

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

* * * * *

COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL
DAY SEVEN

JASON ROBINSON
TANZERIUS ANDERSON

* * * * *

TRANSCRIPT OF PROCEEDINGS

BEFORE: ROUSE, J

APPEARANCES:

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

MICHAEL DOOLIN, Esquire, for Defendant Robinson

TIMOTHY FLAHERTY, Esquire, for Defendant Anderson

March 27, 2002
Boston, Massachusetts

Mary M. Wrighton
Official Court Reporter

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1 (Whereupon, the proceedings were
2 reconvened at 9:59 o'clock a.m., without the
3 jury.)

4 THE COURT: Counsel, please.

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

7 THE COURT: For the record on Heather
8 Coady?

9 MR. TOCHKA: I spoke with Mr. Freedman
10 last night. He told me that she was being sent
11 to a psychiatric unit for observations for three
12 days, that she would be in the psychiatric unit
13 and therefore she is unavailable and, as a
14 result, I'm just going forward with the witnesses
15 I have and I don't intend to call her. It's my
16 understanding she is unavailable plus my
17 understanding from Mr. Freedman was that she
18 would exercise her Fifth Amendment rights before
19 this Court and, rather than delaying the jury,
20 asking this Court to delay the jury when I
21 honestly don't believe I would have an
22 opportunity for over a week to bring her back,
23 not knowing whether or not she would still be in
24 a condition to be able to testify in a week, I'm

1 proceeding with the witnesses I do have.

2 THE COURT: Does that mean that your
3 intimidation of a witness indictment is going to
4 be -- that would mean that the intimidation
5 indictment would be dismissed or --

6 MR. TOCHKA: Would be dismissed as well
7 as the indictment, I believe it charges him with
8 armed robbery with a knife since Heather Coady
9 would have testified to that.

10 THE COURT: Okay. Yes, sir?

11 MR. FLAHERTY: I think, Judge,
12 procedurally, mustn't the Court entertain a
13 required finding of not guilty as to those
14 indictments since each of the defendants has been
15 placed in jeopardy on those indictments?

16 THE COURT: I don't know. We can
17 discuss that later. If you have any authority, I
18 don't know, I'm happy to consider that, sir, if
19 you have something for me to look at.

20 MR. FLAHERTY: There is one matter that
21 I wanted to bring to the Court's attention.
22 There is a card. Last night, speaking with Ana
23 Culgini, the mother of Joleena Tate, she gave me
24 a card that Joleena Tate had mailed to her on

1 March 16 with certain statements that I would
2 argue are her intention, go to her intention, and
3 bias, motive, and prejudice with respect to her
4 trial testimony. So I would seek to introduce
5 this, authenticate it through the mother, and
6 introduce it. I gave it to Mr. Tochka and
7 Detective Coleman, if the Court would like to
8 take a look at it before ruling on it.

9 THE COURT: Not now, sir. It wouldn't
10 be until your case --

11 MR. FLAHERTY: Right. I just wanted to
12 bring it to the Court's attention.

13 MR. TOCHKA: The other question, Your
14 Honor, whether the Court would allow me to call
15 Detective Devane who visited Heather Coady in the
16 hospital and put on the record before the jury
17 simply that he went to the hospital yesterday, to
18 St. Elizabeth's Hospital, and he spoke with
19 Heather Coady and he had a conversation with her
20 at St. Elizabeth's Hospital, not what the
21 conversation was, and simply that's it, only
22 because I mentioned her in my opening and I don't
23 want this jury to speculate that she's
24 unavailable -- I don't know.

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THE COURT: She is unavailable.

MR. TOCHKA: Right. I don't want the jury to speculate as to why I have not called her.

THE COURT: Well, I don't think so, sir, is the short answer because I analogize it to a witness invoking the Fifth Amendment privilege. It's not permissible to put the witness on before the jury for the purposes of having the witness found unavailable due to the invocation of the privilege. I don't know of any case which is exactly analogous. If there is something -- it seems to me I could, in the charge, address that by some instruction along the lines of -- I'd want to think about it but I would consider putting something in the instructions so that no party would be -- it would be taken out of the jury's realm of speculation, at a minimum.

MR. TOCHKA: That's fine. If the Court would do that, then I'd appreciate that.

THE COURT: Okay. The court reporter did type up a transcript of the direct and redirect of Jonathan Simms and I've reviewed it

1 and, based on my review of it, I'm not going to
2 allow the written testimony, the grand jury, the
3 transcript, to go in as probative evidence.

4 Mr. Simms' surprising lack of memory
5 about almost everything including the underlying
6 events as well as statements he made to the grand
7 jury, you did, in connection with your
8 examination on some instances attempt to refresh
9 his recollection with the transcript. His
10 recollection in the main wasn't refreshed. I
11 think there are a couple of instances where it
12 was refreshed and, of course, then his answers
13 would be substantive on that. The other
14 occasions when you asked him to recall the
15 underlying event in the grand jury testimony, he
16 was unable to do that. You did, with respect to
17 your questions, use the questions and answers
18 that were given by him in the grand jury and
19 those essentially you went through unobjected to.

20 So I'm going to leave the transcript as
21 it is. I'm not going to instruct the jury that
22 they may use the grand jury testimony as
23 probative. I will, however, say that because at
24 our conferences you were suggesting to me that he

1 was -- is it fair to say, that you believe he was
2 falsifying his memory, sir?

3 MR. TOCHKA: Yes.

4 THE COURT: His lack of memory. Okay.
5 Well, based on that and my observations of his
6 demeanor, there are probably grounds to conclude
7 that, although I make no opinion about that, only
8 for the purpose of saying that that would allow
9 you then -- it's an open question as to whether
10 that would allow you then to argue the
11 inconsistencies between trial testimony and grand
12 jury testimony, but I do think that this is
13 certainly a case where you should be permitted to
14 argue at least that the grand jury testimony was
15 inconsistent with his trial testimony, even
16 though on many of these issues he had a lack of
17 memory.

18 MR. TOCHKA: On two points, Your Honor,
19 with respect to that. I believe it's
20 Commonwealth versus Seriano (phonetic spelling)
21 that talks about when a witness feigns a lack of
22 memory, this court, for purposes of Daye, can
23 admit that testimony.

24 THE COURT: That's what I did -- oh,

1 for probative value?

2 MR. TOCHKA: I believe it's for
3 probative value as well.

4 THE COURT: If you give me a cite, I'm
5 happy to look at it but the point is, sir, it's
6 in there.

7 MR. TOCHKA: But then to my second
8 point --

9 THE COURT: I'm not allowing it to go
10 to the jury in writing.

11 MR. TOCHKA: -- since the Court then
12 instructs the jury the questions are not
13 evidence, I simply put the question to him and
14 then therefore, didn't you say before the grand
15 jury, no, you had not gone to the hotel, and this
16 Court's instruction to the jury, the questions
17 aren't evidence, the jury would be instructed
18 that that question, they could not consider that
19 as evidence, his inconsistent statements unless
20 his grand jury minutes went in. The Court could
21 just instruct them they are being offered only
22 for the purposes of impeachment, not for
23 probative value.

24 THE COURT: I will consider that, if

1 you would give me a cite about including that in
2 my instructions. Off the record for a moment.

3 (Whereupon, a discussion occurred off
4 the record at side bar.)

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

7 THE COURT: Any exhibits which have
8 been given identification letters, I will give
9 counsel an opportunity to argue to me based on
10 the evidence whether they should be admitted or
11 not and if there are any appropriate redactions,
12 we can make those. That goes for both you and
13 the defendants.

14 MR. TOCHKA: I want to make sure when
15 the Court wants me to do it. Before I rest?

16 THE COURT: Let's do it at the end.
17 We'll clean it all up. Okay.

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

20 THE COURT: May I have the jurors,
21 please?

22 (Whereupon, the jury was escorted into
23 the courtroom at 10:10 o'clock a.m.)

24 THE COURT: Ladies and gentlemen, I'd

1 like to welcome you back. We're ready to move
2 into the final presentation of the evidence. We
3 thank you for your continued attention with us.

4 Before we do that, however, again I
5 just ask whether there is any juror who has not
6 complied with any instruction I've given
7 including not discussing the case, consulting any
8 outside source, or visiting any of the sites that
9 we saw on the view. If you have not so complied,
10 would you raise a hand, please? Thank you very
11 much. The record should reflect no juror has.

12 Mr. Tochka?

13 MR. TOCHKA: Thank you, Your Honor.
14 The Commonwealth would call Christine Stevens.
15 May I proceed, Your Honor?

16 THE COURT: You may, sir.

17 MR. TOCHKA: Thank you.

18
19 CHRISTINE STEVENS,
20 called as a witness, being first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. TOCHKA:

24 Q Ma'am, would you please introduce yourself?

1 A Yes. My name is Christine Stevens. That's
2 S-t-e-v-e-n-s.

3 Q What is your occupation?

4 A I am a senior criminalist at the Boston Police
5 crime laboratory.

6 Q And where are your offices located?

7 A We are at One Schroeder Plaza.

8 Q How long have you been with the Boston Police?

9 A I have been with the Boston Police since 1995.

10 Q Are you a civilian or a police officer?

11 A I'm a civilian.

12 Q When you tell us you are a senior criminalist,
13 can you tell us something about your background
14 and training to become a senior criminalist?

15 A Yes. I started as a medical technologist. I
16 have twenty-five years of clinical laboratory
17 experience. I am a registered medical
18 technologist through the American Medical
19 Technologists Society, and then I transferred to
20 the crime lab in 1995. I transferred as a
21 forensic technologist and became a criminalist in
22 1997 and subsequently a senior criminalist in
23 1999.

24 Q And what are your duties and responsibilities,

- 1 Ms. Stevens, as a senior criminalist?
- 2 A As a senior criminalist, I have supervisory
3 duties and administrative duties. My section is
4 serology which is blood and body fluids and I
5 supervise the serology section of the laboratory.
6 I also go to crime scenes and write reports,
7 examine items of physical evidence, do
8 comparisons, identify body fluids, and present
9 those findings in court.
- 10 Q When you say do comparisons, what do you mean?
- 11 A Comparison testing on identification of blood and
12 unknown evidence samples to known referenced
13 samples.
- 14 Q Okay. Now, in connection with this case -- well,
15 let me ask you, before I get to this case, is it
16 a standard operating procedure for individuals in
17 the crime lab -- how many individuals are there
18 in the crime lab, actually?
- 19 A We have approximately fourteen people in the
20 crime laboratory.
- 21 Q And is it the duty -- is it a standard operating
22 procedure for individuals in the crime lab to go
23 to every crime scene in the City of Boston?
- 24 A No.

1 Q Is it the standard operating procedure for
2 individuals in the crime lab to go to every
3 homicide scene in the City of Boston?

4 A No.

5 Q When is it that individuals from the crime lab
6 will go out to a crime scene, any crime scene?

7 A We go to crime scenes at the request of the
8 investigator.

9 Q And in connection with this case, did you have
10 occasion to go to the crime scene at 89 Faneuil
11 Street back in March of the year 2000?

12 A Yes.

13 Q And at whose request did you go?

14 A Sergeant Coleman from homicide.

15 Q Do you recall about what time you got there?

16 A Yes. I arrived at the scene at approximately
17 seven forty-five in the morning.

18 Q And when you went out there, did you go out there
19 with another individual from the crime lab?

20 A Yes. I responded with Susan Coyne. She is a
21 criminalist in the laboratory.

22 Q And when you went there, did you have a
23 conversation with Sergeant Coleman?

24 A Yes.

1 Q And as a result -- by the way, are there various
2 reasons why individuals such as yourself are
3 called to a crime scene?

4 A We're called to the crime scene if the
5 investigator wants us to collect biological
6 evidence or to confer with us at the scene for
7 any reason, for us to collect items at the scene.

8 Q And when you went to this scene you did confer
9 with Sergeant Coleman?

10 A Yes.

11 Q And can you tell us what your observations were
12 when you arrived at that scene?

13 A When I arrived at that scene, there were cones,
14 numbered cones marking items that were on the
15 ground. We talked about the scene and we did a
16 walk-through of the area.

17 Q With Sergeant Coleman?

18 A Yes.

19 Q And were there photographs taken of that
20 particular scene?

21 A Yes.

22 Q And when you say that there were cones, what were
23 those cones marking?

24 A The cones were marking items that the

1 investigators wanted us to collect.

2 Q And when you say that the investigators wanted
3 you to collect, are there reasons why you collect
4 items at that point in time?

5 A We collect items at the scene because they could
6 become potentially evidence when we know more
7 about the case.

8 Q So when you collect items at the scene, do you
9 know whether or not the items that you're
10 collecting are evidence connected to this
11 particular case?

12 A No.

13 Q And so items are retrieved for what reason then?

14 A Items are retrieved so that we can look at them
15 later if we need to.

16 Q Now, in connection with this case, did you
17 collect certain items?

18 A I collected nine items at the scene.

19 Q And do you have a report with you?

20 A Yes.

21 Q And can you take out your report?

22 A Yes.

23 Q And can you tell us what -- why don't we go with
24 the first item that you have in your report that

1 you collected.

2 A The first item that I collected was a pair of
3 eyeglasses.

4 Q And where were those eyeglasses located?

5 A The eyeglasses were found by cone one which was
6 near the victim's hand.

7 Q Ma'am, I'd ask you to take a look at that item.
8 And can you tell me if the eyeglasses you
9 collected are there?

10 A This is the eyeglass lens, this is item four.

11 Q Can you look inside?

12 A And this is item one in the bag.

13 Q And what is that?

14 A This is the pair of eyeglasses.

15 Q And can you take that out, please? And, ma'am,
16 you have just taken out a pair of eyeglasses from
17 a bag and you put on rubber gloves when you did
18 that.

19 Can you just explain to the jurors the
20 reason why you handled that item with gloves?

21 A We handle the item with gloves so we don't
22 contaminate the item and so we don't expose
23 ourselves to any biohazards.

24 Q Are those the items that you retrieved in March

1 of 2000 by the victim's body?

2 A Yes.

3 MR. TOCHKA: Your Honor, I would ask if
4 the witness could step to the jurors and actually
5 show the jurors.

6 THE COURT: Yes.

7 THE WITNESS: (Complying)

8 MR. TOCHKA: And if you could place
9 those back inside the bag, and I'd ask the
10 Court's permission to mark them as an exhibit. I
11 move to introduce these as an exhibit.

12 THE COURT: Any objection?

13 MR. DOOLIN: No objection, Your Honor.

14 MR. FLAHERTY: No objection.

15 (Exhibit No. 38, being eyeglasses, as
16 described above, was marked and admitted into
17 evidence.)

18 BY MR. TOCHKA:

19 Q Ms. Stevens, I'm showing you now on the diagram
20 what's been marked as Exhibit 13, and are those
21 the same glasses that you have just shown to the
22 jury that were by the body of Iman Yazbek?

23 A Yes. They were approximately five inches or so
24 from his right hand.

1 Q What was the next item that you retrieved?

2 A The next item was a reddish brown stain that we
3 collected from the left side of the front step,
4 the entrance to 89 Faneuil Street.

5 Q And do you know whether or not that was
6 photographed?

7 A I don't know.

8 Q And I'm going to show you what's been marked
9 Exhibit 3 and ask you if you recognize that.

10 A Yes.

11 Q And does that depict the stain that you were
12 referring to?

13 A Yes. It would be the reddish brown stain on the
14 front stoop.

15 Q And you just pointed to that, correct?

16 A Yes.

17 Q Is that depicted there?

18 A Yes. It's on the left side of the front step.

19 Q And when you said you collected, you collected
20 what?

21 A I collected a sample of that.

22 Q What was the next item that you collected?

23 A The next item was a set of keys.

24 Q And I'm showing you what's been marked previously

1 as Exhibit No. 9.

2 Does this photograph depict where those
3 keys that you recovered were found?

4 A Yes.

5 Q What was the next item?

6 A Next item was an eyeglass lens.

7 Q I'm sorry. Can you repeat that, please?

8 A Yes. The next item was an eyeglass lens that was
9 also collected from the top righthand corner of
10 the step.

11 Q And the first item that you referred to was an
12 eyeglass, correct?

13 A Yes.

14 Q In that eyeglass was there a missing glass from
15 that eyeglass?

16 A Yes.

17 Q And do you have that with you today, that
18 eyeglass?

19 A Yes.

20 MR. TOCHKA: And may I see that? With
21 the Court's permission, if the witness could take
22 that out and show it to the jurors?

23 THE WITNESS: (Complying.)

24 MR. TOCHKA: Thank you, ma'am. Could

1 you resume the stand? And if you could place
2 that back into that envelope?

3 THE WITNESS: (Complying.)

4 MR. TOCHKA: Your Honor, at this time
5 I'd move to introduce this item into evidence.

6 MR. DOOLIN: No objection.

7 MR. FLAHERTY: No objection.

8 THE COURT: It may be marked and
9 admitted.

10 (Exhibit No. 39, being a lens, as
11 described above, was marked and admitted into
12 evidence.)

13 BY MR. TOCHKA:

14 Q And showing you Exhibit 9, I ask you whether or
15 not you observe that eyeglass on this diagram.

16 A Yes.

17 Q And where is that?

18 A It's near cone five.

19 Q Does that fairly and accurately represent where
20 you observed that eyeglass?

21 A Yes.

22 Q Where you collected it from?

23 A Yes.

24 Q That's it right there, correct?

1 A Yes.

2 Q What was the next item?

3 A The next item was a piece of debris that was
4 stained reddish brown. It was collected from the
5 same area. It was on the righthand side of the
6 top step.

7 Q Now, when you say a piece of debris that was
8 stained reddish brown, can you describe that for
9 us?

10 A It was an irregularly shaped triangular piece
11 that measured almost a half an inch by a quarter
12 of an inch by three eighths of an inch and had a,
13 like a thread-like piece on it as well.

14 Q And what did that debris appear to be consistent
15 with?

16 A Consistent -- it was possibly a piece of tissue.

17 Q And you don't have that with you today, correct?

18 A No. It's biological. It's maintained in the
19 laboratory.

20 Q And once again showing you Exhibit 9, and I ask
21 you if that's depicted and if what I'm pointing
22 to right now, if that appears to be the debris
23 that you're referring to.

24 A Yes. It's hard to see in the photo but it was --

- 1 Q Can you point it out for us, please?
- 2 A (Indicating)
- 3 Q I'm going to put this on the screen, try to
4 enlarge it. Is that the debris shown on Exhibit
5 9?
- 6 A Yes.
- 7 Q And that appeared to you to be tissue?
- 8 A Yes.
- 9 Q What's the next thing?
- 10 A We collected a battery.
- 11 Q And what number are we up to now?
- 12 A We're on item sixteen.
- 13 Q And -- item what?
- 14 A Sixteen.
- 15 Q The tissue and the batteries, do you recall where
16 the battery -- is there more than one battery?
- 17 A Yes. There was a battery that was in the
18 driveway and another battery that was up against
19 the wall in the driveway.
- 20 Q Is this the battery that you're referring to
21 that's in the driveway?
- 22 A Yes. That was by cone six. That is item
23 sixteen, yes.
- 24 Q And do you have that with you today?

1 A It will be in the box with the evidence, yes.

2 MR. TOCHKA: Let me ask if I can have
3 this marked as an exhibit.

4 MR. DOOLIN: No objection.

5 THE COURT: Any objection?

6 MR. FLAHERTY: No objection, Your
7 Honor.

8 (Exhibit No, 40, being a photograph, as
9 described below, was marked and admitted into
10 evidence.)

11 BY MR. TOCHKA:

12 Q And now I'm putting Exhibit No. 40 on the
13 diagram. Is that the newspaper and the battery?
14 Is that in the picture?

15 A Yes.

16 Q And now I'll zoom in on that battery. Is that
17 the battery?

18 A Yes.

19 Q You said there was another battery, correct?

20 A Yes.

21 Q You said that was closer to the what, ma'am?

22 A Closer to the wall in the driveway. There was a
23 back wall.

24 Q Was that marked with a cone?

1 A Yes.

2 Q And is that the battery?

3 A Yes.

4 Q And is that the cone that it was marked with?

5 A Yes.

6 Q And is that a fair and accurate representation as
7 to how it appeared when you observed it back in
8 March of 2000?

9 A Yes.

10 MR. TOCHKA: I move to introduce this.

11 MR. DOOLIN: No objection.

12 MR. FLAHERTY: No objection.

13 THE COURT: It may be marked and
14 admitted.

15 (Exhibit No. 41, being a photograph, as
16 described above, was marked and admitted into
17 evidence.)

18 MR. TOCHKA: And I will publish this on
19 the screen with the Court's permission.

20 THE COURT: Yes.

21 BY MR. TOCHKA:

22 Q And is that the battery that's on the screen now
23 that you observed back in March of 2000?

24 A Yes.

1 Q And is that fair and accurate in terms of the
2 close-up of the battery?

3 A Yes.

4 Q What else did you collect?

5 A I collected a reddish brown stain from a grouping
6 on the inside hallway.

7 Q I'm sorry? Go ahead.

8 A I'm sorry. Inside of the door in the entranceway
9 of 89 Faneuil Street.

10 Q So as you walk inside the doorway, it's where in
11 relation to the doorway?

12 A The door opens right to left and it was on the
13 right wall.

14 Q And was that photographed?

15 A Yes.

16 Q And are these photographs all of the same --
17 well, you tell me what these are photographs of.

18 A These are photographs of the inside right wall,
19 the grouping of reddish brown stains. They
20 appeared similar to me and I collected one of
21 them and identified the stain as human blood.

22 Q Those three photographs, are those the -- are
23 those showing, depicting the same blood that you
24 observed on the wall, just from different angles?

1 A Yes.

2 Q And which one, in your opinion, best reflects
3 what you observed?

4 A (Indicating)

5 MR. TOCHKA: The Commonwealth would
6 move to introduce that photograph.

7 MR. FLAHERTY: No objection.

8 MR. DOOLIN: No objection.

9 THE COURT: It shall be marked.

10 (Exhibit No. 42, being a photograph, as
11 described above, was marked and admitted into
12 evidence.)

13 BY MR. TOCHKA:

14 Q You said that you examined that blood, and what
15 did you do?

16 A I first did a presumptive test which is a general
17 screening test. It indicates the presence of
18 blood. If that test is positive, then we go on,
19 do a confirmatory test which tests for human
20 blood. I did that and the test was positive.

21 Q Did you do any DNA typing on that blood?

22 A No.

23 Q Is there a reason why you didn't do any DNA
24 typing?

1 A It wasn't requested and we need comparison
2 samples to do DNA typing.

3 Q And let me ask you, in terms of when you are at a
4 crime scene, when you're going to crime scenes --
5 you've collected blood samples on other occasions
6 when you went to crime scenes?

7 A I'm sorry?

8 Q Have you collected blood samples at crime scenes
9 other than this crime scene?

10 A Yes.

11 Q Is it the custom of the crime lab to regularly
12 test all the blood for DNA?

13 MR. FLAHERTY: Objection.

14 THE COURT: Rephrase the question, sir.

15 BY MR. TOCHKA:

16 Q You take samples of crime scene blood, correct?

17 A Yes.

18 Q Is it the custom of the lab to test all the
19 samples for DNA?

20 MR. FLAHERTY: Objection.

21 THE COURT: She may answer that yes or
22 no.

23 A No.

24 BY MR. TOCHKA:

1 Q And why not?

2 MR. FLAHERTY: Objection again, Your
3 Honor.

4 THE COURT: She may answer that.

5 A We only test samples that we determine by our
6 examination and by conferring with investigators
7 to be probative samples.

8 BY MR. TOCHKA:

9 Q What do you mean by that?

10 A Samples that are going to give us information.

11 Q What's the next thing you did?

12 A I collected a quarter from the inside hallway
13 floor.

14 Q And that quarter from the hallway floor, where
15 was that in the hallway floor? Where was that
16 quarter collected from in the hallway of 89
17 Faneuil?

18 A I'm sorry?

19 Q The quarter was collected from the hallway of 89
20 Faneuil?

21 A Yes, on the inside hallway.

22 Q And was that taken to the crime lab?

23 A Yes.

24 Q What's the next thing you did?

1 A That was all the items that I collected at the
2 scene. At that point I conferred with Sergeant
3 Coleman, told him what we had. I believe we
4 waited for the medical examiner before we left
5 the scene.

6 Q Okay. Now, with respect to the pair of
7 eyeglasses that have already been introduced into
8 evidence that was retained by the crime lab?

9 A Yes.

10 Q When you retain items in the crime lab, what's
11 the reason for retaining the items in the crime
12 lab?

13 A When we collect items from a scene, we have that
14 initial opportunity to collect them and so we
15 bring them back to the laboratory and, as the
16 investigation proceeds, those items may become
17 important to the investigation, they may not.

18 Q And if it's determined they become important to
19 the investigation, what is done with them at that
20 point?

21 A They would be examined and testing would be
22 performed on them.

23 Q In terms of items that you receive in the crime
24 lab that are collected, is it fair to say the

1 crime lab collects many items at various crime
2 scenes?

3 A Yes.

4 Q Can you tell us whether or not every single item
5 at crime scenes is examined by the Boston Police
6 Department?

7 A All items are not examined.

8 Q And with respect to the reddish brown stain that
9 you referred to, you examined that and you have
10 determined the reddish brown that was on the
11 step, you determined that to be what?

12 A I determined that to be human blood.

13 Q And the piece of debris that you found, the piece
14 of debris matter by the stairs which is next to
15 the eyeglass, did you do an examination of that?

16 A I described it, I observed it under a stereo
17 microscope. I observed that it had gray disk-
18 like particles adhering to it. I removed those
19 and documented them and then I did a presumptive
20 test for blood which was the general screening
21 test. It was positive which indicates the
22 presence of blood.

23 Q And other than collecting the batteries that you
24 referred to, did you do any other testing as to

1 those two batteries?

2 A No.

3 Q Were you asked to do any tests as to those two
4 batteries?

5 A No.

6 Q The reddish brown stain that you referred to in
7 the hallway, what was the testing that you did on
8 that?

9 A I did a presumptive test on the reddish brown
10 stain. I also did a test for human blood on the
11 stain.

12 Q And what did your tests come back?

13 A The test was positive for human blood.

14 Q With respect to -- did you observe any other
15 matter to be blood stains inside or outside of
16 the hallway at 89 Faneuil?

17 A There were reddish brown stains. There were
18 approximately twenty or so, a grouping of them on
19 the interior of the wall. There were also
20 reddish brown stains on the outside of the wall.

21 Q I'm going to show you this photograph and ask if
22 you recognize what that is a photograph of.

23 A Yes. This is a photograph of the outside right
24 wall at the entrance to 89 Faneuil.

1 Q Is this a fair and accurate representation as to
2 how that grouping of blood stains, what appeared
3 to be blood stains, appeared back in March, 2000?

