I bring
6 this motion, is that this happens three months
7 after the -- over three months after the alleged
8 homicide and that my client has already been
9 questioned by the police, he has other cases in
10 the system, where there is no evidence, I don't
11 think, that he defaulted. I would suggest to the
12 Court that eliciting this evidence that three and
13 a half months later my client hides from the
14 police, I would suggest, is more prejudicial than
15 probative, that there is no value, I would
16 suggest, to the jury, no probative value of my
17 client doing these alleged actions on the date of
18 his arrest.

19 THE COURT: I don't understand the
20 significance of paragraph two, sir.

21 MR. DOOLIN: Well, the significance, I
22 would suggest to the Court is that he's already
23 talked to the police, he's already given a
24 statement.

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THE COURT: That has to do with another case?

MR. DOOLIN: Has to do with this case. He gets arrested on another warrant.

THE COURT: That's what I'm talking about. What is the significance of his arrest for another offense out of Roxbury? Why have you included that?

MR. DOOLIN: I included it there because that -- it gives the Court a fuller view of why he was at the police station. I'm not trying to hide from you that he went to the police station, Judge. He was at the police station for something else.

THE COURT: Perhaps I misunderstand. As I understand what you wish to do is exclude his alleged conduct on July 17.

MR. DOOLIN: Absolutely.

THE COURT: 2000.

MR. DOOLIN: Absolutely.

THE COURT: Okay. So --

MR. DOOLIN: Maybe I shouldn't have included that.

THE COURT: Mr. Tochka is not going to

1 bring that in.

2 MR. DOOLIN: I know.

3 THE COURT: July 17 only, Mr. Tochka.

4 MR. TOCHKA: Your Honor, I suggest it
5 shows consciousness of guilt. I mean, the police
6 surround the house, they knock on the door, say,
7 Jason, Jason, police, open up. They repeatedly
8 ask him to open up. They go inside, he's hiding
9 under a blanket. They arrest him, charge him
10 with murder. It goes to consciousness of guilt.
11 He has no other warrants outstanding for him at
12 the time, no defaults or whatever. This is the
13 only case and he's charged.

14 THE COURT: The motion in limine is
15 denied.

16 MR. DOOLIN: I ask that my objection be
17 noted.

18 THE COURT: Okay. Do you want to go
19 check?

20 MR. TOCHKA: I have to go through the
21 tape because I was going to play the tape
22 recording of the defendant's statement to the
23 police and I have the tape but I have to delete
24 that portion of the tape.

1 THE COURT: Okay. Were you also
2 intending to give the jury transcripts or just
3 listening?

4 MR. TOCHKA: No, I have copies of the
5 transcripts for them to listen.

6 THE COURT: To follow along.

7 MR. TOCHKA: So I have to delete --

8 THE COURT: The redactions can be made
9 very easily by someone.

10 MR. TOCHKA: It's going to be pretty
11 quick with Officer -- Detective McLaughlin.
12 Basically I'm going to ask him about the Miranda
13 and then have him testify to the statement.

14 THE COURT: If you can do it as fast as
15 possible.

16 MR. TOCHKA: I'll try.

17 THE COURT: Thank you.

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

20 THE COURT: About how long, Mr. Tochka?

21 MR. TOCHKA: Twenty minutes.

22 (Whereupon, the proceedings were
23 recessed at 9:50 o'clock a.m., and reconvened at
24 10:15 o'clock a.m., without the jury.)

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THE COURT: Counsel.

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

THE COURT: Yes, what is it?

MR. TOCHKA: I just wanted to make sure that all parties are in agreement with this. I just want to play that portion. My point to the Court is, we have excised the portion the Court has said to excise. When you excise that portion it's a hundred percent crystal clear that the original tape has been tampered with so if it's going to have -- if the Court's decision is firm that it is going to continue to be excised, I would ask the Court to explain that by agreement of all parties, a certain portion was redacted. Otherwise it sounds like someone tampered with it.

THE COURT: Let me hear it, if you would, please.

(Whereupon, a tape was played at side bar.)

MR. TOCHKA: I have the original, if I could play the original to show the Court in the context, with the Court's permission.

1 THE COURT: Sir, they are going to have
2 the transcript. They can follow long with the
3 transcript. You have excised the transcript
4 accordingly?

5 MR. TOCHKA: I have excised the
6 transcript, yes.

7 THE COURT: Okay.

8 MR. TOCHKA: Could I just play the
9 Court the original as to how it sounds?

10 THE COURT: For what purpose?

11 MR. TOCHKA: As the Court can see, it's
12 clear that the tape has been excised. I just
13 don't want these jurors to think that the tape
14 was actually manipulated by the Commonwealth in
15 any way.

16 THE COURT: It's not going to change my
17 ruling, Mr. Tochka. These words are going to
18 come out. I will give the jury a limiting
19 instruction -- I'm not even sure we need it.
20 These tapes have their own infelicitous, let me
21 say. If you have some language you would like me
22 to use --

23 MR. TOCHKA: I would ask you to say
24 that by agreement of all parties on page twenty a

1 certain portion of the tape was redacted. That's
2 simply it, because it's clear that -- I don't
3 want you to say at the request of the defense
4 attorneys. By all parties, it was agreed upon
5 that a certain portion was redacted.

6 THE COURT: Any comment?

7 MR. DOOLIN: Judge, I'd ask you not to
8 read any sort of instruction like that because it
9 appears as though we're keeping something out
10 from the jury and keeping evidence away from
11 them. I just ask that it go in the way it is and
12 they have the transcript to go on.

13 MR. FLAHERTY: I would just, on behalf
14 of Mr. Anderson, state that Mr. Anderson does not
15 agree to the redaction of that statement and I
16 would renew my motion to sever.

17 THE COURT: Now, while we were talking
18 about this before, Mr. Flaherty, you never
19 mentioned that. Now you're mentioning it now
20 that I've made the ruling so now you want me to
21 reconsider this issue? Is that what you're
22 asking me to do?

23 MR. FLAHERTY: What I'm saying, Your
24 Honor, on behalf of Mr. Anderson I'm renewing my

1 motion to sever.

2 THE COURT: On the basis of what, sir?

3 MR. FLAHERTY: On the basis of an
4 instruction that the Court is going to give the
5 jury that all parties agree to a redaction. Mr.
6 Anderson does not agree to a redaction.

7 THE COURT: I'm not giving any
8 instruction, Mr. Tochka. I will tell them that
9 they will be provided with a transcript, they may
10 follow along, that there may be some infelicities
11 in the tape and that -- other than that, I don't
12 think it needs any explanation. I will say that
13 what I listened to was more redaction than I
14 ordered. That's the best you could do?

15 MR. TOCHKA: That's the best we could
16 do with the equipment we have. Your Honor, I
17 realize the Court has made its ruling but it's a
18 hundred percent crystal clear that there has been
19 a redaction when the jury listens to it and when
20 they see the blanks on the transcripts. It was
21 at the request of the defense counsel, Mr.
22 Robinson's, and not to explain to the jurors that
23 there is a redaction -- you don't even have to
24 say at the request of the defense attorneys, but

1 you can't speculate as to the reason why it was
2 redacted. You don't even have to refer to the
3 defense counsel.

4 THE COURT: There are also other
5 portions of the transcript, sir, which appear as
6 if there have been redactions. I would just
7 direct your attention to page twenty-seven.

8 MR. TOCHKA: Judge, when you listen to
9 that one, it's clear that you cannot hear what is
10 being said. You cannot hear the parties, but
11 it's clear that there was not a white-out at some
12 point in time. It's just that the stenographer
13 could not hear exactly what was being said. On
14 this one you can clearly tell someone put their
15 finger on the recorder and stopped and redacted a
16 portion of it.

17 THE COURT: I think I'm going to
18 explain to the jury there are some infelicities,
19 that they may not be able to hear every word that
20 appears on the transcript. They may follow along
21 listening to the tape with the transcript and
22 that's going to be the extent of any instruction
23 at this time, sir. Thank you.

24 (Whereupon, the discussion at side bar

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was concluded.)

THE COURT: May we have the jurors,
please?

(Whereupon, the jurors were escorted
into the courtroom at 10:22 o'clock a.m.)

THE COURT: Ladies and gentlemen, I'd
like to welcome you back this morning. There
were matters which were unavoidable with respect
to getting started this morning and we are now
ready to resume the testimony and we are still
with the Commonwealth's case.

Before we do that, however, I just ask
whether any among you has not complied with my
instructions concerning the case, discussing it,
revisiting any of the sites we saw on the view,
or consulting any outside source of whatever
kind. If you have not so complied would you
raise a hand, please? Thank you very much. The
record should reflect no juror has.

Mr. Tochka, call you next witness.

MR. TOCHKA: Your Honor, for the
record, at this time the Commonwealth would move
to introduce into evidence a Registry of Motor
Vehicles certificate involving a car licensed to

1 Tanzerius Anderson.

2 THE COURT: Any objection?

3 MR. DOOLIN: No, Your Honor.

4 MR. FLAHERTY: Not to that document,
5 Your Honor.

6 THE COURT: Thank you. It will be
7 marked and admitted.

8 (Exhibit No. 30, being a document, as
9 described above, was marked and admitted into
10 evidence.)

11 MR. TOCHKA: The Commonwealth would
12 call Detective Paul McLaughlin.

13
14 PAUL MCLAUGHLIN,
15 called as a witness, being first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. TOCHKA:

19 Q Sir, could you please introduce yourself to the
20 jury?

21 A Yes. Good morning. My name is Paul C.
22 McLaughlin. My last name is spelled
23 M-c-L-a-u-g-h-l-i-n.

24 Q Sir, tell us your occupation.

1 A I'm a detective with the Boston Police Department
2 assigned to the homicide unit.

3 Q And how long have you worked in the Boston Police
4 Department?

5 A Since 1988.

6 Q And how long have you worked in the homicide
7 unit?

8 A Since January of 1998.

9 Q And back in the year 2000, what unit -- not what
10 unit, what team were you assigned to in the
11 homicide unit?

12 A At that time I was assigned to a team with
13 Sergeant Detective Tom O'Leary and Detective
14 Wayne Rock.

15 Q And at some point in terms of your duties as a
16 detective investigating homicides, did you come
17 to work on this investigation into the death of
18 Iman Yazbek?

19 A Yes, I did.

20 Q And during the course of your investigation, did
21 you have an opportunity to question one Tanzerius
22 Anderson?

23 A Yes, I did.

24 Q And can you tell us what efforts you made to

1 locate Tanzerius Anderson?

2 A I went to the area of his home at 25 Bearnse Ave.
3 and I went there, first had conversation with his
4 mother, let her know that we were looking to
5 speak to him and Jason Robinson, if she knew
6 where they were, and he was not home at the time
7 but she told us -- we left cards and she said she
8 would have him get back in touch with us.

9 Q Bearnse Ave. is spelled --

10 A Oh, B-e-a-r-s-e.

11 Q And that's located where?

12 A That's located in the lower middle section of
13 Dorchester.

14 Q After you left the mother's house, did you go
15 somewhere?

16 A Yes.

17 Q Where did you go?

18 A I went to his work place.

19 Q Where was his work place back then?

20 A His work place, I believe it was Rent-All in
21 Boston. It's on Adams Street in Dorchester.

22 Q How far is that from Bearnse Ave.?

23 A About a two minute ride.

24 Q And when you went there, do you remember what day

1 of the week you went there?

2 A I believe that was April 4. I'm not sure of the
3 day of the week but it was April 4.

4 Q And when you went there on April 4 was it in the
5 day time?

6 A Yes.

7 Q And your purpose of going there was to do what,
8 sir?

9 A To check on his work, see if he had been at work,
10 see if they had any idea -- if he was there,
11 first of all, and if they had any idea where he
12 was.

13 Q And when you went there, sir, who did you speak
14 to, do you recall?

15 A We spoke to a -- we spoke to a gentleman. I
16 forget his name. I think he was like the manager
17 and then he directed us to a woman who kept the
18 books, the time books.

19 Q Let's deal with the first thing. When you went
20 there, did you find the defendant, Tanzerius
21 Anderson?

22 A No.

23 Q At some point you said you spoke to a woman and
24 what books did you look at?

1 A She checked her time books to see when he had
2 worked, when he had last worked and what his
3 hours were.

4 Q And those work books, you were there April 4,
5 right?

6 A Yes.

7 Q And the previous week was beginning the twenty-
8 seventh, twenty-eighth, Monday into Tuesday,
9 correct?

10 A Yes.

11 Q And did she check that information for you?

12 A Yes, she did.

13 Q And as a result did you then go to where -- not
14 as a result, but at some point did you leave and
15 go somewhere?

16 A Yes.

17 Q And where did you go?

18 A We went back to 25 Bearse Ave.

19 Q And what was the reason for going back go 25
20 Bearse Ave.?

21 A We had received a page that Mr. Anderson was back
22 at that location and we went back to meet with
23 him.

24 Q And that's his house, correct?

- 1 A Yes.
- 2 Q And did you meet with him?
- 3 A Yes.
- 4 Q Was he with anybody?
- 5 A He was with a friend, Jonathan Simms.
- 6 Q And did you have a conversation with the
7 defendant, Tanzerius Anderson, at his house?
- 8 A Brief conversation.
- 9 Q And what was that conversation?
- 10 A We let Mr. Anderson know that we were
11 investigating a murder that had happened in
12 Brighton the prior week and that his name had
13 come up as either being involved or having
14 knowledge of the incident.
- 15 Q Did you ask him to do something?
- 16 A We asked him if he would accompany us to the
17 homicide unit headquarters so we could speak to
18 him about it.
- 19 Q And what did he say?
- 20 A He said that he would. He asked us if his
21 friend, Jonathan, could come with us. We said he
22 could and we left and went to the homicide unit.
- 23 Q Did he explain any reason why he wanted his
24 friend, Jonathan Simms, to come with him?

- 1 A I don't recall any particular reason, no.
- 2 Q So then how did you -- how was the defendant
- 3 taken to the -- where was he then taken?
- 4 A We drove with him to One Schroeder Plaza which is
- 5 police headquarters and he was taken to the
- 6 homicide unit.
- 7 Q And when you say we drove, that's you and who?
- 8 A That was Detective Thomas Traylor.
- 9 Q And can you spell Thomas Traylor's last name?
- 10 A T-r-a-y-l-o-r.
- 11 Q And the two of you were in the front seat,
- 12 correct?
- 13 A Yes.
- 14 Q You and Detective Traylor?
- 15 A Yes.
- 16 Q And Mr. Simms and the defendant were in the back
- 17 seat, correct?
- 18 A That's correct.
- 19 Q And you said that you took them to the homicide
- 20 unit. And where -- where did you question the
- 21 defendant in the homicide unit?
- 22 A We have an interview room in the homicide unit
- 23 and that's where the interview was conducted.
- 24 Q And prior to questioning the defendant, did you

1 advise him of certain rights?

2 A Yes, I did.

3 Q And do you recall who advised him of those
4 rights?

5 A Yes. I did.

6 Q Sir, let me show you this item and ask if you
7 recognize what that document is.

8 A Yes, I do.

9 Q What do you recognize that document to be?

10 A This is a Boston Police Department Miranda
11 warning form. That's a BPD form 2530 and it's a
12 form that was filled out at the time of Mr.
13 Anderson's interview, prior to.

14 Q Prior to him being questioned?

15 A Yes.

16 Q And can you --

17 MR. TOCHKA: Your Honor, the
18 Commonwealth would move to introduce this
19 document into evidence.

20 THE COURT: Any objection?

21 MR. FLAHERTY: Well, I object on the
22 basis of hearsay, Your Honor.

23 THE COURT: Your objection is
24 overruled.

1 (Exhibit No. 31, being a document, as
2 described above, was marked and admitted into
3 evidence.)

4 BY MR. TOCHKA:

5 Q Sir, showing you Exhibit 31, can you explain to
6 the jurors the process that you took in terms of
7 explaining to the defendant his rights and
8 whether or not he understood his rights?

9 A Yes. At the top of the page underneath where it
10 says Boston Police Department Miranda warning, it
11 says, name, and has a line for the person's name.
12 I filled in the name, Tanzerius Anderson. Under
13 that it says address. I put in 25 Bearse Ave.,
14 Dorchester. Under that is the date, April 4 of
15 2000, and under that is the time, three thirty-
16 two p.m.

17 At that point I advised Mr. Anderson
18 that I was going to read the rights to him and
19 ask him if he understood them. At that point I
20 said, before we ask you any questions, you must
21 understand your rights. You have the right to
22 remain silent. I asked Mr. Anderson if he
23 understood that. He answered that he understood
24 it and he put his initials in the line next to

1 that, TA, indicating that he understood.

2 After that I read, anything you say can
3 be used against you in a court of law or other
4 proceeding. Again I asked him if he understood
5 that. He said that he did and again he initialed
6 in the place next to that line.

7 I then said, you have the right to talk
8 to a lawyer for advice before we ask you any
9 questions and to have him or her with you during
10 questioning. I asked him if he understood that.
11 He answered that he did and also put his initials
12 on the line.

13 I then stated that, if you cannot
14 afford a lawyer and you want one, a lawyer will
15 be provided for you by the Commonwealth without
16 cost to you. Again I asked if he understood that
17 and he answered that he did and initialed in the
18 line next to that right.

19 I then stated, if you decide to answer
20 any questions now without a lawyer present, you
21 will still have the right to stop answering at
22 any time until you've talked to a lawyer. Again
23 he answered that and also placed his initials
24 next to it.

1 Underneath that is a line that states:
2 I, and then it has a blank line which I had Mr.
3 Anderson place his name in his handwriting,
4 Tanzerius Anderson, have read and understand the
5 above rights as explained to me, and there is
6 another line in which I placed Detective Paul
7 McLaughlin, and I am willing to make a statement
8 at this time without a lawyer being present.

9 Underneath that there are two lines, one which
10 says signed and the other says witness. Mr.
11 Anderson signed next to the word, signed, and the
12 witness was Thomas L. Traylor, Detective, BPD.

13 Q And, Detective McLaughlin, did the defendant,
14 Tanzerius Anderson, sign that document, his name,
15 Tanzerius Anderson, in your presence?

16 A Yes, he did.

17 MR. TOCHKA: Your Honor, the
18 Commonwealth would move to publish this to the
19 jury.

20 THE COURT: It may be.

21 BY MR. TOCHKA:

22 Q Sir, how long did you -- after you read him his
23 rights, what was the next thing that was done?

24 A At that point myself and Detective Traylor

1 conducted an interview off tape which we went
2 through a series of questions about the incident,
3 about Mr. Robinson, and his knowledge about the
4 people that were named -- names that we gave him
5 and whether he knew them or not.

6 Q And when you say off tape, at some point did you
7 then tape, record him?

8 A Yes.

9 Q And can you describe -- can you explain the
10 reasons why the initial interview is off tape and
11 then is tape recorded?

12 A Yes. When we conduct an interview, what we like
13 to do is, before we go on tape, we like to do a
14 wider discussion about what we're there to
15 interview him about and at the time that we go on
16 tape, we then try to clarify it into a more --
17 more of a question and answer, more on the point
18 interview.

19 Q Sir, let me show you this and ask you, is this a
20 copy of the tape of the interview of the
21 defendant, Tanzerius Anderson, on April 4 of the
22 year 2000?

23 A Yes, it is.

24 MR. TOCHKA: Your Honor, the

1 Commonwealth would move to introduce that into
2 evidence.

3 MR. DOOLIN: Just the previous
4 objection, Your Honor.

5 MR. FLAHERTY: The same for Anderson.

6 THE COURT: The objection is overruled.

7 BY MR. TOCHKA:

8 Q And, sir, let me show you this transcript and ask
9 you if you recognize that to be a transcript of
10 the tape of the interview of the defendant,
11 Tanzerius Anderson, on April 4 of the year 2000?

12 A Yes.

13 MR. TOCHKA: Your Honor, I would move
14 to have this marked for identification at this
15 time.

16 (Exhibit No. 32, being a tape, as
17 described above, was marked and admitted into
18 evidence.)

19 (Exhibit J, being a transcript, as
20 described above, was produced and marked for
21 identification.)

22 MR. TOCHKA: With the Court's
23 permission, I'd ask to play the tape and I have
24 copies of the transcript for the jurors to read

1 along.

2 THE COURT: They may be distributed.
3 Ladies and gentlemen, while they are being
4 distributed, let me explain what these are.
5 These are transcripts of the tape that you are
6 about to hear and you should listen and follow
7 along with the transcript. The actual evidence
8 is the tape itself but we're providing you with
9 transcripts so that you may better understand the
10 audio on the tape.

11 There are some infelicities in the tape
12 and I want to draw your attention to that. If
13 there are some portions which, for whatever
14 reason you cannot hear, the transcripts should be
15 of assistance to you. You have been provided
16 with the transcript which the Court has ruled is
17 admissible under our rules of evidence here so
18 please don't feel that there is something -- if
19 you feel the tape has been stopped or started, I
20 have ruled in certain ways with respect to the
21 tape. You are getting what I have ruled is
22 admissible and that is what you may consider.
23 Thank you.

24 MR. TOCHKA: Thank you, Your Honor.

1 May I ask if the Court has a copy of the
2 transcript?

3 THE COURT: I do, sir.

4 (Whereupon, a tape was played for the
5 jury.)

6 THE COURT: Ladies and gentlemen, if
7 you would give your transcripts to the court
8 officer, please.

9 MR. TOCHKA: May I approach, Your
10 Honor?

11 THE COURT: Yes, please.

12 BY MR. TOCHKA:

13 Q Detective McLaughlin, that interview took place
14 on a Tuesday, April 4?

15 A Yes.

16 Q And are these two sheets a calendar?

17 A Yes, for March and April of 2000.

18 Q And are those accurate, sir? April 4 is the date
19 that you interviewed the defendant at the
20 homicide unit?

21 A That is correct.

22 Q And that was on a Tuesday, correct?

23 A Yes.

24 MR. TOCHKA: Your Honor, the

1 Commonwealth would introduce the calendars for
2 March and April of the year 2000.

3 MR. DOOLIN: No objection.

4 MR. FLAHERTY: No objection.

5 THE COURT: They may be marked and
6 admitted.

7 (Exhibit No. 33, being calendars, as
8 described above, was marked and admitted into
9 evidence.)

10 BY MR. TOCHKA:

11 Q Just a few more questions, Detective McLaughlin.
12 Let me ask you, in terms of -- actually, let me
13 ask you, after you finished the interview with
14 the defendant, what's the next thing you did?

15 A We conducted an interview with his friend,
16 Jonathan Simms.

17 Q And where did you conduct that interview?

18 A In the same room at the homicide unit.

19 Q And you had the defendant step out, correct?

20 A Yes. He sat out in the waiting area.

21 Q Did you ask him questions relative to the taped
22 statement, the information provided in his
23 statement?

24 A Yes.

1 Q Did you ask Jonathan Simms whether or not he had
2 gone to New Hampshire with the defendant?

3 MR. DOOLIN: I object, Your Honor.

4 MR. FLAHERTY: Objection.

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

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

8 MR. FLAHERTY: Your Honor, most
9 respectfully at this stage of the proceeding I'd
10 like to put on the record that Mr. Tochka has
11 repeatedly asked improper questions designed to
12 elicit inadmissible evidence. He knows full well
13 that is objectionable.

14 THE COURT: Your objection is?

15 MR. FLAHERTY: My objection is hearsay
16 but I would also like to put on the record he is
17 forcing both counsel into the position of having
18 to object repeatedly to questions he knows are
19 improper questions before the jury.

20 MR. TOCHKA: Two points. Number one, I
21 object that Mr. Flaherty raised his voice so
22 clearly the jurors can hear what he said.
23 Secondly, I'm not offering it for hearsay. I'm
24 offering it to impeach the defendant because

1 Jonathan Simms offered in his statement to the
2 police, he said that he was not with him in a
3 hotel room, that he did see his uncle at the
4 time, so it's offered for impeachment.

5 THE COURT: Sir, if you want to call
6 him to impeach the witness, you have to call Mr.
7 Simms.

8 MR. TOCHKA: That's fine. I will call
9 Jonathan Simms.

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

12 BY MR. TOCHKA:

13 Q After you finished your interview with Jonathan
14 Simms, what's the next thing you did?

15 A Mr. Simms and Mr. Anderson were brought back to
16 Bearse Avenue.

17 Q And they were brought back by who?

18 A Myself and Detective Traylor

19 Q Let me ask you, Detective McLaughlin, in your
20 experience as a Boston Police officer, when an
21 individual is arrested, is there a process called
22 the booking process?

23 A Yes, there is.

24 Q In the booking process, sir, are fingerprints

1 taken of individuals?

2 A Yes, they are.

3 Q And in the booking process, sir, are photographs
4 taken of the individual who was arrested?

5 A Yes.

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

8 THE COURT: Thank you. Mr. Doolin?

9 MR. DOOLIN: No questions, Your Honor.

10 THE COURT: Mr. Flaherty?

11 MR. FLAHERTY: Thank you.

12

13 CROSS EXAMINATION

14 BY MR. FLAHERTY:

15 Q Detective my name is Timothy Flaherty. I am an
16 attorney. I represent Mr. Anderson.

17 If I ask you anything that you don't
18 understand, just tell me and I'll try to rephrase
19 it. Okay?

20 A Okay.

21 Q As part of your investigation you went up to New
22 Hampshire, right?

23 A Yes, I did.

24 Q And you went and you had some information that

1 possibly Joleena Tate and a person you believed
2 to be Mr. Anderson had met with one of Joleena
3 Tate's friends, right?

4 A Yes. I was in New Hampshire twice. Are we
5 talking about the first or the second time?

6 A One of the occasions, correct? And you
7 interviewed a woman named Gibney?

8 A Yes, I did.

9 Q And that woman, according to your information
10 from Joleena Tate had been friendly with Joleena
11 Tate, right?

12 A That's correct.

13 Q And the purpose of interviewing Ms. Gibney was to
14 determine at the time that Ms. Tate came up with
15 this individual, if that individual was Tanzerius
16 Anderson, among other things, right?

17 A Yes.

18 Q And, in fact, you showed Ms. Gibney a series of
19 photographs, right?

20 MR. TOCHKA: Objection. I ask to be
21 heard at side bar.

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

24 MR. TOCHKA: I would strongly object.

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What Mr. Flaherty --

THE COURT: State the grounds, if you would, please, sir, first so I can understand the context of your comments.

MR. TOCHKA: Mr. Flaherty is only doing this in terms of putting hearsay evidence before this jury, what he simply just accused me of doing. The photographic array, she did not make an identification of the defendant and he can't get into a photographic array where a witness who was shown the array is not here.

MR. FLAHERTY: I'm cross examining this witness on his investigation, Your Honor.

THE COURT: What are you doing with the photo arrays?

MR. FLAHERTY: I'm going to ask him if he received any information that caused him in his mind to think that Tanzerius Anderson was a suspect.

THE COURT: The question about the photo array, if it was shown to some other witness, sir, is going to be excluded unless you can show why it's admissible.

MR. FLAHERTY: The reason why it would

1 be admissible, for purposes of the witness, is
2 the same reason, number one, as part of his
3 investigation he went up and he took --

4 MR. TOCHKA: I would object to his
5 raising his voice.

6 THE COURT: I know it's difficult for
7 everyone. I think everyone is getting a little
8 too heated. I'm just going to ask each of you to
9 keep your voice down.

10 MR. FLAHERTY: As part of his
11 investigation, this witness went to New Hampshire
12 to conduct interviews. He conducted an interview
13 following a lead that the government had and, in
14 following that lead, it did not pan out as the
15 government thought it would.

16 THE COURT: Who is this person?

17 MR. FLAHERTY: This is a person, Megan
18 Gibney, who Joleena Tate had testified that she
19 went up with Mr. Anderson -- during her testimony
20 she testified that she went up to New Hampshire,
21 she visited with a friend with Mr. Anderson. On
22 cross examination, I asked her if this person had
23 spent time, interacted with Mr. Anderson. She
24 responded affirmatively. She mentioned her name

1 is Megan Gibney.

2 Now, through this witness, I'm going to
3 ask him if he interviewed Ms. Megan Gibney and
4 what he did in the interview with Ms. Gibney, as
5 a result of his interview with Ms. Gibney, did he
6 form some conclusions.

7 THE COURT: You certainly may cross
8 examine him, sir, about who he spoke to in the
9 course of the investigation, what he did, but
10 that was not the question that brought us to side
11 bar. I believe you asked whether he had shown
12 this person a photo array.

13 MR. FLAHERTY: Yes, I did ask him that.

14 THE COURT: And that's as far as you
15 can go there. If your next question is, was
16 there an identification made, that is going to be
17 excluded unless the photo array is shown, unless
18 she comes in.

19 MR. FLAHERTY: Well, I'm happy to show
20 the photo array that he showed her. I filed a
21 motion in limine, Your Honor, on photographic
22 arrays because there were a number --

23 THE COURT: To keep them out.

24 MR. FLAHERTY: To keep them out. I'm

1 not seeking to introduce the photo array. I'm
2 seeking to introduce what he did with the photo
3 array, if Mr. Anderson's picture was in the photo
4 array, and if the witness made any statement with
5 respect to the photo array and what did that
6 cause him in his understanding of the
7 investigation.

8 THE COURT: And why is that not
9 hearsay, sir?

10 MR. FLAHERTY: Well, for a number of
11 reasons, Your Honor. Identification is not
12 hearsay, first of all. This is a failure to
13 identify Anderson.

14 THE COURT: Mr. Tochka's objection is
15 going to be sustained, sir. That does not
16 preclude you from going into what he did with
17 respect to any investigation by way of interview
18 or whatever.

19 MR. FLAHERTY: Okay.

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

22 BY MR. FLAHERTY:

23 Q When you were up in New Hampshire, you
24 interviewed the woman, Megan Gibney, right?

1 A Yes, I did.

2 Q And you asked her, did you not, whether or not
3 she had seen Joleena Tate recently, right?

4 MR. TOCHKA: Objection, Your Honor.

5 THE COURT: He may answer that yes or
6 no.

7 A Had she seen her recently?

8 BY MR. FLAHERTY:

9 Q Yes.

10 A I don't believe I asked her that.

11 Q Well, you had asked her when is the last time she
12 had seen Joleena Tate, right?

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: He may answer.

15 A I may have asked that.

16 BY MR. FLAHERTY:

17 Q Okay. And you also inquired about in whose
18 company Joleena Tate was, correct?

19 MR. TOCHKA: Objection, Your Honor, to
20 the form of that question.

21 THE COURT: Overruled.

22 A When are we talking about?

23 BY MR. FLAHERTY:

24 Q When you interviewed Megan Gibney.

1 A When are we talking about whose company she was
2 in?

3 Q Didn't you try and inquire from Ms. Gibney
4 whether or not she'd ever seen Joleena Tate in
5 the company of a black male?

6 MR. TOCHKA: Objection, Your Honor.

7 THE COURT: You can answer that yes or
8 no, sir.

9 THE WITNESS: I did not ask that
10 specific question, Your Honor.

11 BY MR. FLAHERTY:

12 Q Was that part of the investigation?

13 MR. TOCHKA: Objection.

14 THE COURT: Overruled.

15 A My reason for being there was to find out if
16 Joleena Tate had visited her after she had left
17 Fryberg Academy and moved back to Boston.

18 Q Did you have some investigation with respect to
19 Megan Gibney about her meeting Joleena Tate at or
20 about the Yankee Clipper motel?

21 A Yes.

22 Q And it's fair to say, is it not, that the results
23 of your investigation were not consistent with
24 Joleena Tate's memory of what took place?

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MR. TOCHKA: Objection.

THE COURT: Sustained.

BY MR. FLAHERTY:

Q Well, what did you learn as a result of that investigation?

MR. TOCHKA: Objection, Your Honor.

Can I ask to be heard at side bar?

THE COURT: Not again, sir. He may answer the question.

A Would you repeat the question?

BY MR. FLAHERTY:

Q When you spoke to Megan Gibney about her memory of meeting Joleena at the Yankee Clipper --

THE COURT: Sir, there is no reason for you to show that to the detective. Take it back, please.

BY MR. FLAHERTY:

Q At the Yankee Clipper hotel, what's your memory, sir, as best you can recall today, what you found out in your investigation?

MR. TOCHKA: Objection, Your Honor, calls for hearsay.

THE COURT: He may answer the question.

A My recollection of what Megan told me about the

1 Yankee Clipper hotel was, first of all, that her
2 recollection was very vague about that time
3 period and she was not sure if she had it
4 accurate but what she stated was, there was one
5 time that Joleena came back to New Hampshire
6 after she had left Fryberg Academy and gone back
7 to Boston and on one of those occasions -- there
8 was actually two times that she recalled.

9 On one of the occasions she had gone to
10 meet her at the Yankee Clipper hotel and at that
11 time she believed, to the best of her
12 recollection, that she was with a black male and
13 possibly what she referred to as a Mexican or
14 Spanish male. She also stated that the next
15 morning she had breakfast at the Yankee Clipper
16 hotel and at that time she stated that her
17 recollection was that it was her, plus Chester,
18 who was Megan Gibney's boyfriend, Megan, and a
19 black male that had breakfast.

20 BY MR. FLAHERTY:

21 Q And isn't it fair to say that at some point you
22 inquired specifically about Mr. Anderson?

23 MR. TOCHKA: Objection, Your Honor.

24 THE COURT: He may answer that.

1 A Not by name, sir.

2 BY MR. FLAHERTY:

3 Q And how is it -- how did you do that? How did
4 you inquire specifically about Mr. Anderson to
5 Megan Gibney?

6 A I inquired about the individual that she was with
7 when she came up.

8 Q And did you attempt in any way in your mind to
9 see whether or not she was referring to Tanzerius
10 Anderson?

11 MR. TOCHKA: Your Honor --

12 A Yes.

13 MR. TOCHKA: Your Honor, objection.

14 THE COURT: He has answered the
15 question. It may stand.

16 BY MR. FLAHERTY:

17 Q How did you do that?

18 A I showed --

19 MR. TOCHKA: Objection, Your Honor.

20 THE COURT: I'll see counsel, please.

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

23 THE COURT: Mr. Flaherty, I've given
24 you considerable latitude here. What is your

1 next question?

2 MR. FLAHERTY: I'm going to ask whether
3 or not any of the information he received that
4 day, did any of that information he received that
5 day cause him in his mind to conclude that it was
6 Tanzerius Anderson with Joleena Tate.

7 THE COURT: Will there be an objection
8 to that question?

9 MR. TOCHKA: Yes, Your Honor.

10 THE COURT: And it will be sustained.

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

13 BY MR. FLAHERTY:

14 Q Isn't it fair to say, Detective McLaughlin, that
15 you received no information relating to Mr.
16 Anderson during your visit in New Hampshire when
17 you interviewed Megan Gibney?

18 A Specifically Mr. Anderson, that's correct.

19 Q Now, when you interviewed Mr. Anderson with
20 Detective Traylor on April 4 of 2000, first there
21 was an off tape interview, right?

22 A Yes.

23 Q And the reason that you said that you go off tape
24 in some of these interviews is, before you go on

1 tape, you have a wider discussion.

2 Is that correct, a wider discussion?

3 A Yes. What it does is, it avoids having, you
4 know, a prolonged, rambling tape in a
5 conversational form. It allows us to talk about
6 essentially the same thing that's on the tape but
7 then on tape make it more of a question and
8 answer format.

9 Q Okay. And on tape you say, when you go on tape,
10 that's when you clarify and it's a question and
11 answer on the points of the interview, right?

12 A Yes.

13 Q And the person who selects the taped points of
14 the interview is the questioner, right?

15 A Yes. Anything that's important is asked on the
16 taped interview.

17 Q And the person who is deciding who or what is
18 important is the person asking the questions?
19 It's Detective Traylor or yourself, right?

20 A Yes.

21 Q And it's fair to say that you didn't write a
22 report about your interview or your conversation
23 with Mr. Anderson or with Tanzerius Anderson
24 prior to going to Schroeder Plaza, right?

1 A That's correct.

2 Q And it's fair to say that nowhere on the
3 audiotape or in the transcript is there any
4 mention that you told Mr. Anderson that he was
5 being looked at for the homicide of Mr. Yazbek,
6 right?

7 A Mr. Anderson, I think, referred to that himself.

8 Q Well, there is nowhere on the tape or in the
9 transcript that you can point to that you told,
10 or Detective Traylor told Mr. Anderson that you
11 were looking at him as a suspect, right?

12 A I specifically did not say that on the tape,
13 that's correct.

14 Q So that portion is off tape, is unrecorded stuff,
15 right?

16 A Yes.

17 Q And there is no police report recording or
18 memorializing unrecorded portions of what you
19 asked Mr. Anderson and what he said to you?

20 A No, there is not.

21 Q And when you asked Mr. Anderson, yourself and
22 Detective Traylor, about his whereabouts as you
23 went through the Monday, the Tuesday, the
24 Wednesday, the Thursday, after the interview did

1 you go and speak with Mr. Robinson, Jason
2 Robinson's grandmother?

3 A No, I did not.

4 Q Did any member of the Boston Police homicide unit
5 go to the Faneuil projects and speak with Mrs.
6 Robinson to determine whether or not Mr. Anderson
7 was being accurate when he said he went to the
8 Faneuil projects to pick up some papers for
9 Jason?

10 A Not that I'm aware of.

11 Q Are you aware that during this investigation it
12 was learned that Mr. Robinson did apply for a job
13 at Rent-All of Boston?

14 A I'm not aware of that.

15 Q Did any member go to 149 Bowdoin Street and
16 determine whether or not Mr. Anderson was there
17 when he said he was there?

18 A I know myself and Detective Traylor went by that
19 location on one occasion in an attempt to locate
20 his girlfriend and were unsuccessful. Whether
21 there was another attempt made, I don't know.

22 Q Her name is Anika Terry (phonetic spelling),
23 correct?

24 A I don't recall her name right now.

1 Q Do you know whether or not any member of the
2 Boston Police homicide unit went and interviewed
3 Anika Terry to see whether or not Tanzerius was
4 there with his child and his girlfriend as he
5 said he was?

6 A I am not aware of whether they did or didn't.

7 Q Did anyone interview her mother to see whether or
8 not he was there when he said he was on the taped
9 interview?

10 A I did not.

11 Q Do you know whether any member of the Boston
12 Police homicide unit did that?

13 A I do not.

14 Q Do you know whether any member of the Boston
15 Police homicide unit interviewed the people
16 living in the apartment at 149 Bowdoin Street to
17 determine if Mr. Anderson was there when he said
18 he was?

19 A I'm not aware of that.

20 Q Do you know whether or not anyone at the Boston
21 Police homicide unit went and checked Anika
22 Terry's work at State Street, Boston, to
23 determine if anybody saw Mr. Anderson picking her
24 up after work?

1 A No.

2 Q So after Mr. Anderson told you what he said on
3 the taped interview, it is a fair statement,
4 Detective McLaughlin, that no one went and
5 conducted any interviews to verify the story that
6 he gave you and Detective Traylor?

7 A I did not.

8 Q Okay. As far as you know, no member of the
9 Boston Police homicide unit attempted to conduct
10 any interviews other than the one time you and
11 Traylor went to see Anika Terry and verify
12 whether what he told you was true, as far as you
13 know?

14 A As far as I know.

15 Q Do you know whether or not anybody interviewed
16 his brother to see whether or not his brother
17 came into town when he said he came in?

18 A I recall speaking to the mother, the mother or
19 somebody there made mention that he had just come
20 into town from Job Corps, I think up in Maine or
21 somewhere like that.

22 Q So that portion of what Mr. Anderson told you on
23 the taped interview was independently verified,
24 is that a fair statement?

1 A Prior to the conversation, yes.

2 Q And with respect to damage or accident involving
3 Mr. Anderson's motor vehicle, do you know whether
4 or not anybody independently corroborated that?

5 A I'm not sure what you're referring to, sir.

6 Q Well, do you know whether or not anybody went out
7 and looked at the Mazda, Mr. Anderson's Mazda to
8 see if there was any damage to it?

9 A I saw the Mazda when I got to the house and there
10 was evident front end damage.

11 MR. FLAHERTY: Could I see Exhibit No.
12 29?

13 THE CLERK: It's Exhibit 30.

14 BY MR. FLAHERTY:

15 Q Detective McLaughlin, I'm showing you what's
16 marked Exhibit 30, and are you familiar with
17 these types of documents? Have you ever seen
18 something like that before?

19 A I have.

20 Q And that's a Registry of Motor Vehicles document,
21 correct?

22 A Yes.

23 Q And I'd ask you, Detective McLaughlin, on the
24 second to last page of this document where the

1 heading to the entries by the Registry reads, the
2 following is a list of all offenses and actions
3 on file.

4 You'll agree with me I read that
5 correctly?

6 A Actually you left out a complete list.

7 Q Oh, is a complete list of all offenses and
8 actions on file. Thank you.

9 There is a column that has the incident
10 date, correct?

11 A Yes.

12 Q And correct me if I'm wrong, is there an incident
13 date of 3/22, March 22, 2000, that reads,
14 surchargeable accident, Dorchester?

15 A Yes, there is.

16 Q The alleged date of the homicide is March 27 into
17 March 28, correct?

18 A Yes, sir.

19 Q And March 22 is prior to March 27 and 28, right?

20 A Yes.

21 Q Now, as part of your investigation, Detective
22 McLaughlin, did you go to 89 Faneuil Street?

23 A Yes, I did.

24 Q And you went there, I think - correct me if I'm

1 wrong - March 31, is that right?

2 A I believe so, sir.

3 Q And that was in the afternoon of March 31 and you
4 conducted some interviews of some people, right?

5 A Yes.

6 Q And you also went to the rear of 89 Faneuil
7 Street, right?

8 A Yes.

9 Q Now, you've been at crime scenes in your
10 experience as a Boston Police officer, homicide
11 unit, right?

12 A Yes, I have.

13 Q And you understand the importance of protecting
14 and preserving the integrity of a crime scene,
15 right?

16 A Yes, I do.

17 Q You understand the purpose of yellow crime scene
18 tape, right?

19 A Yes.

20 Q You understand the purpose of maintaining a
21 proper and accurate crime scene log of people who
22 enter crime scenes, right?

23 A Yes.

24 Q You understand that it's very important to make

1 certain that people don't introduce evidence to
2 the crime scene or contaminate evidence at the
3 crime scene and it's also very important to
4 collect and preserve the evidence that you find
5 at the crime scene, right?

6 A Yes.

7 Q And when you went on March 31 to 89 Faneuil
8 Street, that was about four and a half days later
9 after the report of the body of Iman Yazbek?

10 A The death was the twenty-eighth, that was the
11 thirty-first.

12 Q And that is about -- this is about four o'clock
13 in the afternoon on the thirty-first, right?

14 A I don't recall the exact time.

15 Q Is your present memory exhausted as to that
16 point?

17 A As to the time, yes.

18 Q I'll just show you a report. Take a glance at
19 that and tell me if that refreshes your
20 recollection about what time you were at the area
21 of 89 Faneuil.

22 A It refreshes my recollection to the point that I
23 know I conducted an interview at three fifty-five
24 with somebody but I don't know if that was the

1 first thing I did when I got there or the second
2 thing or the third.

3 Q Let me show you this one, Detective. Does that
4 refresh your recollection about what time you
5 were there? Maybe the first thing you did when
6 you were there?

7 A Yes, it does.

8 Q Okay. Was it the first thing that you did, you
9 went to 89 Faneuil?

10 A I believe it was.

11 Q And is that because in your list of priorities of
12 March 31, the most important thing was to go to
13 the rear of 89 Faneuil Street?

14 A I just think that's what we did. I don't think
15 it was a list of priorities. That's what we did.

16 Q Alright. Were you instructed by anyone to go to
17 the rear of 89 Faneuil Street?

18 A I don't believe we were. I think Detective
19 Torres and I just decided to go and give it a --
20 look around the area.

21 Q It's a good thing you did, right?

22 MR. TOCHKA: Objection, Your Honor.

23 THE COURT: That will be stricken.

24 Another question, sir, please.

1 BY MR. FLAHERTY:

2 Q On March 31 at about three o'clock in the
3 afternoon, two fifty-five in the afternoon, did
4 you go into the hallway of 89 Faneuil Street?

5 A Yes, I did.

6 Q And yourself and Detective Torres, while you were
7 in the hallway, did you make certain
8 observations?

9 A Yes.

10 Q And when you made those observations, were they,
11 in your mind as a Boston Police homicide
12 detective, pertinent or important?

13 MR. TOCHKA: Objection, Your Honor.

14 THE COURT: He may answer that.

15 A To some degree, yes.

16 BY MR. FLAHERTY:

17 Q Okay. Had you received any information prior to
18 going to the hallway of 89 Faneuil about what you
19 might find in the hallway?

20 A No.

21 Q So no one told you about the interior of the
22 hallway of 89 Faneuil Street prior to going
23 there?

24 A Not that I can recall, sir.

1 Q And on March 31 in the afternoon you and
2 Detective Torres noted what appeared to you to be
3 blood pattern or blood stain evidence on the
4 halls and the walls inside the hallway, right?

5 A There was some blood spatter, appeared to be
6 blood spatter on the walls inside the door.

7 Q And, Detective McLaughlin, have you, as part of
8 your training and experience as a Boston homicide
9 detective, have you been to blood spatter or
10 blood stain classes?

11 A Yes.

12 Q The interpretation and analysis?

13 A I have, yes.

14 Q And when you saw this stuff inside of 89 Faneuil
15 Street, you immediately recognized the potential
16 evidentiary value of it, right?

17 A Well, I don't know if I'd say that, say it was
18 important four days after the crime scene had
19 been finished with.

20 Q Okay. Would you agree with me that you thought
21 it was important?

22 A I took pictures of it so I documented it but at
23 that point we're talking three to four days after
24 the incident and the crime lab had already been

1 out and examined it so I just took pictures to
2 document, that's all.

3 Q Are you aware as you testify here today that the
4 only photographs of what took place or what you
5 observed inside 89 Faneuil Street are the
6 photographs you and Detective Torres took?

7 A I'm not, no.

8 Q And are those original photographs that you took
9 here in court today?

10 A I do not know, sir.

11 MR. FLAHERTY: May I approach the
12 witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. FLAHERTY:

15 Q I'm going to show you an envelope, Detective
16 McLaughlin, that Sergeant Detective Coleman just
17 handed to me and I'll ask you to just take a look
18 and see if you recognize what's contained
19 therein.

20 A Yes, I do.

21 Q And are those photographs the photographs that
22 you and Detective Torres took of the area
23 immediately around 89 Faneuil Street on March 31,
24 2000, at about three o'clock in the afternoon?

1 A Yes, they are.

2 Q Are they a fair and accurate depiction of the way
3 that scene appeared when you were there, March 31
4 at about three o'clock in the afternoon?

5 A Yes.

6 MR. FLAHERTY: Your Honor, I move to
7 introduce these as a group exhibit.

8 MR. TOCHKA: I would object, if I can
9 be heard at side bar.

10 THE COURT: They can be marked for
11 identification right now.

12 (Exhibit K, being photographs, as
13 described above, was produced and marked for
14 identification.)

15 MR. TOCHKA: Objection, Your Honor.

16 MR. FLAHERTY: Your Honor, may I use
17 the teleprompter?

18 THE COURT: No, sir. They are not in
19 evidence. I'll see you at side bar.

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

22 THE COURT: Grounds for the objection?

23 MR. TOCHKA: The grounds for the
24 objection, in terms of the photographs, whether

1 they are a fair and accurate representation as to
2 how they appeared at that time on the day of the
3 incident, I mean, these are three days later.

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

6 MR. FLAHERTY: It's very relevant to
7 what they did three days later, Your Honor, and
8 it's relevant to what took place at the crime
9 scene and why these photographs were taken. I
10 would suggest, Your Honor, it's absolutely
11 admissible evidence. It goes along all the lines
12 of questioning in Bowden. It goes all along the
13 questioning about proper crime scene approach and
14 it goes along the lines of whether or not these
15 are exculpatory evidence.

16 THE COURT: For those photographs to be
17 admitted, they have to be relevant. For them to
18 be relevant, it has to be shown that they are
19 relevant to the time period and that would be the
20 time this murder occurred or shortly thereafter.
21 He has testified he has taken these three to four
22 days after that time. Ordinarily if it can be
23 shown that there has been no change from the
24 relevant time to the time that the pictures have

1 been taken, they can be admitted but that hasn't
2 been established yet, sir.

3 MR. FLAHERTY: Your Honor, would you
4 consider them, taking them de bene. There is a
5 criminalistic report that has been filed by a
6 senior criminalist with the Boston Police crime
7 lab.

8 THE COURT: She will be coming in?

9 MR. FLAHERTY: She is under subpoena.
10 I expect that she would agree through her
11 criminalistics report that she observed blood
12 spatter evidence inside of 89 Faneuil Street.

13 THE COURT: If she can identify these,
14 sir, as the ones that -- did she go to the crime
15 scene?

16 MR. FLAHERTY: She went there on the
17 twenty-eighth.

18 THE COURT: Okay.

19 MR. FLAHERTY: And these photographs
20 were taken on the thirty-first.

21 THE COURT: If you can establish the
22 documentation for their admissibility, they can
23 be admitted. They can't be shown to the jury
24 until that time. They may be marked for

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identification.

MR. FLAHERTY: The second reason for the admissibility is that there was evidence retrieved from the scene, ballistics evidence, that was submitted to the crime lab and analyzed in connection with this case. There were cones that were placed out there by Detective McLaughlin. This ballistics evidence was not found on March 28. I would expect to elicit through this detective, however, that he found it when he was there on the twenty-eighth and for that reason, Your Honor, several of these photographs that don't depict the blood spatter but depict the cone, that was not identified, located, retrieved, analyzed.

THE COURT: It will be the testimony of this detective that he placed the cones there?

MR. FLAHERTY: Yes.

THE COURT: And that he retrieved the items?

MR. FLAHERTY: Yes.

MR. TOCHKA: Once again, Your Honor, that was three days after this particular incident. That particular item which was

1 retrieved, my questioning with the ballisticians,
2 they can't even tell whether that is a bullet
3 fragment or the like.

4 THE COURT: I understand that, but he
5 can testify as to what he did. That doesn't mean
6 that there is any connection between what he
7 retrieved and the scene. I'm sure you will
8 elicit that but these are still going to remain
9 for identification at this time.

10 MR. FLAHERTY: These photographs of the
11 ballistics evidence, Your Honor?

12 THE COURT: Yes, sir.

13 MR. FLAHERTY: These are photographs,
14 if I understand his testimony, they fairly and
15 accurately depict the scene and they identify
16 where the evidence was that he retrieved.

17 THE COURT: The same grounds for their
18 exclusion applies here, sir, and that is, in
19 order for photographs to be admitted, they have
20 to be relevant at the time. There is no
21 connection between the retrieval of items from
22 the scene as depicted on that photograph to the
23 time proximate to the murder and for that reason,
24 at this time they will be excluded.

1 MR. FLAHERTY: Okay.

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

4 BY MR. FLAHERTY:

5 Q Now, Detective McLaughlin, when you went inside
6 89 Faneuil Street, you made observations on the
7 walls, right?

8 A Yes.

9 Q And would you describe to your best memory what
10 it is you observed inside the walls?

11 A Appeared to be -- it was a spatter, red colored
12 spatter on the walls.

13 Q And do you remember exactly where on the walls
14 you saw it?

15 A It was just inside the door on the righthand
16 side.

17 Q And do you recall writing a police report --
18 well, is your present memory exhausted as to
19 where you saw it?

20 A Exactly where, yes.

21 Q I just ask you for a second, just to take a look
22 at the police report and look up at me after you
23 have had an opportunity to review it.

24 A Okay.

1 Q Is your memory now presently refreshed?

2 A I didn't author this report but to the extent
3 that Detective Torres's report -- it does refresh
4 my memory.

5 THE COURT: The question is, does it
6 refresh your recollection.

7 THE WITNESS: Yes, it does, Your Honor.

8 BY MR. FLAHERTY:

9 Q Okay. And now with your refreshed recollection,
10 would you tell us where, to the best of your
11 memory, these red brown stains were that you saw
12 on the interior wall of 89 Faneuil?

13 A Blood spatter on the entrance door, on the
14 interior, sir, and the door jamb which was in the
15 exterior cement wall.

16 THE COURT: Mr. Flaherty, we are going
17 to take a short recess at this time. Thank you.

18 Ladies and gentlemen, we will take a
19 short recess. Leave your notes on your seats,
20 please. I'll see you shortly.

21 (Whereupon, the proceedings were
22 recessed at 11:48 o'clock a.m., and reconvened at
23 12:04 o'clock p.m., without the jury.)

24 (Whereupon, the following discussion

1 occurred at side bar:)

2 THE COURT: Okay. We are back on the
3 record with Mr. Freedman.

4 MR. FREEDMAN: Your Honor, I was at the
5 St. Elizabeth's Hospital, myself and police
6 officer, Detective Michael Doolin spoke to the
7 doctor --

8 THE COURT: Detective Michael --

9 MR. TOCHKA: I'm sorry. Devane,
10 Michael Devane. At any rate, her prognosis, Your
11 Honor, in long term is fine. They are definitely
12 going to admit her this afternoon. Right now
13 they're giving her medication and trying to flush
14 out her system. The doctor said that she was
15 going to be in the hospital, as far as he could
16 tell, for two to three days. He couldn't say for
17 sure but that they felt that they needed to
18 monitor her and monitor the situation.

19 THE COURT: What physician was this,
20 sir?

21 MR. FREEDMAN: This was an emergency
22 room physician. She was still in the emergency
23 room when we were there. This was the emergency
24 physician that treated her. Detective Devane

1 took down his name. I'm sorry to say I don't
2 have it at this moment off the top of my head.

3 I spoke to her as well and she's
4 conscious but she's in no condition to, you know,
5 certainly today at any rate, to be of any help to
6 anybody and, as I say, I don't know what the
7 situation is medically in terms of her release
8 other than what the doctors told me at this point
9 in time. I've asked her mother to keep me
10 informed and I've agreed to keep respective
11 counsel informed. I can keep the Court informed
12 as well. I don't know whether, you know, it's
13 going to pass her by or not, but that's not in my
14 control, obviously.

15 THE COURT: Mr. Tochka?

16 MR. TOCHKA: Your Honor, I have nothing
17 to add at this point in time. I don't know what
18 her status is. Maybe by the end of the -- maybe
19 by four o'clock I will have a better idea as to
20 whether or not I do intend to try to call her or
21 not.

22 THE COURT: We have to make some
23 determination by the end of today as to what's
24 going to happen.

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MR. TOCHKA: Right. I'm still proceeding with my case. I still have witnesses. I think the way things are going, it will take me to the end of the day so --

THE COURT: Well, we have to make some provision for getting more -- an updated report by the end of the day. So how do you propose -- how do we propose to do that?

MR. FREEDMAN: I certainly can keep in touch with her mother. I can, if need be -- at this point the rest of my day is pretty much gone by the boards. If I need to go back to Brighton and get another update, I can try and do that.

THE COURT: Is the other physician there aware that she is scheduled to testify in this trial?

MR. FREEDMAN: I don't know that they're specifically aware. I know that they are aware that the Court or the police department is interested in what's going on. My sense was that they were making their decisions from a medical perspective which is, you know, what I would expect them to do. I don't know what they factored in one way or another, but this is what

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1 this doctor felt was necessary for her in terms
2 of reasonable and necessary medical care at this
3 moment.

4 THE COURT: What I would like is a
5 report by four o'clock today so we'll have a
6 sense of what to do with the trial and the
7 jurors, and what I would ask, Mr. Freedman, if
8 you would be in touch with the emergency room,
9 either those doctors or when she gets admitted
10 there, so I'm not sure who the appropriate person
11 would be at what stage, but whoever that is, I
12 ask that you get the report from either the team
13 head or the emergency room physician.

14 MR. FREEDMAN: I'll try to.

15 THE COURT: To see what her physical
16 condition is. You say she's --

17 MR. FREEDMAN: Long term.

18 THE COURT: She's conscious?

19 MR. FREEDMAN: She is conscious, she is
20 not well. She's very pale, her stomach is
21 somewhat convulsive, she's being fed charcoal or
22 whatever they feed her to help get rid of
23 whatever she's taken and out of her stomach. She
24 appears to be weak and, you know, as I say, the

1 doctor has told me, has told both of us that his
2 expectation was -- he was absolutely certain that
3 she was going to be admitted today and that his
4 sense was that it would be a two to three day
5 admission.

6 THE COURT: Alright. So if we could
7 have an update at four o'clock, I'd appreciate it
8 very much.

9 MR. FREEDMAN: And I can do that by
10 phone?

11 THE COURT: You can.

12 MR. FREEDMAN: That's what I'm going to
13 get now before I leave. Thank you.

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

16 THE COURT: Alright. We are ready to
17 proceed.

18 (Whereupon, the jury was escorted into
19 the courtroom at 12:10 o'clock p.m.)

20 THE COURT: Mr. Flaherty?

21 MR. FLAHERTY: Thank you.

22 BY MR. FLAHERTY:

23 Q Detective McLaughlin, before the break we left
24 off with the point where you were at the rear of

1 89 Faneuil Street on March 31, 2000, in the
2 afternoon, making certain observations, right?

3 A Yes.

4 Q When you made these observations, Detective Juan
5 Torres from the homicide unit was with you,
6 correct?

7 A Yes.

8 Q Which one of you had the camera, do you recall?

9 A Who took the pictures? I think I may have taken
10 the pictures.

11 Q Okay. And is it fair to say that you took six
12 pictures of what you observed in and around the
13 hallway and doorway area of 89 Faneuil? Right?
14 Is that fair to say?

15 A If I could see it?

16 Q Showing you a portion of what's been marked for
17 identification purposes only.

18 A There are six photos here, yes.

19 Q And those six photographs depict what you
20 observed and what you photographed in and around
21 the area of the rear door and interior hallway of
22 89 Faneuil Street, right?

23 A Yes.

24 Q And each of those photographs was initialed by

1 you, Detective McLaughlin?

2 A Yes.

3 Q And each of the photographs was dated by you,
4 Detective McLaughlin?

5 A Yes, it was.

6 Q And each of the photographs contains a brief
7 description authored by you of what you saw,
8 right?

9 A Yes, sir.

10 Q And is it fair to say that each one of those
11 photographs depicted a location that you appeared
12 to think important as you made the observations
13 on March 31, 2000?

14 A Potentially important, yes.

15 Q And each of them appeared to be potentially
16 important in your training and experience as a
17 Boston Police homicide detective of blood stain
18 or blood spatter evidence, right?

19 A Some of it is blood spatter, some of it -- some
20 of them are marks that looked like at the time
21 could have been made by a ricocheted bullet and
22 one of them is just a mark on the wall in some
23 type of a reddish substance.

24 Q And the markings you thought were made by

1 ricocheted bullets, where exactly was that
2 located with respect to the rear of 89 Faneuil?

3 A Those two were located -- when you walk into the
4 door of 89 Faneuil Street, just when you walk up
5 the two steps to go into the hallway, you are in
6 a little bit of an overhang there and the wall
7 that's on your righthand side of the door, it's
8 like a white or an off-white colored paint, there
9 were two different spots, one higher, one lower,
10 on that wall.