4 A Yes.

5 Q And there is a light source on that wall. Where
6 is that light source from? Do you know if that's
7 from the photographer or not?

8 A I don't know.

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

11 MR. FLAHERTY: No objection.

12 MR. DOOLIN: No objection.

13 THE COURT: It may be marked and
14 admitted.

15 (Exhibit No. 43, being a photograph, as
16 described above, was marked and admitted into
17 evidence.)

18 BY MR. TOCHKA:

19 Q Ms. Stevens, I'm going to show you this
20 photograph and ask you, does this photograph
21 assist you in determining and showing to the
22 jurors where you found the stains that have just
23 been introduced in the photograph, in Exhibit 43?

24 A Yes.

1 Q And is this a fair and accurate representation as
2 to how the scene appeared back in March of 2000?

3 A Yes.

4 MR. TOCHKA: The Commonwealth would
5 move to introduce this photograph.

6 MR. DOOLIN: No objection.

7 MR. FLAHERTY: No objection.

8 THE COURT: It may be marked and
9 admitted.

10 (Exhibit No. 44, being a photograph, as
11 described above, was marked and admitted into
12 evidence.)

13 MR. TOCHKA: And with the Court's
14 permission, I'll put number 43 --

15 THE COURT: Yes, sir.

16 MR. TOCHKA: Thank you.

17 BY MR. TOCHKA:

18 Q What is that that I just put on the diagram, on
19 the monitor?

20 A That's the exterior righthand wall of the
21 entryway to 89 Faneuil.

22 Q What does that show?

23 A It shows the grouping of reddish brown stains.

24 Q And now I'm putting Exhibit 44, and in

1 relationship to the wall that you've just
2 referred to in Exhibit 43, can you tell me where
3 those stains would be?

4 A The stains would be around the righthand corner
5 on that small wall going to the door.

6 Q So if I can direct you to where it says the
7 letter "F", if you can point that out?

8 And your testimony is it would be
9 around the corner?

10 A Yes.

11 Q Now, putting back Exhibit 43 for reference, is
12 that what we just talked about on that exhibit?

13 A Yes.

14 Q Okay. And this would be the wall, the corner of
15 the wall?

16 A Yes.

17 Q Ma'am, what other testing did you do in reference
18 to this case?

19 A I received items from the medical examiner on
20 April 4 of the year 2000. That was a blood
21 sample, head and pubic hair standards,
22 fingernails and -- I'm sorry, no fingernails, and
23 clothing.

24 Q And all the items belonging to who?

1 A They were belonging to Mr. Yazbek.

2 Q And did you do any testing on any of those items?

3 A I examined the pants of the clothes.

4 Q And what did you examine on the pants of the
5 clothes?

6 A I examined a reddish brown stain on the front
7 crotch area of the pants and it tested
8 presumptive positive for blood. I went on to
9 confirm the stain as human blood. I also noticed
10 that the pants were -- had dirt adhering to them.

11 Q Do you recognize what this is a photograph of,
12 ma'am?

13 A Yes.

14 Q And what is that a photograph of?

15 A That's the photograph of Mr. Yazbek at the scene,
16 89 Faneuil Street.

17 Q And does that depict the pants that you tested?

18 A Yes.

19 Q And is that a fair and accurate representation as
20 to how that scene appeared back in March of 2000?

21 A Yes. I received the pants, the legs were rolled
22 up on the bottom. There was a reddish brown
23 stain in the crotch area and there was dirt
24 adhering to the pants.

1 MR. TOCHKA: The Commonwealth would
2 move to introduce this photograph.

3 MR. DOOLIN: No objection.

4 MR. FLAHERTY: No objection, Your
5 Honor.

6 (Exhibit No. 45, being a photograph, as
7 described below, was marked and admitted into
8 evidence.)

9 MR. TOCHKA: With the Court's
10 permission, if I could publish this on the
11 monitor?

12 THE COURT: Yes.

13 BY MR. TOCHKA:

14 Q Ma'am, I'm showing you what's been marked as
15 Exhibit 45, and I'm asking you whether you can
16 tell us, what does that photograph depict?

17 A It depicts a photograph of item twenty-two, the
18 pants. It also depicts a photograph of Mr.
19 Yazbek in situ, at the scene.

20 Q And you said that you examined this area?

21 A I examined the front, yes, the reddish brown
22 stain on the front crotch area.

23 Q And under your examination, what did you find?

24 A I found that that was human blood.

1 Q And, ma'am, showing you what was earlier marked
2 Exhibit 17, if I hold these up, actually where is
3 the area that you examined?

4 A The area that I identified human blood would be
5 cut out and we maintain that in the laboratory, a
6 biological example. When we examine it, we cut
7 it out and retain it and this would be right
8 here. There also would be a control area on
9 another part of the pants and it's here, and it's
10 marked control with the date that I performed the
11 testing and my initials.

12 Q And what's the purpose of doing that?

13 A To identify the area that i cut as opposed to
14 damage that might have been on the pants when I
15 received them.

16 Q You referred to a red jacket of Mr. Yazbek that
17 you received from the crime lab -- from the
18 medical examiner's office, correct?

19 A Yes.

20 Q And is this the jacket, red jacket that you
21 received which has been marked as Exhibit 16?

22 A Yes.

23 Q And it's fair to say that you received other
24 things from the crime lab, correct -- I mean,

1 from the medical examiner's office in connection
2 with Mr. Yazbek's personal items of clothing,
3 correct?

4 A Yes, items that he was wearing at the time.

5 Q Including socks and shoes?

6 A Yes.

7 Q And it's fair to say that you did not test any of
8 those and you weren't asked to test any of those,
9 correct?

10 A That's correct.

11 Q And in terms of the blood spatter that you
12 observed, would it be fair to say, to call that
13 blood spatter?

14 A Yes.

15 Q And what observations did you make in terms --
16 and I might have forgot if you've already told
17 this jury, in terms of the height and distance
18 and the like, what observations did you make?

19 A I measured on my crime scene notes the distance
20 of the reddish brown stains. I did an
21 approximate count of them. There were
22 approximately twenty and I measured the largest
23 stain that was on the interior right wall.

24 Q And --

1 A The --

2 Q I'm sorry. Go ahead.

3 A The stains were, they were approximately thirty-
4 two to forty-seven inches up from the floor and
5 ten to twelve inches over from the door.

6 Q And just so the jurors are clear, in terms of the
7 stain, the two areas of stain that we talked
8 about, one is on the inside?

9 A Correct.

10 Q And one is on the outside of --

11 A 89 Faneuil.

12 Q -- 89 Faneuil?

13 A Yes.

14 Q And having looked at that, what appeared to be
15 blood spatter, did you confer -- was one of the
16 reasons why you were called out was to confer
17 with Sergeant Coleman as to your observations?

18 A Yes.

19 Q And did you have a conversation with Sergeant
20 Coleman as to your observations of that blood
21 spatter?

22 A Yes.

23 MR. TOCHKA: No further questions.

24 Thank you.

1 THE COURT: Cross examination.

2 MR. DOOLIN: Thank you, Your Honor.

3 May I see Exhibit No. 44? I'm sorry, 45.

4
5 CROSS EXAMINATION

6 BY MR. DOOLIN:

7 Q Showing you what's been marked Exhibit No. 45,
8 does this depict the way that the scene was that
9 night?

10 A Yes. It was early morning. We arrived around
11 seven forty-five a.m.

12 Q Do you know what that is?

13 A It appears to be a cup.

14 Q It's a cup that's sitting right next to Mr.
15 Yazbek, isn't it?

16 A Yes.

17 Q Was that recovered that night?

18 A No, not by me. It may have been recovered.

19 Q Was that turned over to you for analysis?

20 A No.

21 Q Is the first time that you have ever seen that
22 cup today?

23 A Yes.

24 Q Did you have a chance to look through these

1 photos before you took the witness stand?

2 A Yes.

3 Q And you've had a chance to go through with
4 Sergeant Coleman the things that were turned over
5 to your unit, is that correct?

6 A Yes. Sergeant Coleman received a receipt from
7 the crime laboratory unit.

8 Q And you were at the scene that night or that
9 morning, is that correct?

10 A Yes.

11 Q And this cup, to the best of your knowledge, was
12 never taken into evidence by the Boston Police,
13 is that right?

14 A It was not collected by myself at the crime
15 scene.

16 Q You have never examined it, is that right?

17 A That's correct.

18 Q You've never had a chance to determine where the
19 origins of that cup are, have you?

20 A No.

21 Q And to your knowledge that was never turned over
22 -- that was never even collected, to the best of
23 your knowledge, is that right?

24 A Things are collected at the scene that don't go

1 to the crime laboratory.

2 Q Did you see it there that night?

3 A I don't recall seeing the glass there that night.

4 Q Have you ever been asked to take a look at this
5 picture which has been marked Exhibit 45 to see
6 if there was a cup right next to Mr. Yazbek?

7 A No.

8 Q Ms. Stevens, you've had training and experience
9 before you went onto the Boston Police Department
10 as a civilian and obviously you've had experience
11 working as a lab technician in the past, is that
12 right?

13 A Yes.

14 Q How many years did you work as a lab technician?

15 A I have twenty-five years of clinical laboratory
16 experience. Many of those years are as a
17 supervisor of a laboratory.

18 Q You were, in fact, the supervisor of one of the
19 laboratories over at what is now Boston Medical
20 Center, is that correct?

21 A Yes.

22 Q And one of the things that you did in that
23 laboratory, it's fair to say, was there was blood
24 analysis that was done, is that right?

1 A That's correct, yes.

2 Q And how many different types of blood are there?

3 A There are four basic blood types.

4 Q Could you tell the jury what they are?

5 A They are blood type O, blood type A, blood type B
6 and blood type AB. Those are the main four
7 types, and then one can either be positive or
8 negative and then there are hundreds and hundreds
9 of other markers on the red cells that
10 individualize those red cells.

11 Q You mentioned on direct examination the term,
12 DNA. What is DNA?

13 A DNA is the individual genetic markers that are
14 found in the nucleus of your cells and they --
15 there are areas that we can look at and
16 individualize.

17 Q When you say that you can individualize, you can
18 look at the markers and you can determine who
19 those cells came from, is that correct?

20 A We can compare and include or exclude someone as
21 a source. We can't do a determination who it is
22 without a comparison.

23 Q How many people work down there at the crime lab
24 with you?

1 A Approximately fourteen.

2 Q Do you know a person by the name of Don Hayes?

3 A Yes.

4 Q Who is Don Hayes?

5 A Don is the director of the crime lab.

6 Q He has experience in DNA, does he not?

7 A Yes.

8 Q Can you tell the jury what Cellmark Laboratories
9 are?

10 A Cellmark Laboratories are laboratories that are a
11 private laboratory that people contract out to do
12 testing for the, DNA testing.

13 Q And it's fair to say that there is DNA testing
14 that is done at the Boston Police crime lab, is
15 that correct?

16 A That's correct, yes.

17 Q And in the past it's fair to say that the Boston
18 Police Department has had a relationship with
19 Cellmark Laboratories, is that correct?

20 A The Boston Police has a relationship with
21 Cellmark Laboratories. Since we developed our
22 own DNA laboratory, we use Cellmark far less
23 frequently now.

24 Q It's fair to say that over the last five to six

1 years that your facility within the Boston Police
2 Department crime laboratory has improved greatly,
3 is that correct?

4 A We have added specialties to our laboratory.

5 Q Okay. And it's fair to say that your office is
6 now over at Schroeder Plaza at the Boston Police
7 headquarters, is that right?

8 A Yes.

9 Q The identification unit which includes
10 fingerprinting, are they in the same building as
11 you?

12 A Yes.

13 Q What floor are you on?

14 A We're on the second floor.

15 Q What floor are they on?

16 A They're on the second floor as well.

17 Q And it's fair to say that in your background as a
18 criminalist, one of the things that you try to do
19 is to recognize and identify certain evidence, is
20 that correct?

21 A Yes.

22 Q And one of the things that you try to do with
23 that evidence is compare it, is that correct?

24 A That's correct.

1 Q And you try to individualize that evidence, is
2 that right?

3 A That's correct.

4 Q And you try to evaluate it, is that right?

5 A Yes.

6 Q And one of the goals is to try to link up pieces
7 of evidence with certain individuals, is that
8 right?

9 A That's correct.

10 Q Whether they be the individual who, in this case,
11 such as Mr. Yazbek who is dead or to individuals
12 who may be suspects, is that right?

13 A We determine the value of the evidence and if it
14 is determined that it is probative evidence and
15 it's going to give us information about the
16 investigation, then, yes, we will do further
17 testing.

18 Q Can you tell the jury what trace evidence is?

19 A Trace evidence is evidence such as fibers, hairs,
20 it could be gunshot residue, it could be paint,
21 could be glass.

22 Q Can you tell the jury what transferred evidence
23 is?

24 A Transfer evidence is hairs, fibers that come off

1 of one person and get transferred onto another
2 person.

3 Q And in your background, it's fair to say that you
4 have taken courses in gunpowder and gunshot
5 residue, is that right?

6 A Yes.

7 Q You have also taken courses in collection and
8 preservation of evidence, is that right?

9 A Yes.

10 Q Footwear and tire tread recovery techniques, is
11 that right?

12 A Yes.

13 Q And also in hair and fiber microscopy?

14 A Microscopy.

15 Q I'll go with your pronunciation.

16 A Yes.

17 Q And it's fair to say that in this case that you
18 went to the crime scene yourself. Was it raining
19 that day?

20 A It was raining heavily.

21 Q And it's fair to say that the elements play at
22 least some part in your ability to analyze
23 certain things, is that right?

24 A That's correct.

1 Q Was there any sort of covering that was put over
2 the crime scene?

3 A No.

4 Q You yourself were wearing gloves that day, is
5 that right?

6 A Yes.

7 Q How many members of the Boston Police Department
8 were there by your recollection?

9 A I don't recall.

10 Q Were they all wearing gloves?

11 A I don't recall anyone being there. I recall
12 going there, conferring with Sergeant Coleman and
13 doing what I needed to do with my partner from
14 the crime lab.

15 Q That would be Susan Coyne?

16 A That's right.

17 Q Now, the eyeglasses that you've made references
18 to, it's fair to say that you took those
19 eyeglasses in your possession, is that right?

20 A That's correct.

21 Q Were those eyeglasses ever sent over to Detective
22 Wong to be identified for fingerprints?

23 A No.

24 Q And she works right down the hall from you, is

1 that right?

2 A She works across the hall in the ID unit, yes.

3 Q She doesn't work there any more but she used to
4 work there?

5 A That's correct.

6 Q That set of keys that you talked about, there was
7 a set of keys that was recovered, is that right?

8 A Yes.

9 Q The set of keys was taken out to be
10 fingerprinted?

11 A No, not to my knowledge. I returned them to
12 Sergeant Coleman in April.

13 Q How many days after -- do you remember what part
14 of April it was that you gave those keys back to
15 Sergeant Coleman?

16 A I gave them back to Sergeant Coleman on April 25.

17 Q The keys that you came into possession of, do you
18 recall how many keys? Were they counted?

19 A No. There was a ring of keys that had a
20 medallion, a gold medallion on it with symbols.
21 There was reddish brown stain on the medallion.
22 I did test the reddish brown stain presumptive
23 for blood. It was a very small amount of blood.

24 Q So there was a reddish stain that was on the

1 medallion that goes with the set of keys, is that
2 right?

3 A Yes.

4 Q Now, the two batteries that were recovered, were
5 they ever sent over to be analyzed for
6 fingerprints to Detective Wong?

7 A No.

8 Q Now, you talked about blood. It's fair to say
9 that at some point in time you came into
10 possession of some blood from the medical
11 examiner's office that belonged to Mr. Yazbek, is
12 that right?

13 A Yes.

14 Q And it's fair to say that you were able to group
15 that blood, is that right?

16 A Yes.

17 Q What group -- what blood group was Mr. Yazbek?

18 A Mr. Yazbek was group B.

19 Q You made reference to a reddish brown stain that
20 was out on the steps, is that correct?

21 A Yes.

22 Q You tested that for human blood, is that right?

23 A Yes.

24 Q And it was positive for human blood, was it not?

1 A Yes.

2 Q Was that blood ever grouped?

3 A No.

4 Q There was blood that was taken from inside the
5 hallway, is that right?

6 A Yes.

7 Q How many stains were inside the hallway?

8 A There was a group of approximately twenty stains
9 on the wall.

10 Q Was that blood ever grouped?

11 A No.

12 Q So it's fair to say that you at some point had
13 knowledge of the type blood that Mr. Yazbek had,
14 is that right?

15 A That's correct, yes.

16 Q And there was no comparison done to see whether
17 that blood that was outside on the steps was the
18 same type of blood as Mr. Yazbek, is that right?

19 A That's correct.

20 Q And there was no typing that was done to
21 determine whether that blood that was inside the
22 hallway was Mr. Yazbek's, is that right?

23 A That's correct.

24 Q There was no comparison that was done between the

1 blood that was outside on the steps and the blood
2 that was inside on the wall, is that right?

3 A That's correct.

4 Q And none of it was sent for DNA, is that right?

5 A That's right.

6 Q Did you ever at any point in time come into
7 possession of two bags full of clothes that were
8 attributed to Jason Robinson?

9 A No, I did not.

10 Q This piece of debris that was found outside, it's
11 fair to say, I think that you said that there was
12 a thread that was in that, is that right?

13 A No. The piece itself was fairly triangular.
14 There was a piece of it that appeared thread-
15 like. It wasn't a piece of thread. It was a
16 thread-like piece of the debris.

17 Q Of the debris?

18 A Of the debris itself, yes.

19 Q And was there reddish brown stains in the debris?

20 A Yes. It was stained reddish brown.

21 Q Was that tested for blood?

22 A I did a presumptive test for blood. It was
23 preliminarily positive.

24 Q And again that wasn't grouped either, was it?

1 A No.

2 Q You took a look, did you not, at Mr. Yazbek's
3 pants and at the jacket, is that right?

4 A I took a look -- I examined the pants. I did not
5 examine the jacket. I documented the jacket for
6 court.

7 Q Okay. And the pants, the blood on the pants was
8 never grouped either, was it?

9 A No, it was not.

10 Q Before today's court date, when was the last time
11 that you had examined the evidence in question?

12 A I examined the pants in March of this year.

13 Q Was that to get it ready for court?

14 A Yes.

15 Q Were there any further tests done after April of
16 2000 on any of these things?

17 A No.

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

20 THE WITNESS: Sorry. Yes, the pants
21 were examined in March of 2002 and the human test
22 on the pants was determined in March of 2002.

23 BY MR. DOOLIN:

24 Q So the blood testing that was done on the pants

1 wasn't done at the time, is that right?

2 A That's correct.

3 Q It was only done within the last month?

4 A That's correct.

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

7 THE COURT: Mr. Flaherty?

8 MR. FLAHERTY: Thank you, Your Honor.

9

10 CROSS EXAMINATION

11 BY MR. FLAHERTY:

12 Q Ms. Stevens, my name is Timothy Flaherty. If I
13 ask anything that confuses you, just let me know
14 and I'll try and rephrase it. Okay?

15 From 1970 to 1995 you were a medical
16 technician, is that right?

17 A I was a medical technologist and supervisor for
18 many of those years. I was a senior technologist
19 at the Dana Farber Cancer Institute as well as
20 supervisor at Boston Medical Center.

21 Q I guess by trade we would call you a serologist,
22 senior criminalist?

23 A Yes.

24 Q A serologist is someone with extensive experience

1 in blood, right?

2 A Blood and body fluid identification, yes.

3 Q Now, in 1995, you became employed by the Boston
4 Police Department, right?

5 A Yes.

6 Q 1995 criminalist and 1999 a senior criminalist,
7 right?

8 A That's correct.

9 Q By March of 2000, you had responded to crime
10 scenes as a criminalist, right?

11 A Yes. I responded to crime scenes from the day I
12 began in the crime lab in 1995.

13 Q So how many crime scenes had you been to prior to
14 March of 2000?

15 A Conservatively maybe fifty.

16 Q And how many homicide scenes?

17 A Probably, probably more than half of those would
18 have been homicide scenes.

19 Q How many homicide scenes with blood stain or
20 blood spatter evidence?

21 A I can't guess at that.

22 Q Something less than twenty-five Is that a fair
23 estimate?

24 A Yes.

1 Q But you have been to them in the past, right?

2 A Yes.

3 Q Are you familiar with the phrase, occult blood?

4 A I'm familiar with the phrase, occult blood, in
5 reference to blood that you can't see in urine
6 and feces. It's not a term that we use in the
7 laboratory forensically.

8 Q Is it a term that you use as a senior
9 criminalist?

10 A No.

11 Q Have you ever had occasion to examine items to
12 determine whether or not occult blood exists on
13 items?

14 A No.

15 Q Have you ever had occasion to examine a weapon,
16 for instance, to determine if there is some blood
17 that is not visible to the human eye on the
18 weapon?

19 A No.

20 Q Are you familiar with any of the blood reagents
21 that illuminate the presence of blood such as
22 leuco crystal violet?

23 A I'm familiar with the chemical enhancing method
24 that we use which is luminal and also we have

1 used amido black.

2 Q Would you tell the jury how luminal works?

3 A Luminal is a chemical that adheres to hemoglobin.

4 It also adheres to other cleaning reagents and

5 when you shine light on it, it will light up so

6 it will fluoresce in the dark and allow you to

7 see very, very faint or possible stains that

8 could be there.

9 Q So when you apply luminal to an area or an item,
10 the occult blood then shines, right?

11 A I've never seen luminal used on an item. I've
12 seen it used at crime scenes.

13 Q Was there any luminal used at this crime scene?

14 A The blood was visible at the crime scene.

15 Q Well, did -- you're trained in footwear and tire
16 tread recovery techniques, right?

17 A Yes.

18 Q And have you ever had occasion -- well, during
19 your training in your footwear class, were you
20 ever taught the process by using luminal in an
21 area to see whether or not there are any foot
22 impressions in occult blood?

23 A In the footwear class that I took with the FBI
24 agent, Mr. Bosiac (phonetic spelling), we

1 chemically enhanced using amido black. I don't
2 recall him using luminal to do that.

3 Q And did Bosiac in his instruction to you and to
4 the rest of the class go about a technique by
5 which luminal can be applied to a floor or a
6 hallway to determine if there are any footprints
7 from blood spatter in the hallway?

8 A I don't recall that he did that.

9 Q Are you familiar with the process by which that's
10 done and then to do a comparison from any
11 footwear impressions to known footwear?

12 A Yes.

13 Q Were there any Timberland boots given to you in
14 the process of this investigation?

15 A No.

16 Q And there was no luminal or any other reagents
17 used March 29, 2000, at the scene, right?

18 A ~~is~~ No.

19 Q Now, you do have some training in STR analysis,
20 ~~is~~ correct?

21 A ~~is~~ Yes.

22 Q And that stands for short tandem repeat analysis,
23 right?

24 A That's correct, yes.

1 Q And that's the newest, most innovative DNA
2 analysis?
3 A That's correct. It's PCR methodology. The other
4 methodology we used before is also a PCR.
5 Q Does the Boston Police crime laboratory use STR
6 now?
7 A Yes.
8 Q And you have the equipment there available to do
9 that?
10 A Yes, we do.
11 Q There is a Hatachi biotube. Is that the machine
12 that's used to do STR?
13 A We use the 310.
14 Q 310, okay, and you have one of those at the
15 Boston Police crime laboratory, right?
16 A Yes, we do.
17 Q And it's Mr. Hayes that's experienced in it and
18 is he the one that completes the DNA analysis?
19 A Mr. Hayes is the director of the crime
20 laboratory. Our technical leader in DNA is Joe
21 Varlaro. He directs the DNA section of the
22 laboratory. He is a senior criminalist.
23 Q On March 29 of 2000, I think you testified you
24 arrived at seven forty-five a.m.?

1 A Approximately.

2 Q And was it raining at seven forty-five a.m.?

3 A I believe it rained the entire time we were
4 there.

5 Q How long did you remain at the scene?

6 A We were there for a couple of hours.

7 Q Now, correct me if I'm wrong, but it's my
8 understanding that the cones had already been
9 placed in locations when you arrived?

10 A That's correct.

11 Q Did you go through a process of a search of the
12 scene itself yourself or were you directed to
13 items?

14 A We were directed to the items but we do, if we
15 observe something, we would confer with the
16 investigator.

17 Q Well, I guess I'm asking the question this way
18 then, did you conduct a crime scene search
19 yourself as a senior criminalist?

20 A No.

21 Q So basically you looked at the cones and
22 recovered the evidence from where the cones had
23 been placed, right?

24 A We observed the rest of the scene as well. We

1 did a walk-through of the scene. We talked to
2 the investigator at the scene.

3 Q And you took some control samples, right? From
4 the blood evidence you found at the scene, is
5 that right?

6 A I don't recall that.

7 Q Did you collect a portion of a reddish brown
8 stain from a grouping of approximately twenty
9 reddish brown stains?

10 A Yes.

11 Q On the inside hallway?

12 A Yes.

13 Q And that's then retained, refrigerated, and
14 placed in the Boston Police crime laboratory,
15 right?

16 A Yes.

17 Q And the process -- and the purpose of that
18 process is that it is there for examination if
19 you choose to examine it, right?

20 A That's correct. It's done to maintain the
21 evidence.

22 Q You also had a blood sample from Mr. Yazbek,
23 correct?

24 A Yes.

1 Q And that blood sample is maintained in the same
2 fashion, right?

3 A Yes. The blood sample from the medical examiner
4 is placed onto a cotton swab, placed in an
5 envelope, and placed in our freezer in the
6 laboratory.

7 Q And with respect to those items -- well, I guess
8 item number twelve you collected as reddish brown
9 stain outside, that was also retained in the same
10 fashion, refrigerated at the Boston Police crime
11 laboratory, right?

12 A Yes.

13 Q Now, as a serologist and senior criminalist, it's
14 not an onerous task to do a comparison between
15 the known blood sample of Mr. Yazbek and the
16 blood sample collected from inside the hallway
17 and outside the steps, right?

18 A Our laboratory strictly does DNA at this point so
19 any comparison is done with all the samples that
20 are acquired and it's done for probative reasons.
21 It's done to give us information.

22 Q Did you seek any information from the blood you
23 found at the scene and the blood you knew came
24 from Mr. Yazbek?

1 A No.

2 Q You can't tell us even if the blood on the steps
3 outside or the blood inside belongs to Mr.
4 Yazbek, right?

5 A That's true.

6 Q As a matter of fact, you can't tell us if the
7 blood on Mr. Yazbek's clothing belongs to Mr.
8 Yazbek, right?

9 A That's correct.

10 Q And Mr. Doolin asked you if you received any
11 clothes attributed to Mr. Robinson for process of
12 analysis. You did not?