11 Q Now, you also took four other photographs, right?
12 Of the area outside 89 Faneuil Street?

13 A Yes, I did.

14 Q And those photographs depict cones that you had
15 placed in that location, right?

16 A Yes.

17 Q And those orange cones are used by the Boston
18 Police homicide unit to identify the location of
19 evidence, right?

20 A Yes.

21 Q And also to memorialize in photographs where you
22 found that evidence, correct?

23 A Yes.

24 Q And you also placed a ruler in a couple of those

1 photographs as well, right?

2 A Yes.

3 Q And in doing so, you're attempting to memorialize
4 the exact location of where you find certain
5 things memorialized in those photographs, right?

6 A Yes.

7 Q And, of course, that's important in crime scene
8 collection and preservation of evidence, right?

9 A Yes.

10 Q And is it fair to say that those four photographs
11 depict what you call or what you believe to be
12 ballistics evidence?

13 A What we referred to as a flattened metal object
14 that appeared that it could have been ballistic
15 evidence, that's correct.

16 Q Okay. The flattened metal object that you
17 recovered, that was found right outside 89
18 Faneuil Street, right in the hallway right
19 outside, right?

20 A No, it was found -- I'm just estimating maybe
21 fifteen feet in front of the stairway going
22 towards where the motor vehicle would have been
23 parked, I guess, away from Faneuil Street.

24 Q And that flattened metal object that you saw, you

1 believed it to be a spent bullet, right?

2 A We believed that it could have been a spent
3 bullet or a piece of a spent bullet.

4 Q Was it described in the report as a spent bullet?

5 MR. TOCHKA: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. FLAHERTY:

8 Q Well, would you agree with the characterization
9 that the metal object you found was consistent
10 with a flattened spent bullet?

11 A Yes.

12 Q And when you retrieved that, you and Detective
13 Torres, you took it and you identified it as
14 evidence in this case, right?

15 A It was -- it was turned in to the ballistics unit
16 relative to this case.

17 Q Right. And it was turned in to the ballistics
18 unit on April 3, 2000 by Detective Torres, right?

19 A I don't know the date but it was turned in by
20 Detective Torres.

21 Q And it was placed under the same case number as
22 other evidence in this case, right?

23 A I believe it was.

24 Q And the purpose for submitting it to the

1 ballistics unit at the Boston Police crime lab is
2 obviously to be analyzed, right?

3 A That is correct.

4 Q Do you recall what time it was on March 31, 2000
5 that you found what's described as a metal object
6 consistent with a flattened spent bullet? What
7 time in the afternoon you found it?

8 A I know that earlier we said it was two fifty-five
9 when we went to that location so sometime between
10 two fifty-five and when I conducted interviews of
11 Heather Coady and Mrs. Coady. So sometime
12 between two and three o'clock -- three and four
13 o'clock, excuse me.

14 Q Was it raining at that time?

15 A No, it was not.

16 Q When you were up in New Hampshire, did you have a
17 photograph with you of a person named Jeffrey
18 Fitzgerald?

19 A No, I did not.

20 Q Did you inquire in your investigation of the name
21 of people up there, Jeffrey Fitzpatrick?

22 MR. TOCHKA: Objection, Your Honor, as
23 to when.

24 THE COURT: Put a time on it, please.

1 BY MR. FLAHERTY:

2 Q The same time that you were up there and you
3 spoke to Megan Gibney.

4 A I'm sorry. Would you repeat the question?

5 Q When you went up and you spoke with Megan Gibney,
6 did you --

7 A Right.

8 Q Incidentally, she is a person that went to
9 Fryberg with Joleena, as far as you know?

10 MR. TOCHKA: Objection.

11 THE COURT: If he knows, he may answer.

12 A She was a classmate of Joleena's at Fryberg
13 Academy. Actually, we're in Maine, just to
14 clarify.

15 Q I'm sorry. And when you went up to see her, did
16 you speak with her about a -- or did you inquire
17 on the subject of a Jeffrey Fitzpatrick or
18 Fitzgerald?

19 A I didn't specifically inquire. I inquired about
20 people that may have visited while she was --
21 while Joleena was a student at Fryberg.

22 Q And did you inquire specifically as to Jeffrey
23 Fitzpatrick?

24 A I don't believe I specifically inquired. She

1 said that he had been up there at some time
2 during the time that she was at Fryberg Academy.
3 I don't believe I specifically asked about him.

4 Q Did she also say that she came to Boston to visit
5 a Jeffrey Fitzpatrick?

6 MR. TOCHKA: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. FLAHERTY:

9 Q Detective McLaughlin, when Mr. Anderson in July
10 was charged, were you involved on the date that
11 he was taken?

12 A I was involved in the interview of Mr. Anderson
13 on that date.

14 Q Was he taken from a work site in Dorchester,
15 Local 33? Do you recall that?

16 A I don't remember where he was arrested.

17 Q You don't remember the Venetian Restaurant,
18 working for Local 33, and he was taken off the
19 job site?

20 A I had nothing to do with the actual arrest, sir.
21 I don't recall that.

22 Q And the four photographs depicting the cones,
23 measurements, and what's been described as being
24 a metal object consistent with a flattened

1 bullet, each of those photographs was also
2 initialed by you, Detective McLaughlin, right?

3 A Yes, they are.

4 Q And each of those photographs were dated 3/31/00,
5 right?

6 A Yes, they are.

7 Q And each of those photographs contains a
8 description of what it is you observed?

9 A Two of them just state 89 Faneuil and the other
10 two state -- have a description on them.

11 Q And it's your testimony that prior to March 31 of
12 2000, you were not directed by anyone to go to
13 the rear of 89 Faneuil Street prior to going
14 there and taking those photographs, right?

15 A I specifically was not directed there.

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

18 THE COURT: Mr. Tochka?

19
20 REDIRECT EXAMINATION

21 BY MR. TOCHKA:

22 Q Detective McLaughlin, you were shown a Registry
23 of Motor Vehicles certificate, correct?

24 A Yes, I was.

1 Q Do you have that with you? And the date that you
2 were shown and I'm showing it to you now, the
3 date that you were shown on Exhibit 30, there is
4 a reference to a surcharge as a result of an
5 accident, correct?

6 A There was a surchargeable accident on March --
7 according to this, March 22 of 2000.

8 Q And where that says March 22, do you have any
9 information of your own as to whether or not --
10 who supplies that information to the Registry as
11 to when an accident took place?

12 MR. FLAHERTY: Objection.

13 THE COURT: Rephrase the question, sir.

14 BY MR. TOCHKA:

15 Q Do you know, sir, who supplies that information
16 to the Registry as to when an accident -- the day
17 an accident took place?

18 MR. FLAHERTY: Objection.

19 THE COURT: Lay the basis for his
20 knowledge, please.

21 MR. TOCHKA: I'm asking him whether he
22 can --

23 BY MR. TOCHKA:

24 Q Sir, have you ever been involved in a car

1 accident before?

2 A Yes, I have.

3 Q And have you ever, as a result of being involved
4 in a car accident, had to fill out a report?

5 A Yes, I have.

6 Q And is that report then submitted to the motor
7 vehicle Registrations?

8 A Yes. One is submitted to the Registry.

9 Q And the others are submitted to the insurance
10 company, correct?

11 A Insurance and the local police department.

12 Q And the basis for the information the Registry
13 has for the time of an accident and the date of
14 an accident is based upon when the person
15 reporting the accident submits that information,
16 correct?

17 A Yes, it is.

18 Q And as a matter of fact, on this particular
19 occasion, you spoke to the defendant, Tanzerius
20 Anderson, and he admitted or he said that he had
21 driven his car on either the twenty-sixth or the
22 twenty-seventh, Sunday or Monday, into the
23 Faneuil development, correct?

24 MR. FLAHERTY: Objection as to that

1 question, Your Honor.

2 THE COURT: Rephrase it so it's not
3 leading, sir.

4 BY MR. TOCHKA:

5 Q Did you ask the defendant whether or not he was
6 in the Faneuil development on Sunday or Monday,
7 the twenty-sixth or the twenty-seventh of March?

8 A Yes, I did.

9 Q And did he indicate whether he was or he was not?

10 A He was in the development one of those two days.

11 Q And did he indicate how -- in your conversations
12 with him, did he indicate how he got into the
13 development?

14 A He stated he drove to that location with Jason
15 Robinson.

16 Q And in your conversations with the defendant and
17 on the taped statement, did you ask him on April
18 3, which would be, I believe, a Sunday, correct?
19 What he did on that April 3? Did you ask him?

20 A Yes.

21 Q Did he indicate what, if anything, he did
22 relative to his car on April 3?

23 A I think he indicated that he attempted to get a
24 rental car because he had had a car accident.

1 Q Six days after March 27 into the 28th, isn't that
2 correct?

3 A Yes.

4 Q Sir, you were asked questions about Ms. Gibney,
5 Megan Gibney. Do you recall those questions?

6 A Yes, I do.

7 Q And this incident took place on March 27 and 28
8 of the year 2000, correct?

9 A Yes.

10 Q You interviewed Ms. Gibney when, sir?

11 A I don't recall the exact date but it was within
12 the last thirty days.

13 Q So sometime within the last thirty days of the
14 year 2002, correct?

15 A Yes.

16 Q And how many years is that between 2000 and 2002?

17 A Approximately two years.

18 Q And you've described how she described to you her
19 memory of that particular season or the like,
20 correct?

21 A Yes.

22 Q And how did she describe to you her memory of
23 March, 2000 or strike that.

24 In the year 2000, how did she describe

1 her memory to you in 2002 about what transpired?

2 A She was up front when we first started to
3 interview her. She said that she did not have a
4 good recollection, that she was not sure if the
5 things she was telling us were completely
6 accurate as far as one incident to the other and
7 whether she had things exactly the way they
8 happened.

9 Q And you asked -- you heard Mr. Flaherty ask you
10 about, as a result of your interview with the
11 defendant, whether or not you ever interviewed
12 anybody as a result of that interview, correct?

13 Let me ask you another. Do you recall
14 the defense asking you whether or not you, as a
15 result of -- you went to New Hampshire in order
16 to interview Megan -- what's her last name?

17 A Megan Gibney.

18 Q As a result of that conversation with Joleena
19 Tate, correct?

20 A Right.

21 Q So you followed up as a result of a conversation,
22 correct?

23 A Yes, I did.

24 Q Did you follow up, as a result of the

1 conversation with the defendant and interview
2 anybody when you interviewed him on April 4 of
3 the year 2000?

4 A Yes. That was the reason we interviewed Jonathan
5 Simms.

6 Q What was the reason you interviewed Mr. Simms?

7 A Because in Mr. Anderson's statement he had stated
8 that he had spent quite a bit of time with Mr.
9 Simms and he also stated that he had gone to New
10 Hampshire with Mr. Simms.

11 Q And did you ask Mr. Simms whether or not he was
12 with the defendant, just yes or no, whether or
13 not he was with the defendant during that March
14 27 into March 28?

15 A Yes, I did.

16 Q Did you ask Mr. Simms whether or not he had gone
17 up to New Hampshire with the defendant as he told
18 you in the statement? Yes or no.

19 MR. FLAHERTY: Objection, Your Honor,
20 because it assumes a fact not in evidence.

21 THE COURT: The objection is overruled.

22 A Yes, I did.

23 BY MR. TOCHKA:

24 Q Mr. Flaherty asked you whether or not you

1 followed up in terms of interviewing anyone else
2 in the statement that Mr. Anderson gave.

3 Did he reference an individual by the
4 name of Erica Butler?

5 A Yes, he did.

6 Q As a result of that interview that you had with
7 the defendant, did you interview a person by the
8 name of Erica Butler?

9 A Yes, I did.

10 Q Mr. Flaherty asked you whether or not you
11 interviewed the defendant or Jason Robinson's
12 grandmother and you testified that you did not.
13 Correct?

14 A That is correct.

15 Q And you were investigating an incident that, as
16 far as you understood, the homicide to have taken
17 place at what time of day? Was it in the day
18 time or was it in the night time?

19 A It was in the night time.

20 Q And at that point in time were you aware that the
21 -- in your investigation approximately what time
22 was it believed that the homicide had taken
23 place?

24 A Sometime after midnight on the twenty-eighth.

1 Q And the defendant, Tanzerius Anderson, told you
2 the latest he was in the development was what
3 time, sir?

4 A I believe he said then -- he said eight thirty
5 p.m.

6 Q Finally, sir, with respect to the photographs
7 that Mr. Flaherty showed you that you took of the
8 area of 89 Faneuil Street, how many days after
9 the homicide did you go back to Faneuil -- first
10 of all, did you ever go to Faneuil Street at the
11 time of the homicide during the initial
12 investigation?

13 A No. I was not called out.

14 Q You went there how many days after the homicide,
15 sir?

16 A Three days.

17 Q And during those three days, during those
18 seventy-two hours, was there a -- was the scene
19 roped off for seventy-two hours?

20 A No.

21 Q Would it be the practice of the homicide unit to
22 rope off a scene for seventy-two hours on the
23 facts in this case?

24 A No, not usually.

1 Q So when you went back to that scene, is it fair
2 to say that individuals from that development and
3 outside of the development had the right of way
4 to go into that hallway or to go into within that
5 crime scene?

6 MR. FLAHERTY: Objection, Your Honor.

7 THE COURT: Rephrase the question,
8 please.

9 BY MR. TOCHKA:

10 Q Sir, was there anything preventing individuals
11 from that development, in the Faneuil
12 development, from going in back of 89 Faneuil
13 Street, to your knowledge, during those three
14 days from the time of the incident to the time
15 that you went there?

16 A No.

17 Q Was there anything preventing, if you know, any
18 individuals from outside of the development to go
19 into the back of 89 from the time of the incident
20 to the time that you went back three days later?

21 MR. FLAHERTY: Pray Your Honor's
22 judgment.

23 THE COURT: He may answer the question.

24 A No, there was not.

1 BY MR. TOCHKA:

2 Q In terms of the photographs that you took that
3 Mr. Flaherty has shown you, you said that some of
4 them appear to be blood spatter, correct?

5 A Yes.

6 Q And can you tell from looking, from what you saw
7 at that scene when you went there three days
8 later whether that is or is not blood?

9 A No, I could not.

10 Q Can you tell, when you went there three days
11 later at what point in time that -- those items
12 on the wall or the doors or whatever was placed
13 there?

14 A No.

15 Q Mr. Flaherty asked you whether or not a piece of
16 metal was consistent with ballistics evidence
17 that you retrieved.

18 Are you a ballisticians, sir?

19 A No, I'm not.

20 Q Can you say to this jury whether or not what you
21 retrieved was fired from a gun or not?

22 A No, I cannot.

23 Q Can you say to this jury, sir, when that piece of
24 ballistics -- or did you refer to it as metallic

1 evidence?

2 A It was a flattened metal object, appeared to be
3 possibly ballistics evidence.

4 Q Can you tell this jury when that item was placed
5 or was put there or how it ever got there?

6 A No.

7 MR. TOCHKA: No further questions.

8 THE COURT: Anything more?

9 MR. DOOLIN: I just have two questions.

10 THE COURT: Only within the scope of
11 Mr. Tochka's redirect.

12 MR. DOOLIN: Yes, Your Honor.

13

14 RE CROSS EXAMINATION

15 BY MR. DOOLIN:

16 Q When did you ascertain the name of Megan Gibney?

17 A I first received Megan Gibney's name back in,
18 sometime around the incident. I made a trip to
19 New Hampshire and Maine at that time.

20 Q Did you seek to interview Megan Gibney in the
21 year 2000 when these events were closer in
22 proximity?

23 A At that time we attempted a couple of locations
24 up in the Fryberg area, didn't have any luck

1 finding her and we were only up there for the
2 day.

3 Q Did you go back in 2001?

4 A No.

5 Q The Erica Butler that you talked about, you
6 interviewed her, is that right?

7 A Yes, I did.

8 Q Did you seize some clothes from her?

9 A Yes, I did.

10 Q And you also said that you went and you
11 interviewed Mr. Simms as a result of what Mr.
12 Anderson had said, is that right?

13 A Yes, sir.

14 Q And it's fair to say that Mr. Simms was sitting
15 right there in the waiting room for you, wasn't
16 he?

17 A Yes, he was.

18 Q And on March 29 did you yourself go to that area
19 at 89 Faneuil Street?

20 A March 29?

21 Q Yes, of 2000.

22 A The day after the murder?

23 Q Yes.

24 A I don't believe -- I do not remember going to

1 Faneuil Street itself. I may have been in the
2 area of the Faneuil projects.

3 Q Do you recall going to that area of 89 Faneuil on
4 March 30?

5 A Yes.

6 Q And on March 30 did you go in and make
7 observations at that point in time?

8 A I'm sorry, sir. It was the thirty-first.

9 Q My point is, sir, on the twenty-eighth, the
10 twenty-ninth and the thirtieth, that you did not
11 go into this area over here at 89 Faneuil, you,
12 yourself, is that right?

13 A No, I did not.

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

16 THE COURT: Anything more, Mr.
17 Flaherty?

18 MR. FLAHERTY: Very briefly, Your
19 Honor.

20

21 RECROSS EXAMINATION

22 BY MR. FLAHERTY:

23 Q I understand, Detective McLaughlin, that you are
24 not a ballisticians, but you do have a service

1 revolver, right?

2 A I have -- it's not a revolver but I have a
3 service weapon, yes.

4 Q And you've had training to fire it, right?

5 A Yes, I have.

6 Q And you know what a spent bullet looks like?

7 A There's a lot of variation what a spent bullet
8 looks like but certainly I've seen it.

9 MR. FLAHERTY: Okay. Nothing further.

10 MR. TOCHKA: Nothing, Your Honor.

11 THE COURT: Thank you very much. You
12 may step down.

13 MR. TOCHKA: May I call the next
14 witness, Your Honor?

15 THE COURT: Yes, sir.

16 MR. TOCHKA: Jonathan Simms.

17 THE COURT: We will be with you
18 momentarily.

19 MR. TOCHKA: Your Honor, could we be
20 seen at side bar?

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

23 MR. TOCHKA: I'm not sure where Mr.
24 Simms is. He was here twenty seconds ago.

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THE COURT: See if he is in the cafeteria maybe.

MR. TOCHKA: I think they looked in the cafeteria.

THE COURT: What do you want to do?

MR. TOCHKA: I guess I can call the next witness. I really wanted to call him in relationship to what we had just talked about with Detective McLaughlin. It just seemed it would fit. Can I just have one look in the back of the cafeteria?

THE COURT: Sure.

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

THE COURT: Counsel?

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

THE COURT: What do you want to do?

MR. TOCHKA: If the Court wants to either recess at this point in time for lunch or I would put on another witness. I prefer to call him.

THE COURT: Do you have any assurance that he will return?

1 MR. TOCHKA: He should return. He was
2 here yesterday all day. I'm surprised he's not
3 here.

4 THE COURT: I will take the luncheon
5 recess at this time but if he is not here when we
6 return, you will have to proceed with another
7 witness.

8 MR. TOCHKA: Fine. Thank you.

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

11 THE COURT: Ladies and gentlemen,
12 apparently the next witness is not available and
13 so we are going to take the luncheon recess a
14 little early and we will pick up when we return.
15 Please come back at quarter of two. Quarter of
16 two. Thank you.

17 (Whereupon, the proceedings were
18 recessed at 12:31 o'clock p.m., and reconvened at
19 1:55 o'clock p.m.)

20 THE COURT: Ladies and gentlemen,
21 welcome back. Mr. Tochka, are we ready to
22 continue, sir?

23 MR. TOCHKA: Yes, Your Honor. The
24 Commonwealth would call Jonathan Simms.

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THE COURT: Thank you.

MR. TOCHKA: May I proceed?

THE COURT: Yes.

MR. TOCHKA: Thank you.

JONATHAN SIMMS,

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 Jonathan Simms.

Q Mr. Simms, would you please spell your last name?

A S-i-m-m-s.

Q How old are you, sir?

A I'm twenty-one.

Q What's your birth date?

A 8/26/80.

Q Do you know the defendant, Tanzerius Anderson?

A Yes, I do.

Q And do you know the defendant, Jason Robinson?

A Yes, I do.

Q And can you describe your relationship with the
defendant, Tanzerius Anderson, currently?

1 A Like my brother. He's like a brother to me.

2 Q Can you describe your relationship to Jason
3 Robinson?

4 A Same thing.

5 Q They're both like brothers to you?

6 A Yeah.

7 Q And is that the same relationship you had with
8 them back in the year 2000?

9 A Yup.

10 Q How long have you known the defendant, Jason
11 Robinson, for?

12 A Maybe a good six years.

13 Q And how about the defendant, Tanzerius Anderson?

14 A The same.

15 Q About six years?

16 A Yeah.

17 Q And, sir, back in the year 2000 did, at some
18 point, you have an opportunity to be questioned
19 by the Boston Police?

20 A Yeah.

21 Q And do you remember what day that was?

22 A No.

23 Q And if I would suggest to you sometime in the
24 month of April of the year 2000, would that

1 refresh your memory?

2 A Yeah. I believe it was sometime between March,
3 April.

4 Q And at that point in time when you were
5 questioned by the police, you were questioned
6 where, sir?

7 A The headquarters.

8 Q And you had been to the headquarters with who?

9 A Tanzerius.

10 Q And let me ask you, sir, from the time of January
11 of 2000 to April, to about when you were
12 questioned by the police, at any point in time
13 during that period did you go to New Hampshire
14 with the defendant?

15 A I believe so.

16 Q And when you say you believe so, are you not
17 certain or did you go?

18 A We had taken trips. When I was asked the
19 question, I believe I said, yes, we did. If
20 that's what I said, then that's what I'm standing
21 to now.

22 Q Is your memory today that, yes, you did go?

23 A Yeah.

24 Q And when you went to New Hampshire, at whose

1 suggestion did you go to New Hampshire?

2 A I believe it was Tee's because we were -- he was
3 going down there to take care of something with
4 his uncle, one of his uncles.

5 Q And which uncle was it?

6 A I'm not sure. I only know two of his uncles,
7 Uncle Joe and Uncle Frank.

8 Q And when you went with the defendant to New
9 Hampshire, whose car did you go in?

10 MR. DOOLIN: Your Honor, I object.

11 BY MR. TOCHKA:

12 Q When you went with Tanzerius Anderson, whose car
13 did you go in?

14 A I'm not sure.

15 Q Did you drive or did he drive?

16 A He most likely drove. I didn't have a license at
17 the time.

18 Q And back then did you know what type of car he
19 drove?

20 A I'm not sure if he was driving, he had had his
21 car then yet because he's had two cars since I've
22 known him.

23 Q But I'm asking you, back then do you know what
24 type of car he drove when you went to New

1 Hampshire that time?

2 A No.

3 Q As a matter of fact, you had gone with him to
4 pick up -- to purchase a car, didn't you? In
5 January of the year 2000?

6 A I believe it was 2000, if it was -- yeah, I think
7 so.

8 Q And you had gone with the defendant, Tanzerius
9 Anderson, to Brockton, is that true?

10 A Yup.

11 Q What type of car did he purchase back in January
12 of 2000?

13 A Mazda 626.

14 Q And that Mazda 626, was that the same car that he
15 owned at the time you went up to New Hampshire
16 with him?

17 A I'm not sure.

18 Q Well, did he purchase another car that you're
19 aware of after that?

20 A No. What car we went down to New Hampshire, I'm
21 not sure.

22 Q I'm asking -- you said that he had more than one
23 car. Did he purchase another car?

24 A No. He only had the Mazda 626.

1 Q That's the only car that you know that he had?

2 A Yup.

3 Q Well, when you went to New Hampshire, you said he
4 went to go for what reason?

5 A To see one of his uncles.

6 Q And did he tell you why he wanted to go see one
7 of his uncles?

8 A Yeah. I believe at the time he wasn't working
9 or, you know, and he was trying to get some work
10 with one of his uncles up there. They owned a
11 lobster company or something like that.

12 Q So your memory is he went there to get some work?

13 A Correct.

14 Q Where did you go with the defendant driving the
15 car?

16 A Um, I'm not too sure on the whole details of
17 where we went.

18 Q Have you ever been to Manchester, New Hampshire,
19 with the defendant?

20 A I wouldn't be able to tell you if it was
21 Manchester or --

22 Q Or what, sir?

23 A Or any other place in New Hampshire because I'm
24 not too familiar with New Hampshire.

1 Q When you went to see his -- the purpose was to
2 see his uncle, you said?

3 A Yeah.

4 Q Did you see his uncle?

5 A I don't believe so.

6 Q Well, when you say you don't believe so --

7 A Um-hum.

8 Q Does that mean that you don't have a memory as to
9 whether or not --

10 A Yeah. My memory is a little hazy as to what
11 happened when we went down there.

12 Q And how many times have you gone to New Hampshire
13 with the defendant?

14 A Just that time.

15 Q Was that in the day time or the night time?

16 A I'm not sure.

17 Q Was it in the weekday or weekend?

18 A I'm not sure.

19 Q And you were questioned about this back in April
20 of the year 2000, correct?

21 A Yeah.

22 Q And was your memory fresher then?

23 A Should have been.

24 Q And when you went to New Hampshire, your memory

1 is, you're not sure whether or not you saw the
2 defendant's uncle, correct?

3 A Correct.

4 Q Let me show you this report and ask if this
5 refreshes your memory. You can read that to
6 yourself and look up when you've finished.

7 Does that refresh your memory?

8 A Not too much because a lot on there doesn't make
9 sense to me anyway.

10 Q A lot of what?

11 A A lot of what it says on there.

12 Q What you just read?

13 A Yeah.

14 Q Do you recall testifying before the grand jury in
15 this case, sir?

16 A Yes.

17 Q Do you recall the way that you were questioned
18 before the grand jury?

19 A No.

20 Q Do you recall being asked the question in the
21 grand jury as to whether or not you had seen the
22 defendant's Uncle Frank?

23 A Yes.

24 Q Do you recall what your answer was?

1 A I believe I said I was unsure.

2 Q Sir, look at that. Look at the first page there.

3 A Um-hum.

4 Q And the second page, the page with your name. Is
5 that your name, sir?

6 A Yup.

7 Q And you, having looked at that, does that refresh
8 your memory as to when you testified before the
9 grand jury?

10 A I know I -- there's a date on there --

11 Q Was it in July of the year 2000?

12 A I don't know. Whatever date you got down there
13 is whatever I know about.

14 Q On page fourteen, sir, read that question and
15 read that answer to yourself.

16 Does that refresh your memory as to
17 whether or not you saw the defendant's uncle when
18 you went up there?

19 A I still don't know whether we saw him or not when
20 we went up there.

21 Q Do you remember, sir, when you went up there,
22 whether or not you stayed in a hotel room?

23 A I'm not too sure of that either.

24 Q It's only one time you've gone up with the

1 defendant, correct, to New Hampshire?

2 A Yeah.

3 Q Page twenty. Sir, look at page twenty, page
4 twenty there, read that to yourself, to line
5 sixteen.

6 Does that refresh your memory?

7 A It's what's on the paper.

8 Q I'm asking you, does that refresh your memory,
9 sir?

10 A As to what?

11 Q As to the question I asked you, whether or not
12 you --

13 A Can you repeat the question?

14 Q I will. Whether or not you stayed at a hotel
15 with the defendant.

16 A I still don't know whether we stayed in a hotel
17 or not.

18 Q Sir, you testified before the grand jury? You
19 testified under oath, didn't you, sir?

20 A Yes.

21 Q And you were asked a question: When you
22 returned, did you come back home? Do you
23 remember that question?

24 When you returned from New Hampshire,

1 did you come back home? Do you remember what
2 your answer was?

3 A No.

4 Q Do you remember answering, yeah?

5 MR. DOOLIN: I object.

6 THE COURT: Overruled.

7 BY MR. TOCHKA:

8 Q Do you remember being asked the next question:
9 Did you stop in any hotel rooms? Remember the
10 answer was no?

11 A No, I don't remember if I stayed, yes or no.

12 Q Do you remember you were asked then: And you're
13 certain of that? And you said yeah?

14 A No, I don't remember that either.

15 Q Do you remember that -- so do you remember being
16 asked a question: So after going to New
17 Hampshire, at no time did you ever stay in any
18 hotel room up in New Hampshire? And your answer
19 was no?

20 Remember that question and that answer?

21 A No. I remember the question but I don't remember
22 the answer I gave. I don't think I gave you guys
23 an exact answer.

24 Q And when you were in the grand jury, sir, was

1 either of these defendants in that grand jury
2 when you were testifying?

3 A No.

4 Q And when you were in the grand jury, was there a
5 lady that was taking down what you were saying?

6 A stenographer similar to a stenographer who's
7 here today?

8 A I'm not sure of the procedure.

9 Q And, sir, do you recall giving a statement to
10 Detective McLaughlin when -- you were questioned
11 on April 4, correct? At the homicide unit?

12 A At the homicide unit. I'm not sure what the date
13 was.

14 Q But you were questioned, correct, sir?

15 A Yeah.

16 Q And do you recall saying at that time --

17 MR. DOOLIN: I object, Your Honor.

18 THE COURT: Let me see counsel.

19 (Whereupon, a discussion occurred off
20 the record at side bar.)

21 BY MR. TOCHKA:

22 Q And, sir, you testified in the grand jury
23 sometime after you spoke to the detectives in
24 this case, correct?

1 A Yeah.

2 Q And when you spoke to the detectives, they asked
3 you questions about you going to -- whether or
4 not you went to New Hampshire with the defendant,
5 Tanzerius Anderson, correct?

6 A I believe so, yes.

7 Q And you told the detectives that you had driven
8 home and that you had not stayed in a hotel with
9 the defendant, Tanzerius Anderson?

10 Didn't you tell that to the detectives?

11 A Like I said, I do not remember saying that,
12 giving them that certain, specific answer.

13 Q And, sir, you were asked the question in the
14 grand jury, page fourteen -- is it fair to say in
15 the grand jury, relative to whether or not you
16 met with the defendant's uncle in New Hampshire,
17 you were asked the question: Had you had a
18 conversation with Tanzerius -- I'm sorry.

19 You were asked a question: Did you see
20 the uncle? And you answered: Yeah, we tried.
21 No, we didn't see the uncle. We tried to see if
22 we could see him but I don't remember what
23 happened, but we never ended up meeting with him.

24 Do you recall saying that to the

1 detectives -- I'm sorry. Do you recall saying
2 that to the grand jury?

3 A Yeah, some of it sounds familiar to me.

4 Q No, sir. I'm asking you --

5 A Well, I can't tell you exact, if those were
6 everything I said, but if that's what you guys
7 have on paper, then I'll go with that.

8 Q Sir, do you recall being asked the question: Did.
9 you see his uncle? And your answer was: Yeah,
10 we tried. No, we didn't see the uncle. We tried
11 to see if we could see him but I don't remember
12 what happened, but we never ended up meeting up
13 with him.

14 Do you remember that? You were asked
15 that question and that's the answer you gave,
16 correct?

17 A Yeah.

18 Q And do you remember being asked -- questioned
19 earlier on April 4 on the same issue as to
20 whether or not you sw the defendant's uncle in
21 New Hampshire?

22 You were questioned by the detectives,
23 correct?

24 A Yeah.

1 Q And do you remember in your statement to the
2 detectives, you stated that, sometime within the
3 past two months, that you went to New Hampshire
4 with Tee, looking for his cousin?

5 MR. DOOLIN: Your Honor, I object.

6 BY MR. TOCHKA:

7 Q Did you say that to the detectives, sir?

8 MR. DOOLIN: I object.

9 THE COURT: Overruled.

10 A I don't believe so.

11 BY MR. TOCHKA:

12 Q Did you say to the detectives that you stated
13 that they couldn't find the cousin but that you
14 found his Uncle Frank? Did you say that to the
15 detectives?

16 A I don't know anything about a cousin, going to
17 see a cousin in New Hampshire.

18 Q Sir, I asked you, did you say to the detectives
19 that you couldn't find the cousin but you found
20 his Uncle Frank?

21 A I don't remember saying anything of a cousin. I
22 remember something of the uncle but nothing of
23 any cousin.

24 Q Do you remember saying to the detectives that you

1 found his Uncle Frank in New Hampshire?

2 A No, I don't remember saying that either.

3 Q Do you remember saying to the detectives that you
4 hung around with him, meaning Frank, for a couple
5 of hours and then you went home to Boston?

6 A No, I don't remember saying that either.

7 Q And, sir, you were asked where you were the week
8 -- when you were questioned on April 4, you were
9 asked where you were during the previous week,
10 correct?

11 A I guess so.

12 Q And you were asked whether or not you were with
13 the defendant at any time during the night time,
14 correct?

15 A Yes.

16 Q And do you recall what your answer was?

17 A Um, not exactly.

18 Q Sir, read that to yourself and see if that
19 refreshes your memory. Does that refresh your
20 memory?

21 A Yeah.

22 Q And having read that, and having been refreshed
23 by your memory, what is your memory when asked on
24 April 4 whether or not you had been with the

1 defendant on Monday, March 27?

2 A We used to hang out all the time so I probably
3 said that we did hang out that day.

4 Q Then you said -- and so your answer on April 4
5 was that you probably hung out with the
6 defendant?

7 A I believe so.

8 Q And that's because you usually hang out with the
9 defendant at night, correct?

10 A No, because if that's what I said at the time,
11 then that's what I remembered then, that's what
12 it was.

13 Q Well, this was April 4. Your memory was fresher
14 then than it is today, right?

15 A Yeah. If you're looking at two weeks back from
16 April 4 or a week, whatever it was.

17 Q Were you working back then, sir?

18 A I'm not sure.

19 Q When you were questioned by the police on April
20 4, you don't recall whether you were working?

21 A No, I don't.

22 Q And it's fair to say, sir, that you told the
23 detectives that you did not have an exact
24 recollection of whether or not you hung around

1 with the defendant at ten thirty or eleven
2 o'clock on Monday, the twenty-seventh?

3 A Yeah. I believe I told them we did hang out but
4 I wasn't certain at the time.

5 Q So your memory is now that you told them -- well,
6 let me ask you. Is your memory, having looked at
7 this statement, that you probably hung out with
8 him?

9 Or is your memory now that you did hang
10 out with him on Monday?

11 A If my statement says I hung out with him, then I
12 hung out with him.

13 Q I'm asking you, sir, whether or not you said
14 that, looking at that report, that -- you
15 refreshed your memory, correct? What is your
16 memory as to --

17 A My memory is that, if I said that I hung out with
18 him on that date, I was with him that day.

19 Q Is that what it says in the report? That you
20 were with him on that day? You said, having
21 looked at that -- I would ask you to look at that
22 again and see if that refreshes your memory, what
23 it says.

24 A It says, yeah, most likely we met, right.

1 Q Read the next line, sir.

2 A I'm not sure about that part either.

3 Q So the part where it says, most likely --

4 A Um-hum.

5 Q You remember that, but the part where it says --

6 MR. FLAHERTY: Objection.

7 THE COURT: The objection is sustained.

8 BY MR. TOCHKA:

9 Q It's fair to say, sir, that you stated to the
10 police that, although you didn't have an exact
11 recollection, you usually would hang out at about
12 eleven thirty -- ten thirty or eleven p.m.?

13 A I'm not sure of the time.

14 Q Sir, it's fair to say that you stated to the
15 police that, although you didn't have an exact
16 recollection, usually you would hang out around
17 about ten thirty or eleven p.m. with the
18 defendant, Tanzerius Anderson?

19 A We, sometimes we hang out all day so the time was
20 not specific.

21 Q And it's fair to say, on April 4 of the year
22 2000, when you gave that statement to the Boston
23 Police detectives, your memory was fresher,
24 correct, than it is today?

1 A I wouldn't say that but as to what you have on
2 the paper, then go with that, but as I said, we
3 hang out all day so I'm not sure of what the time
4 was.

5 Q When you gave that statement to the Boston
6 Police, Detective McLaughlin, on April 4, that
7 was approximately seven days after March 27,
8 correct?

9 A I guess so.

10 MR. TOCHKA: No further questions.

11 MR. DOOLIN: No questions, Your Honor.

12 THE COURT: Mr. Flaherty?

13

14 CROSS EXAMINATION

15 BY MR. FLAHERTY:

16 Q When -- you were interviewed on April 4 with
17 Detective Traylor and Detective McLaughlin,
18 right?

19 A I believe so.

20 Q Was there a tape recorder in the room?

21 A I believe so.

22 Q Did they tape what you said? Did they record
23 what you said?

24 A I believe so.

1 Q There is a police report that you have been
2 shown, right?

3 A I just saw a brief statement of some of the
4 things I had said.

5 Q You had been to New Hampshire in the past with
6 Mr. Anderson?

7 A Yes.

8 Q Have you been other places with Mr. Anderson?

9 A Yes.

10 Q Have you ever stayed overnight anywhere with Mr.
11 Anderson?

12 A Yes.

13 Q And have you ever stayed in hotel rooms with Mr.
14 Anderson?

15 A Yes.

16 Q And to the best of your recollection today here,
17 as you're testifying, how often in your
18 friendship with Mr. Anderson had you done that,
19 if you have any idea?

20 A At least a few times.

21 Q And when did you first meet him?

22 A Back in like '95.

23 Q And what were the circumstances of you meeting
24 Mr. Anderson?

1 A We went to a summer program supported by
2 Northeastern to get a scholarship for
3 Northeastern.

4 Q And would you describe what the summer program
5 is?

6 A It's called Balfor Academy. It's a six-year
7 program. You go through it, you take college
8 courses, classes, and it prepares you for college
9 and once completing the six-year program, if you
10 maintain, I think, a C average, that you get a
11 one-year scholarship.

12 Q Did you get a scholarship to Northeastern?

13 A Yeah.

14 Q Did Mr. Anderson get a scholarship?

15 A Yeah.

16 MR. FLAHERTY: No further questions,
17 sir.

18
19 REDIRECT EXAMINATION

20 BY MR. TOCHKA:

21 Q Sir, the only time that you went up with the
22 defendant to New Hampshire in the year 2000 was
23 how many times?

24 A I've only been to New Hampshire with Tanzerius

1 once.

2 Q And on that one time did you ever stay at a hotel
3 room with him?

4 A Like I said, I'm not sure if we stayed at a hotel
5 room.

6 Q And you testified in the grand jury under oath
7 that you did not stay at a hotel room, correct?

8 A I do not remember saying that, no.

9 Q And you gave a statement to the detectives where
10 you told them that you did not stay at a hotel
11 room with the defendant, Tanzerius Anderson?

12 A I do not remember saying no either on that one.

13 MR. TOCHKA: Your Honor, may I be heard
14 at side bar?

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

17 MR. TOCHKA: At this point in time I
18 would move to introduce the grand jury minutes
19 where he states that he did not stay at a hotel
20 and he is repeatedly asked the question. I think
21 it's page twenty.

22 THE COURT: Any response?

23 MR. FLAHERTY: Your Honor, I think his
24 testimony, he's now presently saying he has no

1 memory of what took place at the grand jury. I
2 think that's different from denying his statement
3 at the grand jury.

4 THE COURT: Respectfully, though, we
5 are confusing several different evidentiary
6 protocols. The grand jury minutes can be
7 introduced as substantive evidence or refreshing
8 the witness's memory if his recollection is
9 different. Refreshing his recollection is
10 different from impeaching the witness's
11 testimony. Grand jury testimony can be used to
12 refresh, can be used to impeach, it can also be
13 introduced as substantive evidence. The fact
14 that Mr. Tochka has tried to use all three
15 protocols with respect to this witness does not
16 prevent him from introducing it as substantive
17 evidence unless somebody can bring some authority
18 to my attention on that.

19 MR. FLAHERTY: Your Honor, I would
20 submit that he has attempted to refresh his
21 recollection with it. He's attempted to impeach
22 him with it, and now he's attempting to use it as
23 a prior inconsistent statement. It can't come in
24 substantively as a prior inconsistent statement

1 because it's not subject to the right of
2 confrontation.

3 THE COURT: Commonwealth versus Daye --

4 MR. FLAHERTY: I've read Daye and I
5 point, Your Honor, your attention directly to
6 Daye. In Daye, the witness in that case at trial
7 specifically refused to testify in accordance
8 with the way he testified at the grand jury. In
9 fact, in Daye, that witness testified at trial
10 that he did denied his grand jury testimony and
11 said, no, I never identified him and I don't know
12 that person, I don't know Dennis Daye. In this
13 case, Your Honor, this witness is saying, I
14 remember being at the grand jury, I remember
15 testifying, I'll go with what you have down on
16 paper, I can't remember exactly what my words
17 were, and my memory is not exact as to that.
18 It's a different situation than Daye.

19 THE COURT: Well, I will be happy to
20 review Daye but the three points I made earlier,
21 grand jury can be used any one of three ways.
22 I'll take a look at Daye to see if the questions
23 this witness -- the way the witness has been
24 examined allows him to introduce it as

1 substantive evidence. If you want to argue
2 anything tomorrow on that, you may. Is there
3 anything else?

4 MR. TOCHKA: Other than that I wanted
5 to read the grand jury minutes to the jury.

6 THE COURT: I'm not going to do that
7 until I re-read Daye. Do you have it here?

8 MR. DOOLIN: I have it.

9 THE COURT: Okay. Mr. Flaherty, as I
10 understand your point, it is this, that before
11 grand jury testimony can be used as substantive
12 or probative, it must first be established that
13 the testimony given to the grand jury was
14 inconsistent with trial testimony, and it is your
15 contention, if I understand your argument, that
16 that has not been the testimony of this witness,
17 that he has not given inconsistent trial
18 testimony?

19 MR. FLAHERTY: Well, my --

20 THE COURT: Is that right, sir? The
21 first point of your argument, the grand jury
22 testimony should not be admitted substantively
23 because it is not subject to the right of cross
24 examination and confrontation.

1 MR. FLAHERTY: I understand the holding
2 in Daye and my point with regard to Daye is the
3 circumstances of Daye, the facts in Daye are
4 distinct from this because in Daye, and I would
5 submit that Daye is a very limited, narrow
6 rationale, and that in Daye there was an
7 identifying witness who failed -- not only failed
8 but denied his identification at trial of the
9 defendant. The facts of this case are different.
10 This witness is saying that he does not recall
11 the exact words that he used at the grand jury,
12 and I would suggest that that is very different
13 from Daye.

14 MR. DOOLIN: I would just second my
15 brother, Judge. Mr. Simms has a lack of
16 recollection as opposed to a denial.

17 THE COURT: Let's just deal with this.
18 I think that's a fair point, Mr. Tochka, that,
19 based on the questions you asked him, he did not
20 recall. It has not been established for purposes
21 of introduction for substantive evidence or for
22 any probative value. I will mark them for
23 identification.

24 MR. TOCHKA: Can I explain to the

1 Court, Daye talks about that the witness just
2 can't stand up and say, I don't remember and
3 claim a lack of memory and then the statement
4 does not come in.

5 THE COURT: My observation has to do
6 with the form of your questions which is what I
7 was trying to make some observations about
8 earlier. You posed him questions, do you recall
9 giving this testimony. The issue is not whether
10 he recalls having given the grand jury testimony,
11 his memory on that --

12 MR. TOCHKA: Then I changed it. First,
13 whether or not it refreshed his memory, it
14 doesn't refresh his memory, then I said you said
15 before the grand jury, and he said no, or I don't
16 remember.

17 THE COURT: I would have to go back
18 through the transcript and I will review the
19 exact questions.

20 MR. TOCHKA: I will ask him the
21 question again.

22 THE COURT: You can go through more
23 examination if you want or you can mark it for ID
24 and I will review the transcript, make a ruling

1 on my review of the transcript.

2 MR. TOCHKA: I'm going to ask him the
3 question again.

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

6 BY MR. TOCHKA:

7 Q Sir, let me ask you that question again. You
8 testified before the Suffolk County grand jury,
9 correct?

10 A Correct.

11 Q You testified under oath, correct?

12 A Correct.

13 Q You testified before the Suffolk County grand
14 jury sometime in July of the year 2000, correct?

15 A Correct.

16 Q And you were asked the question before the
17 Suffolk County grand jury: When you turned
18 around, did you come back home? And your answer
19 was yeah, correct?

20 A I'm not sure of the response.

21 Q You were asked the question: Did you stop in any
22 hotel rooms? And you answered no?

23 A I'm not sure of that response either.

24 Q And you were asked the question: And you're

1 certain of that? And you answered yeah?

2 A I'm still not certain of that either.

3 Q And you were asked the question: After going to
4 New Hampshire, at no time did you ever stay in
5 any hotel room up in New Hampshire? And you
6 answered no, correct?

7 A I'm not certain of that either.

8 Q And then you were asked on the next question: At
9 no time have you ever stayed in any hotel rooms
10 with Tanzerius? And your answer was no, not that
11 I can remember, no.

12 Do you remember that question and
13 answer?

14 A I remember the question. I'm not sure if I said
15 no but I remember saying something like I don't
16 know or I don't remember.

17 Q Do you remember being asked the next question:
18 When you say, not that you can remember, is there
19 a time that you think that you stayed in a hotel
20 room with Tanzerius? And your answer was:
21 Nothing I can think of. Correct?

22 A I'm not sure of that response either.

23 MR. TOCHKA: Your Honor, I renew my
24 motion.

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THE COURT: Anything more, counsel?

MR. TOCHKA: No.

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

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

THE COURT: My attention was drawn to a footnote in Daye which says that the witness must recall the underlying event to which a prior statement refers. The witness need not recall making the statement provided there is evidence, such as a grand jury transcript, which we have here, that the statement was made. We leave open the question whether, when the circumstances at trial indicate that the witness is falsifying a lack of memory, a judge may admit the statement as inconsistent with the claim of lack of memory.

So Daye says when a witness at trial has no recollection of the events to which the statement relates, the requirement of an opportunity for meaningful cross examination is not met. So I'm not going to admit it at this time, allow you to read it to the jury. You may mark it for identification and I will give

1 further consideration to it and if I rule it's
2 admissible as probative evidence during the rest
3 of your case, I will reconsider my ruling.

4 Anything more on this? I will order a
5 transcript of this because I do think that it is
6 unclear on various of these issues as to whether
7 or not he is confessing he has a lack of memory
8 about the events, not just whether he has a lack
9 of memory about what he said at the grand jury,
10 but whether he has a lack of memory about what
11 happened back in March, 2000, and I think I need
12 to carefully review the transcript to make those
13 decisions. Anything more in terms of the
14 examination?

15 MR. FLAHERTY: No, Your Honor.

16 MR. TOCHKA: The next witness I
17 intended to call was Detective Paul McLaughlin,
18 to recall Detective Paul McLaughlin in terms of,
19 to impeach this witness as to the statement he
20 made to him.

21 THE COURT: I think you're entitled to
22 do that, sir.

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

1 MR. TOCHKA: Your Honor, at this point
2 in time the Commonwealth would move to have
3 marked for identification purposes the grand jury
4 minutes of Jonathan Simms.

5 (Exhibit L, being grand jury minutes,
6 as described above, was produced and marked for
7 identification.)

8 MR. TOCHKA: I have no further
9 questions.

10 THE COURT: Thank you. You may step
11 down, Mr. Simms.

12 MR. TOCHKA: The Commonwealth would
13 recall Detective Paul McLaughlin.

14
15 PAUL MCLAUGHLIN,
16 recalled as a witness, having been previously
17 duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. TOCHKA:

21 Q Detective McLaughlin, let me ask you about -- you
22 testified that you interviewed the witness,
23 Jonathan Simms, correct?

24 A Yes, I did.

1 Q Did you tape record his interview?

2 A No, I didn't.

3 Q And when you interviewed Mr. Simms -- and, by the
4 way, do you tape record all the interviews that
5 you conduct?

6 A No.

7 Q And did you write a report in connection with
8 your interview of Mr. Simms?

9 A Yes, I did.

10 Q And I show you this two-page report and ask you,
11 is this the report?

12 A Yes, it is.

13 MR. TOCHKA: Your Honor, I ask it be
14 marked for identification purposes.

15 (Exhibit M, being a document, as
16 described above, was produced and marked for
17 identification.)

18 BY MR. TOCHKA:

19 Q Who was present for the interview with Mr. Simms?

20 A Detective Traylor.

21 Q Did you inquire of Mr. Simms as to whether or not
22 he had been to New Hampshire with the defendant,
23 Tanzerius Anderson?

24 A Yes, I had.

1 Q What did he tell you?

2 MR. DOOLIN: Objection.

3 MR. FLAHERTY: Objection.

4 THE COURT: Overruled.

5 A He stated that sometime in the prior two months
6 of that date he had gone to New Hampshire with
7 Mr. Anderson. He stated that they had gone there
8 looking for Tanzerius's cousin and that they
9 couldn't find the cousin but they did end up
10 seeing his Uncle Frank. He stated that they
11 stayed with Uncle Frank for a couple of hours,
12 hung out, and then drove back to Boston. I asked
13 him specifically if they stayed in a hotel that
14 night. He stated that they did not. He was sure
15 that they had driven home and they had not stayed
16 in a hotel.

17 BY MR. TOCHKA:

18 Q Did you ask Mr. Simms whether or not he recalled
19 the events of Monday, March 27, that evening?

20 A Yes, I did.

21 Q And what did he tell you?

22 MR. FLAHERTY: I object.

23 THE COURT: The objection is overruled.

24 A He stated that that was his day off and that he

1 most likely had been with Tee at some time on
2 that day. He stated that he didn't have an exact
3 recollection but that usually when he hung out
4 with Tee, he'd hang out until about ten thirty or
5 eleven o'clock at night.

6 BY MR. TOCHKA:

7 Q And you interviewed him on what day of the week,
8 sir?

9 A I believe that was a Tuesday.

10 Q And the Monday that you were talking to him about
11 was Monday, March 27, which was one week prior to
12 that?

13 A That is correct.

14 MR. TOCHKA: No further questions.

15 MR. DOOLIN: I don't have any questions
16 for Detective McLaughlin.

17 THE COURT: Let me see counsel, please.

18 MR. FLAHERTY: Your Honor, may I
19 inquire?

20 THE COURT: Yes, you may. That's why I
21 need to see you first at side bar.

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

24 THE COURT: Daye requires you to have a

1 voir dire.

2 MR. TOCHKA: I had no idea what the
3 witness was going to say.

4 THE COURT: I just wanted to alert you
5 in case you're going to do that. If you were
6 going to recall Mr. Simms, we need to do a voir
7 dire.

8 MR. DOOLIN: May I just be heard
9 respectfully on Detective McLaughlin's testimony
10 and our objections? Simms has been called to the
11 stand, I suggest, just with the pure purpose of
12 trying to have him impeached with prior
13 statements.

14 THE COURT: You can put all this on the
15 record. I'm going to take a recess after this
16 witness and Mr. Flaherty's cross examination.

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

19
20 CROSS EXAMINATION

21 BY MR. FLAHERTY:

22 Q Detective McLaughlin, when you spoke with
23 Jonathan Simms, did you ask him how many times he
24 had been to New Hampshire with Mr. Anderson?

1 A I believe I asked him if he had ever been to New
2 Hampshire.

3 Q Did you ask him how many times he had been to New
4 Hampshire?

5 A I don't recall if I asked that specifically.

6 MR. FLAHERTY: Okay. Nothing further,
7 Your Honor.

8 THE COURT: Anything more, Mr. Tochka?

9 MR. TOCHKA: Nothing further.

10 THE COURT: Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Your next witness?

13 MR. TOCHKA: It would be Mr. Harris,
14 Peter Harris.

15 THE COURT: How long, sir?

16 MR. TOCHKA: I'd say approximately two
17 minutes or so.

18 THE COURT: Okay. We'll go until three
19 o'clock.

20

21

22

23

24

PETER HARRIS,

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

3 DIRECT EXAMINATION

4 BY MR. TOCHKA:

5 Q Good afternoon, sir. Please tell us your name.

6 A Peter Harris.

7 Q And, Mr. Harris, do you work?

8 A Yes.

9 Q Where do you work?

10 A Rent-All of Boston.

11 THE COURT: Keep your voice up, please,
12 sir. Speak directly into the mike. It would
13 help a lot.

14 BY MR. TOCHKA:

15 Q And, Mr. Harris, where is Rent-All of Boston?

16 A 1162 Adams Street, Boston.

17 THE COURT: Sir, I'm going to ask you
18 again to keep your voice up, please.

19 BY MR. TOCHKA:

20 Q Sir, what kind of business is Rent-All of Boston?

21 A We are a rental business.

22 Q What do you rent?

23 A Construction equipment.

24 Q And are you part owner of that business?

1 A Yes, I am.

2 Q And who are you part owner with?

3 A Several family members.

4 Q And do you know the defendant, Tanzerius
5 Anderson?

6 A Yes, I do.

7 Q And how do you know him?

8 A As an employee.

9 Q And do you know when he started working for you?

10 A In December of '99.

11 Q And how long did he -- do you know if he worked
12 in January of 2000?

13 A Yes, he did.

14 Q And can you tell us whether or not he worked in
15 February of 2000?

16 A Yes, he did.

17 Q Can you tell us whether he worked in March of
18 2000?

19 A Yes, he did.

20 Q And when was the last time that he worked for
21 your business? When was the last day-- strike
22 that.

23 Let me ask you this. In terms of how
24 an employee -- what are the hours of -- what were

1 the hours of Mr. Anderson back then, back in
2 December to March?

3 A Seven thirty to five o'clock p.m.

4 Q And how was Mr. Anderson required to check in?

5 A He would punch in on the computer using a code
6 that would be just for his name as an individual.

7 Q So it was a time clock?

8 A Yes, computerized time clock.

9 Q And do you have the records with you relative to
10 Mr. Anderson's punching in during the months of
11 December, January, February and March?

12 A Yes, I do.

13 Q And those particular records, sir, who is
14 responsible for keeping those records?

15 A I am.

16 Q And are those records kept in the normal course
17 of business?

18 A Yes, they are.

19 Q And can you tell us the information that's
20 contained in those particular records?

21 Is that information obtained at about
22 the time of the information that's in it, the
23 making of that information?

24 A Yes. It's time stamped as to the actual time

1 that the person enters into the computer system.

2 Q And it's the regular practice of your business to
3 keep those records?

4 A Yes, it is.

5 Q Do you have those records with you today?

6 A Yes, I do.

7 Q May I see those, please? Can you take out the
8 actual records, sir?

9 A (Complying.)

10 MR. TOCHKA: I'd move to introduce
11 these records into evidence.

12 MR. DOOLIN: I don't have any
13 objection.

14 MR. FLAHERTY: No objection, Your
15 Honor.

16 THE COURT: Thank you.

17 (Exhibit No. 34, being records, as
18 described above, were marked and admitted into
19 evidence.)

20 BY MR. TOCHKA:

21 Q Sir, what's been marked as Exhibit 34, do those
22 records indicate the time of December of 1999
23 when the defendant checked into work?

24 A Yes.

1 Q Do they indicate the times when he checked out of
2 work?
3 A Yes.
4 Q And do they also indicate the times that he
5 checked in and out for lunch breaks?
6 A Yes.
7 Q Do they indicate the same as for January,
8 February and March of the year 2000?
9 A Yes.
10 Q Sir, I'm going to show you this. Let me show you
11 this diagram and ask, have you seen this before?
12 A Yes, I have.
13 Q And have you had an opportunity to examine this
14 in the past?
15 A Yes, I have.
16 Q And do these charts and the months that are on
17 these charts accurately reflect the dates, the
18 times that the defendant worked for you during
19 the months of December, January, February and
20 March?
21 A Yes, they do.
22 Q Do they accurately reflect the times that he
23 began work?
24 A Yes.

1 Q And the times that he left work?

2 A Yes, it does.

3 Q And these are based upon the records that you
4 have that have been marked as Exhibit 34,
5 correct?

6 A That is correct.

7 MR. TOCHKA: Your Honor, the
8 Commonwealth would move to introduce this exhibit
9 into evidence.

10 MR. DOOLIN: I have no objection.

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

13 THE COURT: It shall be marked.

14 (Exhibit No. 35, being a chart, as
15 described above, was marked and admitted into
16 evidence.)

17 BY MR. TOCHKA:

18 Q Sir, I'm going to ask you, looking at this, sir,
19 can you tell us for the month of December, what's
20 the latest that the defendant arrived at your
21 work?

22 A Seven twenty-one in the morning.

23 Q For the month of January, what's the latest the
24 defendant arrived to work?

- 1 A Seven twenty-two.
- 2 Q And the month of February, what was the latest
3 that he arrived to work?
- 4 A Seven twenty-two also.
- 5 Q And the month of March, what was the latest that
6 he arrived to work?
- 7 A Eight fifty-four.
- 8 Q And eight fifty-four was what day, sir?
- 9 A March 28.
- 10 Q And that was on Tuesday, is that correct, sir?
- 11 A That's correct.
- 12 Q He's supposed to be at work at what time, sir?
- 13 A By seven thirty.
- 14 Q The following day, sir, on Wednesday, was he
15 responsible for working a full day on that day?
- 16 A Yes, he was.
- 17 Q Did he work a full day, sir, on that day?
- 18 A No, he did not.
- 19 Q What time did he leave, check out on that day,
20 sir?
- 21 A Two fifty-nine in the afternoon.
- 22 Q The following day was Thursday, sir? Do you
23 know, based upon your records, whether or not he
24 worked on Thursday?

1 A No, he did not work on Thursday.

2 Q Was that his day off?

3 A No, it wasn't.

4 Q Do you remember what his day off was?

5 A I don't recall what his day off was scheduled for

6 that week.

7 Q Did he work on Thursday, sir?

8 A No, he did not.

9 Q Did he work on Friday?

10 A No, he did not.

11 Q Did he work on Saturday?

12 A No, he did not.

13 Q After that Wednesday in the afternoon, did you

14 ever see the defendant again?

15 A No, I didn't.

16 Q So from that Wednesday in the afternoon until

17 today, that's the first time you've seen him,

18 correct?

19 A That's correct.

20 Q Did he ever give you any reason as to why he was

21 leaving Wednesday afternoon?

22 A Not that I recall.

23 Q Did he ever show back up in -- back to your work?

24 A No, he did not.

- 1 Q Sir, based upon the records, did the defendant
2 receive -- -what hours -- how many hours a week
3 did he work?
- 4 A Probably about an average of about forty-five
5 hours, anywhere from forty to forty-five.
- 6 Q And on this last week that you saw the defendant
7 in which he worked on that Monday, is that fair
8 to say on the twenty-sixth?
- 9 A Correct.
- 10 Q He worked on the twenty-seventh, came in late but
11 he worked until five, correct?
- 12 A I think the twenty-eighth he came in late.
- 13 Q Right. He came in late but he worked until what
14 time? What time did he come in on the twenty-
15 eighth and what time did he end work?
- 16 A He came in at eight fifty-four on the twenty-
17 eighth, left at five oh one.
- 18 Q And the next day, sir, what time did he come in?
- 19 A Seven nineteen in the morning.
- 20 Q What time did he leave?
- 21 A Two fifty-nine p.m.
- 22 Q That last week, sir, can you tell the jurors in
23 terms of how the defendant was paid, was he paid
24 in a check or was he paid direct deposit or how

1 was he paid?