13 A I did not.

14 Q Were you involved in the process -- or were you
15 ever requested to process an automobile, a green
16 Mazda?

17 A No, I was not.

18 Q Were you ever requested to process any clothes or
19 items from Tanzerius Anderson?

20 A No, I was not.

21 Q Mr. Doolin asked you about trace evidence, right?
22 You understand the term, trace evidence?

23 A Yes.

24 Q And you understand the term transfer evidence,

1 right?

2 A Yes.

3 Q And with blood spatter and blood stain evidence,
4 isn't it common in your experience as a senior
5 criminalist that there is transfer evidence of
6 that type?

7 A Of blood evidence?

8 Q When there's blood shed at a crime scene, is it
9 not common in your experience as a senior
10 criminalist that there could be or there is
11 transfer evidence?

12 MR. TOCHKA: Objection, Your Honor.

13 THE COURT: Rephrase the question, sir.

14 BY MR. FLAHERTY:

15 Q In your less than twenty-five homicide scenes
16 involving blood stain evidence, is it your
17 experience involved in those cases that transfer
18 evidence existed?

19 MR. TOCHKA: Objection.

20 THE COURT: Sustained.

21 BY MR. FLAHERTY:

22 Q Well, in this case did you attempt to determine
23 whether or not there was any transfer evidence
24 anywhere?

1 A No, I did not.

2 Q And you're familiar that transfer evidence is
3 evidence that can be taken from one person and
4 put on another person, right?

5 A Yes.

6 Q And transfer evidence is used to identify either
7 a perpetrator or a person who is present during
8 bloodshed, right?

9 A It's used to connect, make a connection. It can
10 be used to make a connection between a person and
11 a scene or person to person.

12 Q The item number eleven, the pair of eyeglasses
13 were collected on the ground near Mr. Yazbek's
14 hand were --

15 A Yes.

16 Q -- moved into evidence when you showed them to
17 the jury.

18 It looks like there was some matter on
19 one of the eyeglass lenses themselves. Did you
20 notice that in your examination?

21 A I didn't examine the eyeglasses. I noticed it,
22 that there was -- it appeared to be dirt on them.
23 They were outside.

24 Q Did you ever examine the matter on the eyeglasses

1 to determine what that matter was?

2 A No.

3 Q And in the process of your experience and your
4 employment at the Boston Police crime laboratory,
5 DNA and STR analysis isn't simply limited to
6 blood, right?

7 A In our laboratory we do STR DNA for blood only
8 yes. It's human and upper primates specifically.

9 Q Okay. The Cellmark lab that you use on occasion,
10 right? They do DNA analysis from all bodily
11 fluids, right?

12 Blood, semen, saliva, correct?

13 A Yes.

14 Q So, for instance, in exhibit --

15 A I'm sorry. I misunderstood the question. We do
16 test all biological fluids. We would test semen,
17 we would test saliva. I thought you were
18 referring to bacterial DNA or plant DNA.

19 Q But the process of DNA that you use at the crime
20 lab at Boston, you can determine DNA from all
21 those bodily fluids?

22 A Yes.

23 Q Semen, saliva, blood, correct?

24 A Correct. That's correct, if there was a

1 sufficient amount.

2 Q And on some of the items there was sufficient
3 amount, wouldn't you agree?

4 A Yes.

5 Q Now, showing you what's been marked Exhibit 45
6 and specifically the plastic cup.

7 Have you ever had occasion in your
8 experience at the crime lab to make an analysis
9 of a cup or a can, something coming in contact
10 with saliva?

11 A Yes.

12 Q That was not done in this case, right?

13 A No.

14 Q And there was no DNA performed on this item to
15 determine whether or not there was any person's
16 saliva on it, right?

17 A That's correct.

18 Q When you arrived at the scene and Mr. Yazbek's
19 body was where it is depicted in Exhibit No. 45,
20 did you do, as a senior criminalist, an
21 examination of his body for trace evidence or
22 transfer evidence?

23 A No, I did not.

24 Q And isn't that something in your training in the

1 class you took from the FBI, Mass. Criminal
2 Justice, collection and preservation of evidence,
3 isn't that something you are taught to do at
4 homicide scenes? To check the body for any trace
5 evidence?

6 A We don't routinely check the body.

7 Q But at that class, the collection and
8 preservation of evidence, were you taught at a
9 homicide scene you should check the body for
10 trace or transfer evidence?

11 A No.

12 Q Would you agree with me in your --

13 A We retain the clothes from the medical examiner's
14 office. They're bagged and sent to us.

15 Q What's the purpose of placing a yellow plastic
16 trauma sheet over the body of a homicide victim
17 at the scene?

18 A To preserve the evidence.

19 Q But there was no examination of the body at the
20 scene for trace evidence or transfer evidence?

21 A I did not examine the body at the scene, no.

22 Q Were there any other senior criminalists at the
23 scene other than you, Ms. Stevens?

24 A No.

1 Q Item thirteen is the set of keys. Is that a set
2 of Buick keys, do you know?

3 A I don't know.

4 Q Items sixteen and seventeen were the batteries
5 and they have never been examined, right?

6 A That's correct.

7 Q Would you put them in a category of importance to
8 be collected at a crime scene?

9 A I put them in a category that they were items
10 that were at the scene. They could potentially
11 become evidence when the investigation gave
12 information that led us to that.

13 Q How would you know if they became important if
14 you never examined them?

15 A They would become important if the investigator,
16 with his information, asked the crime lab to do
17 an examination of them.

18 Q Could the crime lab by its own examination of
19 evidence show that this evidence is important in
20 some shape or fashion to an investigation?

21 A It's usually a combined effort between the
22 laboratory and the investigation.

23 Q You'd agree with me, wouldn't you, that the
24 examination of evidence at the crime laboratory,

1 independent of what happens in the other arms of
2 the investigation, can be very important?

3 A That's true.

4 Q And items sixteen, seventeen, twenty-three
5 through twenty-seven, twenty-eight, twenty-one,
6 fourteen and eleven were not examined, right?

7 A That's correct.

8 Q The pants of Mr. Yazbek were examined in March?

9 A Yes.

10 Q And your report was authored March 12 of 2002,
11 right?

12 A Yes.

13 Q Nearly two years from the time you responded to
14 the scene?

15 A Yes.

16 Q The crime laboratory that's located at Schroeder
17 Plaza, the identification unit is also on the
18 same floor, second floor?

19 A Yes.

20 Q And Sharon Wong works in the identification unit
21 on the same floor, right?

22 A Not any more. She did at the time.

23 Q Did you ever have occasion to have a conversation
24 with Sharon Wong in the investigative efforts

1 here?

2 A No.

3 Q Were you involved in the processing of a Buick
4 Skylark that was brought to the Schroeder Plaza?

5 A No.

6 Q So there was no determination of the existence of
7 any serological or blood spatter evidence from
8 the Buick Skylark, was there?

9 A Not by myself.

10 Q Ms. Stevens, I'm going to show you a series of
11 photographs -- well, first let me ask you.

12 The photographs that you took of the
13 interior of 89 Faneuil, were they exhaustive of
14 everything you saw?

15 A I did not take the photographs at Faneuil. The
16 photographs are done by personnel from the
17 identification unit, from the photo unit.

18 Q Were you present when the photographs were taken?

19 A Yes.

20 Q And the photographs, I think as you described
21 them, were taken on the outside wall, the small
22 wall as you're going into the door of 89 Faneuil
23 and also the interior on the righthand side,
24 right?

1 A That's correct.

2 Q Alright. I'd ask you just to take a look at
3 those pictures by yourself. Do you recognize the
4 area of the -- or the location that's depicted in
5 those photographs?

6 A Yes.

7 Q There's 89 Faneuil Street, right?

8 A Yes.

9 Q Do you know Detective Paul McLaughlin from the
10 homicide unit?

11 A Yes.

12 Q Did you ever have a conversation with Detective
13 McLaughlin to direct him to take photographs
14 there?

15 A No, I did not.

16 Q And the photographs that you see, is it fair to
17 say that these five photographs depict blood
18 spatter evidence?

19 A Yes.

20 Q And is it fair to say that those five photographs
21 depict locations at 89 Faneuil Street?

22 A Yes.

23 Q And do you know whether or not those locations
24 were photographed on March 28, 2000?

1 A These photographs are of the right wall so, yes,
2 those areas were photographed and these
3 photographs are of the door and I'm not sure -- I
4 don't know if the door was photographed or not.

5 Q And did you have an occasion to observe the door
6 on March 28, 2000?

7 A Yes.

8 Q And are these photographs a fair and accurate
9 representation of the way the door looked to you
10 when you were there?

11 A I don't remember.

12 Q You don't remember?

13 A I don't have notes that --

14 Q You wrote your report on March 12 of 2002,
15 correct?

16 A Yes.

17 Q And when you wrote the report on March 12 of
18 2002, did you refer back to your crime scene
19 notes?

20 A Yes.

21 Q And do you have your crime scene notes with you
22 here today?

23 A Yes.

24 Q Would you refer to your crime scene notes,

1 please, and tell us if you noticed that blood
2 stain or blood pattern identification on the
3 locations depicted on those three photographs?

4 A I don't have any reference to the door in my
5 notes.

6 Q Did you have an opportunity to examine the door
7 when you were there on March 28, 2000?

8 A I don't recall.

9 Q But the photographs you see in front of you are
10 pictures of the door at 89 Faneuil Street, right?

11 A Yes.

12 Q And with respect to the other photographs you see
13 cones in those photographs, right? Same type of
14 cones that were out on March 28, 2000?

15 A Yes.

16 Q And you were not present on March 31 when those
17 photographs were taken by Detective McLaughlin,
18 correct?

19 A That's correct.

20 Q Have you spoken, prior to your testimony today,
21 with Detective McLaughlin or any other member of
22 the Boston Police or District Attorney's office
23 about these photographs?

24 A About these photographs? I knew that there were

1 photographs.

2 Q And what's your understanding of those
3 photographs?

4 MR. TOCHKA: Objection.

5 THE COURT: Rephrase the question, sir.

6 BY MR. FLAHERTY:

7 Q Based on your discussion with respect to those
8 photographs, are those photographs, do they
9 fairly and accurately depict the blood spatter
10 photographs the way the scene appeared to you on
11 March 28, 2000, when you were present?

12 MR. TOCHKA: Objection, Your Honor.

13 THE COURT: She may answer that.

14 MR. TOCHKA: As to which photographs
15 are we referring to, Your Honor?

16 MR. FLAHERTY: The blood spatter.

17 THE COURT: Take them one by one, sir.

18 MR. FLAHERTY: Okay. Excuse me.

19 BY MR. FLAHERTY:

20 Q Showing you a photograph, and I'll ask you if you
21 recognize what's depicted therein.

22 A I believe this is the outside wall at Faneuil
23 Street.

24 Q And does that photograph fairly and accurately

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1 depict the way it appeared to you on March 28,
2 2000?

3 A There was blood spatter on the outside wall, yes,
4 on the right side.

5 MR. FLAHERTY: I'd move to admit this
6 photograph into evidence, Your Honor.

7 MR. TOCHKA: No objection.

8 THE COURT: That may be marked and
9 admitted.

10 (Exhibit No. 46, being a photograph, as
11 described above, was marked and admitted into
12 evidence.)

13 BY MR. FLAHERTY:

14 Q I'm showing you a second photograph and I'll ask
15 you if you recognize what's depicted therein.

16 A Yes. Again, that's the outside wall.

17 Q Is that a fair and accurate depiction of the way
18 it appeared to you on March 28, 2000, when you
19 were at the scene?

20 A I don't recall.

21 Q This photograph, is this area depicted in any of
22 the photographs that were taken while you were
23 there?

24 A There were pictures of the outside wall, yes, the

1 crime scene photos.

2 Q Is the specific location in here that's depicted
3 that you know of in any other photographs?

4 A There's no marking for me to know what area of
5 the wall that is.

6 MR. FLAHERTY: Okay. I would move to
7 introduce this photograph, Your Honor.

8 MR. TOCHKA: Objection.

9 THE COURT: Sustained.

10 BY MR. FLAHERTY:

11 Q Showing you another photograph and I'll ask you
12 if you recognize what's depicted therein.

13 A This is reddish brown stains on the inside of the
14 hallway door.

15 Q And does that fairly and accurately depict the
16 way that it appeared to you on March 28, 2000,
17 when you were present at the scene?

18 A I don't have any notes about spatter on the door.

19 Q You have no recollection of blood spatter on the
20 door?

21 A I don't, no.

22 Q And are there any other photographs in the
23 photographs from the crime scene that depict that
24 location March 28, 2000?

1 A I'm sure there are photographs from the crime
2 scene, yes.

3 Q Do you know if any photographs depict that
4 location?

5 A I don't know.

6 MR. FLAHERTY: I would move to
7 introduce it into evidence, Your Honor.

8 MR. TOCHKA: Objection.

9 THE COURT: Sustained.

10 BY MR. FLAHERTY:

11 Q I'm showing you another photograph and I'll ask
12 you if you recognize what's depicted there in.

13 A This is another photo from, it appears to be
14 further away, of the same spatter on the inside
15 of the hallway door.

16 Q Okay. And is that a fair and accurate depiction
17 of the way the scene appeared to you on March 28,
18 2000?

19 A I don't recall the stain on the door.

20 MR. FLAHERTY: I'd move to introduce
21 this photograph, Your Honor

22 MR. TOCHKA: Your Honor, if I could be
23 heard at side bar?

24 THE COURT: The objection which counsel

1 is rising to make is sustained.

2 BY MR. FLAHERTY:

3 Q And I'll show you another photograph and I will
4 ask you if you recognize what's depicted therein.

5 A Yes. This is spatter from the inside of the
6 hallway.

7 Q And is that a fair and accurate depiction of the
8 way that scene appeared to you on March 28, 2000?

9 A Yes. There was spatter on the inside of the
10 hallway that I recall.

11 Q Inside the hallway door?

12 A Inside of the hallway on the wall.

13 MR. FLAHERTY: Okay. I would move to
14 introduce this photograph in evidence, Your
15 Honor.

16 MR. TOCHKA: I would object unless the
17 witness says it's a fair and accurate
18 representation as to what --

19 BY MR. FLAHERTY:

20 Q Excuse me. Is this a fair and accurate
21 representation of the way it appeared to you on
22 March 28 of 2000?

23 A It's not a very good photo. It appears similar.
24 The crime scene photo was better but there are

1 reddish brown stains.

2 MR. FLAHERTY: Okay. I would move to
3 introduce this into evidence, Your Honor.

4 MR. TOCHKA: I would object, Your
5 Honor.

6 THE COURT: Sustained.

7 BY MR. FLAHERTY:

8 Q These three photographs that I previously showed
9 you are photographs of the interior door of 89
10 Faneuil Street, right?

11 A The photos say inside the hallway door on them.

12 MR. TOCHKA: Objection, Your Honor.
13 Move to strike.

14 THE COURT: Another question, sir.

15 BY MR. FLAHERTY:

16 Q And you have no reference to this inside hallway
17 door of 89 Faneuil Street in your report authored
18 March 22, 2002, correct?

19 A That's correct.

20 Q And you have no reference to the inside hallway
21 door, any blood spatter or lack of blood spatter,
22 in your notes that you wrote contemporaneously
23 with what you did March 28, 2000, correct?

24 A Contemporaneously?

1 Q Did you take notes as you were at the crime
2 scene?

3 A Yes.

4 Q So when you were at the crime scene you didn't
5 make any notes one way or the other of the inside
6 metal door of 89 Faneuil Street, right?

7 A That's correct.

8 Q And finally, Ms. Stevens, how far away was the
9 distance from Mr. Yazbek's body outside 89
10 Faneuil Street to the inside hallway where you
11 observed the blood spatter evidence that you
12 observed on March 28, 2000?

13 A I would have to measure it. I didn't measure it
14 at the time.

15 Q You used some measuring tape and made some rough
16 estimates of the way the blood spatter appeared
17 inside 89 Faneuil Street, right?

18 A That's correct.

19 Q You never measured the distance from the blood
20 spatter evidence inside 89 Faneuil Street to
21 where the body was outside?

22 A No.

23 Q And you never compared that blood spatter inside
24 to the blood from the body outside, right?

1 A That's correct.

2 MR. FLAHERTY: Nothing further, Your
3 Honor.

4 THE COURT: Anything more, sir?

5
6 REDIRECT EXAMINATION

7 BY MR. TOCHKA:

8 Q Ms. Stevens, you were asked relative to clothing,
9 whether or not you tested any clothing allegedly
10 from Mr. Robinson and you didn't, correct?

11 A I did not, that's correct.

12 Q And in terms of whether you look at clothing for
13 possibility of -- when you look at clothing for
14 possibility of blood stains, what are you looking
15 for? How do you determine that?

16 A We determine it by visually looking at it.

17 Q And if you see something visually looking at it,
18 what do you do next?

19 A Then we do a presumptive screening test that
20 indicates whether it is or it isn't and then we
21 may or may not go on to confirm it, depending on
22 what information we're going to get from
23 performing further testing.

24 Q If you observed nothing on your visual

1 examination, looking at clothing for a
2 possibility of blood, what do you do?

3 A We just document the item.

4 Q Do you do any further testing on it?

5 A Not if we don't see a stain.

6 Q Why not?

7 A If you don't see it, then there isn't sufficient
8 there to do anything with. We have to have a
9 visual stain in order for us to do any further
10 testing. Even to do a human testing, you need a
11 certain amount of the stain and in reference to
12 DNA, you need a presence of reddish brown stain.

13 Q So if you just look at a piece of clothing and
14 you observe nothing that indicates any type of
15 stain, you don't go any further?

16 A That's correct.

17 Q Is it possible, in the realm of possibility, for
18 you to go further?

19 A I've never seen it done in any laboratory. There
20 are chemical enhancements.

21 Q And a chemical enhancement would do what?

22 A A chemical enhancement is meant for, as an
23 investigative tool to help you see spatter, to
24 document a location.

1 Q And in your experience with chemical enhancement,
2 where are the chemical enhancements used? On
3 what type of items?

4 A They're used in a scene.

5 Q On the walls of a scene?

6 A On the walls, on the floor, things like that.

7 Q Are they used on clothing?

8 A Not in my experience.

9 Q And have you ever had any experience where they
10 have been used on clothing?

11 A No.

12 Q And is one of the reasons why it wouldn't be used
13 on clothing because of what -- even if you came
14 up with an item, what would it tell you?

15 A We would not be able to go any further.

16 Q Than what?

17 A Than to say chemical enhancement shows that it
18 could possibly -- chemical enhancements are
19 presumptive tests of themselves. They react with
20 other things besides blood so unless you were
21 using it for investigative reasons or to help you
22 find blood that had leaked into a crack on a
23 floor or something like that, it would not be of
24 any value. It could be reacting to chemicals.

1 Q It wouldn't help you one way or the other with
2 respect to clothes?

3 A That's correct.

4 Q Mr. Flaherty asked you about luminal, and have
5 you ever used luminal on the floors -- on hallway
6 floors in order to try to get a footprint? Have
7 you ever heard of that being done?

8 A I've heard of it being done if there was an
9 attempt to clean the scene, if there was not
10 visible blood at the scene.

11 Q And was there any visible blood on the floor of
12 this particular hallway?

13 A No.

14 Q Mr. Doolin asked you about the blood spatter on
15 Iman Yazbek's crotch area and you tested that
16 when?

17 A I tested the pants -- it was actually -- I'm
18 sorry. It was the right thigh area on the pants,
19 the reddish brown stain that was tested and
20 identified as human. It was tested in March of
21 2002.

22 Q Okay. So March 2002 of this year, correct?

23 A Yes.

24 Q And it's fair to say that you only do testing

1 such as this on this particular item as a result
2 of being asked to do that, correct?

3 A That's correct.

4 Q And it's fair to say that the prosecutor in the
5 case can't ask you for particular items to be
6 tested, isn't that fair to say?

7 A Examination is done from the investigator.

8 Q And the prosecutor could ask the investigator to
9 have a certain item tested on his own, correct?

10 A That's correct.

11 Q With respect also to the blood spatter that you
12 saw on the inside and outside of the walls in the
13 hallway and the outside of 89 Faneuil Street,
14 from your observations, your initial -- just your
15 naked eye observations, did it appear -- how
16 close were those two groupings of spatter?

17 By that I mean, the inside and the
18 outside of the hallway? What did it appear to
19 you?

20 A It appeared to me at the time that the door might
21 have been open and that it was caused by the same
22 or --

23 MR. DOOLIN: I object.

24 THE COURT: Another question, sir.

1 BY MR. TOCHKA:

2 Q When you saw the spatter on the inside hallway
3 and the spatter on the outside of the hallway,
4 did it appear to be -- what I'm asking is the
5 distance between those two groupings, the one on
6 the inside, the one on the outside. What were
7 they? Like fifteen feet apart?

8 MR. DOOLIN: Your Honor, I object.

9 MR. FLAHERTY: Objection.

10 THE COURT: Sustained.

11 BY MR. TOCHKA:

12 Q How far apart were they? How far apart were they
13 approximately?

14 A Like maybe a few feet.

15 Q Mr. Doolin asked you about the tissue that you
16 observed on that stair, and let me ask you this -
17 - actually, let me go back to that scene.

18 When you saw Iman Yazbek, can you
19 describe the face of Mr. Yazbek?

20 MR. DOOLIN: Your Honor, I object.

21 MR. FLAHERTY: Objection.

22 THE COURT: Sustained.

23 MR. TOCHKA: May I be heard at side bar
24 as to that?

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THE COURT: Yes.

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

MR. TOCHKA: It's relevant, I'm asking in terms of the blood that she saw on the face, the blood that she saw on the driveway, the blood that she saw, was it consistent with being, in her mind, all connected to the same individual and so as a result there was no need to be testing it.

THE COURT: I understand why you're asking the question. How can she say the blood is from the same individual?

MR. TOCHKA: As to why it wasn't tested. The defense asked why wasn't it tested. The reason why it was not tested is because it's consistent with all coming from Mr. Yazbek, the blood that was at the scene. I can ask her about the blood on the face, the blood streaming down. There's blood on the stairs, there's blood on the inside hallway. Why wasn't it tested? Because it's consistent with all being from Mr. Yazbek.

THE COURT: You can ask her why this wasn't done, you can then explore the reasons why

1 these tests weren't performed, but the question
2 to which counsel made an objection was about her
3 observations about the blood on the face of Mr.
4 Yazbek and that's before the jury so --

5 MR. TOCHKA: That's my point. I'm not
6 trying to belabor it with this particular jury
7 about the blood on his face. I'm trying to
8 explain that at the scene that there was plenty
9 of blood at that particular scene so that it's
10 for the jury to understand from this witness and
11 through my closing argument, there was no need to
12 be testing all of this for DNA.

13 THE COURT: You can get into that but I
14 don't want her observations about Mr. Yazbek's
15 face because it is before the jury.

16 MR. TOCHKA: Then if I could just lead
17 her in terms of, was there blood -- I just ask to
18 lead her, was there blood around the victim, on
19 the victim, on the walls and blood on the stairs.

20 THE COURT: Why don't you put another
21 question to the witness, sir.

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

24 BY MR. TOCHKA:

1 Q Ms. Stevens, it's fair to say that when you were
2 at this particular scene, you observed the body
3 of Mr. Yazbek, correct?

4 A Yes.

5 Q And you observed the blood around the face of Mr.
6 Yazbek?

7 A Correct.

8 Q And you observed the pool of blood leading from
9 the body, correct?

10 A Yes.

11 Q And you observed the blood that you testified
12 that was on the stairs, correct?

13 A Yes.

14 Q And you testified about the blood spatter that
15 appeared to be on that particular wall, correct?

16 A On the outside righthand side, yes.

17 Q In terms of doing DNA testing, ma'am, can you
18 tell us, is that testing done in every particular
19 case?

20 A No.

21 Q And in this particular case, it was not done,
22 correct?

23 A That's correct.

24 Q Based on your initial observations -- strike

1 that. And why is it not done, ma'am?

2 A It's done only if we're going to gain some
3 information from it such as if there was a
4 question about more than one person being
5 injured, if we're trying to connect suspect and
6 victim.

7 Q Okay. And with respect to your observations in
8 this case, were you trying to compare the blood
9 on the wall to any individual?

10 A No.

11 Q Just yes or no, based upon your observations, do
12 you have an opinion as to where that blood
13 spatter on the wall came from?

14 MR. DOOLIN: I object.

15 MR. FLAHERTY: Objection.

16 THE COURT: Sustained.

17 BY MR. TOCHKA:

18 Q Finally, ma'am, with respect to the keys -- well,
19 let me ask you, with respect to the tissue that
20 you observed, based on where you saw that tissue,
21 did you have an opinion - not what's your opinion
22 - but did you have an opinion as to where that
23 tissue came from?

24 A Yes.

1 Q Based upon the blood spatter that you saw on the
2 thigh area of Mr. Yazbek, not what your opinion
3 was, but did you have an opinion as to where that
4 blood came from?

5 MR. FLAHERTY: I object.

6 MR. DOOLIN: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. TOCHKA:

9 Q The keys in connection with this case, ma'am,
10 you're aware that there was a car there, correct,
11 that was at the scene?

12 A There was a car in the driveway, yes.

13 Q And those particular keys you gave to Sergeant
14 Coleman, correct, after you did a preliminary
15 testing for blood on them?

16 A That's correct.

17 Q What was the reason why you gave them to Sergeant
18 Coleman?

19 A He requested them.

20 Q And do you know whether or not those keys
21 belonged to the owner of the car?

22 A I don't know.

23 MR. TOCHKA: You don't know. Thank
24 you. I have no further questions.

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MR. DOOLIN: I do.

THE COURT: Only within the scope of
redirect.

MR. DOOLIN: Just one question.

RECROSS EXAMINATION

BY MR. DOOLIN:

Q No clothing attributable to Robinson was ever
given to you for your examination, is that right?

A That's correct.

MR. DOOLIN: That's all I have.

MR. FLAHERTY: Just one.

RECROSS EXAMINATION

BY MR. FLAHERTY:

Q The blood spatter on the inside door hallway
isn't in the immediate area of the blood spatter,
right?

A It's in the immediate area, yes.

THE COURT: Anything more, Mr. Tochka?

MR. TOCHKA: Nothing, Your Honor.

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

We are going to take a short recess,

1 ladies and gentlemen. We are going to take a
2 short recess. Leave your notes on your seats,
3 please. Thank you.

4 (Whereupon, the proceedings were
5 recessed at 11:45 o'clock a.m., and reconvened at
6 12:04 o'clock p.m.)