2 A That last week was by a check.

3 Q Now, from December, January and February, at some
4 point was he getting direct deposit?

5 A Yes, he was.

6 Q And do you remember when that was?

7 A Typically it starts one to two weeks after the
8 start of employment.

9 Q And was there a reason why that last week -- was
10 his check directly deposited that last week?

11 A Yeah. We hadn't seen him and we held his last
12 check, just basically to turn his uniforms in.

13 Q When you say his uniforms, what type of uniforms
14 did he have?

15 A Jacket, shirt, sweatshirt, that sort of thing.

16 Q Did the defendant ever come to get his check for
17 that last week?

18 A No, he did not.

19 Q Do you know where the defendant lived?

20 A Yes, I do.

21 Q Where did he live?

22 A About a block and a half from the shop. I'm not
23 sure of the exact address but it was very close
24 to the store.

1 Q Sir, do you have the defendant's application when
2 he first came to your job to apply for
3 employment? Do you have the application with
4 you?

5 A No. I know I do not have that with me.

6 Q Do you have other documents with you, sir, in
7 connection with records that you keep relative to
8 the defendant's work records?

9 Sir, let me show you this particular
10 document. Do you recognize what that is?

11 A It's a notice that, to receive a company manual
12 and sexual harassment policy and he understands
13 and read the policy and has no further questions
14 regarding the policies.

15 Q That's just a standard notice that's given to all
16 employees, correct?

17 A That's correct.

18 Q And is that signed?

19 A Yes, it is.

20 Q And whose signature is that on it?

21 A Tanzerius Anderson.

22 Q Is that document kept in the normal course of
23 business by your business, your office?

24 A Yes, it is.

1 Q And those documents, sir, the information that's
2 -- the signature that's put on this, when would
3 that signature be put on that document, sir?

4 A December -- no, November 30, '99.

5 Q And do you know when he began working for you,
6 the defendant?

7 A Shortly thereafter.

8 MR. TOCHKA: Your Honor, at this point
9 I would move to introduce that sheet of paper.

10 THE COURT: Any objection?

11 MR. DOOLIN: Not from me, Your Honor.

12 THE COURT: Mr. Flaherty, is there an
13 objection?

14 MR. FLAHERTY: Just, if I could take a
15 look.

16 THE COURT: You want to see it? Okay.

17 MR. FLAHERTY: No objection, Your
18 Honor.

19 THE COURT: Fine.

20 (Exhibit No. 36, being a document, as
21 described above, was marked and admitted into
22 evidence.)

23 BY MR. TOCHKA:

24 Q And, sir, is this a copy?

1 A Yes, it is.

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

4 THE COURT: Mr. Doolin?

5 MR. DOOLIN: I have no questions, Your
6 Honor.

7 THE COURT: Mr. Flaherty.

8 MR. FLAHERTY: Thank you.

9
10 CROSS EXAMINATION

11 BY MR. FLAHERTY:

12 Q Mr. Anderson worked for you for a year and a
13 half, is that right? About that time?

14 A No, about four months.

15 Q He began in 1999 -- oh, I'm assuming a date
16 earlier. I'm sorry. About four months?

17 A Correct.

18 Q And in that four months' time period you gave him
19 a raise, didn't you?

20 A Correct.

21 Q He was making eight dollars an hour and then in
22 February you bumped him up to nine dollars an
23 hour?

24 A I believe that's correct.

1 Q He got good reviews? He was a good employee, is
2 that fair to say?

3 A Yes, that's fair to say.

4 Q Do you know whether or not after leaving your
5 place of employment, he went to work for Miracle
6 Workers the following week?

7 A I'm not aware of that.

8 Q Do you know whether or not he worked for Local
9 33, the union?

10 A I'm not aware of that.

11 Q And with respect to the employment application --

12 MR. FLAHERTY: May I approach the
13 witness, Your Honor?

14 THE COURT: Yes.

15 BY MR. FLAHERTY:

16 Q Is this the application for employment that you
17 folks use at Rent-All of Boston?

18 A That would be correct.

19 Q Two pages, right?

20 A Yes, it is.

21 Q And that's a record that's maintained in the
22 regular course of business at Rent-All of Boston,
23 right?

24 A Correct.

1 Q Made in good faith, right?

2 A Correct.

3 Q And made at or about the time that the
4 information is placed in there, right?

5 A Correct.

6 Q Prior to this proceeding here?

7 A Correct.

8 MR. FLAHERTY: Okay. Your Honor, I'd
9 move to introduce the application for employment.

10 MR. TOCHKA: No objection.

11 THE COURT: It shall be marked.

12 (Exhibit No. 37, being a document, as
13 described above, was marked and admitted into
14 evidence.)

15 BY MR. FLAHERTY:

16 Q Sir, this exhibit, this calendar, you didn't
17 prepare this, right?

18 A No, I did not.

19 Q This was prepared by the District Attorney's
20 office and then shown to you, is that fair to
21 way?

22 A I would say it would be fair to say.

23 Q Did you ever have an employee who was late for
24 work other than Mr. Anderson?

1 A Sure.

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

4 THE COURT: Anything more, Mr. Tochka?

5 MR. TOCHKA: No further questions.

6 THE COURT: I'm sorry?

7 MR. TOCHKA: I have no further
8 questions.

9 THE COURT: Thank you very much, sir.
10 You may step down.

11 Ladies and gentlemen, we are going to
12 take short recess. Would you leave your notes on
13 your seats, please? Thank you.

14 (Whereupon, the jury was escorted from
15 the courtroom at 2:58 o'clock p.m.)

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

18 THE COURT: You wanted to put something
19 on the record, sir?

20 MR. DOOLIN: I just objected to and I
21 do object to testimony that was put in from Mr.
22 Simms and Mr. McLaughlin. Respectfully, after
23 having heard Mr. Simms' testimony and then the
24 government calling McLaughlin to the stand, I

1 refresh your memory?

2 A Yeah. I believe it was sometime between March,
3 April.

4 Q And at that point in time when you were
5 questioned by the police, you were questioned
6 where, sir?

7 A The headquarters.

8 Q And you had been to the headquarters with who?

9 A Tanzerius.

10 Q And let me ask you, sir, from the time of January
11 of 2000 to April, to about when you were
12 questioned by the police, at any point in time
13 during that period did you go to New Hampshire
14 with the defendant?

15 A I believe so.

16 Q And when you say you believe so, are you not
17 certain or did you go?

18 A We had taken trips. When I was asked the
19 question, I believe I said, yes, we did. If
20 that's what I said, then that's what I'm standing
21 to now.

22 Q Is your memory today that, yes, you did go?

23 A Yeah.

24 Q And when you went to New Hampshire, at whose

1 suggestion did you go to New Hampshire?

2 A I believe it was Tee's because we were -- he was
3 going down there to take care of something with
4 his uncle, one of his uncles.

5 Q And which uncle was it?

6 A I'm not sure. I only know two of his uncles,
7 Uncle Joe and Uncle Frank.

8 Q And when you went with the defendant to New
9 Hampshire, whose car did you go in?

10 MR. DOOLIN: Your Honor, I object.

11 BY MR. TOCHKA:

12 Q When you went with Tanzerius Anderson, whose car
13 did you go in?

14 A I'm not sure.

15 Q Did you drive or did he drive?

16 A He most likely drove. I didn't have a license at
17 the time.

18 Q And back then did you know what type of car he
19 drove?

20 A I'm not sure if he was driving, he had had his
21 car then yet because he's had two cars since I've
22 known him.

23 Q But I'm asking you, back then do you know what
24 type of car he drove when you went to New

1 Hampshire that time?

2 A No.

3 Q As a matter of fact, you had gone with him to
4 pick up -- to purchase a car, didn't you? In
5 January of the year 2000?

6 A I believe it was 2000, if it was -- yeah, I think
7 so.

8 Q And you had gone with the defendant, Tanzerius
9 Anderson, to Brockton, is that true?

10 A Yup.

11 Q What type of car did he purchase back in January
12 of 2000?

13 A Mazda 626.

14 Q And that Mazda 626, was that the same car that he
15 owned at the time you went up to New Hampshire
16 with him?

17 A I'm not sure.

18 Q Well, did he purchase another car that you're
19 aware of after that?

20 A No. What car we went down to New Hampshire, I'm
21 not sure.

22 Q I'm asking -- you said that he had more than one
23 car. Did he purchase another car?

24 A No. He only had the Mazda 626.

1 Q That's the only car that you know that he had?

2 A Yup.

3 Q Well, when you went to New Hampshire, you said he
4 went to go for what reason?

5 A To see one of his uncles.

6 Q And did he tell you why he wanted to go see one
7 of his uncles?

8 A Yeah. I believe at the time he wasn't working
9 or, you know, and he was trying to get some work
10 with one of his uncles up there. They owned a
11 lobster company or something like that.

12 Q So your memory is he went there to get some work?

13 A Correct.

14 Q Where did you go with the defendant driving the
15 car?

16 A Um, I'm not too sure on the whole details of
17 where we went.

18 Q Have you ever been to Manchester, New Hampshire,
19 with the defendant?

20 A I wouldn't be able to tell you if it was
21 Manchester or --

22 Q Or what, sir?

23 A Or any other place in New Hampshire because I'm
24 not too familiar with New Hampshire.

1 Q When you went to see his -- the purpose was to
2 see his uncle, you said?

3 A Yeah.

4 Q Did you see his uncle?

5 A I don't believe so.

6 Q Well, when you say you don't believe so --

7 A Um-hum.

8 Q Does that mean that you don't have a memory as to
9 whether or not --

10 A Yeah. My memory is a little hazy as to what
11 happened when we went down there.

12 Q And how many times have you gone to New Hampshire
13 with the defendant?

14 A Just that time.

15 Q Was that in the day time or the night time?

16 A I'm not sure.

17 Q Was it in the weekday or weekend?

18 A I'm not sure.

19 Q And you were questioned about this back in April
20 of the year 2000, correct?

21 A Yeah.

22 Q And was your memory fresher then?

23 A Should have been.

24 Q And when you went to New Hampshire, your memory

1 is, you're not sure whether or not you saw the
2 defendant's uncle, correct?

3 A Correct.

4 Q Let me show you this report and ask if this
5 refreshes your memory. You can read that to
6 yourself and look up when you've finished.

7 Does that refresh your memory?

8 A Not too much because a lot on there doesn't make
9 sense to me anyway.

10 Q A lot of what?

11 A A lot of what it says on there.

12 Q What you just read?

13 A Yeah.

14 Q Do you recall testifying before the grand jury in
15 this case, sir?

16 A Yes.

17 Q Do you recall the way that you were questioned
18 before the grand jury?

19 A No.

20 Q Do you recall being asked the question in the
21 grand jury as to whether or not you had seen the
22 defendant's Uncle Frank?

23 A Yes.

24 Q Do you recall what your answer was?

1 A I believe I said I was unsure.

2 Q Sir, look at that. Look at the first page there.

3 A Um-hum.

4 Q And the second page, the page with your name. Is
5 that your name, sir?

6 A Yup.

7 Q And you, having looked at that, does that refresh
8 your memory as to when you testified before the
9 grand jury?

10 A I know I -- there's a date on there --

11 Q Was it in July of the year 2000?

12 A I don't know. Whatever date you got down there
13 is whatever I know about.

14 Q On page fourteen, sir, read that question and
15 read that answer to yourself.

16 Does that refresh your memory as to
17 whether or not you saw the defendant's uncle when
18 you went up there?

19 A I still don't know whether we saw him or not when
20 we went up there.

21 Q Do you remember, sir, when you went up there,
22 whether or not you stayed in a hotel room?

23 A I'm not too sure of that either.

24 Q It's only one time you've gone up with the

1 defendant, correct, to New Hampshire?

2 A Yeah.

3 Q Page twenty. Sir, look at page twenty, page
4 twenty there, read that to yourself, to line
5 sixteen.

6 Does that refresh your memory?

7 A It's what's on the paper.

8 Q I'm asking you, does that refresh your memory,
9 sir?

10 A As to what?

11 Q As to the question I asked you, whether or not
12 you --

13 A Can you repeat the question?

14 Q I will. Whether or not you stayed at a hotel
15 with the defendant.

16 A I still don't know whether we stayed in a hotel
17 or not.

18 Q Sir, you testified before the grand jury? You
19 testified under oath, didn't you, sir?

20 A Yes.

21 Q And you were asked a question: When you
22 returned, did you come back home? Do you
23 remember that question?

24 When you returned from New Hampshire,

1 did you come back home? Do you remember what
2 your answer was?

3 A No.

4 Q Do you remember answering, yeah?

5 MR. DOOLIN: I object.

6 THE COURT: Overruled.

7 BY MR. TOCHKA:

8 Q Do you remember being asked the next question:
9 Did you stop in any hotel rooms? Remember the
10 answer was no?

11 A No, I don't remember if I stayed, yes or no.

12 Q Do you remember you were asked then: And you're
13 certain of that? And you said yeah?

14 A No, I don't remember that either.

15 Q Do you remember that -- so do you remember being
16 asked a question: So after going to New
17 Hampshire, at no time did you ever stay in any
18 hotel room up in New Hampshire? And your answer
19 was no?

20 Remember that question and that answer?

21 A No. I remember the question but I don't remember
22 the answer I gave. I don't think I gave you guys
23 an exact answer.

24 Q And when you were in the grand jury, sir, was

1 either of these defendants in that grand jury
2 when you were testifying?

3 A No.

4 Q And when you were in the grand jury, was there a
5 lady that was taking down what you were saying?

6 A stenographer similar to a stenographer who's
7 here today?

8 A I'm not sure of the procedure.

9 Q And, sir, do you recall giving a statement to
10 Detective McLaughlin when -- you were questioned
11 on April 4, correct? At the homicide unit?

12 A At the homicide unit. I'm not sure what the date
13 was.

14 Q But you were questioned, correct, sir?

15 A Yeah.

16 Q And do you recall saying at that time --

17 MR. DOOLIN: I object, Your Honor.

18 THE COURT: Let me see counsel.

19 (Whereupon, a discussion occurred off
20 the record at side bar.)

21 BY MR. TOCHKA:

22 Q And, sir, you testified in the grand jury
23 sometime after you spoke to the detectives in
24 this case, correct?

1 A Yeah.

2 Q And when you spoke to the detectives, they asked
3 you questions about you going to -- whether or
4 not you went to New Hampshire with the defendant,
5 Tanzerius Anderson, correct?

6 A I believe so, yes.

7 Q And you told the detectives that you had driven
8 home and that you had not stayed in a hotel with
9 the defendant, Tanzerius Anderson?

10 Didn't you tell that to the detectives?

11 A Like I said, I do not remember saying that,
12 giving them that certain, specific answer.

13 Q And, sir, you were asked the question in the
14 grand jury, page fourteen -- is it fair to say in
15 the grand jury, relative to whether or not you
16 met with the defendant's uncle in New Hampshire,
17 you were asked the question: Had you had a
18 conversation with Tanzerius -- I'm sorry.

19 You were asked a question: Did you see
20 the uncle? And you answered: Yeah, we tried.
21 No, we didn't see the uncle. We tried to see if
22 we could see him but I don't remember what
23 happened, but we never ended up meeting with him.

24 Do you recall saying that to the

1 detectives -- I'm sorry. Do you recall saying
2 that to the grand jury?

3 A Yeah, some of it sounds familiar to me.

4 Q No, sir. I'm asking you --

5 A Well, I can't tell you exact, if those were
6 everything I said, but if that's what you guys
7 have on paper, then I'll go with that.

8 Q Sir, do you recall being asked the question: Did.
9 you see his uncle? And your answer was: Yeah,
10 we tried. No, we didn't see the uncle. We tried
11 to see if we could see him but I don't remember
12 what happened, but we never ended up meeting up
13 with him.

14 Do you remember that? You were asked
15 that question and that's the answer you gave,
16 correct?

17 A Yeah.

18 Q And do you remember being asked -- questioned
19 earlier on April 4 on the same issue as to
20 whether or not you sw the defendant's uncle in
21 New Hampshire?

22 You were questioned by the detectives,
23 correct?

24 A Yeah.

1 Q And do you remember in your statement to the
2 detectives, you stated that, sometime within the
3 past two months, that you went to New Hampshire
4 with Tee, looking for his cousin?

5 MR. DOOLIN: Your Honor, I object.

6 BY MR. TOCHKA:

7 Q Did you say that to the detectives, sir?

8 MR. DOOLIN: I object.

9 THE COURT: Overruled.

10 A I don't believe so.

11 BY MR. TOCHKA:

12 Q Did you say to the detectives that you stated
13 that they couldn't find the cousin but that you
14 found his Uncle Frank? Did you say that to the
15 detectives?

16 A I don't know anything about a cousin, going to
17 see a cousin in New Hampshire.

18 Q Sir, I asked you, did you say to the detectives
19 that you couldn't find the cousin but you found
20 his Uncle Frank?

21 A I don't remember saying anything of a cousin. I
22 remember something of the uncle but nothing of
23 any cousin.

24 Q Do you remember saying to the detectives that you

1 found his Uncle Frank in New Hampshire?

2 A No, I don't remember saying that either.

3 Q Do you remember saying to the detectives that you
4 hung around with him, meaning Frank, for a couple
5 of hours and then you went home to Boston?

6 A No, I don't remember saying that either.

7 Q And, sir, you were asked where you were the week
8 -- when you were questioned on April 4, you were
9 asked where you were during the previous week,
10 correct?

11 A I guess so.

12 Q And you were asked whether or not you were with
13 the defendant at any time during the night time,
14 correct?

15 A Yes.

16 Q And do you recall what your answer was?

17 A Um, not exactly.

18 Q Sir, read that to yourself and see if that
19 refreshes your memory. Does that refresh your
20 memory?

21 A Yeah.

22 Q And having read that, and having been refreshed
23 by your memory, what is your memory when asked on
24 April 4 whether or not you had been with the

1 defendant on Monday, March 27?

2 A We used to hang out all the time so I probably
3 said that we did hang out that day.

4 Q Then you said -- and so your answer on April 4
5 was that you probably hung out with the
6 defendant?

7 A I believe so.

8 Q And that's because you usually hang out with the
9 defendant at night, correct?

10 A No, because if that's what I said at the time,
11 then that's what I remembered then, that's what
12 it was.

13 Q Well, this was April 4. Your memory was fresher
14 then than it is today, right?

15 A Yeah. If you're looking at two weeks back from
16 April 4 or a week, whatever it was.

17 Q Were you working back then, sir?

18 A I'm not sure.

19 Q When you were questioned by the police on April
20 4, you don't recall whether you were working?

21 A No, I don't.

22 Q And it's fair to say, sir, that you told the
23 detectives that you did not have an exact
24 recollection of whether or not you hung around

1 with the defendant at ten thirty or eleven
2 o'clock on Monday, the twenty-seventh?

3 A Yeah. I believe I told them we did hang out but
4 I wasn't certain at the time.

5 Q So your memory is now that you told them -- well,
6 let me ask you. Is your memory, having looked at
7 this statement, that you probably hung out with
8 him?

9 Or is your memory now that you did hang
10 out with him on Monday?

11 A If my statement says I hung out with him, then I
12 hung out with him.

13 Q I'm asking you, sir, whether or not you said
14 that, looking at that report, that -- you
15 refreshed your memory, correct? What is your
16 memory as to --

17 A My memory is that, if I said that I hung out with
18 him on that date, I was with him that day.

19 Q Is that what it says in the report? That you
20 were with him on that day? You said, having
21 looked at that -- I would ask you to look at that
22 again and see if that refreshes your memory, what
23 it says.

24 A It says, yeah, most likely we met, right.

1 Q Read the next line, sir.

2 A I'm not sure about that part either.

3 Q So the part where it says, most likely --

4 A Um-hum.

5 Q You remember that, but the part where it says --

6 MR. FLAHERTY: Objection.

7 THE COURT: The objection is sustained.

8 BY MR. TOCHKA:

9 Q It's fair to say, sir, that you stated to the
10 police that, although you didn't have an exact
11 recollection, you usually would hang out at about
12 eleven thirty -- ten thirty or eleven p.m.?

13 A I'm not sure of the time.

14 Q Sir, it's fair to say that you stated to the
15 police that, although you didn't have an exact
16 recollection, usually you would hang out around
17 about ten thirty or eleven p.m. with the
18 defendant, Tanzerius Anderson?

19 A We, sometimes we hang out all day so the time was
20 not specific.

21 Q And it's fair to say, on April 4 of the year
22 2000, when you gave that statement to the Boston
23 Police detectives, your memory was fresher,
24 correct, than it is today?

1 A I wouldn't say that but as to what you have on
2 the paper, then go with that, but as I said, we
3 hang out all day so I'm not sure of what the time
4 was.

5 Q When you gave that statement to the Boston
6 Police, Detective McLaughlin, on April 4, that
7 was approximately seven days after March 27,
8 correct?

9 A I guess so.

10 MR. TOCHKA: No further questions.

11 MR. DOOLIN: No questions, Your Honor.

12 THE COURT: Mr. Flaherty?

13

14 CROSS EXAMINATION

15 BY MR. FLAHERTY:

16 Q When -- you were interviewed on April 4 with
17 Detective Traylor and Detective McLaughlin,
18 right?

19 A I believe so.

20 Q Was there a tape recorder in the room?

21 A I believe so.

22 Q Did they tape what you said? Did they record
23 what you said?

24 A I believe so.

1 Q There is a police report that you have been
2 shown, right?

3 A I just saw a brief statement of some of the
4 things I had said.

5 Q You had been to New Hampshire in the past with
6 Mr. Anderson?

7 A Yes.

8 Q Have you been other places with Mr. Anderson?

9 A Yes.

10 Q Have you ever stayed overnight anywhere with Mr.
11 Anderson?

12 A Yes.

13 Q And have you ever stayed in hotel rooms with Mr.
14 Anderson?

15 A Yes.

16 Q And to the best of your recollection today here,
17 as you're testifying, how often in your
18 friendship with Mr. Anderson had you done that,
19 if you have any idea?

20 A At least a few times.

21 Q And when did you first meet him?

22 A Back in like '95.

23 Q And what were the circumstances of you meeting
24 Mr. Anderson?

1 A We went to a summer program supported by
2 Northeastern to get a scholarship for
3 Northeastern.

4 Q And would you describe what the summer program
5 is?

6 A It's called Balfor Academy. It's a six-year
7 program. You go through it, you take college
8 courses, classes, and it prepares you for college
9 and once completing the six-year program, if you
10 maintain, I think, a C average, that you get a
11 one-year scholarship.

12 Q Did you get a scholarship to Northeastern?

13 A Yeah.

14 Q Did Mr. Anderson get a scholarship?

15 A Yeah.

16 MR. FLAHERTY: No further questions,
17 sir.

18
19 REDIRECT EXAMINATION

20 BY MR. TOCHKA:

21 Q Sir, the only time that you went up with the
22 defendant to New Hampshire in the year 2000 was
23 how many times?

24 A I've only been to New Hampshire with Tanzerius

1 once.

2 Q And on that one time did you ever stay at a hotel
3 room with him?

4 A Like I said, I'm not sure if we stayed at a hotel
5 room.

6 Q And you testified in the grand jury under oath
7 that you did not stay at a hotel room, correct?

8 A I do not remember saying that, no.

9 Q And you gave a statement to the detectives where
10 you told them that you did not stay at a hotel
11 room with the defendant, Tanzerius Anderson?

12 A I do not remember saying no either on that one.

13 MR. TOCHKA: Your Honor, may I be heard
14 at side bar?

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

17 MR. TOCHKA: At this point in time I
18 would move to introduce the grand jury minutes
19 where he states that he did not stay at a hotel
20 and he is repeatedly asked the question. I think
21 it's page twenty.

22 THE COURT: Any response?

23 MR. FLAHERTY: Your Honor, I think his
24 testimony, he's now presently saying he has no

1 memory of what took place at the grand jury. I
2 think that's different from denying his statement
3 at the grand jury.

4 THE COURT: Respectfully, though, we
5 are confusing several different evidentiary
6 protocols. The grand jury minutes can be
7 introduced as substantive evidence or refreshing
8 the witness's memory if his recollection is
9 different. Refreshing his recollection is
10 different from impeaching the witness's
11 testimony. Grand jury testimony can be used to
12 refresh, can be used to impeach, it can also be
13 introduced as substantive evidence. The fact
14 that Mr. Tochka has tried to use all three
15 protocols with respect to this witness does not
16 prevent him from introducing it as substantive
17 evidence unless somebody can bring some authority
18 to my attention on that.

19 MR. FLAHERTY: Your Honor, I would
20 submit that he has attempted to refresh his
21 recollection with it. He's attempted to impeach
22 him with it, and now he's attempting to use it as
23 a prior inconsistent statement. It can't come in
24 substantively as a prior inconsistent statement

1 because it's not subject to the right of
2 confrontation.

3 THE COURT: Commonwealth versus Daye --

4 MR. FLAHERTY: I've read Daye and I
5 point, Your Honor, your attention directly to
6 Daye. In Daye, the witness in that case at trial
7 specifically refused to testify in accordance
8 with the way he testified at the grand jury. In
9 fact, in Daye, that witness testified at trial
10 that he did denied his grand jury testimony and
11 said, no, I never identified him and I don't know
12 that person, I don't know Dennis Daye. In this
13 case, Your Honor, this witness is saying, I
14 remember being at the grand jury, I remember
15 testifying, I'll go with what you have down on
16 paper, I can't remember exactly what my words
17 were, and my memory is not exact as to that.
18 It's a different situation than Daye.

19 THE COURT: Well, I will be happy to
20 review Daye but the three points I made earlier,
21 grand jury can be used any one of three ways.
22 I'll take a look at Daye to see if the questions
23 this witness -- the way the witness has been
24 examined allows him to introduce it as

1 substantive evidence. If you want to argue
2 anything tomorrow on that, you may. Is there
3 anything else?

4 MR. TOCHKA: Other than that I wanted
5 to read the grand jury minutes to the jury.

6 THE COURT: I'm not going to do that
7 until I re-read Daye. Do you have it here?

8 MR. DOOLIN: I have it.

9 THE COURT: Okay. Mr. Flaherty, as I
10 understand your point, it is this, that before
11 grand jury testimony can be used as substantive
12 or probative, it must first be established that
13 the testimony given to the grand jury was
14 inconsistent with trial testimony, and it is your
15 contention, if I understand your argument, that
16 that has not been the testimony of this witness,
17 that he has not given inconsistent trial
18 testimony?

19 MR. FLAHERTY: Well, my --

20 THE COURT: Is that right, sir? The
21 first point of your argument, the grand jury
22 testimony should not be admitted substantively
23 because it is not subject to the right of cross
24 examination and confrontation.

1 MR. FLAHERTY: I understand the holding
2 in Daye and my point with regard to Daye is the
3 circumstances of Daye, the facts in Daye are
4 distinct from this because in Daye, and I would
5 submit that Daye is a very limited, narrow
6 rationale, and that in Daye there was an
7 identifying witness who failed -- not only failed
8 but denied his identification at trial of the
9 defendant. The facts of this case are different.
10 This witness is saying that he does not recall
11 the exact words that he used at the grand jury,
12 and I would suggest that that is very different
13 from Daye.

14 MR. DOOLIN: I would just second my
15 brother, Judge. Mr. Simms has a lack of
16 recollection as opposed to a denial.

17 THE COURT: Let's just deal with this.
18 I think that's a fair point, Mr. Tochka, that,
19 based on the questions you asked him, he did not
20 recall. It has not been established for purposes
21 of introduction for substantive evidence or for
22 any probative value. I will mark them for
23 identification.

24 MR. TOCHKA: Can I explain to the

1 Court, Daye talks about that the witness just
2 can't stand up and say, I don't remember and
3 claim a lack of memory and then the statement
4 does not come in.

5 THE COURT: My observation has to do
6 with the form of your questions which is what I
7 was trying to make some observations about
8 earlier. You posed him questions, do you recall
9 giving this testimony. The issue is not whether
10 he recalls having given the grand jury testimony,
11 his memory on that --

12 MR. TOCHKA: Then I changed it. First,
13 whether or not it refreshed his memory, it
14 doesn't refresh his memory, then I said you said
15 before the grand jury, and he said no, or I don't
16 remember.

17 THE COURT: I would have to go back
18 through the transcript and I will review the
19 exact questions.

20 MR. TOCHKA: I will ask him the
21 question again.

22 THE COURT: You can go through more
23 examination if you want or you can mark it for ID
24 and I will review the transcript, make a ruling

1 on my review of the transcript.

2 MR. TOCHKA: I'm going to ask him the
3 question again.

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

6 BY MR. TOCHKA:

7 Q Sir, let me ask you that question again. You
8 testified before the Suffolk County grand jury,
9 correct?

10 A Correct.

11 Q You testified under oath, correct?

12 A Correct.

13 Q You testified before the Suffolk County grand
14 jury sometime in July of the year 2000, correct?

15 A Correct.

16 Q And you were asked the question before the
17 Suffolk County grand jury: When you turned
18 around, did you come back home? And your answer
19 was yeah, correct?

20 A I'm not sure of the response.

21 Q You were asked the question: Did you stop in any
22 hotel rooms? And you answered no?

23 A I'm not sure of that response either.

24 Q And you were asked the question: And you're

1 certain of that? And you answered yeah?

2 A I'm still not certain of that either.

3 Q And you were asked the question: After going to
4 New Hampshire, at no time did you ever stay in
5 any hotel room up in New Hampshire? And you
6 answered no, correct?

7 A I'm not certain of that either.

8 Q And then you were asked on the next question: At
9 no time have you ever stayed in any hotel rooms
10 with Tanzerius? And your answer was no, not that
11 I can remember, no.

12 Do you remember that question and
13 answer?

14 A I remember the question. I'm not sure if I said
15 no but I remember saying something like I don't
16 know or I don't remember.

17 Q Do you remember being asked the next question:
18 When you say, not that you can remember, is there
19 a time that you think that you stayed in a hotel
20 room with Tanzerius? And your answer was:
21 Nothing I can think of. Correct?

22 A I'm not sure of that response either.

23 MR. TOCHKA: Your Honor, I renew my
24 motion.

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THE COURT: Anything more, counsel?

MR. TOCHKA: No.

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

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

THE COURT: My attention was drawn to a footnote in Daye which says that the witness must recall the underlying event to which a prior statement refers. The witness need not recall making the statement provided there is evidence, such as a grand jury transcript, which we have here, that the statement was made. We leave open the question whether, when the circumstances at trial indicate that the witness is falsifying a lack of memory, a judge may admit the statement as inconsistent with the claim of lack of memory.

So Daye says when a witness at trial has no recollection of the events to which the statement relates, the requirement of an opportunity for meaningful cross examination is not met. So I'm not going to admit it at this time, allow you to read it to the jury. You may mark it for identification and I will give

1 further consideration to it and if I rule it's
2 admissible as probative evidence during the rest
3 of your case, I will reconsider my ruling.

4 Anything more on this? I will order a
5 transcript of this because I do think that it is
6 unclear on various of these issues as to whether
7 or not he is confessing he has a lack of memory
8 about the events, not just whether he has a lack
9 of memory about what he said at the grand jury,
10 but whether he has a lack of memory about what
11 happened back in March, 2000, and I think I need
12 to carefully review the transcript to make those
13 decisions. Anything more in terms of the
14 examination?

15 MR. FLAHERTY: No, Your Honor.

16 MR. TOCHKA: The next witness I
17 intended to call was Detective Paul McLaughlin,
18 to recall Detective Paul McLaughlin in terms of,
19 to impeach this witness as to the statement he
20 made to him.

21 THE COURT: I think you're entitled to
22 do that, sir.

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

1 MR. TOCHKA: Your Honor, at this point
2 in time the Commonwealth would move to have
3 marked for identification purposes the grand jury
4 minutes of Jonathan Simms.

5 (Exhibit L, being grand jury minutes,
6 as described above, was produced and marked for
7 identification.)

8 MR. TOCHKA: I have no further
9 questions.

10 THE COURT: Thank you. You may step
11 down, Mr. Simms.

12 MR. TOCHKA: The Commonwealth would
13 recall Detective Paul McLaughlin.

14
15 PAUL MCLAUGHLIN,
16 recalled as a witness, having been previously
17 duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. TOCHKA:

21 Q Detective McLaughlin, let me ask you about -- you
22 testified that you interviewed the witness,
23 Jonathan Simms, correct?

24 A Yes, I did.

1 Q Did you tape record his interview?

2 A No, I didn't.

3 Q And when you interviewed Mr. Simms -- and, by the
4 way, do you tape record all the interviews that
5 you conduct?

6 A No.

7 Q And did you write a report in connection with
8 your interview of Mr. Simms?

9 A Yes, I did.

10 Q And I show you this two-page report and ask you,
11 is this the report?

12 A Yes, it is.

13 MR. TOCHKA: Your Honor, I ask it be
14 marked for identification purposes.

15 (Exhibit M, being a document, as
16 described above, was produced and marked for
17 identification.)

18 BY MR. TOCHKA:

19 Q Who was present for the interview with Mr. Simms?

20 A Detective Traylor.

21 Q Did you inquire of Mr. Simms as to whether or not
22 he had been to New Hampshire with the defendant,
23 Tanzerius Anderson?

24 A Yes, I had.

1 Q What did he tell you?

2 MR. DOOLIN: Objection.

3 MR. FLAHERTY: Objection.

4 THE COURT: Overruled.

5 A He stated that sometime in the prior two months
6 of that date he had gone to New Hampshire with
7 Mr. Anderson. He stated that they had gone there
8 looking for Tanzerius's cousin and that they
9 couldn't find the cousin but they did end up
10 seeing his Uncle Frank. He stated that they
11 stayed with Uncle Frank for a couple of hours,
12 hung out, and then drove back to Boston. I asked
13 him specifically if they stayed in a hotel that
14 night. He stated that they did not. He was sure
15 that they had driven home and they had not stayed
16 in a hotel.

17 BY MR. TOCHKA:

18 Q Did you ask Mr. Simms whether or not he recalled
19 the events of Monday, March 27, that evening?

20 A Yes, I did.

21 Q And what did he tell you?

22 MR. FLAHERTY: I object.

23 THE COURT: The objection is overruled.

24 A He stated that that was his day off and that he

1 most likely had been with Tee at some time on
2 that day. He stated that he didn't have an exact
3 recollection but that usually when he hung out
4 with Tee, he'd hang out until about ten thirty or
5 eleven o'clock at night.

6 BY MR. TOCHKA:

7 Q And you interviewed him on what day of the week,
8 sir?

9 A I believe that was a Tuesday.

10 Q And the Monday that you were talking to him about
11 was Monday, March 27, which was one week prior to
12 that?

13 A That is correct.

14 MR. TOCHKA: No further questions.

15 MR. DOOLIN: I don't have any questions
16 for Detective McLaughlin.

17 THE COURT: Let me see counsel, please.

18 MR. FLAHERTY: Your Honor, may I
19 inquire?

20 THE COURT: Yes, you may. That's why I
21 need to see you first at side bar.

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

24 THE COURT: Daye requires you to have a

1 voir dire.

2 MR. TOCHKA: I had no idea what the
3 witness was going to say.

4 THE COURT: I just wanted to alert you
5 in case you're going to do that. If you were
6 going to recall Mr. Simms, we need to do a voir
7 dire.

8 MR. DOOLIN: May I just be heard
9 respectfully on Detective McLaughlin's testimony
10 and our objections? Simms has been called to the
11 stand, I suggest, just with the pure purpose of
12 trying to have him impeached with prior
13 statements.

14 THE COURT: You can put all this on the
15 record. I'm going to take a recess after this
16 witness and Mr. Flaherty's cross examination.

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

19
20 CROSS EXAMINATION

21 BY MR. FLAHERTY:

22 Q Detective McLaughlin, when you spoke with
23 Jonathan Simms, did you ask him how many times he
24 had been to New Hampshire with Mr. Anderson?

1 A I believe I asked him if he had ever been to New
2 Hampshire.

3 Q Did you ask him how many times he had been to New
4 Hampshire?

5 A I don't recall if I asked that specifically.

6 MR. FLAHERTY: Okay. Nothing further,
7 Your Honor.

8 THE COURT: Anything more, Mr. Tochka?

9 MR. TOCHKA: Nothing further.

10 THE COURT: Thank you.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Your next witness?

13 MR. TOCHKA: It would be Mr. Harris,
14 Peter Harris.

15 THE COURT: How long, sir?

16 MR. TOCHKA: I'd say approximately two
17 minutes or so.

18 THE COURT: Okay. We'll go until three
19 o'clock.

20

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23

24

PETER HARRIS,

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

3 DIRECT EXAMINATION

4 BY MR. TOCHKA:

5 Q Good afternoon, sir. Please tell us your name.

6 A Peter Harris.

7 Q And, Mr. Harris, do you work?

8 A Yes.

9 Q Where do you work?

10 A Rent-All of Boston.

11 THE COURT: Keep your voice up, please,
12 sir. Speak directly into the mike. It would
13 help a lot.

14 BY MR. TOCHKA:

15 Q And, Mr. Harris, where is Rent-All of Boston?

16 A 1162 Adams Street, Boston.

17 THE COURT: Sir, I'm going to ask you
18 again to keep your voice up, please.

19 BY MR. TOCHKA:

20 Q Sir, what kind of business is Rent-All of Boston?

21 A We are a rental business.

22 Q What do you rent?

23 A Construction equipment.

24 Q And are you part owner of that business?

1 A Yes, I am.

2 Q And who are you part owner with?

3 A Several family members.

4 Q And do you know the defendant, Tanzerius
5 Anderson?

6 A Yes, I do.

7 Q And how do you know him?

8 A As an employee.

9 Q And do you know when he started working for you?

10 A In December of '99.

11 Q And how long did he -- do you know if he worked
12 in January of 2000?

13 A Yes, he did.

14 Q And can you tell us whether or not he worked in
15 February of 2000?

16 A Yes, he did.

17 Q Can you tell us whether he worked in March of
18 2000?

19 A Yes, he did.

20 Q And when was the last time that he worked for
21 your business? When was the last day-- strike
22 that.

23 Let me ask you this. In terms of how
24 an employee -- what are the hours of -- what were

1 the hours of Mr. Anderson back then, back in
2 December to March?

3 A Seven thirty to five o'clock p.m.

4 Q And how was Mr. Anderson required to check in?

5 A He would punch in on the computer using a code
6 that would be just for his name as an individual.

7 Q So it was a time clock?

8 A Yes, computerized time clock.

9 Q And do you have the records with you relative to
10 Mr. Anderson's punching in during the months of
11 December, January, February and March?

12 A Yes, I do.

13 Q And those particular records, sir, who is
14 responsible for keeping those records?

15 A I am.

16 Q And are those records kept in the normal course
17 of business?

18 A Yes, they are.

19 Q And can you tell us the information that's
20 contained in those particular records?

21 Is that information obtained at about
22 the time of the information that's in it, the
23 making of that information?

24 A Yes. It's time stamped as to the actual time

1 that the person enters into the computer system.

2 Q And it's the regular practice of your business to
3 keep those records?

4 A Yes, it is.

5 Q Do you have those records with you today?

6 A Yes, I do.

7 Q May I see those, please? Can you take out the
8 actual records, sir?

9 A (Complying.)

10 MR. TOCHKA: I'd move to introduce
11 these records into evidence.

12 MR. DOOLIN: I don't have any
13 objection.

14 MR. FLAHERTY: No objection, Your
15 Honor.

16 THE COURT: Thank you.

17 (Exhibit No. 34, being records, as
18 described above, were marked and admitted into
19 evidence.)

20 BY MR. TOCHKA:

21 Q Sir, what's been marked as Exhibit 34, do those
22 records indicate the time of December of 1999
23 when the defendant checked into work?

24 A Yes.

1 Q Do they indicate the times when he checked out of
2 work?
3 A Yes.
4 Q And do they also indicate the times that he
5 checked in and out for lunch breaks?
6 A Yes.
7 Q Do they indicate the same as for January,
8 February and March of the year 2000?
9 A Yes.
10 Q Sir, I'm going to show you this. Let me show you
11 this diagram and ask, have you seen this before?
12 A Yes, I have.
13 Q And have you had an opportunity to examine this
14 in the past?
15 A Yes, I have.
16 Q And do these charts and the months that are on
17 these charts accurately reflect the dates, the
18 times that the defendant worked for you during
19 the months of December, January, February and
20 March?
21 A Yes, they do.
22 Q Do they accurately reflect the times that he
23 began work?
24 A Yes.

1 Q And the times that he left work?

2 A Yes, it does.

3 Q And these are based upon the records that you
4 have that have been marked as Exhibit 34,
5 correct?

6 A That is correct.

7 MR. TOCHKA: Your Honor, the
8 Commonwealth would move to introduce this exhibit
9 into evidence.

10 MR. DOOLIN: I have no objection.

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

13 THE COURT: It shall be marked.

14 (Exhibit No. 35, being a chart, as
15 described above, was marked and admitted into
16 evidence.)

17 BY MR. TOCHKA:

18 Q Sir, I'm going to ask you, looking at this, sir,
19 can you tell us for the month of December, what's
20 the latest that the defendant arrived at your
21 work?

22 A Seven twenty-one in the morning.

23 Q For the month of January, what's the latest the
24 defendant arrived to work?

- 1 A Seven twenty-two.
- 2 Q And the month of February, what was the latest
3 that he arrived to work?
- 4 A Seven twenty-two also.
- 5 Q And the month of March, what was the latest that
6 he arrived to work?
- 7 A Eight fifty-four.
- 8 Q And eight fifty-four was what day, sir?
- 9 A March 28.
- 10 Q And that was on Tuesday, is that correct, sir?
- 11 A That's correct.
- 12 Q He's supposed to be at work at what time, sir?
- 13 A By seven thirty.
- 14 Q The following day, sir, on Wednesday, was he
15 responsible for working a full day on that day?
- 16 A Yes, he was.
- 17 Q Did he work a full day, sir, on that day?
- 18 A No, he did not.
- 19 Q What time did he leave, check out on that day,
20 sir?
- 21 A Two fifty-nine in the afternoon.
- 22 Q The following day was Thursday, sir? Do you
23 know, based upon your records, whether or not he
24 worked on Thursday?

1 A No, he did not work on Thursday.

2 Q Was that his day off?

3 A No, it wasn't.

4 Q Do you remember what his day off was?

5 A I don't recall what his day off was scheduled for
6 that week.

7 Q Did he work on Thursday, sir?

8 A No, he did not.

9 Q Did he work on Friday?

10 A No, he did not.

11 Q Did he work on Saturday?

12 A No, he did not.

13 Q After that Wednesday in the afternoon, did you
14 ever see the defendant again?

15 A No, I didn't.

16 Q So from that Wednesday in the afternoon until
17 today, that's the first time you've seen him,
18 correct?

19 A That's correct.

20 Q Did he ever give you any reason as to why he was
21 leaving Wednesday afternoon?

22 A Not that I recall.

23 Q Did he ever show back up in -- back to your work?

24 A No, he did not.

1 Q Sir, based upon the records, did the defendant
2 receive -- -what hours -- how many hours a week
3 did he work?

4 A Probably about an average of about forty-five
5 hours, anywhere from forty to forty-five.

6 Q And on this last week that you saw the defendant
7 in which he worked on that Monday, is that fair
8 to say on the twenty-sixth?

9 A Correct.

10 Q He worked on the twenty-seventh, came in late but
11 he worked until five, correct?

12 A I think the twenty-eighth he came in late.

13 Q Right. He came in late but he worked until what
14 time? What time did he come in on the twenty-
15 eighth and what time did he end work?

16 A He came in at eight fifty-four on the twenty-
17 eighth, left at five oh one.

18 Q And the next day, sir, what time did he come in?

19 A Seven nineteen in the morning.

20 Q What time did he leave?

21 A Two fifty-nine p.m.

22 Q That last week, sir, can you tell the jurors in
23 terms of how the defendant was paid, was he paid
24 in a check or was he paid direct deposit or how

1 was he paid?

2 A That last week was by a check.

3 Q Now, from December, January and February, at some
4 point was he getting direct deposit?

5 A Yes, he was.

6 Q And do you remember when that was?

7 A Typically it starts one to two weeks after the
8 start of employment.

9 Q And was there a reason why that last week -- was
10 his check directly deposited that last week?

11 A Yeah. We hadn't seen him and we held his last
12 check, just basically to turn his uniforms in.

13 Q When you say his uniforms, what type of uniforms
14 did he have?

15 A Jacket, shirt, sweatshirt, that sort of thing.

16 Q Did the defendant ever come to get his check for
17 that last week?

18 A No, he did not.

19 Q Do you know where the defendant lived?

20 A Yes, I do.

21 Q Where did he live?

22 A About a block and a half from the shop. I'm not
23 sure of the exact address but it was very close
24 to the store.

1 Q Sir, do you have the defendant's application when
2 he first came to your job to apply for
3 employment? Do you have the application with
4 you?

5 A No. I know I do not have that with me.

6 Q Do you have other documents with you, sir, in
7 connection with records that you keep relative to
8 the defendant's work records?

9 Sir, let me show you this particular
10 document. Do you recognize what that is?

11 A It's a notice that, to receive a company manual
12 and sexual harassment policy and he understands
13 and read the policy and has no further questions
14 regarding the policies.

15 Q That's just a standard notice that's given to all
16 employees, correct?

17 A That's correct.

18 Q And is that signed?

19 A Yes, it is.

20 Q And whose signature is that on it?

21 A Tanzerius Anderson.

22 Q Is that document kept in the normal course of
23 business by your business, your office?

24 A Yes, it is.

1 Q And those documents, sir, the information that's
2 -- the signature that's put on this, when would
3 that signature be put on that document, sir?

4 A December -- no, November 30, '99.

5 Q And do you know when he began working for you,
6 the defendant?

7 A Shortly thereafter.

8 MR. TOCHKA: Your Honor, at this point
9 I would move to introduce that sheet of paper.

10 THE COURT: Any objection?

11 MR. DOOLIN: Not from me, Your Honor.

12 THE COURT: Mr. Flaherty, is there an
13 objection?

14 MR. FLAHERTY: Just, if I could take a
15 look.

16 THE COURT: You want to see it? Okay.

17 MR. FLAHERTY: No objection, Your
18 Honor.

19 THE COURT: Fine.

20 (Exhibit No. 36, being a document, as
21 described above, was marked and admitted into
22 evidence.)

23 BY MR. TOCHKA:

24 Q And, sir, is this a copy?

1 A Yes, it is.

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

4 THE COURT: Mr. Doolin?

5 MR. DOOLIN: I have no questions, Your
6 Honor.

7 THE COURT: Mr. Flaherty.

8 MR. FLAHERTY: Thank you.

9
10 CROSS EXAMINATION

11 BY MR. FLAHERTY:

12 Q Mr. Anderson worked for you for a year and a
13 half, is that right? About that time?

14 A No, about four months.

15 Q He began in 1999 -- oh, I'm assuming a date
16 earlier. I'm sorry. About four months?

17 A Correct.

18 Q And in that four months' time period you gave him
19 a raise, didn't you?

20 A Correct.

21 Q He was making eight dollars an hour and then in
22 February you bumped him up to nine dollars an
23 hour?

24 A I believe that's correct.

1 Q He got good reviews? He was a good employee, is
2 that fair to say?

3 A Yes, that's fair to say.

4 Q Do you know whether or not after leaving your
5 place of employment, he went to work for Miracle
6 Workers the following week?

7 A I'm not aware of that.

8 Q Do you know whether or not he worked for Local
9 33, the union?

10 A I'm not aware of that.

11 Q And with respect to the employment application --

12 MR. FLAHERTY: May I approach the
13 witness, Your Honor?

14 THE COURT: Yes.

15 BY MR. FLAHERTY:

16 Q Is this the application for employment that you
17 folks use at Rent-All of Boston?

18 A That would be correct.

19 Q Two pages, right?

20 A Yes, it is.

21 Q And that's a record that's maintained in the
22 regular course of business at Rent-All of Boston,
23 right?

24 A Correct.

1 Q Made in good faith, right?

2 A Correct.

3 Q And made at or about the time that the
4 information is placed in there, right?

5 A Correct.

6 Q Prior to this proceeding here?

7 A Correct.

8 MR. FLAHERTY: Okay. Your Honor, I'd
9 move to introduce the application for employment.

10 MR. TOCHKA: No objection.

11 THE COURT: It shall be marked.

12 (Exhibit No. 37, being a document, as
13 described above, was marked and admitted into
14 evidence.)

15 BY MR. FLAHERTY:

16 Q Sir, this exhibit, this calendar, you didn't
17 prepare this, right?

18 A No, I did not.

19 Q This was prepared by the District Attorney's
20 office and then shown to you, is that fair to
21 way?

22 A I would say it would be fair to say.

23 Q Did you ever have an employee who was late for
24 work other than Mr. Anderson?

1 A Sure.

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

4 THE COURT: Anything more, Mr. Tochka?

5 MR. TOCHKA: No further questions.

6 THE COURT: I'm sorry?

7 MR. TOCHKA: I have no further
8 questions.

9 THE COURT: Thank you very much, sir.
10 You may step down.

11 Ladies and gentlemen, we are going to
12 take short recess. Would you leave your notes on
13 your seats, please? Thank you.

14 (Whereupon, the jury was escorted from
15 the courtroom at 2:58 o'clock p.m.)

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

18 THE COURT: You wanted to put something
19 on the record, sir?

20 MR. DOOLIN: I just objected to and I
21 do object to testimony that was put in from Mr.
22 Simms and Mr. McLaughlin. Respectfully, after
23 having heard Mr. Simms' testimony and then the
24 government calling McLaughlin to the stand, I

1 would suggest that the only reason why Simms was
2 called was to impeach him with prior inconsistent
3 statements.

4 On behalf of my client, I object under
5 Commonwealth versus Benoit (phonetic spelling),
6 and I move to strike all of that evidence of Mr.
7 Simms and then the recalling of Detective
8 McLaughlin. I would suggest to the Court that
9 there was no other reason to call him except to
10 try to impeach him with the statements.

11 MR. FLAHERTY: I have just had a chance
12 to look at Benoit myself, Your Honor, and it
13 appears that those two witnesses fall squarely
14 within Benoit and I would also move on behalf of
15 Mr. Anderson the testimony be stricken.

16 THE COURT: Mr. Tochka?

17 MR. TOCHKA: Benoit says if I just call
18 a witness simply for the purposes of impeaching
19 him. I didn't do that. I also called Jonathan
20 Simms with the expectation that he was going to
21 say that he had never gone up to -- that he had
22 gone up to New Hampshire but that they had never
23 stayed --

24 THE COURT: You thought that because he

1 had testified --

2 MR. TOCHKA: Because he had testified
3 before the grand jury and that's why I called
4 him. Once he then did not testify consistently,
5 I then impeached him and then I called Detective
6 McLaughlin to impeach him further so I think it's
7 not a Benoit issue at all.

8 THE COURT: I'm going to, given as a
9 motion to strike, I will deny it. Let's return
10 just momentarily to the Daye issue. Daye does
11 say in a footnote, Mr. Tochka, that before
12 offering a prior inconsistent statement as
13 probative evidence, you should ask for a voir
14 dire during which the witness should be reminded
15 of the circumstances in which the statement was
16 made and given an opportunity to explain the
17 inconsistencies and then I am to rule on the
18 admissibility of the statement. That procedure
19 was not invoked so I don't think I can entertain
20 your request to have it as substantive evidence.

21 I am, however, still going to review --
22 call on the services of our good reporter to see
23 if she can give me a transcript of the direct
24 testimony of Mr. Simms and I will take this up

1 with you again tomorrow after I have had a chance
2 to look at the transcript.

3 MR. TOCHKA: And if I could just
4 respond to that, Your Honor? I would suggest
5 that he was given the opportunity to explain and
6 he said, and that was the point of refreshing his
7 recollection, whether or not it did, he said he
8 did not recall saying that, he did not recall
9 whether or not, he had no memory of that.

10 THE COURT: Daye says it has to be done
11 on a voir dire, sir, which would be in the
12 absence of the jury.

13 MR. TOCHKA: That might be correct,
14 although in all honesty I have seen judges do it
15 exactly the way that it has just been done, the
16 way I have just done it. At this point in time I
17 suggest that does not preclude that statement
18 from coming in because it was not done in the
19 absence of the jury. He did have the opportunity
20 to explain and he did give the explanation and I
21 suggest his explanation is completely incredible,
22 that he had only gone up to New Hampshire one
23 time with this defendant and he cannot recall
24 whether or not he stayed with the defendant in

1 New Hampshire.

2 THE COURT: I am still going to request
3 a copy of the transcript of the direct testimony
4 because I do believe that you read into evidence
5 portions of the grand jury testimony so that we
6 do have to consider -- I have to consider
7 instructing the jury how they may consider those
8 statements and I also need to rule on your
9 request so I'm going to do that first, sir.

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

12 (Whereupon, the proceedings were
13 recessed at 3:04 o'clock p.m., and reconvened at
14 3:10 o'clock p.m.)

15 MR. TOCHKA: The Commonwealth calls
16 Detective Sharon Wong. May I proceed, Your
17 Honor?

18 THE COURT: Yes.

1 SHARON WONG,

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

4 DIRECT EXAMINATION

5 BY MR. TOCHKA:

6 Q Ma'am, could you please identify yourself to the
7 jury?

8 A Yes. Detective Sharon Wong.

9 Q And could you spell your last name?

10 A W-o-n-g.

11 Q And you are a detective with the Boston Police
12 Department?

13 A Yes, I am.

14 Q How long have you been a Boston Police officer?

15 A Going on twenty years this month.

16 Q And where are you currently assigned to?

17 A I'm currently assigned to the Suffolk County
18 District Attorney's office.

19 Q And prior to that where were you assigned?

20 A To the forensic technology division, the
21 identification unit, latent print section.

22 Q And how long did you work in the latent print
23 section?

24 A I have been with -- I was with that unit for

1 about fourteen years.

2 Q Can you tell us, what is a latent print?

3 A A latent print is a hidden print that is left
4 when you touch an object and it's latent and we
5 say it's hidden because latent means hidden.
6 What it is, it has to be developed. You may not
7 be able to see it with your eyes alone.

8 Q And can you tell this jury your training and
9 experience in developing latent prints?

10 A Yes. I have been for the past fourteen years
11 when I was with the unit, your first year it was
12 on the job training. I took several courses and
13 completed them with the FBI, Mass. Criminal
14 Justice and the Identification Association, the -
15 - yes, the Identification Association. What the
16 courses were was basic fingerprinting, latent
17 fingerprinting, advanced fingerprinting, the
18 science of ridgeology. I took a black and white
19 photography course at the School of Photography
20 of New England and then there are various other
21 courses that we constantly were taking during the
22 fourteen years of being there.

23 Q Have you testified as an expert in the past in
24 the area of latent prints?

1 A Yes, I have.

2 Q How many times would you estimate?

3 A I would say it's been over hundreds. I have been
4 qualified in all of the district courts, Superior
5 Court, federal court, which included immigration.

6 Q And you told us what a latent print is, Detective
7 Wong. Can you tell us how a latent print is
8 developed?

9 A A latent print can be developed differently,
10 depending upon the material and the object. If
11 it's paper, it would be done with a chemical
12 nutrient, if it's a metal or wooden object it
13 would be more likely by fuming, a fuming and
14 dusting method.

15 Q And can you tell us the various reasons why a
16 print might be able to be developed versus not
17 being able to be developed?

18 A Basically, I should probably tell you that the
19 way you leave a print is from sweat and oils on
20 your hand. When you touch an object, a print can
21 be left on an object or not left. It depends
22 upon contact. A lot of it has to do with
23 contact. The easiest way to explain it that I
24 like to use is what I call a rubber stamp

1 analogy. If you're familiar with a rubber stamp,
2 you know, if you feel your fingers you can feel a
3 groove. That is your ridge detail in your
4 fingers which is what we call the lines that are
5 going through your fingers which are patterns and
6 characteristics.

7 If you touch an object, just like a
8 rubber stamp, if you took a rubber stamp and pad
9 which is ink, think of that as your object and
10 your rubber stamp as your fingerprint. If you
11 took a finger and touched it on the pad very
12 lightly and then you took that, transferred it to
13 an object and you touched it very lightly with
14 the rubber stamp pad, you're going to get a very
15 light touch which we would call probably
16 insufficient. Now, if you took that rubber stamp
17 and you pressed very hard on your ink pad and
18 then you took it and pressed it very hard on
19 another object, it blots, just like if you were
20 sweating and you touched an object very hard,
21 your fingerprint will be left there but it will
22 be blotchy which becomes insufficient.

23 Now, if you took that rubber stamp and
24 you pressed the stamp, you took the rubber stamp

1 and pressed it on the pad just lightly and
2 touched it evenly or in a good position, it could
3 leave the print, it will leave the same pattern
4 that's on the rubber stamp. So when you think of
5 that and you think of a latent print, that's
6 basically all you're doing, you're transferring
7 your sweat to an object and it has a lot to do
8 with the kind of contact. That's one of the
9 factors.

10 THE COURT: Detective, would you slow
11 down? The court reporter has been at this all
12 day.

13 THE WITNESS: Okay. I'm sorry.

14 A (continued) So it has a lot to do with the
15 contact. Then it would also have a lot to do
16 with the material. If the object is bumpy,
17 you're not going to be able to get anything
18 because you're not touching it smoothly. If an
19 object is smooth, it's usually the best surface
20 and it depends on the material.

21 BY MR. TOCHKA:

22 Q What do you mean, it depends on the material?

23 A If it's a bumpy surface like I said, it's not
24 going to -- you're not going to be able to leave

1 a print. Just as a rubber stamp, if you're
2 touching a rubber stamp with something that's
3 curved, it's very hard to leave a print.

4 Q You said it depends on the object and the
5 smoothness and the like. If I pick up a
6 telephone and put the receiver down, would you be
7 able to develop my prints on that telephone?

8 A It would be possible if you left a good print.
9 You could have touched it too hard, you could
10 have been sweating very heavily, you may not have
11 sweat, your hands could be too oily, and it
12 depends, if you leave a good print. That's the
13 whole thing.

14 Q When you say a good print, can you explain to the
15 jury what you mean by a good print?

16 A Well, a good print, I should say an identifiable
17 print. Just because the print is left on an
18 object doesn't mean it's identifiable.

19 Q Alright. And explain to us what you mean by
20 that.

21 A That would be, I'd have to go into your patterns.
22 Okay? There are only three patterns to a
23 fingerprint. Everybody has fingerprints. We've
24 all heard that no prints are alike, no individual

1 has the same print, but what we all do have is a
2 pattern type. You have a loop, an arch and a
3 whorl. Within those loops, arches and whorls are
4 characteristics, ridge details. They're like
5 valleys. You have valleys and then you have
6 ridges. Those ridges do things like, sometimes
7 they go straight up and they break off like a
8 fork in the road. That's what we call a
9 bifurcation characteristic. Sometimes if you
10 look real closely with a magnifying glass, you'll
11 see these, sometimes a little dot. We call those
12 dots. Then there's like little islands.

13 Those are the characteristics. Those
14 are the things we're looking for. Sometimes you
15 have a ridge that just goes up and ends. It's
16 called an ending ridge. Very simple names for
17 what they do. Those are your characteristics.
18 When you leave a print, an identifiable print has
19 to have characteristics in it that I can make a
20 comparison to an inked print.

21 Q And characteristics, how many characteristics do
22 you need in order to make an identification?

23 A Well, what we call that is points and we have to
24 have a minimum of eight.

1 Q Now, in connection with this case, were you given
2 certain items or asked to test certain items for
3 the possibility of latent prints?