7 MR. TOCHKA: May I call my next
8 witness, Your Honor?

9 THE COURT: Yes.

10 MR. TOCHKA: Sergeant Detective Mark
11 Vickers.

12 MR. FLAHERTY: Your Honor, may we
13 approach very briefly?

14 THE COURT: Yes.

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

17 MR. FLAHERTY: On the motion in limine
18 regarding the chalk, I don't know if there's been
19 a decision by the Court on that yet. I think
20 this witness is the one who will be trying to
21 demonstrate with a chalk.

22 THE COURT: I had said that he could
23 use it to assist him in his testimony, that I
24 would give a limiting instruction. I have

1 already included one in my charge but if you want
2 me to give one at this time, I will certainly
3 consider it. As I understand it, your objection
4 is that this is not the three fifty-seven magnum
5 that was used in the commission of the crimes and
6 that there is no way of telling that a three
7 fifty-seven magnum was used in the crimes.

8 MR. TOCHKA: I would object to that
9 type of instruction. I will make it clear to the
10 jury through the questioning that this is not --
11 this is a seven fifty-seven that is unrelated to
12 this crime, period.

13 THE COURT: Okay. Is that an
14 instruction you would like me to give at the time
15 he displays the weapon?

16 MR. DOOLIN: Yes.

17 MR. FLAHERTY: I think so, Judge, but I
18 don't know if that's inclusive enough because I
19 don't know if there is any connection other than
20 Mr. Tate's testimony that a three fifty-seven
21 magnum was stolen and the fact that this was a
22 gun shooting.

23 THE COURT: Well, at this time I'll
24 give an instruction that is limited in scope and

1 in the charge I'll consider a more comprehensive
2 instruction based on our discussion of the
3 evidence at the end of the case.

4 MR. TOCHKA: And just to let the Court
5 know, it's obvious that Alan Tate testified that
6 he had a three fifty-seven, four inch barrel,
7 that was stolen from his condominium.

8 THE COURT: I know. So the instruction
9 I propose to give is as follows. This witness
10 will be using --

11 MR. TOCHKA: I'll just ask, did you
12 bring an item with you, a handgun today.

13 THE COURT: What I'd just like you to
14 do is lead him into it, and it has nothing --
15 that he has many firearms at the ballistics unit,
16 this is in no way related to this particular
17 case. Is that fair to say?

18 MR. TOCHKA: Yes.

19 THE COURT: And if that is elicited by
20 the Commonwealth, do you also want me to give a
21 limiting instruction?

22 MR. DOOLIN: Yes.

23 THE COURT: Okay. And the instruction
24 will be that this witness is going to be using a

1 firearm which he will describe to you to assist
2 him in his testimony but there is no -- it is
3 stipulated that this is not the weapon which was
4 used in the commission of any of the crimes for
5 which the defendants are on trial.

6 MR. FLAHERTY: I guess.

7 THE COURT: Okay. We do have a
8 Passover concern from a juror. Passover does
9 begin at sundown and he wants to know when he's
10 leaving here today so I'm not sure when sundown
11 starts, but after this witness -- let's go off
12 the record.

13 (Whereupon, a discussion occurred off
14 the record at side bar, after which the
15 discussion at side bar was concluded.)

16 THE COURT: Ladies and gentlemen, let
17 me just explain some scheduling matters before we
18 continue. At least one of you has inquired about
19 it. We do anticipate that all or almost all of
20 the evidence will be concluded today and that we
21 will be getting this case to you tomorrow for
22 your consideration. And what that means is that
23 we would be listening to the closing arguments as
24 well as my instructions on the law and, as I

1 indicated the other day, that is going to take
2 most of a day.

3 Because we're coming on the holiday of
4 both Passover and Good Friday followed by Easter,
5 we are not going to be in session on Friday so
6 that most of you who want to observe the holidays
7 may do that and then you will be returned on
8 Monday for purposes of continuing with your
9 consideration of the case. I know that when we
10 impaneled the case, I had said that we had
11 expected to get the case to you sometime midweek.
12 The schedule obviously has been altered due to
13 various circumstances outside of our control and
14 so the case was not moved along in the manner
15 that we thought it would.

16 If there are any among you for whom the
17 return next week is very difficult or impossible,
18 then I would appreciate a note from you to me so
19 that I may consider any such request, but the
20 expected schedule at this time is, the case will
21 be given to you tomorrow for consideration and
22 then, since that will take most of the day to do,
23 you will be adjourning in time for those of you
24 who observe Passover to get home for it, and then

1 we will be continuing -- adjourning until Monday,
2 the Monday next after Easter. That will be the
3 first of April. Thank you.

4 You may continue, Mr. Tochka.

5
6 MARK VICKERS,

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

9 DIRECT EXAMINATION

10 BY MR. TOCHKA:

11 Q Sir, could you please state your name?

12 A Mark Vickers.

13 Q What's your occupation, sir?

14 A Boston Police sergeant detective.

15 Q I'm sorry. Could you spell your last name?

16 A V-i-c-k-e-r-s.

17 Q Officer Vickers -- Detective Vickers, how long
18 have you been a Boston Police officer?

19 A Twenty years.

20 Q And how long have you been a sergeant detective?

21 A Approximately eight years, nine years.

22 Q And where are you currently assigned to?

23 A The ballistics unit.

24 Q And what is the ballistics unit?

- 1 A Responsible for receiving and analyzing all
2 firearms that come into the custody of the Boston
3 Police Department.
- 4 Q And as a sergeant detective in the ballistics
5 unit, what are your duties and responsibilities?
- 6 A I'm the commander of the unit. I supervise other
7 firearms examiners and technicians in analyzing
8 firearms and firearms related materials.
- 9 Q Tell the jury your background and training in the
10 area of ballistics, please.
- 11 A I have numerous years of experience with the
12 military. I also have been to several schools in
13 firearms, I have been to the Henry Lee Institute
14 on firearm reconstruction, firearms evidence, and
15 basically that's about it.
- 16 Q And, sir, have you testified as an expert in the
17 area of firearms in the past?
- 18 A I have, sir.
- 19 Q And approximately how many times have you
20 testified as an expert in the area of firearms?
- 21 A Numerous times, yes, sir.
- 22 Q And in what courts have you testified as an
23 expert in the area of ballistics?
- 24 A District courts, federal court, and also Suffolk

1 Superior.

2 Q Now, Sergeant Detective, in terms of the staff
3 that you command, approximately how many
4 individuals are under your command?

5 A Eleven, sir.

6 Q And in connection with the case and with the
7 homicide of Iman Yazbek, were you asked to look
8 at certain items connected with this case?

9 A I was, sir.

10 Q And let me ask you, were you given something --
11 were you sent items from the medical examiner's
12 office in connection with this case?

13 A Yes, sir.

14 Q And do you have that with you today?

15 A I do, sir.

16 Q Could you please produce that?

17 A Yes, sir.

18 Q And before I introduce these items, let me ask
19 you to explain for the jury, is there a
20 difference between a revolver and a semiautomatic
21 weapon?

22 A Yes, sir.

23 Q Can you explain to the jurors the difference,
24 please?

1 A A semiautomatic weapon is basically a self-
2 loading weapon which means rounds are fed and
3 fired from an independent ammunition source also
4 known as a magazine or a clip. After each shot
5 is discharged the action resulting from the
6 ignition of the cartridge ejects the empty shell
7 casing and re-chambers another one, another fresh
8 cartridge in the chamber and this process is
9 repeated until the ammunition supply is expended
10 or you stop firing the weapon.

11 Q So on a semiautomatic the ammunition goes into a
12 clip?

13 A That's correct, sir.

14 Q And the clip goes where in the gun?

15 A Into the handle, butt area of the gun.

16 Q And once the bullet is fired from the gun, you
17 said a shell casing is ejected. What is a shell
18 casing?

19 A A shell casing basically holds the propellant or
20 the powder and the ignition system in the bullet.
21 It kind of holds everything together.

22 Q And this casing is ejected, where is it ejected
23 from in the gun?

24 A It's ejected from the, normally the righthand

1 side of the firearm. It's called the ejection
2 port.

3 Q And when it's ejected, what does it do? I mean,
4 does it drop? Does it shoot out?

5 A It's basically thrown from the firearm.

6 Q Okay. And in comparison to that and a revolver,
7 what's the difference?

8 A Well, a revolver is just that there are usually a
9 number of firing ports, the standard is six,
10 where a cartridge is put in each one of these
11 firing ports and every time the trigger is pulled
12 and the cartridge is discharged, the cylinder
13 rotates underneath the hammer of the weapon and
14 this process is repeated until the ammunition
15 supply is exhausted or you stop pulling the
16 trigger.

17 Q In the semiautomatic, you said the shell kicks
18 out or goes to the ground or wherever. In terms
19 of a revolver, what happens to a shell once the
20 bullet -- once it's fired?

21 A They stay inside the weapon.

22 Q Stay inside that cylinder?

23 A That's correct. You have to manually eject them.

24 Q And in connection with a semiautomatic, if you

1 were to use a clip in a semiautomatic -- it's a
2 square handle?

3 A Yes, sir.

4 Q If you were to use a clip in a semiautomatic,
5 once you fired the bullets that are in there, how
6 do you reload the gun? What do you have to do?

7 A You would have to put a fresh magazine in or
8 reload the magazine with ammunition.

9 Q So is it fair to say, if you have a clip in a
10 gun, can you have additional clips, just clips in
11 your pocket?

12 A That's correct, sir.

13 Q So you can have additional clips for -- wherever
14 you're going to keep them, to reload ammunition
15 or it can be loose bullets, if you will, that you
16 then take the clip out and reload manually?

17 A Yes, sir.

18 Q With respect to the revolver, once you expend
19 those six bullets, what do you have to physically
20 do in order -- there's no clip that you can just
21 slide back in with bullets?

22 A That's correct, sir.

23 Q What do you have to do to put another set of
24 bullets in?

1 A You have to open the cylinder and manually eject
2 the spent cartridge cases out of the weapon and
3 then reload each firing port with a fresh
4 cartridge and then close it.

5 Q Okay. So then since there is no clip with a
6 revolver where would those bullets normally be
7 kept? Are they loose?

8 Is there like a barrel that you can
9 replace in the revolver? A barrel that has a
10 revolver, is that how it's done?

11 A Usually, sir, either by speed loaders or loose
12 rounds. Speed loaders basically are, I'd call it
13 a little device used to hold six bullets to make
14 it a little more expedient to reload. Normally
15 loose rounds are kept in a pocket or wherever,
16 wherever is handy and convenient and put back
17 into the weapon.

18 Q And when you say loose rounds, what do you mean
19 by loose rounds?

20 A Just individual, individual cartridges.

21 Q And in terms of -- are you familiar with various
22 terms, street terms for a gun in the vernacular
23 on the street?

24 A I know a few, sir.

1 Q And what are those?

2 A Gat, ratchet, tool.

3 Q Burn? Would that be one?

4 A Burn, smoke wagon, the list can go on a while.

5 Q Are you aware of various street terms in terms of
6 a bullet?

7 MR. DOOLIN: Your Honor, I object.

8 THE COURT: He may answer that.

9 A Bullets, yes, sir, commonly referred to as shells
10 or cartridges or bullets.

11 BY MR. TOCHKA:

12 Q Now, in connection with -- on a bullet, is there
13 such a thing called a copper jacket?

14 A That's correct, sir.

15 Q And what's a copper jacket?

16 A The jacket is the casing of the actual bullet
17 itself. Usually the core of the bullet is lead
18 and then it's wrapped in this, in a copper
19 jacket.

20 Q So the core of the bullet is lead?

21 A That's correct.

22 Q And the copper jacket, that's around the bullet,
23 and what's the reason for that?

24 A To maintain the shape, form of the bullet.

- 1 Q Before it's fired?
- 2 A That's correct, sir.
- 3 Q Looking just at a jacketed bullet, can you tell
- 4 us whether or not a jacketed bullet comes from a
- 5 revolver or a semiautomatic?
- 6 A I don't quite understand your question, sir.
- 7 Q My question is, do revolvers take jacketed
- 8 bullets?
- 9 A Yes.
- 10 Q Do semiautomatics take jacketed bullets?
- 11 A They do, sir.
- 12 Q In connection with this case, did you receive
- 13 these two items from the medical examiner's
- 14 office?
- 15 A Yes, sir.
- 16 Q And --
- 17 A They are received into the unit, sir.
- 18 Q And having received those from the medical
- 19 examiner's office, under your supervision, is
- 20 there an Officer Lydon?
- 21 A That's correct, sir.
- 22 Q And did he review those?
- 23 A Yes, sir.
- 24 Q And were you asked to come in to testify in

1 connection with this case?

2 A I was.

3 Q And as commander of the unit, have you looked at
4 those? And what's your conclusion?

5 A That they are fragments of a copper jacket and
6 basically that's about all I can tell you about
7 these.

8 Q When you say fragments of a copper jacket, what
9 do you mean?

10 A They're fragments, possibly from a bullet, I
11 would say.

12 Q And they are in two separate jars, correct?

13 A They are, sir.

14 Q And in terms of the labeling on A, which is the
15 jar, does that come from the medical examiner
16 where it says, from mouth?

17 A Yes, sir.

18 Q And the labeling on B, is that from the medical
19 examiner where it says from tongue?

20 A That's correct, sir.

21 MR. TOCHKA: Your Honor, the
22 Commonwealth would move to introduce these into
23 evidence at this time.

24 MR. DOOLIN: No objection.

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MR. FLAHERTY: No objection.

THE COURT: They may be marked and admitted.

(Exhibit Nos. 47 and 48, being jars, as described above, were marked and admitted into evidence.)

MR. TOCHKA: May I ask to publish these to the jury?

THE COURT: Give it to one of the officers.

BY MR. TOCHKA:

Q Sir, in connection with this case, did you also receive another item or did the ballistics unit receive another item?

A Yes, sir.

Q And what is that item, sir?

A A small piece of lead.

Q And, sir, this piece of lead that was received from the ballistics unit, it's fair to say you didn't go out to the scene, correct?

A That's correct, sir.

Q Let me go over that with you. In terms of going out to the scene, is the ballistics unit at times called out to the scene of a crime?

1 A Yes, sir.

2 Q Is it standard operating procedure for the
3 ballistics unit always to be called out to the
4 scene of a possible shooting case?

5 A No, sir.

6 Q When is it typically that the ballistics unit
7 would be called out to the crime scene?

8 A The determination is made by the supervisor on
9 scene.

10 Q And is it -- it's at this point that the
11 ballistics unit will go to recover at times
12 ballistics evidence?

13 A That's correct.

14 Q When ballistics evidence has been found, correct?

15 A That's correct, sir.

16 Q And in connection with this case, sir, this
17 particular fragment came to the ballistics unit,
18 correct?

19 A That's correct, sir.

20 Q And looking at this fragment, based upon your
21 experience as a ballisticians, what's the best
22 that you can tell this jury?

23 A That it is a lead fragment, possibly a bullet.

24 Q And what do you mean when you say possibly?

1 A Possibly from a bullet, sir. There is absolutely
2 no evidentiary material there that I can link it
3 back to a particular firearm.

4 Q So that you can link it to a firearm? You cannot
5 use this to link to a firearm, correct?

6 A That's correct.

7 Q Can you even tell this jury with certainty
8 whether or not this is a bullet?

9 A Not with a hundred percent certainty, sir.

10 Q Does it appear to be consistent with a bullet?

11 A It's consistent with a bullet.

12 Q Consistent with not being a bullet?

13 A It's consistent, sir.

14 MR. TOCHKA: I'd move to introduce this
15 into evidence.

16 MR. DOOLIN: No objection.

17 MR. FLAHERTY: No objection.

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

20 (Exhibit No. 49, being a fragment, as
21 described above, was marked and admitted into
22 evidence.)

23 MR. TOCHKA: And I'd ask to publish it
24 to the jurors.

1 BY MR. TOCHKA:

2 Q Now, sir, in connection with this case, if you
3 could just answer my question at this point in
4 time, did you bring a firearm with you?

5 A I did, sir.

6 Q And is that firearm a -- what type of firearm is
7 that?

8 A It's a four inch three fifty-seven magnum.

9 Q And it's fair to say that the ballistics unit has
10 firearms, all types of firearms, correct?

11 A That's correct, sir.

12 Q And it's fair to say that this firearm is not
13 alleged to be connected in any way to this case,
14 correct?

15 A That's also correct, sir.

16 THE COURT: Excuse me again, ladies and
17 gentlemen. I just want you to understand that
18 Detective Vickers may be displaying this firearm
19 in the course of his testimony to assist you in
20 understanding the testimony, but please
21 understand that this is not the weapon which was
22 used in any of the crimes for which any of the
23 defendants stands trial.

24 BY MR. TOCHKA:

1 Q Sir, could you produce that firearm, please?

2 A Yes, sir. I'll open it and make sure it's safe,
3 sir. And it is.

4 Q And, sir, holding that in front of the jurors,
5 can you show us in terms of what you're
6 describing as a revolver, show us what you mean,
7 sir.

8 A Okay. A revolver, this is the cylinder of a
9 revolver. This rotates, every time the trigger
10 is pulled, it rotates, discharges a cartridge,
11 continues to rotate with the next pull of the
12 trigger. This weapon holds six rounds and this
13 will do the six rounds before you have to open
14 it, dump the empty cartridges out, shell cases
15 now because they are empty, they have been
16 expended, the bullet has been expended, and
17 reload the cartridges and the process can be
18 repeated again.

19 Q And is there a type called a double action and a
20 single action?

21 A That's correct, sir.

22 Q Explain to the jury, is that on a semiautomatic
23 or just on a revolver?

24 A It's on both.

1 Q Both? Okay.

2 A Both weapons.

3 Q Can you explain to the jury what a single action
4 versus a double action is?

5 A A single action shot basically is that the hammer
6 is cocked, fires, and then the trigger is pulled.
7 The double action is, the trigger at rest comes
8 back and drops and the hammer drops on the primer
9 of the cartridge. The double action pull is
10 significantly stronger than -- takes more
11 pressure, excuse me, than the single action pull.
12 Single action pull is approximately two and a
13 half, three pounds. This is approximately six to
14 eight pounds.

15 Q And, sir, you had an occasion to observe the
16 photographs of an autopsy of Iman Yazbek,
17 correct?

18 A That's correct, sir.

19 Q Did you have an opportunity to observe the facial
20 area?

21 MR. DOOLIN: Judge, I object.

22 THE COURT: I didn't hear the question,
23 sir.

24 MR. TOCHKA: Pardon me?

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THE COURT: I didn't hear your question.

BY MR. TOCHKA:

Q Did you have an opportunity to observe the facial area of the autopsy photos?

MR. DOOLIN: I object.

THE COURT: He may answer that.

A Yes, sir, I did.

BY MR. TOCHKA:

Q And have you on occasion as a ballisticians had occasion to observe gunshot wounds on individuals?

A Yes, sir.

Q And can you tell the jurors approximately how many times you have had an opportunity to do that?

A Numerous times, sir. I wouldn't know where to begin to count. Numerous times, sir.

Q Let me ask you, yes or no at this point in time, do you have an opinion based upon your experience as a ballisticians to a reasonable degree of certainty whether or not that particular gunshot wound that you observed on Mr. Yazbek's face was caused by the type of that weapon that --

1 MR. DOOLIN: I object.

2 MR. FLAHERTY: Objection.

3 THE COURT: May I see counsel, please?

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

6 THE COURT: Grounds for the objection?

7 MR. DOOLIN: There is no foundation for
8 him to give an expert opinion, the grounds for
9 him to give an expert opinion, which I think he
10 is going to do, that a bullet from a three fifty-
11 seven is consistent with causing that --

12 MR. TOCHKA: Not a three fifty-seven.
13 He's going to say a high pressure bullet.

14 THE COURT: You need to lay a better
15 foundation.

16 MR. TOCHKA: I'll lay a better
17 foundation.

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

20 BY MR. TOCHKA:

21 Q Sir, are you aware of the term contact wound,
22 close contact wound?

23 A Yes, sir.

24 Q And can you explain what those terms mean?

1 MR. DOOLIN: Your Honor, I object.

2 THE COURT: He may answer that.

3 A A contact wound is a wound where the muzzle of
4 the weapon is directly against the surface.
5 Close contact is just that, close contact. It
6 could be a portion of the muzzle such as I have
7 against my hand or slightly away from the object.

8 BY MR. TOCHKA:

9 Q And what is the difference in terms of impact of
10 the bullet on a close versus a contact wound?

11 A I'm sorry. I didn't hear your question, sir.

12 Q What's the effect of a close contact versus a
13 contact wound?

14 A Well, on the close contact, a close contact would
15 leave very little stippling and tattooing.
16 Basically, the burning gasses and powders or
17 unburnt powders, they wouldn't be left on the
18 area, visible on the area, would be left inside
19 of the area.

20 Q Okay. Now, let me back you up then. When you're
21 talking about stippling, what's stippling?

22 A Stippling is unburnt, unburnt particles, powder.

23 Q So we talked about a shell, what happens to the
24 shell in a revolver versus a semiautomatic.

1 A Um-hum.

2 Q In terms of a bullet, when a bullet is fired,
3 what comes out of the barrel?

4 A The bullet and gasses that follow the bullet,
5 that propel the bullet and unburnt powder
6 residue.

7 Q Okay. And if a weapon is held -- is there a
8 distance in which a weapon is held further away
9 from an individual that you will not get
10 stippling?

11 A I'm sorry?

12 Q Sure. Is there a distance -- every time a bullet
13 is fired and strikes an individual, is there
14 stippling on that individual?

15 A No.

16 Q And what's the reason for that?

17 A The reason being is, the distance would dictate
18 that. A distance of six feet would leave no
19 stippling or tattooing. Closer, as you move
20 closer you tend to get it because it doesn't
21 dissipate in the air and very, very close you'll
22 have a lot.

23 Q Okay. So if it's further away, the stippling,
24 the gasses dissipate, as you're saying, so they

1 don't strike the individual, is that right?

2 A That's correct, sir.

3 Q The closer it is, what happens, sir?

4 A The closer it is, the more likely it is to leave
5 an impression on the area.

6 Q Now, when it's a contact wound, when it's
7 actually flush up against the body parts of an
8 individual, what would happen in terms of
9 stippling?

10 MR. FLAHERTY: Objection.

11 THE COURT: Rephrase the question, sir.

12 BY MR. TOCHKA:

13 Q On a contact wound, sir, would there be stippling
14 associated with a contact wound?

15 A Not, not outside the wound, sir.

16 Q Where would the stippling be, sir?

17 MR. FLAHERTY: Objection, Your Honor.

18 THE COURT: Overruled.

19 BY MR. TOCHKA:

20 Q Where would the stippling be?

21 A It would be inside of the wound channel.

22 Q And is there-- in terms of a very close contact
23 wound, where would the stippling be, sir?

24 A Also the majority of it would be inside the wound

1 channel.

2 Q Now, is there a difference between a high
3 pressure gun versus a gun that's not high
4 pressure?

5 A Yes, sir, there is.

6 Q And am I saying that phrase right? High
7 pressure?

8 A Yes, sir. It's fairly accurate.

9 Q What would be the accurate phrase?

10 A High velocity, a high velocity weapon that
11 generates high pressure.

12 Q A high velocity weapon generates high pressure?

13 A Yes, sir.

14 Q What do you mean by that?

15 A Well, sir, the more propellant inside of the
16 cartridge the faster the bullet is going to exit
17 the firearm, the muzzle of the firearm, and to do
18 that, what it is, it decreases the pressure --
19 increases the pressure inside the shell casing.
20 When the primer is ignited and the propellant is
21 burned, it doesn't actually explode. There is
22 not an explosion. When you hear the bang, that's
23 the release of the pressure as the bullet leaves,
24 the shell casing heads down the barrel of the

1 weapon and that's where you get the bang and, in
2 doing so, by adding more propellant you get
3 higher pressures, you get bigger bang, flash
4 fire, and the bullet is going faster.

5 Q And what weapons typically would be considered
6 high velocity, high pressure weapons?

7 A Certain nine millimeters, three fifty-seven. The
8 three fifty-seven magnum is a perfect example of
9 a high velocity weapon that generates high
10 pressures.

11 Q And why is that?

12 A Because of the reason I just stated, sir, the
13 three fifty-seven magnum is loaded up with more
14 propellant than, I could guess, for lack of a
15 better terms, a close kin, the thirty-eight.
16 Basically they are the same bullets but a three
17 fifty-seven magnum is approximately a tenth of an
18 inch bigger than a thirty-eight and it has almost
19 twice the base of powder than a standard thirty-
20 eight.

21 Q What would be considered in your opinion not a
22 high velocity, high pressure weapon?

23 A A thirty-eight special.

24 Q What else?

1 A A three eighty. A three eighty weapon, nine
2 millimeter, there are a number of them, sir,
3 thirty-two caliber.

4 Q Twenty-five caliber?

5 A Excuse me?

6 Q Twenty-five caliber?

7 A Twenty-five, forty-four special.

8 Q All those are considered what?

9 A Mid range. Some of them will be large bore but
10 mid range, as far as pressure, chamber pressures
11 and velocity, not very, very high velocity
12 weapons.

13 Q When you explained, when you said to the jury the
14 high velocity, high pressured guns would have a
15 larger muzzle flash, what's a muzzle flash?

16 A Muzzle flash is the fire that you see when a
17 weapon is discharged. You see a large flame kind
18 of come out of the weapon, out of the muzzle area
19 of the weapon.

20 Q And having looked at the photograph of Iman
21 Yazbek, did you come to a conclusion whether or
22 not that was consistent with a high -- if you
23 could just say -- I'm sorry. Let me ask the
24 question.

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Looking at the photograph of Mr. Yazbek, do you have an opinion, yes or no, whether or not that was consistent with a high velocity, high pressure type weapon?

MR. DOOLIN: Your Honor, I object.

MR. FLAHERTY: Objection.

THE COURT: Overruled.

A I do have an opinion, sir.

BY MR. TOCHKA:

Q And what is your opinion based upon, sir?

A Based upon, there were a few things, sir. First of all, it was -- the bullet path, it had injured this portion of the face.

MR. DOOLIN: Your Honor, I object.

THE COURT: He may continue his answer.

A (continued) And exited and traveled down and exited and exited through the back. That was one. Number two was the laceration from here to here. That would be indicative of a high pressured type weapon, making that kind of a cut. The force that comes out of the muzzle would cause that type of laceration. Next would be the absence of a bullet inside of the -- inside of the body itself and just fragments. High

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1 velocity bullets have a tendency to break up
2 because of their speed on impact. They, in fact,
3 do break up most of the time and that, all of
4 these factor into my opinion.

5 BY MR. TOCHKA:

6 Q In terms of when you say bullets breaking up,
7 what do you mean by that?

8 A Bullets do make contact, they break up, they tend
9 to break up, the jackets come off and they tend
10 to break up.

11 Q And the bullets, it's the jacket comes off and
12 the bullet breaks up?

13 A Yes, sir, and in some cases it does, sir.

14 Q And what is that called when it breaks up? Is
15 that called fragments?

16 A Fragments, sir.

17 Q Do you have an opinion, sir, based upon your
18 observations of the wound that you saw, whether
19 or not it went -- let me ask the question a
20 better way.

21 Do you have an opinion -- you looked at
22 the photograph, right?

23 A I did, sir.

24 Q And based upon looking at the photographs, do you

1 have an opinion, just yes or no, as to whether or
2 not that wound on the face of Mr. Yazbek was
3 caused by a handgun held straight or at an angle?

4 MR. DOOLIN: Your Honor, I object.

5 MR. FLAHERTY: Objection.

6 MR. TOCHKA: Do you have an opinion,
7 that's all I'm asking, Your Honor.

8 THE COURT: Overruled.

9 A Yes, I do.

10 BY MR. TOCHKA:

11 Q And what is your opinion based upon?

12 MR. DOOLIN: I object to this
13 respectfully.

14 THE COURT: Overruled.

15 A Based upon the angle of the entry and of exit,
16 the absence of any stippling or tattooing, it is
17 my opinion that the weapon was held at a slight
18 angle with possibly the top of the muzzle area
19 which is this part making contact or near contact
20 with the victim.

21 BY MR. TOCHKA:

22 Q And that angle would cause what, sir?

23 A That angle would cause that -- two things, the
24 downward, the downward motion of the bullet and

1 the gasses, consistent with the gasses, as the
2 gasses would seek the other lesser path, they
3 would just go straight down and cause that
4 laceration to the victim's face.

5 MR. TOCHKA: Thank you. No further
6 questions.

7 THE COURT: Mr. Doolin?

8 MR. DOOLIN: Thank you.

9
10 CROSS EXAMINATION

11 BY MR. DOOLIN:

12 Q Sergeant Vickers, what you have up in front of
13 you, that's a revolver, is that right?

14 A That's correct, sir.

15 Q Now, the revolver that you have in front of you
16 is the three fifty-seven, is that right?

17 A It is, sir.

18 Q How does the -- what barrel length is that, the
19 one you have up there?

20 A Four inch, sir.

21 Q Three fifty-seven's, how big are the barrel
22 lengths? How much does it vary?

23 A They come in all different sizes, sir.

24 Q Can you tell us what the minimum would be and

1 what would be the maximum that you have seen in
2 your experience?

3 A The minimum would be probably about a one and a
4 half inch, a Derringer, the maximum would
5 probably be a twenty inch rifle.

6 Q On a three fifty-seven, how do they vary the
7 barrel length?

8 A That's what I just gave you.

9 Q One and a half inches to twenty inches?

10 A Twenty inches, I've seen it, yes, sir.

11 Q And what you see here is a three fifty-seven with
12 a -- is that four inches?

13 A That's correct, sir.

14 Q And that carries six bullets, is that right?

15 A It does, sir.

16 Q Now, is it fair to say that by carrying six
17 bullets, that there's six different compartments
18 that you can put the bullets in? Is that right?

19 A That's correct, sir.

20 Q And the bullet that you've described, it's fair
21 to say that in a revolver when a gun is -- when
22 the revolver is fired, what happens to the shell?

23 A It stays inside the weapon, sir.

24 Q So for someone to remove a shell from a weapon,

1 you would have to do what I think you did earlier
2 on direct examination, you'd have to unlock the
3 cylinder, is that right?

4 A That's correct.

5 Q And you would then have to remove the shell from
6 the cylinder, is that correct?

7 A That's correct, sir.

8 Q And it's fair to say that one of the differences
9 between a revolver and an automatic is that in a
10 revolver the shell stays within the --

11 A The cylinder.

12 Q -- the cylinder?

13 A Yes, sir, that's correct.

14 Q It doesn't eject, is that right?

15 A Yes, sir.

16 Q With an automatic it ejects, is that right?

17 A That's correct, sir.

18 Q Now, I think you testified also that the three
19 fifty-seven has a lot of velocity, is that true?

20 A Yes, sir.

21 Q And you've examined the fragments that were found
22 that were turned over from the medical examiner's
23 office, is that right?

24 A That's correct, sir.

1 Q And you also examined a fragment that was found
2 on March 31 in front of 89 Faneuil, is that
3 right?

4 A That's correct, sir.

5 Q The fragment that you found that you examined
6 from March 31, that was found in front of 89
7 Faneuil, is that consistent with being a fragment
8 of a bullet?

9 A Yes, sir, I could say it would be.

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

12 THE COURT: Mr. Flaherty?

13

14 CROSS EXAMINATION

15 BY MR. FLAHERTY:

16 Q Sergeant Vickers, that is a copy of your CV,
17 right? Your curriculum vitae?

18 A Yes, sir.

19 Q Is there anywhere on there any training or
20 experience in forensic pathology?

21 A No, sir. At the Henry Lee Institute for Forensic
22 Science, we touched on that area, sir.

23 Q Did you touch on entrance wounds, exit wounds,
24 passage of bullets in the body?

1 A I believe so. That was included in the course,
2 sir.

3 Q Okay. Did you touch on it?

4 A I don't understand your question, sir.

5 Q Have you ever been to an autopsy?

6 A I have been.

7 Q Conducted an autopsy?

8 A I have seen, I have been to an autopsy, sir.

9 Q But you've never been to medical school, right?

10 A No, sir.

11 Q You've never performed an autopsy, right?

12 A That's correct, sir.

13 Q And what you're talking about here is photographs
14 you looked at, right?

15 A That's correct, sir.

16 Q Have you ever seen stippling travel in the
17 opposite direction in which it was shot?

18 A Yes, I have.

19 Q Stippling travels in the opposite direction?

20 A I've seen it happen, sir.

21 Q When you shoot a gun, stippling is the associated
22 gunpowder that forces the projectile out of the
23 gun, right?

24 A That's correct, sir.

1 Q And when you do testing as a ballisticians
2 sometimes to determine the point from which a gun
3 is fired, you might shoot a gun at a board and
4 move back a couple of feet, a couple of feet, to
5 see the spray of the stippling around the
6 entrance on the board, right?

7 A That's correct, sir.

8 Q And that will give you a distance, correct?

9 A That's true, sir.

10 Q When you shoot the stippling at the board, does
11 the stippling go through the board, turn around
12 and come back and hit the back side of the board?

13 A I don't understand your question, sir.

14 Q Well, when you're shooting at a board, you're
15 looking at the stippling on the entrance of the
16 bullet, right? To determine the distance, isn't
17 that fair to say, Detective Vickers?

18 A Well, it all depends how far I am away from the
19 object I'm trying to gather this test for. If
20 I'm making contact, I'm going to look for the
21 stippling on the side of the board or the medium
22 I'm using.

23 Q Okay. The medium you're use is, you do maybe a
24 half an inch board, right?

1 A No, sir. It's basically cloth swatches that we
2 use.

3 Q And how thick are the cloth swatches that you
4 use?

5 A As thick as a piece of cloth.

6 Q How thick would it be? How thick would you say?
7 Your best estimate?

8 A Maybe a centimeter, a little less, maybe.

9 Q Now, the revolver you have in front of you is a
10 Colt, right?

11 A No, sir.

12 Q It's not a Colt?

13 A No, sir. It's a model sixty-six, a Smith and
14 Wesson.

15 Q Is there something specific about Colt revolvers
16 and all Colt manufactured handguns?

17 A Is there something specific?

18 Q The striations that are caused --
19 A The rifling?
20 Q -- by a Colt? The rifling.
21 A Left, six left.

22 Q That means that every time you fire a bullet from
23 a Colt weapon, that the striations go to the
24 left, lefthand twist, I think they call it,

1 right?

2 A That's true, sir.

3 Q And is it every other firearm, every other
4 handgun a righthanded twist on the striations?

5 A Negative, sir. Actually the Smith and Wesson has
6 left twists in their inventory.

7 Q In their inventory?

8 A They sure do, sir.

9 Q But all Colt firearms have lefthand twists?

10 A To my knowledge they do, sir.

11 Q And what type of brands Smith and Wesson --

12 A I believe it's a four eleven, it's a forty
13 caliber Smith and Wesson four eleven, and that
14 has a lefthand twist, six left to be exact.

15 Q Okay. You testified on direct examination based
16 upon your observations of what you saw that this
17 was a high velocity weapon that was used, right?

18 A That's correct, sir.

19 Q And a Smith and Wesson forty would be a medium
20 velocity weapon, right?

21 A I would say yes.

22 Q So based on your observations the firearm used in
23 this case was definitely not a Smith and Wesson
24 forty caliber, right?

1 A I could safely say it wasn't a forty caliber,
2 sir.

3 Q Okay. Now, I also note from your curriculum
4 vitae you are trained in computer imaging?

5 A No, sir, I'm not trained. I have imagers or
6 technicians that work for me with the IBIS and
7 DRUGFIRE systems that are trained.

8 Q What computer software program does the Boston
9 Police Department ballistics unit use?

10 A We use a case management, ballistics case
11 management and we have IBIS and DRUGFIRE. IBIS
12 is an acronym for integrated ballistics imaging
13 system -- identification system. DRUGFIRE is a
14 FBI -- it's an imaging system also.

15 Q What's the best one for determining whether the
16 lands and grooves of a projectile can be
17 compared?

18 A Sir, I really don't understand that question.

19 Q Well, IBIS is used --

20 A Do you want me to say -- do you want me to say
21 which system is the best?

22 Q Yeah. Which one is the best that the Boston
23 Police has?

24 A Well, both systems are pretty good, sir. They

1 have their specialties, both have their
2 specialties. We use IBIS more than we use
3 DRUGFIRE.

4 Q Now, you received three bottles containing bullet
5 fragments, right?

6 A That's correct, sir.

7 Q Bottle A and bottle B came from the medical
8 examiner's office, right?

9 A That's correct, sir.

10 Q And bottle C came from Detectives Torres and
11 McLaughlin, right?

12 A I believe so, sir.

13 Q Did you use the computer imaging programs
14 available to the Boston Police Department to
15 determine if bottles A, B and C, the fragments
16 contained therein, all came from the same bullet?

17 A No, sir. The fragments were too small to use,
18 sir.

19 Q Did you try with the computer imaging programs at
20 your disposal to match up those fragments?

21 A I'm sorry. You have to ask my technicians that.
22 I can't answer that right now, sir.

23 Q Did you speak with Mr. Lydon who conducted the
24 examinations in this case?

1 A Yes, sir.

2 Q And did Mr. Lydon use the computer imaging
3 process to determine if A, B and C all came from
4 the same bullet?

5 A I'd have to ask him, sir.

6 Q You didn't ask him that question?

7 A No, I did not.

8 Q Did you do that yourself in preparation for your
9 testimony today?

10 A No, sir.

11 Q It's safe to say, is it not, that all these
12 fragments have consistent characteristics?
13 They're all made from the same type of things,
14 right?

15 A Well, the two from the medical examiner's office
16 are, they're both copper substances, and the
17 third that was recovered later on or
18 subsequently, I should say, was a lead so you
19 have two different types of materials.

20 Q How do you make bullets? Put copper and lead
21 together?

22 A I'm sorry, sir?

23 Q The items, the metals that go into a bullet are
24 copper and lead, most bullets, right?

1 A Yes, sir, in some cases.

2 Q Did you do any metallurgical studies on either
3 the copper or the lead to determine if they came
4 from the same bullet?

5 A No, sir. We don't have that capability, sir.

6 Q Now, you were able to determine or you say,
7 Officer Lydon was able to determine that evidence
8 bottle B contained two copper bullet fragments
9 with a combined weight of three point seven
10 grains.

11 These fragments have markings which may
12 make future ballistics comparison possible,
13 right?

14 A That's correct, sir.

15 Q Now, those markings, are they markings that are
16 caused during the firing of a bullet, if you
17 know? Did you examine the markings?

18 A No, sir, I did not.

19 Q It's fair to say that when any bullet is
20 discharged or a projectile is discharged from
21 whatever type weapon it is discharged from, there
22 are things called -- is it the correct term,
23 rifling? Or is it striations?

24 A It's both, sir. There are striations within the

1 rifling basically paramount to a machine marking,
2 tool and machine markings.

3 Q So the bullet goes out, markings are created on
4 it from the barrel?

5 A That's correct, sir.

6 Q And on evidence bottle B, there are some
7 markings, right?

8 A I believe so, sir.

9 Q Was it ever determined whether or not those
10 markings were inconsistent with a Colt weapon?

11 A With a particular Colt weapon?

12 Q Well, let me ask it this way then. All Colt
13 weapons, all Colt manufactured weapons have that
14 lefthand twist, right?

15 A I believe so, sir.

16 Q Was it ever determined if those markings were a
17 righthand twist?

18 A No, sir.

19 Q Nobody used a computer imaging program to
20 determine if those markings --

21 A The imaging system does not do that, sir. That
22 responsibility lies solely on the examiners
23 themselves.

24 Q And you use a microscope?

1 A We use comparison microscopes, sir.

2 Q Was a comparison microscope used to determine if
3 those markings in bottle number B were
4 inconsistent with a Colt lefthand twist?

5 A I still don't understand your question, sir.

6 Q Well --

7 A Are you asking me specifically was it -- did we
8 exclude or include Colt at the exclusion of all
9 others or just the Colt weapon?

10 Q Well, were you able to determine if those
11 markings were a lefthand or righthand twist?

12 A No, sir, because of the size and the condition,
13 you could not -- that can't be determined, sir.

14 Q So as I understand it, you can not include a Colt
15 revolver as being the weapon used to discharge
16 the fragments found and contained in bottles A, B
17 and C, right?

18 A That's correct.

19 Q Nor can you exclude a Glock, right?

20 A I'm sorry, sir?

21 Q You cannot exclude a Glock weapon as being the
22 weapon that fired those projectiles, right?

23 A No, sir, I can't.

24 Q You cannot exclude a Baretta weapon from having

1 fired those projectiles, right?

2 A That's right, sir.

3 Q You can't exclude a Remington weapon from having
4 fired those projectiles, right?

5 A I probably could, sir.

6 Q And how -- would you explain to us how you were
7 able to do that?

8 A A Remington handgun or Remington weapon, a
9 handgun of that velocity -- Remington made
10 handguns but not of that high velocity. If that
11 was a rifle, you'd have a lot more damage than
12 what was done to the victim.

13 Q You can't tell, just based upon the bullet
14 fragments and the photographs, whether this was a
15 pistol or a rifle, can you, sir?

16 A Sir, I can tell you this, that a rifle would
17 cause considerably more damage at close range.

18 Q Getting back, you cannot exclude a Heckler and
19 Cotch, right?

20 A No, sir, I could not.

21 Q You can't exclude a Smith and Wesson, right?

22 A That's correct, sir.

23 Q And you cannot exclude a Sig Sauer, right?

24 A That's correct, sir.

1 Q As a matter of fact, you can't say, based upon
2 the evidence you have, that an automatic weapon
3 was not used, right?

4 A That's correct, sir.

5 Q And isn't it consistent -- isn't the fact a
6 person retrieves shells consistent with an
7 automatic being used as opposed to a revolver?

8 A I'm sorry, sir. I don't understand your
9 question.

10 Q Assuming for the purpose of this question, in
11 your training and experience as a ballisticians --

12 A Um-hum.

13 Q -- that a weapon is discharged.

14 A Yes, sir.

15 Q That subsequent to the discharge of the weapon, a
16 person retrieves shells.

17 A Yes, sir.

18 Q Based on your training and experience in the area
19 of ballisticians -- being a ballisticians in the
20 area of ballistics, do you have an opinion as to
21 whether or not that retrieval of shells is
22 consistent or inconsistent with using a revolver?

23 MR. TOCHKA: Objection, Your Honor.

24 THE COURT: He may answer.

1 A Well, if you emptied your revolver, you'd have to
2 recover your shells and if you wanted to take the
3 shells with you from, shall we say, a scene of a
4 crime you could do that also, so it's six of one
5 or half dozen of the other, sir, respectfully.

6 BY MR. FLAHERTY:

7 Q So the only way that a shell discharges itself is
8 from a semiautomatic, not a revolver, right?

9 A The only -- I'm sorry. Would you repeat that
10 again?

11 Q A semiautomatic weapon --

12 A Um-hum.

13 Q -- ejects out of the ejection port?

14 A That's right, sir.

15 Q The shell, right?

16 A Um-hum.

17 Q And a revolver, the shell stays inside?

18 A That's correct, sir.

19 Q As a matter of fact, isn't it true you can't tell
20 what type of caliber was used just by the
21 fragment, right?

22 A That's correct, sir.

23 Q And different types of caliber bullets or
24 projectiles can be used by the same gun, right?

1 A That's correct, sir, some cases.

2 Q And in your training and experience, you would
3 agree with me, would you not, that if a three
4 fifty-seven magnum Colt Python revolver
5 discharged three fifty-seven ammunition at a
6 close contact range, you'd expect, if that
7 discharge happened to the facial area or the head
8 area of a person, you'd expect that person to be
9 decapitated basically, wouldn't you?

10 A No, sir.

11 Q You would not --

12 A No, sir.

13 Q -- in your training and experience?

14 A No, sir.

15 Q Okay. You're not a forensic pathologist, right?

16 A That's correct, sir.

17 Q Are you wearing a vest today underneath your suit
18 jacket?

19 A No, sir. I just put on a little weight.

20 Q You look good. You look good. And how many
21 inches is this barrel?

22 A Four inch barrel, sir.

23 Q Okay. Four inch barrel, and this is not a Colt
24 Python, right?

1 A No, sir. Smith and Wesson model sixty-six.

2 MR. FLAHERTY: Okay. Nothing further,
3 Detective. Thank you.

4 THE COURT: Anything more, Mr. Tochka?

5 MR. TOCHKA: Nothing, Your Honor.

6 THE COURT: Thank you very much, sir.

7 You may step down.

8 Ladies and gentlemen, we are going to
9 take the luncheon recess at this time. Please
10 leave your notes in your envelopes on your seats.
11 We'll see you at two p.m.

12 (Whereupon, the jury was escorted from
13 the courtroom at 12:57 o'clock p.m.)

14 THE COURT: Counsel.

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

17 THE COURT: Do you intend to call
18 Joanne Constable?

19 MR. DOOLIN: I'd say at this point in
20 time I'm a little bit up in the air on that.

21 THE COURT: Well, she has been taken
22 ill and has been transported by ambulance to
23 Mass. General Hospital. She was in the hallway.
24 I guess an ambulance had to be called and that's

1 where she was sent.

2 MR. DOOLIN: I had had a conversation
3 with her earlier.

4 THE COURT: Well, over the luncheon
5 recess you might want to investigate that and
6 come to some decision.

7 MR. DOOLIN: Okay.

8 THE COURT: With respect to Dicey,
9 whatever you want to put on the record, this
10 would be the time to do it now.

11 MR. FLAHERTY: Okay. Yesterday
12 afternoon, Your Honor, I informed Detective
13 Coleman I was going to call Lieutenant Dicey. He
14 said, whatever is your pleasure, give him a ring
15 or words to that effect, and it was my
16 understanding either in my conversation with
17 Detective Coleman yesterday or prior to that,
18 that wouldn't be a problem in calling him.
19 That's my understanding and I don't know if
20 that's the Commonwealth's or not, but in any
21 event, last night I contacted Lieutenant Dicey.
22 I called the North Conway Police Department,
23 spoke with a dispatcher, gave my cellular
24 telephone number.

1 I was called back by Lieutenant Dicey,
2 had a conversation with him where I did not
3 identify myself as counsel for Mr. Anderson and
4 did not identify myself as an assistant district
5 attorney, told him that I had spoken with
6 Detective Coleman and was calling him in order to
7 call him as a witness in the case, that we
8 requested that, that his testimony was needed at
9 a murder trial in Boston. He said that -- he
10 agreed to come down and I got a voice mail
11 message from Lieutenant Dicey this morning on my
12 cellular phone telling me that he was on
13 Staniford Street, he would be right here.

14 During the break I was in the hallway
15 and I inquired of Detective Torres if Lieutenant
16 Dicey was here and he explained to me that he had
17 arrived at some point, he learned that I was not
18 an assistant district attorney, he became upset
19 because he was apparently not under subpoena and
20 then, according to Detective Torres, told him if
21 no one spoke to him by eleven o'clock, he was
22 leaving. The break was at about, I think, twenty
23 minutes to twelve and at that point Detective
24 Torres told me that Lieutenant Dicey had left.

1 I would ask the Court for some relief.
2 With respect to Detective Sharon Wong, the
3 purpose in calling Lieutenant Dicey was to
4 inquire of him as to whether or not he retrieved
5 some fingerprints. He was at the scene of the
6 condominium in North Conway, New Hampshire, and I
7 would ask him what that was and, as I pointed out
8 to the Court yesterday, he's got notations
9 indicating what it was. Detective Wong's report
10 and testimony is inconsistent with that, and
11 during cross examination of Detective Wong, I was
12 not allowed to ask her whether or not she
13 considered any of Lieutenant Dicey's information
14 in finding her opinion. I think her testimony
15 was she hadn't spoken to him, hadn't reviewed any
16 reports.

17 In the alternative, I suppose the
18 defendant -- I have not subpoenaed this out of
19 state witness but at this stage, Your Honor, I
20 guess I would be seeking, based on what was said
21 today, and I can file an application for out of
22 state process and then Lieutenant Dicey can
23 appear at a hearing up at the district court in
24 New Hampshire to determine, have a judge of the

1 superior court up there determine whether or not
2 he has a material reason for not appearing in
3 court.

4 THE COURT: Mr. Tochka?

5 MR. TOCHKA: Your Honor, all I would
6 add is that I was told that he did come down,
7 that he indicated to one of the detectives or to
8 an individual that he felt that he had been
9 tricked, and when he came down here, he said that
10 he would wait until eleven o'clock and that he
11 would then leave. He felt that he had not been
12 properly served to come down here and he was,
13 like I said -- I'd suggest that does not allow
14 Mr. Flaherty to make the argument to this Court,
15 to ask the Court for relief in terms of
16 introducing any type of report from Lieutenant
17 Dicey, and I would object to that.

18 THE COURT: Well, you've had this
19 report for sometime, is that fair to say, Mr.
20 Flaherty?

21 MR. FLAHERTY: I received the report in
22 the normal course of discovery from the District
23 Attorney's office, yes.

24 THE COURT: That was months or more

1 than a year ago?

2 MR. FLAHERTY: I'm not certain of the
3 date but it was a substantial amount of time,
4 that's right.

5 THE COURT: Okay.

6 MR. FLAHERTY: And I did choose not to
7 seek out of state process with respect to any of
8 the New Hampshire personnel.

9 THE COURT: Okay. And the reason you
10 want Lieutenant Dicey to testify is simply that
11 he was one of the responding officers to the
12 scene up in New Hampshire, Mr. Tate's
13 condominium, when he called the police, when he
14 realized there might have been a break?

15 MR. FLAHERTY: My exact reason is in
16 his notes in the report. He's got a handwritten
17 note that says he obtained a thumb print from a
18 door handle and, contrary to Detective Wong and
19 her testimony yesterday, she states she observed
20 no friction ridge, not insufficient but none.

21 THE COURT: Do you have information,
22 sir, that Lieutenant Dicey is a fingerprint
23 expert or examiner and that --

24 MR. FLAHERTY: All I know, he went to

1 the scene and took the prints and identified them
2 in his report, Your Honor.

3 THE COURT: But you have no information
4 that this print was subjected to analysis,
5 comparison and so forth by him? Is that fair to
6 say?

7 MR. FLAHERTY: Just that the prints
8 were retrieved, collected, and sent to the Boston
9 Police crime laboratory identification unit for
10 Detective Wong.

11 THE COURT: Okay. Is that all that he
12 would be able to testify to? Is it fair to say
13 that he would testify that the thumb print was
14 among several items listed on his report that
15 were retrieved from the break-in?

16 MR. FLAHERTY: I think he'd testify to
17 what it said on his report, thumb print, inside
18 storm door, two prints, inside storm door and
19 that's all it says.

20 THE COURT: And no one has any
21 information whether those prints were analyzed,
22 is that right?

23 MR. FLAHERTY: Well, actually I think
24 he --

1 MR. TOCHKA: My information is they
2 were not analyzed, that they were just kept and
3 then forwarded to Boston.

4 MR. FLAHERTY: Okay. That's the point,
5 the point I would call Lieutenant Dicey for is
6 that Dicey retrieved something, sent it to Wong,
7 Dicey saw something and Wong said she didn't see
8 anything.

9 THE COURT: Out of fairness, sir, I
10 don't think that's exactly how it was but at any
11 rate, the problem is this, and we're encountering
12 more and more delays, you did know about this at
13 some time at least many months ago. To request
14 out of state process today which means that if I
15 issue it today, it has to get to New Hampshire,
16 when it gets to New Hampshire, then Dicey has to
17 be called to court and then a judge up there has
18 to rule and we're well into next week with
19 respect to any appearance, and we're into the
20 holidays also. We're well into next week with
21 the prospect of him coming here.

22 So I'd like you all to do two things
23 over the lunch hour, if there are not other
24 things you want to do with respect to that -- but

1 all that he would proffer is that a thumb print
2 was recovered from the scene and sent to Boston?

3 MR. FLAHERTY: That's all I am looking
4 for from him, Judge.

5 THE COURT: Okay. Thank you.

6 MR. TOCHKA: I will just put on the
7 record that I'd offer Mr. Flaherty, if he wants
8 me to make a phone call, I would do that.

9 MR. FLAHERTY: Mr. Tochka has done
10 that. He has offered to make a telephone call.
11 He also explained to me last night rather than
12 taking it upon myself, I should have asked the
13 Commonwealth for assistance and I took it upon
14 myself to contact Lieutenant Dicey, Your Honor,
15 and maybe the better practice should have been to
16 ask members of the District Attorney's office to
17 do it instead.

18 THE COURT: Well, he's still willing to
19 do it, sir.

20 MR. FLAHERTY: I understand.

21 THE COURT: So what's the purpose of
22 having a process which would not get him here
23 before next week?

24 MR. FLAHERTY: Based on what has

1 happened here today, he says he's not here
2 because he's not subpoenaed so to protect myself
3 for the record, I guess, I would have to look for
4 out of state process at this point.

5 THE COURT: the first thing you have to
6 do, it seems to me, is to have Mr. Tochka assist
7 you and then we'll see after the lunch hour where
8 that leaves us.

9 (Whereupon, the proceedings were
10 recessed at 1:08 o'clock p.m., and reconvened at
11 2:00 o'clock p.m.)