4 A Yes.

5 Q Okay. And why don't we take them one at a time.
6 In terms of, were you asked to attempt to obtain
7 prints from a particular motor vehicle?

8 A Yes.

9 Q And what motor vehicle was that? Do you have a
10 description of that motor vehicle?

11 A Yes. May I look at my papers?

12 Q If that would refresh your memory.

13 A It was a Buick Skylark, license plate number
14 7225GB.

15 Q When did you come in contact with that car?

16 A The car came to the evidence bay on 3/28 of 2000.

17 Q And what's the evidence bay?

18 A The evidence bay is at headquarters. It's a bay
19 where we print all our cars, motor vehicles or
20 large objects.

21 Q And did you attempt to obtain prints from this
22 car?

23 A Yes.

24 Q When was that?

1 A I did that on March 31 of 2000.

2 Q Was there a reason why it goes from the twenty-
3 eighth to the thirty-first that you attempted to
4 do that?

5 A Yes.

6 Q What was the reason?

7 A The motor vehicle was wet.

8 Q What's the effect of the motor vehicle being wet?

9 A Well, we're using a dusting powder and a brush
10 and you can't dust -- you can't get prints off of
11 an object that's wet. You have to let it dry off
12 first.

13 Q The fact that the motor vehicle was wet would
14 that have any impact if anyone were to have left
15 fingerprints on it?

16 A It's possible because prints are very fragile.

17 Q What do you mean?

18 A Prints can be easily wiped off, depends on how
19 they were left. Remember, your prints could be
20 sweat and oil. It can wash off. You take
21 something like a shower or something, wash off,
22 water hitting it, it's very possible because
23 prints are very fragile.

24 Q And what areas of the car did you print?

- 1 A I printed the driver's side door and the
2 passenger door.
- 3 Q And did you find anything when you printed --
4 what were your findings?
- 5 A There was no ridge detail.
- 6 Q And what do you mean by that?
- 7 A That results were negative. I did not find a
8 print or ridge detail to even continue the
9 process.
- 10 Q Did you obtain anything from the car and print
11 it?
- 12 A Yes. There was a water bottle inside the car.
- 13 Q Was there anything else inside the car?
- 14 A No, that's the only thing that was given to me.
- 15 Q What type of method did you use to print that
16 water bottle?
- 17 A Fuming and dusting method.
- 18 Q And what was your finding?
- 19 A The water bottle was insufficient ridge detail --
20 yes, the water bottle was insufficient ridge
21 detail.
- 22 Q And again insufficient ridge detail means what?
- 23 A There is not ridge detail characteristics to
24 compare it to another inked print, a known print.

- 1 Q And can you eliminate anyone as a result of that
2 insufficient ridge detail?
- 3 A No.
- 4 Q And why is that?
- 5 A It's insufficient, you can't do anything with it.
- 6 Q What else did you print in connection with this
7 case?
- 8 A I printed a total of eight items with the water
9 bottle being number one, Capital One Mastercard,
10 Cosco Card, Gold Star membership card, Elipse
11 telephone card, and a plastic card holder, one
12 plastic cigarette lighter, and a metal door
13 handle.
- 14 Q Okay. Now, do you have an order in which you did
15 this printing?
- 16 A Yes, I do.
- 17 Q Okay. We've already done the car and the bottle.
18 What was the next thing that you did?
- 19 A On April 7 I did the plastic bottle and the
20 Capital One Mastercard, the Cosco card, the
21 Eclipse telephone communication card and the card
22 holder on April --
- 23 Q Okay. Why don't we stop there and can you tell
24 us, when you printed those cards that you just

1 referred to -- and are those cards that are in
2 the name of Iman Yazbek?

3 A I think so. Can I --

4 Q If you could look at those.

5 A The Capital One card is the only one that has a
6 name on it.

7 Q And what name is that?

8 A Iman N. Yazbek.

9 Q And the other card, what names are on the other
10 cards?

11 A There are no names. They are just generic cards.

12 Q And what condition did you receive those cards
13 in?

14 A They came to me, they were not in the plastic, of
15 course, and I don't know what you mean when you
16 say condition.

17 Q When you see those cards, were they loose or were
18 they in a bag?

19 A Oh, they were in this.

20 Q What is that?

21 A This is a plastic card holder.

22 Q And did you print those cards?

23 A Yes, I did.

24 Q And what method did you use?

- 1 A I used the fuming and dusting method.
- 2 Q Having done that, what were your findings?
- 3 A On those were no ridge detail.
- 4 Q None at all?
- 5 A None.
- 6 Q What was the next thing you did in connection
7 with this case?
- 8 A A white cigarette lighter.
- 9 Q And what condition was that given to you?
- 10 A Just as -- by itself.
- 11 Q Without being in a bag?
- 12 A Right. I bagged these after they were done.
- 13 Q And what was the method used to print that
14 cigarette lighter?
- 15 A The same method, fuming and dusting.
- 16 Q And what was the result?
- 17 A That was no ridge detail also.
- 18 Q What else did you do next?
- 19 A I did the metal door handle and this is the
20 bottle we were speaking about.
- 21 Q That bottle, you printed that?
- 22 A That's the first, yes.
- 23 Q Now, the metal door handle that you have, can you
24 show it to the jury?

1 A Um-hum.

2 Q That metal handle, did you have information this
3 came from New Hampshire?

4 A Yes. This was given to me by Detective
5 McLaughlin -- well, not to me. It was turned in
6 to our clerk by Detective McLaughlin on 4/13 from
7 New Hampshire.

8 Q And what efforts did you make in terms of trying
9 to identify prints from that?

10 A I fumed and dusted it.

11 Q What were your results having fumed and dusted
12 it?

13 A That was negative, no ridge detail.

14 Q No ridge detail?

15 A Yes.

16 Q What was the next item that you looked at?

17 A I had, there were two items, actually they're
18 lifts. They're what we call hinged lifts.

19 Q Explain to the jury what a hinged lift is.

20 A These are what we use, detectives would use to
21 lift fingerprints. I have to let you know this
22 is a transparent topping and this part sticks
23 onto this. These came from New Hampshire. The
24 black background, we don't use this in Boston.

1 Q What do you mean you don't use this in Boston.

2 A Boston detectives use clear transparent lifts.

3 Q What's the reason for that?

4 A You get a better result. This you would have to
5 -- you can't see the results. It's totally --we
6 haven't used these in, God, I don't know how
7 long.

8 Q Did you look at those lifts from New Hampshire?
9 Did you attempt to obtain fingerprints from them?

10 A Well, the lifts are taken supposedly -- are
11 supposed to be used to lift a latent off of an
12 object. What I did was, I looked to see if there
13 was any latent on here. On lift number one there
14 was no ridge detail, no ridge detail to lift.
15 Number two -- no, I have number two, I'm sorry,
16 was no ridge detail. Lift number one was
17 insufficient ridge detail.

18 Q And what does that mean, insufficient ridge
19 detail?

20 A There is not enough to say it was anyone. You
21 can't identify it.

22 Q You can't include or exclude anybody?

23 A Exactly.

24 Q Did you test anything else?

1 A No, that's it.

2 MR. TOCHKA: Thank you. I have no
3 further questions.

4 THE COURT: Thank you. Mr. Doolin?

5

6 CROSS EXAMINATION

7 BY MR. DOOLIN:

8 Q Detective Wong, your testimony is that in March
9 of 2000 that you were working for the
10 identification unit, is that right?

11 A Yes.

12 Q And on March 28 of 2000, do you recall whether
13 you were working that day?

14 A Yes, I was.

15 Q Were you ever called to 89 Faneuil Street?

16 A No, I was not.

17 Q To your knowledge was anybody from your office,
18 from the identification unit who has training in
19 fingerprinting called to 89 Faneuil Street to
20 fingerprint any areas of that building over
21 there?

22 A Not to my knowledge.

23 Q What time did your day start when you were
24 working at that time in the latent print section

1 of the identification unit?

2 A Seven thirty a.m.

3 Q So at seven thirty a.m. and thereafter you would
4 have been working on March 28, is that right?

5 A Yes.

6 Q Where was your headquarters at that time?

7 A One Schroeder Plaza.

8 Q And your testimony is that there are certain
9 things that were turned over to you in this case,
10 is that right?

11 A Yes.

12 Q And your testimony is that at some point in time
13 you came to make an examination of a Buick
14 Skylark, is that right?

15 A Yes.

16 Q And your testimony is that on March 28 you came
17 into custody or your unit came into custody of
18 the Skylark, is that right?

19 A Yes.

20 Q And that you, yourself, printed it, I think you
21 said on direct examination, on March 31, is that
22 right?

23 A Yes.

24 Q Now, you've also testified that you fingerprinted

1 some other objects from the case, some credit
2 cards, a water bottle, and some items from New
3 Hampshire along with a cigarette lighter. Is
4 that correct?

5 A Yes.

6 Q And on those other items, the credit cards, the
7 cigarette lighter, the items from New Hampshire,
8 it's fair to say that you wrote a report of your
9 examination and results, is that right?

10 A Yes, I did.

11 Q Did you write any report of your examination and
12 results of the Buick Skylark?

13 A No, I did not.

14 Q The areas of the Buick Skylark that you examined,
15 it's fair to say that that would be the driver's
16 side door, is that right?

17 A Yes.

18 Q Was that the outer door or the inner door?

19 A Outer.

20 Q Did you examine the inner door at all?

21 A No, I did not.

22 Q The passenger door, is that the front passenger
23 door?

24 A It is, yes. It was the side.

1 Q And the passenger door, did you examine the outer
2 part of it only?
3 A Yes.
4 Q You did not examine the inner part, is that
5 right?
6 A No, I did not.
7 Q Did you examine the dash?
8 A No, I did not do anything inside.
9 Q Didn't do the steering wheel, is that right?
10 A Correct.
11 Q You didn't do anything else within the car, is
12 that right?
13 A Correct.
14 Q Did you examine at all the hood of the car? The
15 front of the car at all?
16 A No, I did not.
17 Q Did you examine the back of the car, the trunk
18 area of the car?
19 A No, I did not.
20 Q You had that car for three days, is that right?
21 A From the twenty-eighth to the thirty-first, yes.
22 Q Then it was released from your department on
23 April 3, is that right?
24 A I believe that's when it was released.

1 Q And during that time that it was with your unit,
2 it's fair to say that the only things you
3 examined on the car were the outer driver's door
4 and the outer passenger's door, is that right?

5 A I have to correct myself there. When you say
6 examine. I did not process. I did an overview.
7 That you have to do.

8 Q Did you process it though?

9 A No, I didn't process, if that's what you mean
10 when you say examine.

11 Q Yes. Did you examine anything else within the
12 car except for the water bottle?

13 A The water bottle is the only thing that was
14 taken.

15 Q Did you make any notations of other objects that
16 may have been in that car?

17 A No, I did not.

18 Q Did you do an inventory of what was in that car?

19 A No, I did not.

20 Q Do you know what location within the car the
21 water bottle was?

22 A It was in the front.

23 Q Was it in the driver's side or the passenger's
24 side?

1 A It was on the side, the passenger's side near the
2 hump.

3 Q And now the examination of the car, it's fair to
4 say that even through this day, as we're here in
5 March of 2002, you still haven't written a report
6 on that?

7 A No, I did not.

8 Q The other objects that you talked about in this
9 case that you examined which would be the water
10 bottle, the cards, the cigarette lighter and the
11 material from New Hampshire, it's fair to say
12 that your testimony is that you examined those
13 sometime in the year 2000, is that right?

14 A Yes. I have the dates that they were examined.
15 April 7 of 2000 and April 13 of 2000.

16 Q When did you write your report of your
17 examination of those items?

18 A The actual report that was given to the homicide
19 sergeant, I wrote it March 14, 2002.

20 Q Two weeks ago, is that correct?

21 A Yes.

22 Q On an examination that was done two years ago, is
23 that your testimony?

24 A That's what I usually do. I don't usually write

1 a report until the case is going to trial because
2 I have my notes so --

3 Q So your testimony --

4 MR. TOCHKA: Objection. If she could
5 be allowed to finish her answer.

6 THE COURT: Did you finish your answer?

7 THE WITNESS: No, I did not.

8 THE COURT: Go ahead.

9 BY MR. DOOLIN:

10 Q Your usual practice --

11 THE COURT: Sir, if she could finish
12 her answer.

13 A (continued) I write my reports when the case is
14 going to trial. I have all my paperwork, my
15 notes, for my report for the motor vehicle.
16 That's what was stated here, the report for the
17 motor vehicle, I was using the regular receipt.

18 BY MR. DOOLIN:

19 Q So the notes that you have are receipts?

20 A Yes.

21 Q And on the receipt that you're talking about,
22 what notes are you referring to on that receipt?

23 A I wrote down the time, the day that I did it, and
24 what happened to it, the results -- I'm sorry.

1 It's stated here, water bottle, 4/7.

2 Q No. As to the car. I'm sorry.

3 A Oh. Says right here what I did, latent prints,
4 driver's side door, passenger door, and I took
5 the bottle from the inside. What I normally do
6 is --

7 Q Wait a minute. Is there any note on that, ma'am,
8 about your examination of it?

9 A No.

10 Q Is there any note about the results of it?

11 A No.

12 Q And your testimony is that you received some
13 cards, is that right?

14 A Car or cards?

15 Q Cards, credit cards or cards of that nature, is
16 that right?

17 A Yes.

18 Q And your testimony, who did you receive those
19 from?

20 A Those I received from the evidence bay, the
21 evidence room.

22 Q Who in the evidence room?

23 A Well, you have to understand how the system is
24 done.

1 Q My question to you, do you know who in the
2 evidence room.

3 A There is no one in the evidence room. The
4 evidence comes to our clerk which is Mary
5 Cristoff. She puts the evidence on my shelf. I
6 pull it off my shelf. So actually I physically
7 walk into the evidence room and I pull it off.
8 So nobody gives it to me. The detectives or
9 officers bring the evidence to her, she puts it
10 in the computer, she makes a receipt, and then it
11 goes into the bay, whoever's case it is.

12 Q So this came to you from Mary Cristoff, is that
13 right?

14 A Well, she did not hand it to me if that's what
15 you mean.

16 Q Did anybody hand it to you?

17 A No. I just explained to you how it's done.
18 Would you like me to do it again?

19 Q No. My question to you is, maybe you can
20 explain, did anybody hand it to you?

21 MR. TOCHKA: Objection.

22 A No.

23 MR. TOCHKA: Withdrawn.

24 BY MR. DOOLIN:

1 Q And now it's your testimony that those cards that
2 you talked about, you examined those in April of
3 2000, is that right?

4 A I examined those, the cards were done on April 7
5 of 2000.

6 Q Okay. And your testimony also is that other than
7 the lighter, the car, the cards, the items from
8 New Hampshire and the water bottle, did you
9 examine any other items in this case?

10 A What I examined -- yes, you're correct. The
11 water bottle, the eight items here.

12 Q At any point in time were you asked to examine a
13 pair of eyeglasses?

14 A I don't have any eyeglasses on my list.

15 Q Did you examine a lens from an eyeglass?

16 A I don't have it on the list of evidence received.

17 Q Did you examine a set of keys?

18 A They're not on the list, sir.

19 Q So it's fair to say that the items that you
20 examined, Detective Wong, are the items that are
21 given to you and processed through your unit, is
22 that right?

23 A Yes.

24 Q And you yourself have never been to the scene at

1 89 Faneuil Street in connection with this case,
2 is that right?

3 A Correct.

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

6 THE COURT: Thank you. Mr. Flaherty?

7 MR. FLAHERTY: May I inquire?
8

9 CROSS EXAMINATION

10 BY MR. FLAHERTY:

11 Q Detective Wong, my name is Timothy Flaherty. I
12 represent Tanzerius Anderson.

13 If I ask you any questions you don't
14 understand, please let me know and I will try to
15 rephrase it. Okay?

16 A Sure.

17 Q Your analogy with the rubber stamp doesn't really
18 apply to latent prints, does it?

19 A It's a good analogy towards a latent print for
20 someone who has no idea how a latent print is
21 lifted and how the contact is made. I find it to
22 be very helpful.

23 Q Now, are you familiar with the algorithmic study
24 that was conducted by Donald Zezic (phonetic

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spelling)?

A No, I'm not.

Q You're not familiar with the fifty thousand by fifty thousand study?

A No, I'm not.

Q You don't know that Donald Zezic at Lockheed-Martin informational systems, there is a fellow -- do you know what statistics -- do you know what AFIS stands for?

A AFIS, yes.

Q And would you tell us what it stands for?

A It's the Automatic Fingerprint Identification System.

Q Okay. Do you know that Donald Zezic is the one who developed it?

A I can't recall if that's who developed it or not.

Q And do you know that -- well, Zezic, it's in fifty thousand by fifty thousand. Do you know that he used latent prints, the average size of a latent print to develop the uniqueness of the fingerprints?

MR. TOCHKA: Objection.

THE COURT: Counsel, may I see you at side bar?

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

3 THE COURT: Grounds for the objection?

4 MR. TOCHKA: It's not been shown that
5 this witness is aware of that particular
6 treatise.

7 MR. FLAHERTY: She testified as an
8 expert in fingerprint analysis, Judge. This is
9 the fellow who developed AFIS.

10 THE COURT: The issue, the grounds for
11 the objection that Mr. Tochka has raised is, for
12 cross examination a treatise can be used but it
13 first has to be established that she has
14 familiarity with it, relies on it as an
15 authority, and recognizes it in her field.

16 MR. FLAHERTY: Okay.

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

19 BY MR. FLAHERTY:

20 Q Detective Wong, you received training in
21 fingerprint identification, right?

22 A Yes, I did.

23 Q You took a basic fingerprint class that was
24 sponsored by the Mass. Criminal Justice Training

1 Council, right?

2 A Yes, I did.

3 Q You took a basic fingerprint classification class
4 that was also sponsored by the Mass. Criminal
5 Justice Training Council, right?

6 A Yes, I did.

7 Q And you took an advance latent fingerprint
8 techniques class, right?

9 A Yes.

10 Q And then you took the advanced ridgeology course
11 that was sponsored by the International
12 Association for Identification, right?

13 A Yes. That's the science of ridgeology.

14 Q At any of those times, in any of those
15 discussions, did you talk about Donald Zezic, the
16 algorithmist?

17 A If we did, I don't recall it at this time because
18 it's not something that I used to do latent print
19 work so I honestly -- I don't recall.

20 Q Would you agree with me that the average side of
21 a latent print is twenty-one percent of the
22 print?

23 A I'm sorry. Would you explain that?

24 Q Are you familiar with the phrase, the bowler pad?

1 A Yes.

2 Q That means the whole print on the finger, right?

3 A Right.

4 Q That's the bowler pad?

5 A Yes.

6 Q Would you agree with me that in studies of latent
7 prints like this algorithmic test, would you
8 agree with me that the latent prints that they
9 use to show the uniqueness of prints is twenty-
10 one percent of the print?

11 A No, I can't agree with you. I am not really
12 familiar with that and if I was trained on that,
13 I'm really not recalling that because that hasn't
14 really anything to do with basically what I'm
15 doing. I'm looking for latent prints and my
16 concentration is more on the science of trying to
17 find a print than reading about the history of
18 the print.

19 Q Well, let me ask you this then, see if you agree
20 with this.

21 Would you agree with me, in your
22 fourteen years as a member of the identification
23 unit of the Boston Police crime laboratory, now
24 assigned to the Suffolk County District

1 Attorney's office, that of all those thousands of
2 latent prints that you've examined, most of them
3 are only a fraction of a full print?

4 A Oh, definitely, sir. I would also make the
5 correction, sir. I never said I worked for the
6 crime lab.

7 Q Oh, I'm sorry. I thought -- were you assigned to
8 the crime lab?

9 A Never. Never mentioned I worked for the crime
10 lab or ever assigned to the crime lab.

11 Q Well, you'd agree with me that those thousands of
12 latent prints that you've looked at are always a
13 fraction of the print, of the bowler pad, right?

14 A Sure. What you're saying in layman's terms is
15 that's your partial print which is what I was
16 saying exactly as far as insufficient ridge
17 detail, insufficient print. What you're
18 basically saying is, you're using terminology
19 that we probably never use because with our
20 training and our background experience, learning
21 about Lockheed was not important to us. We were
22 more concerned about finding and identifying the
23 right print and making sure that it was to the
24 right person, not basically the history of latent

1 prints. Yes, I can show and talk to you about
2 the history of prints but it's not relevant to
3 basically what I'm doing.

4 Q Actually, Detective Wong, the point I was trying
5 to make is, that light touch by the rubber stamp,
6 isn't that always what a latent print is in your
7 experience?

8 A What do you mean when you say, isn't that always
9 what --

10 Q You used the analogy of a rubber stamp, right?

11 A Yes, and it's just --

12 Q Isn't it --

13 A -- that, an analogy.

14 THE COURT: Please do not interrupt
15 each other.

16 MR. FLAHERTY: If I may pose a --

17 THE WITNESS: I'm sorry.

18 MR. FLAHERTY: -- question to the
19 witness?

20 THE WITNESS: I apologize.

21 THE COURT: Please wait for the
22 question, Detective, and you wait for the answer.

23 MR. FLAHERTY: Yes, ma'am.

24 BY MR. FLAHERTY:

1 Q And you said that if sometimes a rubber stamp is
2 just applied lightly, maybe you wouldn't get much
3 of a print. That makes it difficult to identify,
4 right?

5 A Well, I think you're taking -- I'm using an
6 analogy. I am trying to show to the jury that
7 for someone who has absolutely no background in
8 prints, I'm trying to make it easier for you to
9 understand. Before I understood about prints, I
10 always found that the rubber stamp analogy was,
11 wow, this is kind of easy, I can understand how a
12 latent print is left. It takes away the terms
13 which -- why would I go into terms which you may
14 not understand.

15 A latent print, using the rubber stamp
16 analogy, I find personally to be one of the best
17 ways to explain to a lay person how a latent
18 print could be left. Maybe you disagree but
19 that's your opinion and that's fine, but that's
20 the analogy I like to use because I've always
21 felt it was very easy to understand.

22 Q Detective Wong, isn't it true that when you use
23 the analogy of a light touch by a rubber stamp,
24 that's almost always what a latent print is in

1 your experience? A partial print?

2 A No, I couldn't say. I couldn't say always. I
3 would never say always.

4 Q Almost always? A latent --

5 A I wouldn't say that.

6 Q -- is a partial print?

7 A Every print is different. Every print is left a
8 different way. I couldn't say that.

9 Q Would you agree that every individual has unique
10 prints?

11 A Yes, I agree with you that every individual has
12 unique prints.

13 Q Would you agree that every individual, in and of
14 itself, his fingerprints are unique, meaning that
15 no individual has two prints on his hands that
16 are unique -- are the same?

17 A Yes.

18 Q Would you agree with me that the prints are
19 permanent?

20 A Yes, to a point.

21 Q Well, the only way that they change is with a
22 significant injury. A cut with --

23 A Yes.

24 Q -- scarring, right?

1 A Scarring, right.

2 Q And you would agree with me that prints are
3 formed prenatally, right? In the fetus?

4 A Yes.

5 Q You'd agree with me that they begin to form maybe
6 in like, I'd say -- well, you tell me. In the
7 seventh or tenth or ninth --

8 A They say between the seventh to the ninth,
9 twelfth, it could be fully developed. That's
10 what we're taught.

11 Q And those are the lines and patterns that we
12 refer to as friction ridges, right?

13 A Yes, ridge details.

14 Q Okay. And those friction ridges are fully
15 developed after fourteen months prenatally,
16 before a person is born, right?

17 A Yes.

18 Q And they never change after that?

19 A No, they don't.

20 Q And do you understand how friction ridges are
21 formed?

22 A Yes. They're the epidermis of the skin.

23 Q Epidermis of the dermis come together and the
24 cells form the friction ridges that grow outside

1 the hand, right?

2 A Yes.

3 Q And you are familiar, are you not, with the
4 acronym ACE-V?

5 A No, I'm not.

6 Q Your training in basic fingerprints, advanced
7 prints and advanced ridgeology, you've never
8 heard the acronym, ACE-V, A-C-E, dash V?

9 A Not that I can recall.

10 Q Well, would you agree with me then that ACE-V --
11 or does this refresh your recollection that ACE-
12 V, the acronym stands for the analysis,
13 comparison, evaluation and verification of
14 prints?

15 A Yes, but we seldom use it when I'm doing my work
16 so it doesn't -- I don't use that terminology.
17 I'm sorry.

18 Q Well, do you compare -- do you do an analysis,
19 comparison, evaluation and verification when you
20 look at prints?

21 A Sure, exactly.

22 Q Would you tell us what you do by analysis? What
23 exactly --

24 A Look at the print --

1 Q -- do you do?

2 A -- as I stated when I looked at the problem, do
3 the general analysis. That simply is examining
4 the object --

5 THE COURT: Detective, slow down.

6 A (continued) It's examining the object to see
7 with our own eyes. Without using a magnifying
8 glass, you visualize to see if you see anything.
9 Then you get a magnifying glass and you examine
10 the object and it's a continuation.

11 Q When you examine the object, what exactly are you
12 looking for in the analysis stage?

13 A You're looking to see if there's a print, if
14 there is enough ridge detail to identify the
15 print.

16 Q Well, isn't it true that analysis, first you're
17 looking at the overall pattern to see if --

18 A Exactly.

19 Q -- to see if it's an arch, a loop or a whorl?

20 A That comes naturally. I mean, if you want me to
21 sit down and go back to fourteen years of
22 breaking down of how I did basic fingerprints,
23 yes, we could do that, but when I'm looking at an
24 object to print for a case, I don't sit there and

1 go, this is the A, B, C, dash, dash, dash. I am
2 going to do my work by examining my object. That
3 is book study. I am doing the basic work which
4 is examining the object, looking for the print.

5 I already know what a pattern is. I
6 already know what an arch and a whorl is, so I
7 don't have to do each one of those steps. You
8 can go right to the object. You can go right to
9 examining it. You can go right to the methods
10 that I'm going to choose to use to develop that
11 object. Why would I sit -- I mean, I'm not
12 asking a question, but I would not sit and do an
13 analysis of, is this an arch or a whorl because I
14 know what it is after looking at it.

15 Q Detective Wong, it's not what I want. I'm just
16 trying to ask you questions about what you did so
17 we're clear. Okay?

18 A Okay. You're not asking me what I did. You
19 won't let --

20 Q There's no question --

21 A -- me tell you --

22 Q -- Detective Wong --

23 A -- what I did.

24 Q Detective Wong, we'll get there, okay? We'll get

1 there.

2 A Alright.

3 Q Alright? Are you telling the jury that you don't
4 do the analysis, comparison, evaluation,
5 verification?

6 MR. TOCHKA: Objection.

7 BY MR. FLAHERTY:

8 Q Do you do something different than ACE-V.

9 THE COURT: She may answer that.

10 A Yes. What I'm telling you is that when I get my
11 object, I examine the object for latent prints.
12 That way, when I look at it -- basically, when
13 you have an object and it has ridge detail, it's
14 not always an arch, whorl or loop. You don't
15 know what it is. It's what --

16 BY MR. FLAHERTY:

17 Q Is there another pattern --

18 MR. TOCHKA: Objection --

19 MR. FLAHERTY: -- besides arch, whorl,
20 loop?

21 MR. TOCHKA: Objection, if she could
22 finish her answer?

23 THE COURT: One moment, please. Let
24 her finish her answer. Have you finished,

1 Detective?

2 THE WITNESS: No.

3 THE COURT: Would you, please?

4 A (continued) What I'm looking for, when you have
5 a latent print, a latent print, as you mentioned
6 before, is not always a full print so you may not
7 know if it's a loop, arch or whorl. What you're
8 looking at characteristics. You're examining it.
9 Once you look, you see you have ridge detail,
10 then you determine which method you're going to
11 use. Then you do the method you're going to use
12 which in this case I used the fuming and dusting
13 method. Then I process that way. The fuming and
14 dusting method will bring out the print, will
15 develop the print. Therefore, then I go back and
16 I look and I do another examination. What you're
17 asking me, I believe, is, do I go by your
18 acronym, the ACE-V, no, I don't.

19 BY MR. FLAHERTY:

20 Q Does the FBI?

21 A I'm not an FBI agent. I cannot tell you the way
22 the FBI does their latent print. I was taught to
23 do my print as I just told you.

24 Q Did you testify that you went to some classes

1 sponsored by the FBI?

2 A Yes, we did. Basic latent fingerprints was in
3 conjunction with the Mass. Criminal Justice and
4 it was taught by Charles Walsh of the FBI.

5 Q And did Charles Walsh of the FBI explain to you
6 the acronym of ACE-V and tell you that the FBI
7 agents use it when they do their latent and known
8 fingerprint comparison in a scientific way?

9 A He may have, fourteen years ago, yes.

10 Q You don't recall it today?

11 A I don't recall it today, no, I don't.

12 Q Did you recall it when you did the examinations
13 in this case?

14 A No, I did not give it a thought in this case.

15 Q You mentioned points, right?

16 A Yes.

17 Q Points in comparison, is that right?

18 A Yes.

19 Q And aren't those properly called Galton points?

20 G-a-l-t-o-n?

21 A If you want to use the book term, yes, you may
22 call them that. You can also call them points.

23 Q Is the book term the right term? The accurate
24 term? The one you were trained on?

1 A Well, yes, that's the term that they may have
2 used in the book and they also call them points
3 in that book.

4 Q Do you know that the FBI has a quality assurance
5 plan, a twelve point quality assurance plan?

6 A The FBI, I believe, has changed. Each department
7 is different. Our department is eight points.
8 If we cannot get a minimum of eight points we
9 won't go further.