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

14 THE COURT: For the record now, about
15 Joanne Constable, a witness you're proposing to
16 call, who, while waiting in the hallway this
17 morning, apparently she became ill and was
18 transported to Mass. General by way of ambulance
19 and you have had the opportunity over the
20 luncheon hour to check on that?

21 MR. DOOLIN: I did. I checked on it.
22 She was at the Mass. General, she has since left
23 the Mass. General recently. I have gone through
24 my thought process over the last several days and

1 my thought process of having interviewed her
2 today, I'm not going to call her. After due
3 consideration, I'm not going to put her on the
4 stand.

5 THE COURT: I have a problem with a
6 juror. Before lunch I told them the case was
7 going into the next week, if anyone had a
8 problem. This is the same juror who had the
9 Passover concerns.

10 (Whereupon, juror in seat number one
11 was brought to side bar.)

12 THE COURT: Hello, sir, how are you?
13 Would you just give us your name for the record?

14 THE JUROR: Scott Shoreman.

15 THE COURT: Okay, Mr. Shoreman. You
16 are juror number one?

17 THE JUROR: Yes.

18 THE COURT: Okay. And you've sent me a
19 note, I think the second of today, concerning
20 your -- the concerns you have about the schedule
21 and the case going into next week?

22 THE JUROR: Correct.

23 THE COURT: Is that right, sir? Okay.
24 Could you just -- you're a law student, is that

1 right? Full time?

2 THE JUROR: Yes.

3 THE COURT: Okay. And you're concerned
4 about missing more than two weeks of class?

5 THE JUROR: Right, with exams only a
6 month away.

7 THE COURT: Okay. Is this your third
8 year, sir?

9 THE JUROR: It's my second year.

10 THE COURT: Second year. Okay. And do
11 I take this to mean that you are requesting me to
12 release you from jury service?

13 THE JUROR: Yes.

14 THE COURT: Alright. Does anybody have
15 a question of Mr. Shoreman?

16 MR. FLAHERTY: No.

17 MR. DOOLIN: No.

18 THE COURT: Mr. Shoreman, if you would
19 be good enough to wait with the court officer
20 down there?

21 (Whereupon, the juror left side bar.)

22 THE COURT: I gave you an opportunity
23 to ask questions. Any questions you want me to
24 ask him?

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MR. FLAHERTY: NO.

MR. DOOLIN: No.

THE COURT: Okay.

MR. TOCHKA: It doesn't matter to me, Your Honor, whether he is released or whether he stays.

THE COURT: Okay. You have no objection then if he is released?

MR. TOCHKA: I have no objection.

MR. DOOLIN: I have no objection.

MR. FLAHERTY: No objection, Your Honor.

THE COURT: Okay.

(Whereupon, the juror returned to side bar.)

THE COURT: Mr. Shoreman, I appreciate from your point of view this was an unexpected development, that is, I had said and we actually thought in good faith that we would be getting the case to the jurors, if not yesterday, then by today, and there have been delays in the trial and that is not going to happen and it may not happen tomorrow either, based on some other delays we've experienced today. So it's fair to

1 say the case will extend into next week and the
2 jurors, once they have it, I obviously don't
3 control how long it takes them to decide the
4 case.

5 THE JUROR: Right.

6 THE COURT: So in light of your
7 expressed concern about missing yet more classes,
8 and because we do have more jurors than will
9 constitute the deliberating jury --

10 THE JUROR: It wouldn't cause a
11 mistrial or anything?

12 THE COURT: No, sir, it will not, and
13 we do impanel more jurors because these kinds of
14 problems, family emergencies, illness, do arise
15 so you would not be putting the case in jeopardy
16 at this time if I were to release you. So I
17 regret that we have to do this because of the
18 schedule that has gone somewhat awry due to no
19 one's fault. So I want to thank you very much
20 for your service and you are going to be free to
21 go at this time.

22 THE JUROR: Okay.

23 THE COURT: I would ask, do you have
24 anything in the jury room that needs retrieving,

1 belongings?

2 THE JUROR: Yes, Your Honor.

3 THE COURT: Could Henry do that for
4 you?

5 THE JUROR: Yes.

6 THE COURT: Okay. I'd appreciate that
7 and then if you would not discuss this case with
8 anyone until the case does get decided, sir.
9 It's very important that you understand you're
10 still bound by the Court's instructions about not
11 discussing the case.

12 THE JUROR: Okay.

13 THE COURT: Alright. Thank you very
14 much. Good luck in law school.

15 THE JUROR: Thank you. I'm sorry.

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

18 THE COURT: No, I don't think we can
19 get this case to the jury tomorrow either because
20 we're still looking -- off the record.

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

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

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MR. FLAHERTY: Judge, state of mind.

THE COURT: What page are you on, sir?

MR. FLAHERTY: Four seventy-four, it's the seventh edition.

THE COURT: Let me just look at yours. What is it you would like to argue to me?

MR. FLAHERTY: That statement from Joleena Tate to her mother, Ana Culgini, can be authenticated by Ana Culgini and comes in as state of mind of Joleena Tate when she testifies, under Commonwealth versus Borodine, Tracy, and Commonwealth versus Vermette, 43 Mass. Appeals Court 789.

THE COURT: 816 or 815?

MR. FLAHERTY: The case I was talking about is a United States Supreme Court case, Judge, which was talking about letters stating that the declarant intended to travel to a certain destination were admitted as non-hearsay because they stated the intent. I think these letters go to the state of mind of Joleena Tate.

THE COURT: Why is her state of mind relevant, sir? This is after the notice dated when?

1 MR. FLAHERTY: March 6 and she
2 testified on March --

3 THE COURT: That's this year?

4 MR. FLAHERTY: March of this year, her
5 existent state of mind and the section I note
6 that's particularly relevant is the one that says
7 the coming weeks are very important to me.

8 THE COURT: Mr. Tochka?

9 MR. TOCHKA: It's not relevant. It's
10 not state of mind. It doesn't show any intention
11 to do any particular act. Obviously the coming
12 weeks are important to her, she is about to go
13 and testify at a first degree murder trial. It
14 shows nothing of relevance to this jury.

15 THE COURT: I have to agree, sir. I
16 read the note -- and has everyone seen the note?

17 MR. DOOLIN: Yes, Your Honor.

18 MR. FLAHERTY: The section I'm
19 referring to, Your Honor, is the sentence that
20 says, these weeks coming up are important to me,
21 and I would seek to introduce that in evidence to
22 show her present state of mind as she testified
23 at this trial, that she recognizes -- I think
24 it's proper argument to allow the jury to

1 consider the inference from her words that she
2 recognizes that her performance at trial is
3 important and that that's her understanding of
4 the plea agreement that she's entered into that
5 precedes her trial testimony. And I would submit
6 that that state of mind evidence is particularly
7 relevant when it's a cooperating witness that's
8 entered into a plea agreement with the
9 government.

10 MR. TOCHKA: The coming weeks she is
11 going to be sentenced as well so it doesn't
12 indicate in terms of importance -- it doesn't
13 show any state of mind at all.

14 THE COURT: What is Mrs. Culgini going
15 to be testifying to other than this note?

16 MR. DOOLIN: She'll testify to the
17 note, she'll testify to how her daughter received
18 mail and how the daughter -- she can testify, my
19 understanding of what her testimony would be, is
20 that she would authenticate the note and she
21 would also testify, I would expect, based on my
22 conversation with her, that there was a post
23 office box that was controlled by Mr. Tate,
24 Joleena Tate's father, and that letters to

1 Joleena were then retrieved from the mail box and
2 certain letters were not given to Joleena Tate by
3 Alan Tate, Alan Tate would prevent her from
4 receiving certain mail.

5 THE COURT: Why is that relevant, sir?

6 MR. FLAHERTY: Well, I think it's very
7 relevant for two reasons. Ms. Tate knows what
8 letters were taken by Mr. Tate -- I'm sorry. Ms.
9 Culgini knows which letters were taken by Mr.
10 Tate, not gotten by Ms. Tate.

11 THE COURT: How does she know?

12 MR. FLAHERTY: The letters were mailed
13 to Ms. Culgini and addressed to Ms. Culgini by
14 Joleena, asking her to get in contact with
15 people. It was a tortured way for Joleena to
16 communicate with people. Ms. Culgini would then
17 send letters from these other people to Joleena
18 in envelopes addressed to Joleena which were
19 subsequently taken from the post office box,
20 opened by Mr. Tate, and according to her
21 understanding, never delivered to Joleena.

22 THE COURT: Why is that relevant?

23 MR. FLAHERTY: For the reasons, number
24 one, Mr. Tate's involvement in everything that

1 has happened with respect to his daughter.

2 THE COURT: I'm sorry. I don't
3 understand that.

4 MR. FLAHERTY: Well, I think it shows a
5 connection between Mr. Tate and daughter that is
6 more than simply being a concerned father. I
7 think the jury should be allowed to hear that Mr.
8 Tate, a private investigator, has had a very
9 active role in his daughter's testimony here at
10 this case, and I would seek to argue
11 inferentially, based on the fact that she met
12 with the father and had conversations with her
13 father, he played an active role in acquiring a
14 plea deal for her in exchange for her testimony
15 in the case.

16 THE COURT: Mr. Tochka?

17 MR. TOCHKA: Even if I didn't
18 understand everything that Mr. Flaherty just
19 said, what I do understand is, it doesn't show
20 anything. I suggest it's completely irrelevant,
21 complete speculation, and this witness couldn't
22 even testify to it, what he wants her to testify
23 to.

24 THE COURT: Meaning that she would have

1 no personal knowledge about the receipt of mail
2 and it would all be hearsay testimony?

3 MR. TOCHKA: Correct, and it wouldn't
4 even rise to the level of the inference that Mr.
5 Flaherty would want the jury to speculate about
6 from the conclusions that he's trying -- from the
7 evidence that he's trying to elicit.

8 THE COURT: I think it's too
9 attenuated, sir. I don't think that it has the
10 necessary probative value and I think this note
11 should be excluded. You may mark it, of course,
12 for identification.

13 MR. FLAHERTY: I'd like that marked for
14 identification.

15 MR. DOOLIN: I would ask our objections
16 be noted respectfully.

17 THE COURT: What else?

18 MR. FLAHERTY: I have a ballistician,
19 Your Honor.

20 THE COURT: Alright. Let's get going
21 then. Thank you.

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

24 (Exhibit N, being a note, as described

1 above, was produced and marked for
2 identification; and Exhibit O, being a juror's
3 note, was marked for identification.)

4 (Whereupon, the jury was escorted into
5 the courtroom at 2:28 o'clock p.m.)

6 THE COURT: Ladies and gentlemen, I'd
7 like to welcome you back. Let me just say, with
8 respect to one of the jurors, I needed to excuse
9 him and you shouldn't speculate about that at all
10 nor draw any inference against any party. One of
11 the jurors needed to be excused and that was done
12 and so we are going to move on to the conclusion
13 of the case. Thank you.

14 MR. TOCHKA: Thank you, Your Honor.
15 The Commonwealth would call Officer Ridge. May I
16 proceed, Your Honor?

17 THE COURT: Yes.

18
19 STEPHEN RIDGE,
20 called as a witness, being first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. TOCHKA:

24 Q Sir, could you please introduce yourself?

1 A Sure. Patrolman Stephen Ridge.

2 Q Could you spell your first and last name?

3 A S-t-e-p-h-e-n, R-i-d-g-e.

4 Q And you are a Boston Police officer, correct?

5 A Yes, I am.

6 Q And how long have you worked as a Boston Police
7 officer?

8 A Since September of 1993.

9 Q Where are you currently assigned?

10 A To the bureau of special operations, youth
11 violence strike force.

12 Q And are you a day officer there?

13 A Yes, I am.

14 Q What are your duties and responsibilities with
15 the youth violence strike force?

16 A Our main focus on days in the youth violence
17 strike force is warrant apprehension.

18 Q I want to direct your attention to July 17 of the
19 year 2000. Did you have a warrant for the arrest
20 of Jason Robinson?

21 A Yes, I did.

22 Q In connection with this case?

23 A Yes, I did.

24 Q And at some point did you determine where Jason

1 A Yes, there is.

2 Q And what's that procedure, sir?

3 A When we have an arrest warrant for any
4 individual, we usually have a perimeter team that
5 precedes the front door team to effect that
6 arrest and that happened this day. Approaching
7 768 Columbus Avenue, I was on the front door team
8 and the perimeter team went about thirty seconds
9 ahead, covering the back, the front and the
10 sides.

11 Q And approximately what time did you arrive there?
12 Three o'clock, you said?

13 A Three in the afternoon, correct.

14 Q And can you describe the building that you were -
15 - you had the perimeter covered?

16 A It was a building owned by Northeastern
17 University. It was, I believe, a four-story,
18 partly brick, partly cement apartment building.

19 Q And did you know when you went there which
20 apartment you were looking for?

21 A I believe it was apartment number two.

22 Q That was on what floor?

23 A First floor left.

24 Q And what did you do next?

1 A I made my way, along with other officers from the
2 youth violence strike force, into the front
3 hallway, turned left and approached apartment
4 number two on the first floor.

5 Q Now, is that apartment on the first floor -- did
6 you say that officers were in the back of the
7 apartment?

8 A That's correct.

9 Q What was the reason for that?

10 A The reason for that is to make sure while
11 effecting the arrest warrant that nobody, you
12 know, climbs out a window or tries to flee.

13 Q Now, as you approached that apartment two, what
14 did you do?

15 A I, at first I listened and heard some movement
16 inside of a person or persons and then I knocked
17 on the front door of the apartment, announcing
18 Boston Police.

19 Q Now, when you're in that area or on this
20 particular occasion, are you in uniform? How are
21 you dressed?

22 A I'm dressed in plainclothes with a youth violence
23 strike force authorized jacket, I would call it.

24 Q And can you describe that jacket for us, please?

1 A Sure. It has a badge on the left breast and
2 patches on each shoulder, Boston Police patches,
3 sir, and on the back it has in large letters
4 Boston Police.

5 Q Do you have a badge also that you wear?

6 A I do. I'm not wearing it now but I do have a
7 badge on a chain that hangs on my right at the
8 breast.

9 Q And did you have that on that day?

10 A I had the jacket on and I probably did not have
11 the badge on.

12 Q Okay. How about the other officers that were
13 there?

14 A Similarly dressed.

15 Q Now, you said that you heard noise inside, and
16 what did you do next?

17 A I knocked on the door. At first I announced
18 Boston Police.

19 Q What happened?

20 A From the other side inside the apartment I heard
21 hello.

22 Q What happened next?

23 A I knocked again, Boston Police, we're here, we
24 have a warrant.

1 Q Then what happened?

2 A And then I did not get a response.

3 Q What did you do then?

4 A I announced several times after that, Boston
5 Police, and announced that we did have a warrant
6 and we received no response from inside.

7 Q So what did you do?

8 A Well, we had a warrant for that address and we
9 had reason to believe that our suspect was inside
10 and, in fact, we tried to obtain a key from the
11 Northeastern University police department.

12 Q Now, was there a reason why you didn't
13 immediately gain entry by forceful entry at this
14 point in time?

15 A There was. We wanted to, you know, make a
16 peaceful entry and just use the key.

17 Q So when you attempted to get a Northeastern
18 University key, what happened?

19 A We waited approximately twenty-five minutes and
20 we were unable to obtain a key from Northeastern.

21 Q And why was that?

22 A They just could not find one. I think they
23 believed that they changed the locks, if I
24 recall.

1 Q During that twenty-five minutes that you were
2 waiting for Northeastern police, did you announce
3 it any further, make any further statements to
4 the individual or individuals inside to open up?

5 A Yes. Several times again announcing our
6 presence, Boston Police, we have a warrant, and
7 never once, after the initial hello, did we
8 receive any answers back from inside the
9 apartment.

10 Q So after that twenty-five minutes passed, you
11 were unsuccessful with getting the key, what's
12 the next thing that happened?

13 A The next thing we did was breach the front door
14 which was forcibly opening it.

15 Q Prior to breaching the front door, did you make
16 any statements?

17 A Yes, we do. We did, and that was basically
18 letting the occupant or occupants inside know
19 that we are about to breach the door. You know,
20 we didn't want any problems opening the door.

21 Q Is that what you said?

22 A That's -- in summary, exactly what I would have
23 said.

24 Q You breached the door and how was the door

1 breached?

2 A We kicked it.

3 Q What happened next?

4 A The door was opened and I specifically called the
5 defendant's name.

6 Q And that was Jason Robinson?

7 A Yes, that's correct.

8 Q And what did you say when you called the
9 defendant's name?

10 A Mr. Robinson, we have a warrant, we don't want
11 anybody to get hurt, step out into the -- in
12 fact, it was the kitchen I was looking at.

13 Q Now, just can you describe the layout of this
14 apartment for the jurors?

15 A Sure, I can. After the door was breached, it
16 opened in to the apartment. In front of me was a
17 white refrigerator that was in a small kitchen.
18 To the right of that, walking into the apartment,
19 was a bedroom and a closet. To the left of that
20 we entered the kitchen. Sergeant Gavin stayed at
21 that bedroom until we had enough bodies to clear
22 that room.

23 Q What do you mean when you say bodies to clear
24 that room?

1 A Sorry. Policemen to safely clear the room to our
2 right.

3 Q Okay.

4 A I proceeded left with three or four other
5 policemen into the rear bedroom. That was the
6 only other room after the kitchen absent the one
7 Sergeant Gavin was watching.

8 Q As you were doing these moves into room by room,
9 were you continually making any statements?

10 A Yes. For safety reasons who we were, Boston
11 Police, why we were there, we had a warrant, and
12 for Jason to step out towards us and nobody will
13 get hurt.

14 Q What happened next?

15 A We received no response and we went into that
16 rear bedroom to clear that bedroom which means
17 find out where the person is that said hello, in
18 fact.

19 Q And so describe that bedroom for us.

20 A It's a more rectangular bedroom, ten by twelve,
21 it's a guess. There was a bed in there, there
22 was a lot of clothes around the area. I didn't
23 see a dresser and there was a pile of clothing
24 and stuff in the corner and possibly a chair.

1 Q So what did you do when you observed all that?

2 A We methodically cleared the room, looked under
3 the bed, looked around to clear that room, find
4 the person if there was one in there. I
5 proceeded with the other officers to the -- we
6 went inside to the righthand corner of the room
7 and I saw what I thought to be a pile of clothes
8 with maybe a blanket over it. In fact, it was a
9 chair and in that chair underneath the blanket
10 and possibly some clothes was Mr. Robinson.

11 Q How did you detect that?

12 A I felt his left elbow.

13 Q What happened when you felt his -- what did you
14 do?

15 A Basically, Jason, get to the ground, you know,
16 same thing. It probably wasn't a lot of
17 conversation, you know, comply with us, you're
18 under arrest.

19 Q Did he comply at this point?

20 A No. He stiffened up and, in fact, didn't move at
21 all.

22 Q So what did you do?

23 A We had taken him to the ground.

24 Q Did you then place him under arrest?

1 A That's correct.

2 Q And the person I'm standing behind right now, is
3 that the same person that you arrested back on
4 that date that you just talked to this jury
5 about?

6 A Yes.

7 MR. TOCHKA: Your Honor, if the record
8 could reflect the identification of the
9 defendant, Jason Robinson?

10 THE COURT: It may.

11 MR. TOCHKA: I have no further
12 questions.

13 THE COURT: Mr. Doolin?

14 MR. DOOLIN: Thank you, Your Honor.

15

16 CROSS EXAMINATION

17 BY MR. DOOLIN:

18 Q Officer Ridge, your testimony is that this
19 happened on July 17, 2000, is that right?

20 A That's correct, Mr. Doolin.

21 Q You had with you a warrant from the Brighton
22 District Court for this case, is that right?

23 A That's correct.

24 Q And that was issued on July 17 of 2000, is that

1 right?

2 A I don't have it in front of me but I can --

3 Q Would it refresh your recollection if I showed it
4 to you?

5 A Sure. That's correct.

6 Q So it was issued that same day, earlier that day,
7 is that right?

8 A That's correct.

9 Q And it's your testimony that you went to 768
10 Columbus Avenue and you announced your presence,
11 is that right?

12 A That is one of the things we did, correct.

13 Q And your testimony is that you went there with
14 seven other officers, is that correct?

15 A Approximately, yes.

16 Q So it's fair to say that overall there were eight
17 of you, is that right?

18 A That's an approximation, yes. It could be one
19 more or less.

20 Q And it's also fair to say that some officers
21 stood at various points around the house, is that
22 right?

23 A That's correct.

24 Q And your testimony is that yourself and a good

1 number of other officers went into the house, is
2 that right?

3 A Myself, Sergeant Gavin, I believe two or three
4 other officers.

5 Q And that you found Mr. Robinson in a room, is
6 that right?

7 A That's correct.

8 Q How many officers went into that room?

9 A I believe myself and two others.

10 Q And I think your testimony was that he was under
11 a blanket, is that right?

12 A To the best of my recollection, correct.

13 Q And he was nineteen years old, is that right?

14 A I do not have his date of birth but you can
15 refresh me if you'd like.

16 Q Sure.

17 MR. DOOLIN: May I approach, Your
18 Honor?

19 THE COURT: Yes, sir.

20 A That's correct.

21 BY MR. DOOLIN:

22 Q So you found a nineteen year old kid hiding under
23 a blanket, is that right?

24 A In essence.

1 MR. DOOLIN: Thank you. I have nothing
2 further.

3 THE COURT: Thank you. Anything more?

4 MR. TOCHKA: Nothing from the
5 Commonwealth.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: I'm sorry. Mr. Flaherty?

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

10 THE COURT: Thank you.

11 MR. TOCHKA: At this time the
12 Commonwealth would rest.

13 THE COURT: Thank you. The
14 Commonwealth rests. Mr. Doolin?

15 MR. DOOLIN: May we approach, Your
16 Honor?

17 THE COURT: Yes.

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

20 THE COURT: I just note for the record
21 you're resting --

22 MR. TOCHKA: Pending the admission of
23 some exhibits.

24 MR. DOOLIN: I move for a required

1 finding. I have a physical motion with me which
2 is just the one page that cites Lattimore.

3 THE COURT: Just so you file it.

4 MR. DOOLIN: That's fine. Do you wish
5 me to file it now or do you wish me to argue now
6 and then file it in front of the jury?

7 THE COURT: Did you want to argue now?

8 MR. DOOLIN: I move for a required
9 finding on all counts. I would like to argue on
10 one count of armed robbery.

11 THE COURT: I think it's already been
12 dismissed.

13 MR. FLAHERTY: I join in that, Your
14 Honor, on behalf of Mr. Anderson.

15 THE COURT: Let's just wait for Mr.
16 Doolin. Did you have something you were going to
17 file?

18 MR. FLAHERTY: I do. I'm not sure if I
19 have it in my box. I'll get it later, but I will
20 file it. I did prepare a written motion.

21 THE COURT: Actually, before you
22 continue we should return to Mr. Tochka because,
23 based on the fact that Ms. Coady will not be
24 testifying due to her hospitalization and your

1 desire then to just put the case in without that
2 witness, I understood you were going to dismiss
3 three indictments. They were intimidation of a
4 witness and the two counts of armed robbery
5 alleging commission of a robbery with a knife.

6 MR. TOCHKA: Correct.

7 MR. FLAHERTY: I'd request, Your Honor,
8 that at this stage on behalf of Mr. Anderson, as
9 to the intimidation of a witness and armed
10 robbery by knife that the Court enter a finding
11 of not guilty and direct the verdict from the
12 jurors' consideration.

13 THE COURT: What do you say to that,
14 Mr. Tochka, in terms of telling the jury? I
15 won't be telling the jurors anything at this
16 point. He has requested a finding of not guilty
17 be entered by the court.

18 MR. TOCHKA: I have no objection.

19 THE COURT: It's fair to say that there
20 has been no evidence, which you expected in good
21 faith to put before the jury through Ms. Coady,
22 of intimidation of a witness by Mr. Anderson and
23 that you also expected through her testimony to
24 put in the evidence -- make out the evidence of

1 the crime of armed robbery with a knife.

2 Okay. There is no evidence of any
3 sufficiency on any of those indictments and so
4 findings of not guilty will be entered.

5 MR. FLAHERTY: As to Mr. Anderson, Your
6 Honor, on the armed robbery by gun, I'd also move
7 for a required finding. There is no evidence
8 that Mr. Anderson was in possession of a gun, no
9 ballistics, physical or any other forensic
10 evidence linking him to a gun, and as to the last
11 indictment charging murder in the first degree, I
12 would move for a required finding under the
13 prong, under the theory of extreme atrocity and
14 cruelty. The testimony from Dr. Chirnov was that
15 a person who sustained these wounds would die
16 instantaneously. It was a single blow. There
17 was no evidence put before this jury of any
18 torture or excessive force or the defendant
19 taking pleasure in the killing.

20 And based on the record before the
21 court, I would submit that if this Court would
22 allow the case to go to the jury under a theory
23 of extreme atrocity and cruelty, then there could
24 be really no need for the instruction in any case

1 in this Commonwealth, because if we accept the
2 Commonwealth's evidence in the light most
3 favorable to the Commonwealth, this is a single
4 instantaneous act with no suffering, no excessive
5 force, and every single homicide would fall
6 within the category of extreme atrocity and
7 cruelty if this is allowed to go in on that
8 theory.

9 MR. DOOLIN: Your Honor, I have a
10 motion with me now on behalf of Mr. Robinson. I
11 understand the verdict on the armed robbery.
12 Also on the homicide as it stands, on the count
13 of murder, on the armed robbery with a gun and on
14 the carrying charge as well, I join in my
15 brother's motion also, specifically as to the
16 issue of extreme atrocity and cruelty and I don't
17 mean to belabor it but I join in that.

18 THE COURT: Okay. Mr. Tochka?

19 MR. TOCHKA: Your Honor, there is
20 sufficient evidence, in the light most favorable
21 to the Commonwealth, for this to go to the jury
22 in terms of the extreme atrocity and cruelty, and
23 I suggest this jury can infer in terms of the
24 testimony from Joleena Tate of the victim begging

1 for his life, you have evidence that the gun is
2 placed just within mere inches from the victim's
3 face, and I suggest that, based upon case law, a
4 single bullet can be the basis for a jury
5 instruction as to extreme atrocity and cruelty.
6 The cruelty in this case, in terms of the gun
7 being placed basically in execution style to the
8 face of this individual while he's begging for
9 his life, I suggest that goes to extreme atrocity
10 and cruelty.

11 THE COURT: The motions for required
12 findings of not guilty are denied at this time
13 without prejudice to renew at the conclusion of
14 the case and we will move on to your case. Did
15 you want to make your opening statement at this
16 time?

17 MR. FLAHERTY: Yes, I will.

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

20 THE COURT: Ladies and gentlemen, we
21 now turn to the defendants. Mr. Flaherty is
22 going to at this time make an opening statement.
23 You will recall that I informed you and
24 instructed you at the beginning of the case that

1 at no time was there ever any burden on a
2 defendant to do anything in the course of the
3 trial, put on any evidence, testify, or for the
4 attorneys on their behalf to make an opening
5 statement. However, at this time Mr. Flaherty
6 would like to make an opening statement and so
7 we'll proceed with that. Thank you.

8 MR. FLAHERTY: Incentive, a reason to
9 act a certain way, a reason to do something, a
10 reason to testify, that's what this case is
11 about, ladies and gentlemen, incentive.
12 Incentive provided by the government. Last week
13 Mr. Doolin stood up after Mr. Tochka's opening
14 and very forcefully told you that's not evidence
15 and if you think back, what is the evidence that
16 you've heard? The police didn't know this was a
17 gun shooting? Didn't know for sometime
18 afterwards? That's not evidence, ladies and
19 gentlemen.

20 What is evidence is this agreement
21 between the government and Joleena Tate to
22 testify at this trial against these two men. And
23 make no mistake about it, Tanzerius Anderson and
24 Jason Robinson are sitting at the defendant's

1 table in the courtroom, not because there is any
2 physical evidence linking them to the crime,
3 despite the fact that there's plenty of physical
4 evidence. Not because there's any blood spatter
5 evidence, not because there is any fingerprint
6 evidence, not because there is any ballistics
7 evidence, not because the thirty or forty people
8 interviewed said they were there. Tanzérius
9 Anderson sits at this table because Joleena Tate
10 entered into a deal and Joleena Tate testified to
11 her deal.

12 Now, last week Mr. Parsons, the clerk,
13 read the indictments to you and when they're
14 stripped of all their legal language, they become
15 not evidence but accusations. Put another way,
16 ladies and gentlemen, accusations are questions.
17 I would submit from the evidence that you've
18 heard thus far in this case, several of those
19 questions have already been answered in the
20 negative, but they are, did Tanzerius Anderson
21 commit the murder in the first degree of Iman
22 Yazbek on March 27, 2000? Did he commit an armed
23 robbery by a knife? Did he commit an armed
24 robbery by a gun? Did he carry a gun? Did he

1 intimidate anyone? Some of those questions have
2 been answered but that's how we began this case,
3 with questions.

4 There is one indisputable fact in this
5 case, ladies and gentlemen, indisputable fact,
6 not subject to questions, and that's that Mr.
7 Yazbek suffered a tragic death and I say this
8 with all due respect, most respectfully, do not
9 be blinded by Mr. Yazbek's death. No one
10 disputes Mr. Yazbek's death. When you review
11 photographs that have been published to you, that
12 have been placed on the teleprompter, review them
13 clinically, look at them with an eye towards
14 their evidentiary value.

15 All of you will recall during the
16 impanelment process, sort of a lengthy process,
17 you'll recall at the conclusion of it you were
18 administered an oath. That oath is to truly try
19 the evidence, without passion, without prejudice
20 to any party, and if you do that in this case,
21 without any ignoble motivation, then history will
22 say you performed your duties and your
23 obligations as jurors in the case.

24 THE COURT: This is an opening

1 statement, sir.

2 MR. FLAHERTY: As you listened to the
3 evidence thus far and you listen to the evidence
4 as we go forward, please remind yourself as
5 jurors, you have two sacred obligations. One is
6 presuming Tanzerius Anderson and Jason Robinson
7 innocent. Bear in mind no one who takes that
8 witness stand is under your obligation to do
9 anything. Also you are to test the evidence
10 beyond a reasonable doubt. No one who takes that
11 witness stand and testifies as to their
12 conclusions has that obligation. You folks in
13 this case are the ones who determine what
14 evidence is important, not anyone on the witness
15 stand.

16 I'm going to ask you, as we go forward,
17 to consider the questions in your mind, to
18 consider if those questions are reasonable
19 questions, and ask yourself and maintain this,
20 ask yourself, can you trust, can you trust the
21 evidence? Thank you.

22 THE COURT: Call your first witness,
23 please.

24 MR. FLAHERTY: Michael LaRocca.

1 MICHAEL LAROCCA,

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

4 DIRECT EXAMINATION

5 BY MR. FLAHERTY:

6 Q Good afternoon, sir. In a voice loud enough for
7 all the jurors to hear, would you please state
8 your full name, spelling your last name for the
9 record?

10 A Michael LaRocca, L-a-r-o-c-c-a.

11 Q Mr. LaRocca, what do you do for a living?

12 A I'm self-employed as a gunsmith. I have been in
13 business for twenty years.

14 Q Would you tell us what the profession of being a
15 gunsmith is, sir?

16 A The study and repair of all types of firearms,
17 loading, reloading, stock repair, ballistics,
18 anything to do with repair and function of
19 firearms.

20 Q And what's the name of your business?

21 A LaRocca Gunworks, Incorporated.

22 Q Where is it located?

23 A 51 Union Place, Worcester, Massachusetts.

24 Q Would you tell us your education and your

1 experience in the area of ballistics and being a
2 gunsmith?

3 A In 1972 I completed seventeen hundred and fifty
4 hours of training at the Colorado School of
5 Trades in Lockwood, Colorado for gunsmithing. I
6 have been self-employed as a gunsmith for
7 eighteen years, accumulating over forty-five
8 thousand hours of hands on experience. I'm also
9 a part time police officer. I have attended
10 various schools and academies related to police
11 work. I've gone to numerous academies and
12 classes put on by manufacturers of related
13 handguns.

14 Q Have you published any articles in the area of
15 handgun manufacture or examination of them?

16 A My business and myself have been published in
17 approximately forty or fifty different nationally
18 known and internationally known publications.

19 Q Do you belong to any associations?

20 A I belong to the -- I'm a member of the
21 Massachusetts Police Association. I'm a member
22 of the Massachusetts Law Enforcement Firearm
23 Instruction Association. I'm a member of the
24 American Society of Law Enforcement Trainers.

1 Q And has the Massachusetts Criminal Justice
2 Training Council certified you in any area, sir?
3 A I'm a certified instructor in revolver, pistol,
4 rifle and shotgun. I'm also an instructor in OC
5 spray.
6 Q Now, directing your attention to your involvement
7 in this case, were you asked to examine certain
8 articles at the Boston Police crime lab
9 ballistics unit?
10 A Yes, I was.
11 Q And did you do that, sir?
12 A Yes, I did.
13 Q Sir, I'm going to show you three bottles and I'd
14 ask you if you had an opportunity to examine
15 those bottles and what's contained therein?
16 A Yes, sir, I did.
17 Q And where did you do that, sir?
18 A I did it at the Boston ballistics unit on Tremont
19 Street and Ruggles.
20 Q And how was it you were provided the opportunity
21 to review those, the items contained therein?
22 A I contacted Detective O'Shea and made an
23 appointment with him on Monday, the twenty-fifth
24 of this month, at four p.m. to come up and

1 examine the items. I arrived about fifteen,
2 twenty minutes early. The items were brought out
3 to me in the hallway. At that point I had asked
4 if I could have a room. They told me that we
5 would use the hallway. The items were placed on
6 a windowsill and I examined the items there.

7 Q And how was it you examined -- did you bring your
8 own equipment?

9 A I brought my own equipment. I brought a camera,
10 a microscope, and magnifying glass, some
11 measuring instruments.

12 Q And this was done -- you were directed to a
13 windowsill?

14 A That's correct, sir.

15 Q When you made the examination, Mr. LaRocca, in
16 bottle A, did you see whether or not it contained
17 anything?

18 A Yes, sir. Bottle A contained six small bullet
19 fragments or bullet jacket fragments.

20 Q And based upon your examination of those bullet
21 jacket fragments, were you able to determine if
22 there were any identifying marks on it?

23 A No, sir. The items were small and deformed and
24 had no significant bullet, ballistics

1 characteristics.

2 Q In bottle B did you make an examination of what's
3 contained therein?

4 A Yes, sir, I did.

5 Q And did you make -- during your examination, did
6 you determine if there were any markings on the
7 evidence contained in bottle B?

8 A The evidence in bottle B were two bullet
9 fragments. Combined total weight of those two
10 fragments was three point seven grains which, a
11 very small amount of those fragments did, in
12 fact, have some tool markings on them but the
13 condition of the fragment and the size did not
14 lend itself to be identified.

15 Q The evidence in bottle C, were you able to make
16 an observation of that evidence?

17 A The evidence in bottle C is a lead fragment
18 weighing approximately thirty point two grains.
19 It's a little bit larger. Traditionally that
20 would be the core of the bullet, the center of
21 the bullet that's surrounded by copper and that
22 would not have any distinguishing characteristics
23 on it.

24 Q Now, Mr. LaRocca, are you able to say to a degree

1 of certainty whether or not the items contained
2 in each one of these bottles all came from the
3 same bullet?
4 A It would be very difficult to say they all came
5 from the same bullet.
6 Q Are they consistent with all coming from the same
7 bullet?
8 A Yes, they are
9 Q Are you familiar with Colt firearms?
10 A Yes, sir, I am.
11 Q And in your training and experience as a
12 ballisticsian, are you familiar with all types of
13 firearms?
14 A That's correct.
15 Q Colt manufacturers a firearm that makes -- well,
16 does Colt manufacture in the -- in the
17 manufacture of Colt firearms, do projectiles
18 fired from Colt firearms look differently than
19 those fired from any other firearms?
20 A Every projectile fired from every gun has its own
21 unique characteristics.
22 Q Now, how is that? Would you explain that to the
23 jurors?
24 A Every time a barrel is manufactured, the rifling

1 in the barrel is cut by a tool. Every time the
2 tool is used, it's wearing a little bit. Hence
3 every barrel manufactured has a little bit
4 different signature to it so that no two bullets
5 -- no two guns firing the same bullet would show
6 the same tool markings on the bullet.

7 Q And is there anything peculiar or particular to
8 bullets fired from Colt manufactured firearms?

9 A Colt manufactured firearms uses a six L which is
10 a six lands and grooves with a lefthand twist.
11 There's also other companies that do that but
12 Colt is one of the primary ones that does, in
13 fact, do that.

14 Q And the majority of firearms, do they have what's
15 called a righthand twist as opposed to the Colt
16 lefthand twist?

17 A Probably not a majority. It might be split if
18 you determine all the European firearms and the
19 other items.

20 Q Based upon your examination of the items in front
21 of you, were you able to say if those came from a
22 Colt firearm?

23 A No, sir. There was not enough bullet jacket with
24 lands and grooves so you could measure the

1 thickness and the depth and then you compare it
2 to get a reading on whether it came from a Colt
3 firearm.

4 Q Can you tell whether or not those fragments came
5 from a revolver as opposed to a semiautomatic
6 weapon?

7 A No, sir.

8 Q And what's the difference between a revolver and
9 a semiautomatic weapon?

10 A A revolver has a cylinder to swing out, they're
11 loaded manually into a chamber, and the gun is
12 either single and double action where the hammer
13 is cocked and then the trigger is fired, or it's
14 double action, as you pull the trigger the hammer
15 rotates and it's cocking the hammer and firing
16 the gun.

17 A semiautomatic handgun is one where
18 bullets are loaded in a magazine, the magazine is
19 inserted into the butt of the weapon and then the
20 slide is activated manually rearward to load a
21 round into the chamber. At that time you can
22 pull the trigger and fire the gun.

23 Q When you fire a semiautomatic is anything ejected
24 from it?

1 A In the course of firing through the cycle of
2 operation, after you fire a semiautomatic, the
3 slide, again the rearward movement, the shell is
4 extracted from the chamber and then ejected from
5 the firearm and a new round is picked up and put
6 into the chamber so the gun is ready to fire
7 again.

8 Q Is retrieving a shell from a scene of a shooting
9 consistent with the discharge of a revolver?

10 A No, sir.

11 Q And why is that?

12 A All the chambers are sealed so that as you fire,
13 the empty cartridges stay in the revolver
14 cylinder. At a later time you have to manually
15 open the revolver cylinder and extract the fired
16 casings out of the gun.

17 Q Are you familiar with the term stippling?

18 A Yes, sir.

19 Q What is stippling?

20 A It would be the discharge of unburnt powder and
21 lead particles from the muzzle of the gun that
22 would impact a target area.

23 Q Now, have you had occasion to observe stippling
24 on target areas?

1 A Yes, sir. Approximately three years ago I
2 worked at the Trident Cartridge Company in New
3 York where we did ballistics testing on gelatin,
4 checked bullet performance, and gelatin is a
5 medium we use, basically it's Knox gelatin, to a
6 certain degree of consistency that's set forth by
7 the FBI to replicate human flesh and what this
8 does is, it gives us bullet performance so that
9 bullets are shot into the gelatin and then we
10 retrieve them and we can take the bullet
11 fragments out and the bullet jacket out. When
12 you get close to the gelatin, you also get a
13 stippling effect of the unburned powder and the
14 lead particles that exit the muzzle that disperse
15 very quickly, so if you were farther away, they
16 were dispersed and you wouldn't have any
17 stippling.

18 Q When you shoot at a target, where is the
19 stippling?

20 A On the front of the target.

21 Q Have you ever shot a target, shot completely
22 through?

23 A Yes.

24 Q How many times have you seen that?

1 A Just on that one test, we probably did it thirty
2 or forty times.

3 Q Have you ever seen stippling on the exit of a
4 target?

5 A No, sir.

6 MR. FLAHERTY: Nothing further, Your
7 Honor, from this witness.

8 THE COURT: Mr. Tochka?

9
10 CROSS EXAMINATION

11 BY MR. TOCHKA:

12 Q Sir, with regard to those items that Mr. Flaherty
13 just showed you, A, B and C, you can tell us
14 those are consistent with being bullets, correct?

15 A Yes, correct.

16 Q You can't tell us anything about the
17 characteristics of them in terms of comparing one
18 to the other, correct?

19 A That's correct.

20 Q And you can't tell us whether or not these -- A,
21 which appears to be a jacketed bullet fragment,
22 correct?

23 A I think there's six fragments in there.

24 Q Six fragments. You can't tell us whether that

1 came from the same bullet as B, right?

2 A That's correct.

3 Q You can't tell us whether it came from what you

4 say is a lead fragment?

5 A That's correct.

6 Q So when he asked you whether or not they are

7 consistent with being fired from the same bullet,

8 you can't really tell whether or not they were

9 fired from the same bullet, whether it's part of

10 the same bullet, correct?

11 A Correct.

12 Q And you cannot tell us, sir, is it fair to say,

13 this particular lead fragment is a bullet or not?

14 Consistent with being a bullet?

15 A That's consistent with being a bullet fragment

16 that has impacted on a hard surface.

17 Q But you can't say whether or not that's a bullet?

18 A That's correct.

19 Q And with respect to stippling, sir -- are you a

20 police officer currently?

21 A Yes.

22 Q Are you in the academy -- where are you a police

23 officer?

24 A Town of Brookfield, sir.

1 Q Are you a full time policeman or part time?

2 A Part time, sir.

3 Q Basically what you do is, you have a gun shop,
4 right? You own a gun shop?

5 A That's correct.

6 Q That's your business, correct?

7 A That's correct.

8 Q Buying and selling guns, correct? Ammunition and
9 the like?

10 A No. My predominant business is gunsmithing.

11 Q Okay. And in that gunsmith's shop, you say that
12 you also have -- you say you are also a part time
13 officer, correct?

14 A That's correct.

15 Q And I take it you have been to many crime scenes
16 involving ballistics evidence, correct?

17 A A few.

18 Q A few. How many is a few?

19 A Two.

20 Q Two. And in terms of, as a police officer, you
21 have gone to a number of autopsies connected to
22 gunshot wounds, correct?

23 A No, sir.

24 Q You have never gone to an autopsy connected to a

1 gunshot?

2 A No, sir. We haven't had a gunshot.

3 THE COURT: Keep your voice up, please.

4 BY MR. TOCHKA:

5 Q I'm sorry. You said what?

6 A We haven't had a homicide in Brookfield.

7 Q So you've never seen the effect of stippling and
8 the like in terms of an autopsy in an actual
9 homicide, correct?

10 A That's correct.

11 Q And in terms of what you tell this jury that you
12 went -- was it this past Monday?

13 A Yes.

14 Q To the Boston Police Department?

15 A That's correct, sir.

16 Q And when did you call the police department to
17 go?

18 A I called Detective O'Shea that morning.

19 Q So you called him on that morning?

20 A That's correct.

21 Q And he made arrangements for you. You called him
22 -- at what time did you call?

23 A About nine thirty, ten o'clock.

24 Q And you called him at nine thirty and he tells

1 you -- you came in at what time?

2 A When he requested me to come in.

3 Q When was that, sir?

4 A Four p.m.

5 Q Four p.m., and when you came in he told you about
6 the policy of the Boston Police Department,
7 correct? That in terms of -- if you're an expert
8 that you have to have your own equipment,
9 correct?

10 A That's correct.

11 Q And at no time -- at any time prior to that did
12 you ask to be able to take the evidence, to take
13 it to a shop or the like to look at it yourself,
14 correct?

15 A No. I was told, sir, on the telephone that I
16 would have a bench and it would be spread out on
17 a white piece of paper and I would be left alone
18 to look at it.

19 Q That wasn't my question. My question to you was,
20 at no time did you inquire as to whether or not
21 you could have the opportunity to take that item,
22 say possibly weeks before today, and to bring it
23 to a shop and to look at it yourself?

24 A No, sir, I could not.

1 Q You didn't. Okay.

2 MR. TOCHKA: I have no further
3 questions. Thank you.

4 MR. FLAHERTY: Just one.

5 THE COURT: Mr. Doolin?

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

8 THE COURT: Mr. Flaherty?

9
10 REDIRECT EXAMINATION

11 BY MR. FLAHERTY:

12 Q Were you ever given a white sheet on a bench to
13 look at the evidence?

14 A No, sir. The evidence was placed on a
15 windowsill.

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

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

20 THE WITNESS: Thank you.

21 THE COURT: Mr. Flaherty?

22 MR. FLAHERTY: That's it, Your Honor.

23 THE COURT: Thank you. The defendant,
24 Tanzerius Anderson, rests?

1 MR. FLAHERTY: Correct.

2 THE COURT: Thank you. Mr. Doolin, on
3 behalf of Jason Robinson?

4 MR. DOOLIN: Your Honor, ladies and
5 gentlemen of the jury, the defendant, Jason
6 Robinson, rests.

7 THE COURT: Thank you very much. May I
8 see counsel, please?

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

11 THE COURT: Okay. What I'm doing is --
12 the only communication I have got from a jury
13 about Passover or any holiday is the one I got
14 from Mr. Shoreman, but I was laboring under the
15 impression that Passover began tomorrow, not
16 tonight, so I'm going to make sure no juror has a
17 problem with tomorrow. I think we have some time
18 to deal with the exhibits and then we will do the
19 charge conference.

20 MR. DOOLIN: I just renew my motion for
21 required finding.

22 THE COURT: We will do that after the
23 jury is excused, sir.

24 (Whereupon, the discussion at side bar

1 was concluded.)

2 THE COURT: Ladies and gentlemen, when
3 I talked to you earlier about the schedule, I was
4 mistaken about the commencement of Passover. It
5 begins at sundown today not sundown tomorrow and
6 I had asked that any juror who had a concern
7 about any observance of any religions holiday in
8 the next few days, if they would communicate with
9 me by note. So I just want to make sure that I
10 heard from everyone. I'm going to excuse you in
11 a moment in case anyone does wish to communicate
12 with me, because if everyone is available
13 tomorrow then we are going to proceed to listen
14 to closing arguments and to the instructions on
15 the law which I'm required to give to you.

16 So if you would be good enough just to
17 go to the jury room. We will take a few minutes
18 and then I will return you to give you a more
19 specific schedule. If anyone has a concern,
20 please put it in writing and give it to the
21 officers.

22 (Whereupon, the proceedings were
23 recessed at 3:20 o'clock p.m., and reconvened at
24 3:30 o'clock p.m.)

1 THE COURT: Alright, ladies and
2 gentlemen. I think we have worked out everyone's
3 concerns. The schedule tomorrow will be as
4 follows. I ask you to come at nine o'clock. We
5 are going to move directly to listening to
6 closing arguments which will be made on behalf of
7 both defendants and then the Commonwealth. After
8 that I will instruct you on the law. I do
9 anticipate that that is going to take some time
10 because of the number of instructions I'm
11 required to give you, and that will take us to
12 sometime in the afternoon, but for those of you
13 who are concerned that you stay no later than
14 four tomorrow, you will be dismissed at that time
15 or by that time, and then you will be returned
16 Monday to begin or continue, depending on when we
17 finish tomorrow, your work on the case,
18 discussing the evidence, deliberating and
19 rendering your verdict. That is what the
20 schedule looks like.

21 Now that the evidence has concluded,
22 the case, however, has not yet been submitted and
23 will not be until you have listened to all
24 arguments of all counsel and to my charge.

1 So therefore it is of critical
2 importance that you continue to observe the
3 instructions about the case, not discussing it
4 with anyone, not going to revisit any of the
5 scenes which we saw on the view, or consulting
6 any outside source of any kind, whether it be a
7 book, a treatise, internet or whatever. We are
8 counting on each of you to go to the room, the
9 jury room, after the case has been given to you,
10 to come with nothing in mind but the evidence,
11 your own judgment about the evidence which you
12 will be sharing with other members of the jury,
13 and then to base your verdicts on that evidence
14 and on the law as I instruct you on it.

15 We do not want anyone else's opinion to
16 influence you; that is, anyone else who is not on
17 the jury to influence you about the case or for
18 you to consider anything not given to you here
19 through the witnesses or the exhibits. So once
20 again tomorrow I will be asking you whether or
21 not those instructions have been complied with by
22 you.

23 Thank you again for your continued
24 patience. You have been very attentive and

1 patient with us. I would ask that you leave your
2 notes in your envelopes on your seats and we'll
3 see you tomorrow at nine o'clock. Have a good
4 evening.

5 (Whereupon, the jury was escorted from
6 the courtroom at 3:30 o'clock p.m.)

7 THE COURT: Alright, counsel. I would
8 like to begin with cleaning up the exhibits
9 first.

10 THE CLERK: Your Honor, are we still on
11 the record?

12 THE COURT: Oh, yes, we are still in
13 session, will be for a while. Okay. Let's start
14 with the plea agreement of Joleena Tate. Have
15 counsel agreed on whatever redactions you think
16 are necessary?

17 MR. DOOLIN: No, Your Honor.

18 THE COURT: Okay. First of all, Mr.
19 Tochka, are there any matters which you think you
20 can agree to have deleted from the plea
21 agreement, sir?

22 MR. TOCHKA: If you give me one moment
23 to get the plea agreement, Your Honor. Your
24 Honor, I suggest only the second paragraph that

1 begins, specifically.

2 THE COURT: Yes.

3 MR. TOCHKA: I assume that Mr. Doolin -
4 - I think Mr. Doolin and I have agreed upon where
5 it says, it is further my understanding, the
6 second sentence that Ms. Tate did not directly
7 participate in the murder of Iman Yazbek, as Ms.
8 Tate is not the individual who shot and killed
9 Mr. Yazbek, that should go out.

10 THE COURT: Everybody agrees that
11 sentence should go out?

12 MR. DOOLIN: Yes, Your Honor.

13 THE COURT: Mr. Flaherty?

14 MR. FLAHERTY: Yes.

15 THE COURT: What else, Mr. Tochka?

16 MR. TOCHKA: The other is, well, it's a
17 question as to number three where it says,
18 paragraph number three. It's on the second page.

19 THE COURT: Yes.

20 MR. TOCHKA: Either one, where it says
21 the -- number three which says this agreement is
22 contingent upon the truthfulness of the
23 information that Ms. Tate has provided and will
24 continue to provide to law enforcement officials,

1 or the second one which is the one, I can see is
2 basically redundant, that this agreement is also
3 contingent upon providing -- before the grand
4 jury -- oh, I see.

5 THE COURT: Just tell me what you have
6 out.

7 MR. TOCHKA: Either one of those two, I
8 suggest, would go out and that's about all that I
9 would say --

10 THE COURT: What you're saying is that
11 the sentence three is redundant to the first
12 sentence?

13 MR. TOCHKA: The second, paragraph
14 four, talks about grand jury so it may be that
15 one would go out, this agreement is contingent
16 upon providing complete and truthful testimony
17 before the grand jury.

18 THE COURT: I'm sorry?

19 MR. TOCHKA: Number three is the one
20 that makes more sense to go out.

21 THE COURT: Alright. Mr. Doolin? Mr.
22 Flaherty?

23 MR. DOOLIN: Your Honor, as to the
24 first page, in paragraph one --

1 THE COURT: Can we start with number
2 three first? Can that go out?

3 MR. DOOLIN: Paragraph three, yes, Your
4 Honor. We agree that goes out.

5 MR. FLAHERTY: Yes.

6 THE COURT: Alright. What else, Mr.
7 Doolin?

8 MR. DOOLIN: Your Honor, in paragraph
9 number one, I see in the fourth line down it's
10 completely and truthfully.

11 THE COURT: Where do you see that? Oh,
12 yes.

13 MR. DOOLIN: Fourth line down,
14 completely and truthfully, the word, truthfully,
15 I think, should go out, and then three lines
16 below that it says, she will neither withhold any
17 information in her possession or provide any
18 false information which I suggest is another way
19 of saying truthfully, and then in the second to
20 last line there is another word in there, other
21 than to tell the truth, so in that one paragraph
22 there's three, what I would suggest are different
23 ways of impermissibly vouching for her
24 credibility.

1 And going to paragraph four, Your
2 Honor, I direct the Court's attention to the
3 second line down where it again says, provide
4 complete and truthful information, and then in
5 the third to last line -- I'm sorry. Mr.
6 Flaherty directs my attention to two lines above
7 that where it again says completely and
8 truthfully. That would be the fourth line down
9 in paragraph four and then in the seventh line
10 down in paragraph four, there is another complete
11 and truthful. So in that paragraph again there
12 are three references to truthful, and Mr.
13 Flaherty again brings to my attention that it
14 says if she is not truthful, I suppose that she
15 will be prosecuted for perjury which is again
16 another way of vouching, I would suggest, because
17 the lack of prosecution for perjury is that she
18 is telling the truth.