10 Q Do you know the United Kingdom has a sixteen-
11 point quality assurance plan?

12 MR. DOOLIN: Objection, Your Honor.

13 THE COURT: I'll see you at side bar,
14 please.

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

17 THE COURT: Mr. Flaherty, you're
18 getting argumentative with the witness, number
19 one. Number two, sir, the information you're
20 incorporating in your questions is suggesting to
21 the jury facts which -- information that I don't
22 think is going to be put before the jury. You
23 don't have an expert coming in, do you?

24 MR. FLAHERTY: I'm asking her if she

1 knows. She can say yes or no. The question is
2 not evidence.

3 THE COURT: Nor was your question about
4 the FBI's number of ridge points which they have
5 abandoned so I think that any question you ask,
6 sir, has to be either from an authority in some
7 way, not from Judge Pollack's decision,
8 respectfully, and do you have a basis for --

9 MR. FLAHERTY: My basis, respectfully,
10 Your Honor, my basis is this witness is
11 testifying as an expert in the area of
12 fingerprint comparison. She's testifying and she
13 put before this jury that the methods used by the
14 New Hampshire, Conway police department, were not
15 up to date so I think I have a right to test her
16 knowledge on what's up to date and what's not,
17 Judge.

18 THE COURT: You certainly can do that,
19 sir, but is there a treatise you're using, you
20 can refer to when you're asking these questions?
21 The jury will not know if it comes from some
22 reliable source.

23 MR. FLAHERTY: Your Honor, again,
24 questions are not evidence. I'm seeing whether

1 or not this witness knows and I think it's well
2 established facts, frankly.

3 THE COURT: What's your basis for
4 saying that the FBI uses twelve points as it's
5 minimum?

6 MR. FLAHERTY: What's my basis for --

7 THE COURT: What's your authority for
8 it?

9 MR. FLAHERTY: My training and
10 experience with fingerprint examinations, Your
11 Honor.

12 THE COURT: On that basis, sir, I'm
13 going to strike the question. You are not an
14 expert here. You can't testify as an expert.

15 MR. FLAHERTY: I'm not testifying as an
16 expert.

17 THE COURT: You can use any treatise,
18 any book that she recognizes as an authority for
19 cross examination. That's absolutely
20 permissible.

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

23 BY MR. FLAHERTY:

24 Q Detective Wong, you have three options, do you

1 not, when you make an evaluation of a print?

2 Right?

3 A What are you speaking of, sir? I'm sorry. Three
4 options? What three options?

5 Q When you make a comparison of a latent to a known
6 print, you have three options, right?

7 A I'm not following you when you say I have three
8 options.

9 Q You can say that the latent print absolutely is
10 the known print, right?

11 A Oh, you mean comparison?

12 Q Yes.

13 A When I'm comparing a print?

14 Q Yes.

15 A Yes. It's either sufficient ridge detail,
16 insufficient ridge detail, or no ridge detail
17 before I make the comparison. When I'm making
18 the comparison, I'm looking for points.

19 Q Well, when you compare a latent print to a known
20 print, can't you say it's the print, it's not the
21 print, or I have no idea?

22 A Not until you will have done the counts and the
23 points.

24 Q Assuming you've done the counts and the points,

1 you have your three options, right? It is, it
2 isn't or I don't know, right?

3 A It's an identifiable print and you can compare
4 it, yes, or it's not identifiable, or you don't -
5 - it's unidentifiable means that it is not
6 identifiable, as simple as that.

7 Q Right. Meaning it could be mine, right?

8 A Yes.

9 Q And the level of detail that you've testified to,
10 whether there's a whorl pattern, loop pattern and
11 an arch pattern?

12 A There's only three patterns to a fingerprint,
13 there are loops, arches and whorls.

14 Q There's more closely identified patterns that you
15 could look at, though? You mentioned those
16 bifurcations and islands, right?

17 A Those are called characteristics.

18 Q Right. Level two detail?

19 A We call them characteristics.

20 Q Did you ever hear of level three detail?

21 A We use the term, that was back in basic
22 fingerprinting. The terminology that we use are
23 characteristics. There are three patterns, loop,
24 arches and whorls. Then there are

1 characteristics. Your characteristics, as I said
2 before, are bifurcations, ending ridges, dots,
3 islands, and -- yes, bifurcations. Those are
4 your characteristics.

5 Q What about sweat pores? Did you ever learn about
6 that in your training?

7 A Yes.

8 Q And isn't that --

9 A That's not a characteristic.

10 Q Well, isn't it a level of detail that you can
11 detect when you make an examination?

12 A Yes, it is.

13 Q You've been trained in that --

14 A Yes, it is.

15 Q -- right?

16 A Yes. It's where you have -- when you're looking
17 at a latent print, the sweat pores can leave
18 dots. Those are not -- they're details but
19 they're not what we call characteristics.
20 Characteristics are what I call.

21 Q Uh-huh. But you're familiar that comparison can
22 be made by sweat glands?

23 A Sure.

24 Q Okay. Now, in this case you wrote a report

1 March 15, 2002, right?

2 A Yes.

3 Q And you testified you referred to some notes. Do
4 you have your notes with you today?

5 A Yes, I do.

6 Q Could I see those, please?

7 A You sure may.

8 Q Now, the notes that you have here are latent
9 print evidence receipts, right?

10 A Yes, they are.

11 Q You have a couple of check marks next to them?

12 A Um-hum.

13 Q You testified that at some point you were
14 directed to the bay area at Schroeder Plaza to
15 look at a Buick Skylark, right?

16 A Yes.

17 Q Now, it's fair to say in your report dated March
18 15, 2001, you never mentioned the Buick Skylark
19 in the items that you examined, right?

20 A No, I didn't.

21 Q But it's your testimony that you did examine the
22 Buick Skylark, right?

23 A Yes, I did.

24 Q Only the exterior of the Buick Skylark?

- 1 A Yes.
- 2 Q You waited for it to dry because the exterior was
3 wet and you couldn't apply powder to it in order
4 to see if there were any latent prints left,
5 right?
- 6 A Yes.
- 7 Q The interior of the car was not wet, right?
- 8 A No.
- 9 Q The steering wheel was not wet?
- 10 A Not that I recall.
- 11 Q The radio and the dial was not wet?
- 12 A No.
- 13 Q The interior door handles were not wet?
- 14 A Not that I know.
- 15 Q And incidentally, on March 28, 2000, you never
16 went to 89 Faneuil Street, right?
- 17 A I was not called to -- well, 85 Faneuil Street,
18 no. I was not called there.
- 19 Q And there was no, as far as you know, known
20 person called out from your unit to print
21 anything, any location, any door or anything in
22 that location as far as you know, right?
- 23 A Correct.
- 24 Q When you tested some of the items you used a

1 fuming, right?

2 A I used cyanoacrylate fuming, yes.

3 Q Cyanoacrylate?

4 A Um-hum.

5 Q There's other items that can be used, right?

6 Aren't there other chemicals?

7 A On this particular -- the fuming and dusting
8 method was the best and that would be for this
9 material.

10 Q Now, you've heard of Ardox florescent dye, right?

11 A Yes.

12 Q You have heard of Hungarian red, right?

13 A Yes.

14 Q You have heard of black amido powder, right?

15 A Yes.

16 Q You have heard of leuco crystal violet, right?

17 A Yes.

18 Q And all of those things illuminate prints, right?

19 A Yes.

20 Q None used in this case?

21 A Those, well, first of all, we don't use the dyes.

22 The dyes are very dangerous to handle and those

23 other methods were not the methods that would be

24 best for this object -- for the particular object

1 that I tested.

2 Q And, incidentally, anything you tested, none of
3 it was submitted to the FBI for analysis after
4 your review, right?

5 A Why? We don't submit things to the FBI.

6 Q Who checks your work, Detective Wong?

7 A If there is a print found, it's verified by
8 another latent print examiner.

9 Q What if you make an examination and you determine
10 there is no sufficient ridge, friction ridge.

11 Does anybody check your work on that?

12 A No, they don't.

13 Q So it ends with you?

14 A It does.

15 Q Detective Wong, did you photograph the Buick
16 Skylark, the areas that you applied powder to?

17 A No, I did not.

18 Q Did you photograph where the water bottle was
19 found in the Buick Skylark?

20 A I took no photographs.

21 Q You took a photography class, right?

22 A Yes, I did.

23 Q Did you photograph how the window of the Buick
24 Skylark appeared when you examined it in the bay?

- 1 A I took no photographs of the motor vehicle at
2 all.
- 3 Q Did you take a law enforcement instructors
4 course?
- 5 A Yes, I did.
- 6 Q And in your law enforcement instructor course,
7 were you taught and did you learn about the
8 collection of and preservation of evidence?
- 9 A Had nothing to do with crime scenes.
- 10 Q Did you take a crime scene collection and
11 preservation of evidence class?
- 12 A Yes, I did.
- 13 Q Did they talk about photographing evidence when
14 you make an analysis?
- 15 A When I make an analysis? Yes, it does.
- 16 Q Did you make an analysis in this case?
- 17 A I found no ridge detail so I did not take any
18 photos. The identification unit may have taken
19 photos. We have a photo unit who does that. I
20 take photographs when I find a print. I found
21 nothing on the motor vehicle so I took no
22 photographs.
- 23 Q Did you make an analysis of the motor vehicle?
- 24 A Are we going back to explaining -- when you say

1 analysis, was there a pattern on the motor
2 vehicle?

3 Q I'm using your term, ma'am.

4 A Analysis, is that what you mean?

5 Q Did you make an analysis?

6 A I examined the motor vehicle.

7 Q Did you photograph your examination of the motor
8 vehicle?

9 A I explained to you earlier, I did not take any
10 photographs of the motor vehicle. There were no
11 latent prints on the motor vehicle to photograph
12 so I took no photographs.

13 Q You have a latent print evidence receipt and you
14 identified that as item one in the report you
15 wrote two weeks ago, right?

16 A Yes. Well, you took my receipt so I can't look
17 at them.

18 Q And that's the water bottle?

19 A Yes.

20 Q You identify that as item number one?

21 A Yes.

22 Q And did you apply powder to the water bottle?

23 A I used a fume and dusting method which is using
24 the fume and dusting method which is using the

1 fume which is cyanoacrylate and then dusting
2 afterwards, yes.

3 Q And did you photograph the results after you--

4 A No. The way, what we photograph is when we find
5 an identifiable print, then we will photograph.
6 If it's insufficient ridge detail or no ridge
7 detail, we do not photograph it. I did not
8 photograph it.

9 Q Detective Wong, when you say insufficient ridge
10 detail, what you're really saying is that there
11 is some ridge detail here, right?

12 A Yes.

13 Q Did you photograph the some ridge detail that you
14 found?

15 A The ridge detail that was found on the water
16 bottle was not enough to do anything with it. It
17 was not identifiable. It was insufficient.

18 Q And that's in your opinion, not verified by
19 anyone else, right?

20 A Yes, it is.

21 Q Because item number two that you referred to, the
22 plastic Capital One Mastercard, you write, no
23 ridge detail developed.

24 That's different from insufficient

1 ridge detail, right?

2 A Yes, it is.

3 Q And you didn't photograph that, right?

4 A No ridge detail means exactly that, there's no
5 ridge detail, none at all.

6 Q You used the same method? Didn't use the
7 Hungarian red test, right?

8 A Hungarian red is not used on objects of this sort
9 so I would not use it so I would not use --
10 Hungarian red is very dangerous to use to your
11 skin. The best method we use and we find the
12 safest method. We try to do our work the best
13 that we can without hurting ourselves. Hungarian
14 red, amido black and all those are very dangerous
15 and carcinogenic. So is the black powder. When
16 we can find a method that is very good to use and
17 has always been useful, we stick with it.

18 The fume/dust method is the best method
19 that I find to use to develop prints and it's the
20 safest method and it's still not safe because
21 you're inhaling glue, so when you're talking
22 about those other methods, you're talking about
23 amido black, those are very dangerous chemicals
24 to use. We like to be safe and do a good job,

1 the best job using the fuming and dusting method
2 and it's the safest.

3 Q How many years did you work at the Boston City
4 Hospital?

5 A I've never worked at the Boston City Hospital.

6 Q Did you work as a lab tech in one of the
7 hospitals here?

8 A No, I never did.

9 Q You didn't?

10 A No, I did not, sir.

11 Q Did you, in your training did you learn about
12 rubber gloves, putting rubber gloves on?

13 A Yes, sir.

14 Q Do you wear rubber gloves when you do your
15 examination?

16 A All the time.

17 Q Do you know the state police and the FBI use
18 Hungarian red and black amido powder?

19 A They can use whatever they choose to use. We
20 choose to use the fuming and dusting method.

21 It's the safest method and it has been proven to
22 work well with us.

23 Q Now, items two, three, four and five, the plastic
24 cards and a plastic card holder, you write no

1 ridge detail in your report, right?

2 A Um-hum. Yes, I did.

3 Q Item number six, cigarette lighter, also no ridge
4 detail, right?

5 A Yes.

6 Q Again not photographed, right?

7 A Yes, you're correct.

8 Q April 13 you received two items, two two by four
9 lifts and a black metal door handle, right?

10 A Correct.

11 Q And incidentally, the three, four and five, the
12 credit cards, you have in your latent print
13 receipt, 85 Faneuil, right?

14 A That's what it says there.

15 Q Okay. You didn't make that entry though, right?

16 A No, I did not.

17 Q The two items that you received, you knew these
18 came from New Hampshire, right?

19 A Yes.

20 Q You knew that they were processed by a detective
21 in the Conway Police Department, right?

22 A Yes.

23 Q And you made an independent examination, right?

24 A Yes.

1 Q Did you speak with the detective about the
2 findings?

3 A No, I did not.

4 Q Did you review the detective's reports about his
5 findings?

6 A No, I did not.

7 Q Did you review the detective's notes about his
8 findings?

9 A No, I did not.

10 MR. TOCHKA: Objection, Your Honor.

11 Could I be heard at side bar?

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

14 MR. TOCHKA: I would like to object.

15 That is misleading.

16 THE COURT: Keep your voice down.

17 MR. TOCHKA: That is misleading. There
18 were no findings by any detectives suggesting to
19 this jury that New Hampshire police made findings
20 in connection with this case and Mr. Flaherty
21 knows that.

22 MR. FLAHERTY: She is an expert
23 witness, Judge. I'll have her look at them right
24 now and ask her if it changes her opinion one way

1 or the other.

2 THE COURT: Sir, unless you are going
3 to have those people come in --

4 MR. FLAHERTY: I'm calling them
5 tonight. I can ask her whether or not she
6 reviewed them.

7 THE COURT: What are you showing her?

8 MR. FLAHERTY: Let me direct your
9 attention to item number 010.

10 THE COURT: Not what's on this. What
11 is it that you are showing her?

12 MR. FLAHERTY: That is a police report,
13 Conway Police Department, division of
14 investigation office, dated April 1, 2000, to
15 Nathaniel Burkes, from Detective Dicey. In item
16 number ten, I'm going to ask her -- she
17 identified these as being taken from New
18 Hampshire, Detective Traylor, latent prints, door
19 handle, and item number ten it says in
20 handwriting, partial thumb print inside storm
21 door.

22 THE COURT: And who is the -- unless
23 the person who prepared that report is coming to
24 testify, you may not present her with this.

1 MR. FLAHERTY: I can't ask her whether
2 or not she reviewed the reports?

3 THE COURT: What basis is there for
4 asking that question, sir?

5 MR. FLAHERTY: Because her opinion,
6 Judge, was that there is insufficient ridge
7 detail.

8 THE COURT: If you're going to call
9 this witness, sir, to say that he performed tests
10 and did findings or came to a different
11 conclusion, you certainly may do that and
12 certainly an expert can base his opinion on
13 hearsay, but what you are showing her is not
14 something she based her opinion on. It's
15 something that somebody else did who is not going
16 to come to testify. That's rank hearsay.

17 MR. FLAHERTY: I understand. I
18 understand it's rank hearsay, Judge, but it's
19 also proper cross examination for an expert
20 witness who is rendering an opinion in the court
21 based on her examination and a defendant should
22 be entitled to examine her as to what exactly she
23 did in coming to her conclusions.

24 THE COURT: Nobody is saying you can't

1 do that, sir, but the questions you asked, you're
2 telling me you're not calling any person --

3 MR. FLAHERTY: I'm not saying that,
4 Judge.

5 THE COURT: Well, unless you are going
6 to represent it right here to me now, sir, I'm
7 going to exclude these questions.

8 MR. FLAHERTY: If I can get Lieutenant
9 -- I spoke to Sergeant Detective Coleman prior to
10 the witness testifying and is it my intention to
11 call him depending on the cross examination of
12 Detective Wong, based upon her testimony?
13 Absolutely.

14 MR. TOCHKA: There is not any finding.
15 It's a lieutenant who is writing down a list of
16 things. This is a list of things including a
17 list of things that he took from the crime scene
18 that he says are numbered. That's not a finding,
19 I suggest, that New Hampshire looked at the
20 print.

21 THE COURT: The objection is going to
22 be sustained to those questions, sir.

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

1 BY MR. FLAHERTY:

2 Q As I understood it, Detective Wong, you reviewed
3 no reports and you had no conversation with
4 anyone from New Hampshire relative to items seven
5 and eight in your report dated March 15, 2002,
6 right?

7 A Correct.

8 Q You received those items from Detective Traylor,
9 right?

10 A Sir, I received them. Like I explained to you
11 before, from the evidence it states here that
12 they were submitted by Paul McLaughlin, received
13 by Mary Cristoff and assigned to me.

14 Q As I understand it, it's placed in your bay or on
15 your shelf?

16 A Yes.

17 Q Is the evidence locked up?

18 A Yes.

19 Q And you unlock it, take it out, and make an
20 examination, is that right?

21 A Yes.

22 Q When was your examination conducted on those two
23 items?

24 A It's dated 4/13/2000.

1 Q And what was identified by you in your report as
2 item number seven, two two by four lifts,
3 correct?

4 A Um-hum.

5 Q And a lift is a process by which a latent print
6 is taken from a scene and brought somewhere else
7 for identification, right?

8 A Yes.

9 Q And you have in front of you what I think you
10 referred to as a photographic form?

11 A No, I said a hinged lift.

12 Q A hinged lift?

13 A Yes.

14 Q Okay. And correct me if I'm wrong but I think
15 your testimony on direct examination was, God, I
16 don't know how long ago we used these, right?

17 A Yes. What I don't know -- what I said was the
18 hinged lift with backing, Boston no longer uses
19 these. I've never used them and what we use is
20 similar to this, it's a hinged lift, but it's
21 transparent. If you take this top of the lift
22 off, that's the sticky part, that's the part,
23 this lift opens up like this and the sticky part
24 you put onto the object and you lift it like this

1 and you put it on the backing. This black is
2 just the backing which you can see. It's very
3 difficult to examine. They haven't been -- these
4 are obsolete. We use the transparent and that's
5 what I said.

6 Q Do you use a microscope when you do your
7 examinations?

8 A We use magnifying glasses.

9 Q Do you use a stereo microscope?

10 A We use magnifying glasses.

11 Q Are they hand held?

12 A We have all different sizes in the office. We
13 have the stand-up ones and then we have little
14 ones, yes, sir. We have the eyepieces, we have
15 the magnifying that goes directly onto the
16 latent.

17 Q What kind did you use when you examined item
18 number seven?

19 A I used the hand, the one that goes on top and I
20 don't -- I cannot give you the name of it.

21 Q Now, you write that there is insufficient ridge
22 detail for positive identification, right?

23 A Yes.

24 Q That means that there is ridge detail on that

1 lift, correct?

2 A Yes.

3 Q So the lift, the process by lifting the lift was
4 good enough to pick up the latent, right?

5 A No.

6 Q Well, there is a latent print on there, isn't
7 there?

8 A No. There is what we call insufficient ridge
9 detail. It's insufficient. It's so minute.
10 There is not -- I do not put there is no ridge
11 detail because there is somewhat of a ridge
12 detail when you had a magnifying glass. I don't
13 have any opinion -- you could see that there are
14 ridges there but the ridges are minute. On this
15 there is absolutely nothing. So there is a
16 difference. This is no ridge detail, this has
17 insufficient ridge detail. Insufficient is the
18 terminology that I use when there's something
19 there but there is not enough.

20 Q Did you see sweat pores or sweat glands on the
21 ridge detail?

22 A No. There is not enough of anything on this as
23 far as ridge detail. There is insufficient ridge
24 detail.

1 Q Now, the process of latent fingerprint
2 examination is entirely subjective, isn't it?

3 A Well, it depends on what you're saying. I mean,
4 if --

5 Q Well, I'm saying, Detective Wong, that it is your
6 opinion that it is insufficient ridge detail,
7 right?

8 A Well, I would say that if you had someone here
9 from the defense that wants to look at this, that
10 they could look at it and they would say the same
11 so you could bring in another latent print
12 person, yes, if you chose to, and they would give
13 you the same information. You can't make
14 sufficient ridge detail out of insufficient ridge
15 detail.

16 Q Is that the same thing? Well, you haven't talked
17 to the New Hampshire police department people,
18 right?

19 A No, I have not.

20 Q So you have no idea what their conclusions are,
21 do you?

22 A If they are latent print examiners and they
23 looked at this, they would say it was
24 insufficient ridge detail. There is no way you

1 can say this is sufficient ridge detail.

2 Q Well, that's your opinion, right?

3 A Okay, yes. That's my opinion but, like I said,
4 you can get another opinion.

5 Q Now, item number eight, that's a metal door
6 handle, right?

7 A Yes, it is.

8 Q And on item number eight it's your opinion, is it
9 not, that there is no ridge detail developed,
10 right?

11 A Correct.

12 Q No ridge detail whatsoever?

13 A Correct.

14 Q And again you used the fuming method, right?

15 A Yes, I did.

16 Q And you didn't photograph it, right?

17 A No, I did not.

18 Q And you have not spoken to or examined anything
19 with respect to Lieutenant Dicey from the New
20 Hampshire, Conway Police Department?

21 A I did not speak to him, no.

22 Q You received some prints in the process of this
23 investigation termed elimination prints, right?

24 A I did not receive them.

1 Q You did not receive any elimination prints?

2 A They go to Mary Cristoff, the clerk. If you look
3 at my evidence, it's not -- examination,
4 elimination prints --

5 Q I'll ask a question in a second, Detective. You
6 know Detective McLaughlin from the homicide unit,
7 right?

8 A Yes, I do.

9 Q And as far as you know he knows you, right?

10 A Um-hum.

11 Q I just ask you to take a look at this report and
12 look at me when you have had an opportunity to
13 look at it.

14 A Yes.

15 Q Does it refresh your recollection as to whether
16 or not you received some elimination prints?

17 A Yes.

18 Q And do you presently now recall receiving
19 elimination prints to examine in the case?

20 A Okay. Would you let me explain?

21 Q Do you presently recall receiving elimination
22 prints to examine in the case? Yes or no.

23 A Myself?

24 Q Do you presently recall --

1 A No, I don't.

2 Q Did you ever receive elimination prints to make
3 an examination in this case?

4 A There are -- I personally didn't receive them.
5 The elimination prints were submitted.

6 Q Detective Wong, please --

7 MR. TOCHKA: Objection, Your Honor.

8 THE COURT: Let her finish her answer,
9 sir.

10 A (continued) You have to understand, the way they
11 are sent in to us, elimination prints are not
12 what goes on to the evidence sheet. The
13 elimination prints are separate. If I find a
14 print that needs to be compared, if I have
15 sufficient ridge detail then I will go on with my
16 processing. If I have sufficient ridge detail, I
17 will then reach out for my elimination prints. I
18 don't go to the elimination prints unless I have
19 a print to compare. Elimination prints are used
20 only when you have sufficient ridge detail and
21 you're going to start making comparisons. We put
22 the elimination prints to the side. Those are
23 things we don't worry about until we finish our
24 examination and our processing.

1 BY MR. FLAHERTY:

2 Q And again, the fact that you made no comparison
3 of anyone's prints against what was submitted to
4 you, the lifts, the items, is because you formed
5 the opinion there was insufficient ridge detail,
6 right?

7 A Exactly. I had nothing to compare. You're
8 absolutely right.

9 Q And your opinion of insufficient ridge detail was
10 verified by no one within the Boston Police
11 Department, correct?

12 A It's not an opinion, sir. It's my examination
13 and what I found and what was developed. There
14 was no ridge detail developed on any of the items
15 that I received to make a comparison.

16 Q It's not your opinion that it's insufficient
17 ridge detail, Detective Wong?

18 A It's not an opinion. I looked and it's not
19 there. It's not there. It's not an opinion.

20 Q Let's be clear. When you looked, you saw ridge
21 detail --

22 MR. TOCHKA: Objection to the
23 argumentative nature.

24 THE COURT: You are getting

1 argumentative, sir. Another question, please.

2 BY MR. FLAHERTY:

3 Q When you looked at the item, specifically item
4 number seven and item number one, the first lift
5 and the water bottle, you write in your report,
6 insufficient ridge detail, right?

7 A Yes.

8 Q Which means you saw something, right?

9 A Yes.

10 Q And after seeing something you then decided by
11 yourself that it was insufficient, correct?

12 A Based on my knowledge and my training and my
13 experience as a latent print expert examiner.
14 Let me change that, latent print examiner. My
15 process in the examination, there was
16 insufficient ridge detail for further
17 determination. It's unidentifiable. You cannot
18 identify. You cannot go any further. When it's
19 insufficient, there was not enough ridge detail
20 to go any further to get a second opinion.

21 Q A second opinion?

22 A That's what you want me to say. You want to
23 know, did I go to someone else. No, I did not
24 because there was not enough ridge detail to go

1 to anyone else. It was insufficient. That ended
2 my process. When it's insufficient ridge detail
3 or no ridge detail, there is no sense on going --
4 that's the end of the processing. There is
5 nothing else to process. It's insufficient, no
6 ridge detail.

7 Q Detective Wong, you'd agree with me, would you
8 not, that although you cannot make an inclusion
9 and identification, right, you can make an
10 exclusion, right?

11 A No.

12 Q No?

13 A Not if it's insufficient ridge detail. You
14 cannot do anything with -- if there is no ridge
15 detail, you have nothing to include or exclude.
16 There is nothing, nothing. No ridge detail means
17 exactly that, no ridge detail.

18 THE COURT: Counsel --

19 MR. FLAHERTY: Last question, Judge.

20 BY MR. FLAHERTY:

21 Q I agree, and no ridge detail is different from
22 your opinion of insufficient ridge detail?

23 A No, it's not.

24 Q Would you agree with me, Detective Wong --

1 A It's not my opinion, sir. No ridge detail means
2 no ridge detail. Insufficient means just what
3 the word says, insufficient ridge detail. It's
4 not an opinion, sir. It's no ridge detail,
5 insufficient ridge detail.

6 MR. FLAHERTY: No further questions for
7 the witness, Your Honor.

8 THE COURT: Anything more, Mr. Tochka?

9 MR. TOCHKA: Just one question.
10

11 REDIRECT EXAMINATION

12 BY MR. TOCHKA:

13 Q Just with respect to the items that you have in
14 this box. They were fumed using what?

15 A The fuming and dusting method using
16 cyanoacrylate. Do you want me to spell it?

17 Q And that fuming is still on those particular
18 items, right?

19 A Yes, it is.

20 Q So anyone can take a look at these, an expert
21 could take a look at these, another expert and
22 make their own opinion as well?

23 MR. DOOLIN: Your Honor, I object.

24 A Yes, they could.

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MR. DOOLIN: Objection, Your Honor.

MR. TOCHKA: No further questions.

THE COURT: Thank you, Detective Wong.
You may step down.

THE WITNESS: Thank you.

THE COURT: May I see counsel, please?
(Whereupon, a discussion occurred off
the record at side bar.)

THE COURT: Ladies and gentlemen, thank
you very much for your patience with us today. I
can tell you this, you will not be getting the
case tomorrow for consideration. We had
anticipated that would be so but it is not going
to be. Tomorrow I will be able to tell you more but
at a minimum I do think we will be able to move
to the conclusion of the evidence and we will
know tomorrow more what the schedule looks like
with respect to concluding the case; that is,
giving it to you for your consideration.

After the close of the evidence you
will recall that, when I had given you an outline
of the order of events in the trial before we
began, that after the evidence has been
presented, that is, all the witnesses have

1 testified and all the exhibits have been
2 introduced, that we then listen to closing
3 arguments which are made on behalf of all the
4 parties, both defendants and the Commonwealth,
5 and then I must instruct you on the law. That
6 portion of the case will take probably almost a
7 full day to do given the case and what has to be
8 explained to you. So I'm hoping that that will
9 be done on Thursday. I'll tell you definitely
10 tomorrow if that's the case.

11 So I just wanted to alert you that we
12 will not be getting the case to you tomorrow.
13 I'm going to ask that you come tomorrow at nine
14 thirty tomorrow and we'll use whatever portion of
15 the day we need to get the evidence in.

16 So thank you again. Please continue to
17 observe the instructions about not discussing the
18 case, consulting any outside source, or returning
19 to the scenes about which you saw on the view.
20 Please leave your notes on your seats.

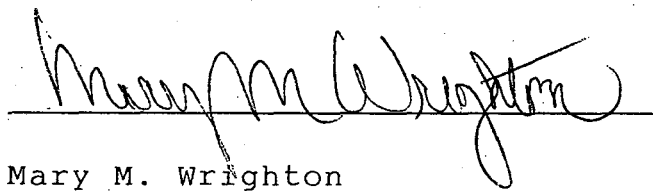
21 We'll see you tomorrow at nine thirty.

22 Thank you.

23 (Whereupon, the proceedings were
24 adjourned at 4:24 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 244, is a complete, accurate and true record of my stenographic notes as taken by me in the above mentioned matter to the best of my skill and ability.


Mary M. Wrighton