19 MR. FLAHERTY: I join in all those
20 objections, Your Honor.

21 THE COURT: Okay. Yes, sir?

22 MR. TOCHKA: Yes, Your Honor. I would
23 object to those for the following reasons. The
24 case that everyone is referencing in this matter

1 does not say that every single time that there is
2 a reference to truthfulness that it must be taken
3 out and that it can only be in at one particular
4 point. It talks about the case where there are
5 repeat references and in the dissent in that
6 decision, it refers to a particular case where I
7 believe it was a six-page or the like plea
8 agreement where the word truthful was in that
9 agreement, I think it said, and I might be
10 mistaken, something in the order of twenty
11 different times. That's what it's talking about,
12 the court, when it's talking about repeated.

13 It's not talking about in this case
14 where, I suggest, it's not repeated to the point
15 where it's overbearing the jury, particularly
16 where I have agreed in terms of the portions that
17 should be redacted. Other portions on this which
18 they're attempting to seek to withdraw, there's
19 two particular areas. One is, it says, the
20 agreement explains in paragraph one she has an
21 obligation to testify truthfully, in paragraph
22 four it says what the DA's rights are if it's
23 determined that she does not testify truthfully.
24 So I'd suggest they need to be in there to be put

1 in context. She has an obligation to testify
2 truthfully. That's paragraph one. Paragraph
3 four, which I have taken out in terms of three,
4 paragraph four says if she does not testify
5 truthfully, then the Commonwealth can consider
6 this null and void and proceed and prosecute her.

7 That's very much important in this
8 case, particularly since Mr. Flaherty held it up
9 in his opening statement before this jury to look
10 at the agreement. The agreement goes to what her
11 obligations are, her obligations to testify
12 truthfully and that she is aware of what happens
13 should she not. And so I'd suggest the
14 credibility of the witness is important in the
15 case, that she understands that obligation and
16 she signed this agreement so I'd ask not to
17 delete those references.

18 THE COURT: Alright. Commonwealth
19 versus Champa says that portions of the plea
20 agreement should be redacted, in particular, that
21 case says that any statement in the agreement
22 that talks about the agreement is contingent on
23 the witness providing truthful information should
24 be redacted. So that would argue --

1 MR. TOCHKA: Your Honor --

2 THE COURT: Just let me finish, Mr.
3 Tochka. That would argue to me that the first
4 sentence in number four should go out. The case
5 goes on to talk about, as indicated, repeated
6 references to the witness's obligation to tell
7 the truth. It seems to me that with respect then
8 to paragraph one, that that first sentence should
9 remain because it does lay out her obligation
10 with respect to providing completely truthful
11 information to law enforcement officials. It
12 seems to me that in order for the agreement to
13 make sense, that there has to be some explanation
14 here of what it is that she is obligating herself
15 to do.

16 My instruction will very specifically
17 tell the jury that you are not, on behalf of the
18 Commonwealth by way of the agreement, vouching
19 for her credibility, that her attorney is not
20 vouching for her credibility because he co-signed
21 this agreement, but it seems to me that there
22 should be at least one place here that does tell
23 the jurors what it is she's agreeing to do. So,
24 therefore, I rule that the first sentence of

1 paragraph one may be kept in.

2 The other two references in that first
3 paragraph that the defendants seek to redact have
4 to do with agreements that she will neither
5 withhold any information nor provide any false
6 information. Again, it seems to me that can
7 remain because it does further define her
8 obligation.

9 Now, with respect to the last sentence
10 there, I do think that other than to tell the
11 truth should go out. She acknowledges that no
12 law enforcement person has threatened her,
13 promised her, whatever, those seem to me can stay
14 and that no law enforcement official has told her
15 what to say. That may stay, but that, other than
16 to tell the truth, should be redacted.

17 Was there anything you wanted to say
18 about that phrase, Mr. Tochka?

19 MR. TOCHKA: No, Your Honor. That's
20 fine.

21 THE COURT: Okay. Other than to tell
22 the truth will be excised.

23 MR. TOCHKA: Might I suggest then -- if
24 I can just say what I probably would do at some

1 point is suggest that maybe where it says -- and
2 see, because my concern is, there is going to be
3 a blank space there and jurors will speculate as
4 to what belongs there.

5 THE COURT: Can you have the first page
6 retyped?

7 MR. TOCHKA: I could do that.

8 THE COURT: Okay. Because you're going
9 to have that second sentence of the first
10 paragraph deleted also.

11 MR. TOCHKA: I will do that.

12 THE COURT: So you may want to just
13 consider retyping it. Now, page two, there are
14 several requests in connection to four. Again,
15 the Champa case says that statements in plea
16 agreements that indicate that the agreement is
17 contingent on the truthfulness is a form -- can
18 be understood by a jury to be a form of vouching
19 so I propose to take out the first sentence of
20 that paragraph.

21 MR. TOCHKA: I'm not sure which one
22 you're referring to.

23 THE COURT: Paragraph four, the first
24 sentence. Is there anything you want to say

1 about the other references there about the
2 consequences of failing to abide by the
3 agreement?

4 MR. TOCHKA: No, Your Honor.

5 THE COURT: Okay. I'm inclined to
6 leave the rest of the paragraph as is because,
7 just as we left in the part that she hasn't been
8 forced or threatened to do this, on the other
9 hand, the penalties for her failure to comply
10 with the agreement -- I'll give that further
11 consideration overnight but at a minimum we're
12 taking out the second sentence of the second
13 paragraph. We're taking out that phrase in the
14 first paragraph number one that says, other than
15 to tell the truth. We're deleting paragraph
16 three in its entirety, numbered paragraph three,
17 and the first sentence of numbered paragraph
18 four.

19 Let me propose an amendment. Since the
20 second and third sentence of paragraph four are
21 somewhat redundant, if we did it this way, if the
22 district attorney learns that the information or
23 testimony which Ms. Tate provides after the date
24 of this letter is not complete and truthful, then

1 this agreement may be declared null and void by
2 the district attorney, and the district attorney
3 may institute a prosecution, leaving out the
4 beginning of the last sentence there since that
5 really repeats the sentence that precedes it.

6 MR. FLAHERTY: On behalf of Mr.
7 Anderson, Your Honor, I object to changing the
8 agreement in its form at this stage of the
9 proceeding and I would ask the Court to
10 reconsider redacting every reference to
11 truthfulness appearing in the letter with respect
12 to Ms. Tate and her obligations under Champa.

13 THE COURT: To reconsider it?

14 MR. FLAHERTY: I think the Court has
15 said --

16 THE COURT: I've left in several
17 references.

18 MR. FLAHERTY: I understand, Your
19 Honor. That's why I'm asking you to reconsider
20 and redact wherever the word truthful, false
21 information, or perjury appears in this two-page
22 letter, to redact that under Champa.

23 THE COURT: Alright. I'm going to
24 consider the last paragraph there but I'm

1 inclined to leave that in. We have taken out
2 three references to truthful and it seems to me
3 at a minimum the jury has to know what it is she
4 is agreeing to do. Otherwise, it makes no sense
5 that she is -- there has to be a quid pro quo for
6 this agreement and the jurors are entitled to
7 know what it is. So the only thing I'm still
8 contemplating is the last two sentences of
9 numbered paragraph four. Anything more on this
10 you want me to consider overnight?

11 MR. DOOLIN: No, Your Honor,

12 MR. TOCHKA: Other than, Your Honor,
13 number four obviously shows, in terms of what the
14 Commonwealth's remedy is and so I'd ask the court
15 to leave that in.

16 THE COURT: The Champa case doesn't
17 address that so -- alright. What other exhibits
18 do we need to attend to? Let's start with the
19 Commonwealth first. Were there any exhibits,
20 sir, that you marked for identification which you
21 propose to move in?

22 MR. TOCHKA: Your Honor, first would be
23 identification B, the diagram of the skull that
24 the medical examiner used to demonstrate the path

1 of the bullet and I would ask that that go into
2 evidence at this time.

3 THE COURT: Is there still an
4 objection?

5 MR. DOOLIN: Judge, I object
6 respectfully. The jury has certainly heard and
7 it was gone over several times the path of the
8 bullet and I think that they have some sort of a
9 skull diagram that was marked as a chalk to go
10 in.

11 THE COURT: Can I see it? This was
12 used in connection with --

13 MR. TOCHKA: The medical examiner put
14 the markings on it.

15 THE COURT: He did not mark it?

16 MR. TOCHKA: Yes, he did. He put the
17 pen markings showing the entrance of the wound,
18 the path of the wound.

19 THE COURT: Where is it? I'm sorry. I
20 can't see it. The objection is going to be
21 overruled.

22 MR. FLAHERTY: Just, Your Honor, on
23 behalf of Mr. Anderson, would you note his
24 objection to that?

1 MR. TOCHKA: Your Honor, the next thing
2 is, the Commonwealth would move to introduce
3 what's been marked identification D, the hotel
4 receipt, the folio.

5 THE COURT: I thought that it had been
6 moved.

7 THE CLERK: That went in as to the
8 receipt.

9 MR. TOCHKA: Your Honor, may I be heard
10 very briefly?

11 THE COURT: I already ruled, not now,
12 but I ruled on it during the trial.

13 MR. FLAHERTY: I think you ruled the
14 handwriting was not being offered for the truth
15 of the matter asserted there, the printing,
16 Tanzerius Anderson, with the license number, with
17 model and make of automobile. You allowed that
18 to come into evidence. You also allowed it on
19 the basis, I think, of the opinion offered by the
20 testifying witness, Mr. Duane from the FBI.

21 I would suggest now, Your Honor, that
22 the Commonwealth has introduced certain Registry
23 of Motor Vehicle documents that have Mr.
24 Anderson's name, make, model and license number

1 on it, and the only purpose for which that
2 handwriting is offered, I suggest, is, that totem
3 pole hearsay on top of a business entry, is to
4 prove the truth of the matter asserted there,
5 that Tanzerius Anderson is the person that signed
6 the hotel receipt.

7 So respectfully I'd ask that the Court,
8 in connection with those two exhibits, redact
9 that printed portion on the folio.

10 THE COURT: I had ruled that it was
11 marked as what?

12 THE CLERK: It's Exhibit 27.

13 THE COURT: I'll take that as a motion
14 to reconsider and deny it, sir. Alright. What
15 else, Mr. Tochka?

16 MR. TOCHKA: So as I understand it,
17 Your Honor, that whole exhibit is in evidence?

18 THE COURT: Yes, sir.

19 MR. TOCHKA: E for identification, it
20 was the E and F, actually the handwriting
21 exemplars. There are two sets of handwriting
22 exemplars. One is the one that Mr. Flaherty went
23 with Sergeant Coleman, they took the handwriting
24 exemplars to the defendant, and the other one is

1 previously known handwriting samples of the
2 defendant. Now, with respect to one of them, I
3 believe it is -- I'm not sure if it's E or F,
4 it's a Miranda form that is with the known
5 samples.

6 THE COURT: Well, the Miranda forms are
7 in evidence?

8 MR. TOCHKA: One of the Miranda forms
9 was placed into evidence. The other Miranda form
10 that was a known sample that was sent was not
11 placed into evidence and I suggest redacting that
12 portion that dealt with Miranda warnings given to
13 the defendant, that that should be redacted, the
14 one that was not introduced, just to make it
15 clear his handwriting samples, two sets of
16 samples were sent to the FBI by Sergeant Coleman,
17 one of them was the known samples of the
18 defendant, those consist of two Miranda forms
19 signed by the defendant. One of the Miranda
20 forms has already been introduced into evidence
21 so obviously that goes before the jury.

22 THE COURT: Right. This one.

23 MR. TOCHKA: It has an exhibit number
24 on it. One of them has an exhibit number on it.

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THE COURT: I'm absolutely confused.
Let's start with E. Is there an objection to E,
Mr. Anderson's Miranda form? Wasn't that marked
into evidence? The September 7?

MR. TOCHKA: What happened, first when
the hand writing expert took the stand, I showed
him the items which are those two items right
there that he received from Sergeant Coleman.
They had not been marked into evidence. At that
point I moved to introduce them for purposes of
identification, that he had received them and
they were marked for identification purposes.
Only after that I put on Detective McLaughlin who
testified that he gave the defendant his Miranda
warning form, that's the April one, I believe it
is.

THE COURT: It's already in evidence.
What about the July 17?

MR. TOCHKA: So I would ask for the
July one to go into evidence, deleting as to the
Miranda warnings, so it just goes in in terms of
as his signature which is a known signature that
was sent to the FBI.

MR. FLAHERTY: I don't think that's

1 what -- I think that's what we discussed, that
2 the Miranda form would be redacted and the
3 signature would go to the jury.

4 THE COURT: I'm just passing this back.
5 So there is no issue about that. The next one?

6 MR. TOCHKA: Exhibit F. That's what
7 you have before you now, Exhibit F?

8 THE COURT: Yes.

9 MR. TOCHKA: Those were the known
10 writing samples that were taken with Mr. Flaherty
11 present and Sergeant Coleman present and they
12 were sent to the FBI lab and they are the basis
13 of the FBI handwriting individual, Duane's giving
14 opinions as to the handwriting sample on the
15 folio.

16 THE COURT: Why do we have multiple
17 copies?

18 MR. TOCHKA: Because as he testified
19 and as Sergeant Coleman testified, the defendant
20 was asked to write his name various times, right
21 and left hand and the like.

22 THE COURT: Mr. Flaherty?

23 MR. FLAHERTY: Well, the reason why I
24 would object to these, Your Honor, is, I think

1 they have been marked for identification, Mr.
2 Duane testified and he used a chalk that he
3 prepared before the jury and his testimony was,
4 these are the known signatures, these are the
5 questioned signatures, based upon my comparison,
6 they are one and the same. He never went through
7 every one of the documents before Your Honor
8 right now to determine and explain whether or not
9 he saw any similar characteristics. So I have no
10 objection to them for identification but they
11 haven't been explained to the jury and I would
12 object to them going into the jury room for
13 deliberation purposes.

14 MR. TOCHKA: He did explain for the
15 jury in terms of the ones he specifically looked
16 at. He did say that he had looked at them all,
17 Your Honor, and so I'd suggest, Your Honor, that
18 that was the basis of his opinion in terms of
19 reviewing the evidence in the case. So I suggest
20 the jurors should have the actual items that he
21 looked at in order to make his comparison.

22 THE COURT: The objection will be
23 overruled and they will be marked and admitted.

24 THE CLERK: Your Honor, the skull chart

1 would be 50.

2 (Exhibit No. 50, being a chart, as
3 described above, was marked and admitted into
4 evidence.)

5 THE CLERK: The redacted document, the
6 Miranda warning, to be redacted, that will be 51.

7 (Exhibit No. 51, being a document, as
8 described above, was marked and admitted into
9 evidence.)

10 THE CLERK: And the envelope will be
11 52.

12 (Exhibit No. 52, being an envelope, as
13 described above, was marked and admitted into
14 evidence.)

15 THE COURT: Next one, sir.

16 MR. TOCHKA: Would be the map of New
17 Hampshire.

18 THE COURT: The map of New Hampshire?
19 For the record, let's just say that is not a true
20 map, this is a sketch.

21 MR. TOCHKA: It's a sketch.

22 THE COURT: That's a sketch that
23 doesn't conform to any known standards. I don't
24 want to anticipate Mr. Flaherty's or Mr. Doolin's

1 argument.

2 MR. DOOLIN: I object. I don't think
3 it should come in. It was testified that it
4 wasn't accurate. I think at least it was upside
5 down. There was some testimony from the witness
6 given here -- I'm sorry. I've forgotten her
7 name.

8 THE COURT: Cynthia McInerney.

9 MR. DOOLIN: Ms. McInerney that the
10 insert in the upper right was upside down. So
11 not only is it not scientifically accurate, it
12 was, in fact, misleading.

13 MR. TOCHKA: Well, I mean, I would
14 suggest to the Court, other than being upside
15 down, obviously the point was simply to show the
16 distance between two locations, Cranmore Birches
17 and the Yankee Clipper hotel. Whether it's
18 upside down, right side up or sideways, doesn't
19 make any difference in terms of showing the
20 relationship.

21 THE COURT: We do have oral testimony
22 about that, sir, from several witnesses, about
23 the distance.

24 MR. TOCHKA: May I be able to use that

1 in my closing argument, though?

2 THE COURT: Yes.

3 MR. TOCHKA: If I could ask the Court,
4 in terms of the transcript of the tape, J for
5 identification, the transcript of the defendant,
6 Tanzerius Anderson, that can go in, the
7 transcript, to the jury if the jury so wishes to
8 read along with the tape as they're listening to
9 the tape?

10 MR. FLAHERTY: I'd object to that, Your
11 Honor.

12 MR. DOOLIN: I join with Mr. Flaherty.

13 THE COURT: The evidence is the tape.

14 MR. TOCHKA: That's fine. If they had
15 no objection, then I'd ask, it would be easier
16 for the jurors. There's no argument that I've
17 heard that that transcript is inaccurate in any
18 way and it's a forty-five minute tape so it would
19 just make it easier for the jurors in terms of --

20 THE COURT: I'm going to take a look at
21 a case tonight and I'll let you know tomorrow.

22 MR. TOCHKA: Your Honor, with respect
23 to what's been marked for identification L which
24 is the grand jury minutes, as I said at side bar

1 to the Court, I wish to make reference in my
2 closing, at least if the Court is not inclined to
3 give it substantively, to Mr. Simms' statement in
4 the grand jury where he says he had not gone to a
5 hotel room repeatedly. I wish to at least argue
6 it's inconsistent with lack of memory up on the
7 stand. The only way I can do that is by having
8 that admitted with the Court giving an
9 instruction, saying that it's offered for the
10 limited purpose of impeachment. Otherwise --

11 THE COURT: I'm going to give the
12 instruction, sir, that prior inconsistent
13 statements may be used in terms of evaluating a
14 witness's credibility. I will not, for the
15 reasons I stated at side bar earlier today,
16 however, instruct the jurors they may consider
17 the grand jury testimony for probative purposes.

18 You're welcome to look at the
19 transcript I had the court reporter prepare, sir,
20 but basically Mr. Simms does not -- did not
21 recall either the underlying events or, very
22 often, what he said at any prior time or in
23 between the time he testified, the beginning to
24 the end, so as I said, you can argue prior

1 inconsistent statements because it is my -- it's
2 my judgment that, based on his testimony, my
3 observation of his demeanor, that one could
4 fairly conclude that he was falsifying a lack of
5 memory and, for that reason, that you should be
6 permitted to argue that there were
7 inconsistencies, and you can, between the grand
8 jury testimony and trial testimony such as there
9 are on the record and you read some of the
10 questions into the record.

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

12 As to, I think, Exhibit H, I just -- Exhibit H
13 which is the chart of the handwriting sample that
14 was prepared by Mr. Duane and that was used in
15 his testimony, explaining the characteristics to
16 the jurors, why he was led to conclude that the
17 known sample was written by the same person as
18 the questioned document, I would ask that to go
19 before the jury because that was subject to his
20 examination, subject to his describing the
21 various characteristics that the jurors should
22 take note of.

23 THE COURT: Those are the blow-ups of
24 the ones that you have moved into evidence?

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MR. TOCHKA: Yes.

THE COURT: Objection?

MR. FLAHERTY: Yes, Your Honor, I object to that. I think you already allowed into evidence the originals of both of those documents on that chart as questioned and known. I would object to both of those words appearing on there, questioned and known. I would also object to the blow-up's. There's oral testimony before the jury as to the witness's feelings with respect to those and the original documents this Court has already ruled as admissible so I would object to this document going before the jury.

MR. TOCHKA: Your Honor, with respect to the questioned, all that simply says is that's the questioned document, that's the known signatures that have been taken from the defendant. It doesn't suggest anything other than with respect to, that that was the basis of the expert giving his opinion of those, it's based on those writing samples, his comparing. That's what he used to explain to the jurors his opinion so I think the jurors have the -- and I'm sure they were taking notes when he's describing

1 each particular signature in terms of the loops,
2 the swirls and the like, so that they can use
3 that to compare their memory as to what he
4 testified to and to his credibility as an expert.

5 THE COURT: The objection is overruled.
6 Any other exhibits, sir?

7 MR. TOCHKA: No.

8 THE COURT: Mr. Doolin, do you have any
9 exhibits, sir, which you wanted to introduce?

10 MR. DOOLIN: No, Your Honor.

11 THE COURT: Mr. Flaherty?

12 MR. FLAHERTY: Yes. The photographs of
13 Detective McLaughlin and Torres that have been
14 marked for identification that I sought to
15 introduce through both McLaughlin and Stevens.
16 These are the photographs that were taken on the
17 thirty-first of both the blood spatter evidence
18 and the ballistics evidence recovered on those
19 dates.

20 I think the Court in its original
21 ruling had said that they are not relevant and
22 described the definition of relevance for
23 purposes of admissibility of evidence, saying
24 they didn't tend to prove anything at issue as to

1 the indictments. I would suggest that they are
2 very relevant, Your Honor.

3 THE COURT: Let me just explain the
4 basis of my ruling and I don't think it changed
5 with respect to Ms. Stevens's testimony which is
6 that relevancy has to be shown to be relevant at
7 the time, the time being approximate to the
8 murder. Now, these were taken three days, three
9 or more days after the murder and, correct me if
10 I'm wrong, sir, but I did not hear either witness
11 say that -- neither or any witness could testify
12 that these were fair and accurate depictions of
13 the crime scene at around the time of the murder.
14 And Ms. Stevens, in particular, said that some of
15 these, and I'm not sure which ones you were
16 showing her, but on several of them she said that
17 she did not make certain observations at all.

18 MR. FLAHERTY: I think what Ms.
19 Stevens' testimony is, Your Honor, my memory of
20 her testimony is, she didn't recall seeing those.
21 I asked her to refer to her crime scene notes and
22 her crime scene notes were silent as to it, her
23 criminalistic reports were silent as to it,
24 saying that she doesn't remember seeing them is

1 not entirely accurate. I think what's accurate
2 is that she took no note of that area.

3 Detective McLaughlin and Detective
4 Torres, however, went back to the scene as part
5 of this investigation, specifically went to the
6 area of 89 Faneuil Street as part of their duties
7 as homicide investigators assigned to this case,
8 made observations at that scene, recorded
9 observations at that scene, collected evidence at
10 that scene, all of which was submitted, the
11 criminalistic evidence was submitted or analyzed
12 and the photographs were kept with the rest of
13 the evidence in the case, dated, initialed and
14 each with a caption on it written by Detective
15 McLaughlin, and I would suggest, Your Honor, that
16 those are admissible because they show --
17 Detective McLaughlin has testified they are a
18 fair and accurate depiction of the way he
19 observed the scene on March 31 and I would
20 suggest they are admissible for a number of
21 reasons, Your Honor.

22 THE COURT: There is only one issue and
23 that is whether or not there is adequate
24 foundation for their admissibility and the test

1 for photographs is, are they a fair and accurate
2 depiction of the time that's relevant in this
3 case, the murder, the incident, or if it cannot
4 be demonstrated or testified about that they
5 depict the scene at the time, can anyone explain
6 any differences between that date and the time
7 they were taken. That's the only thing I'm
8 struggling with with respect to whether or not
9 there is sufficient foundation, sir.

10 MR. FLAHERTY: I understand, Your
11 Honor. The pictures being taken, the mere
12 existence of the photographs taken by two
13 homicide detectives at the scene of a homicide a
14 couple of days later when they collect and
15 preserve evidence, Your Honor, I think speak
16 volumes as to their relevance.

17 March 31, 2000, when these two
18 detectives returned to the scene and continued
19 the crime scene investigation, they recover
20 certain evidence that is then submitted to the
21 ballistics unit is very relevant in this case, I
22 would most respectfully suggest, Your Honor, very
23 relevant.

24 THE COURT: I think you have made the

1 argument. Anything else you want to say? I just
2 want to make sure I hear from everybody before I
3 consider it.

4 MR. FLAHERTY: Relevant under Bowden,
5 Your Honor.

6 MR. DOOLIN: Just my point. I think
7 it's relevant under Bowden. I think the point is
8 that they missed it on the twenty-eighth.

9 MR. FLAHERTY: Right.

10 MR. DOOLIN: And that it's there, they
11 didn't note it.

12 THE COURT: What's the evidence that
13 they missed it on the twenty-eighth?

14 MR. DOOLIN: Well, I think the evidence
15 is that they say that they had been in there and
16 no one takes any -- there is no specific note of
17 it and to say that this evidence, which is right
18 in the heart of the crime scene at this door
19 which is feet away from where Mr. Yazbek's body
20 was recovered and feet away from the spatter
21 that's on the steps and feet away from the
22 hallway wall, respectfully I think that that's
23 the point, that it is seventy-two hours later
24 from the time that Sergeant Coleman left at

1 eleven o'clock or ten thirty or whatever the
2 testimony was on the twenty-eighth to the time
3 that Torres and McLaughlin go back.

4 I think it's our point that they missed
5 it on the twenty-eighth and no one bothered to go
6 back on the twenty-ninth, later on on the twenty-
7 eighth, the thirtieth, until they go back on the
8 thirty-first and I think that's the relevance.

9 MR. TOCHKA: One, it's not relevant.
10 As this Court has indicated, it's three days
11 later, there is no evidence those individuals who
12 took those photographs on the thirty-first were
13 there on the twenty-eighth to say whether or not
14 that is relevant as to how the scene appeared on
15 the particular day in question.

16 Also I would point out, several of the
17 photographs that Mr. Flaherty had attempted to
18 introduce into evidence, it shows a wall. I
19 don't know if it's in that package but it was the
20 original that he attempted to use, it's an
21 outside wall at 89 and it has a red K mark on
22 that particular wall. When you look at the scene
23 photographs taken on the twenty-eighth that red K
24 is not on that wall.

1 THE COURT: I didn't see any red K.

2 MR. TOCHKA: It was in the original
3 packet, I believe.

4 THE COURT: You mean this?

5 MR. TOCHKA: Yes, the scene photographs
6 on the twenty-eighth. Where that K came from on
7 the thirty-first, that picture is taken with a K
8 in it, it's not original scene photographs. It
9 was not there in the photograph of the wall. The
10 photograph shows a blank wall.

11 THE COURT: Did somebody testify to
12 that?

13 MR. TOCHKA: I'm just telling the
14 Court. So then for the defense to argue now that
15 they want to be able to argue that the police
16 missed it, the other things on the door, it would
17 be complete and total speculation and I can tell
18 this Court, and the defense has the scene
19 photographs, that that K was not at the scene at
20 that time and so now they want to argue, well,
21 the droplets on the door are blood and there is
22 no evidence it's really blood and they want to
23 argue that it was there at the time and allow the
24 jurors to speculate. So it's not relevant and

1 I'd ask the Court to deny the motion.

2 THE COURT: I'm going to give further
3 consideration to this overnight as well.
4 Alright. Any other exhibits or can we move on to
5 the charge?

6 MR. DOOLIN: I have no more exhibits.

7 THE COURT: We need to have defense
8 counsel renew their motions for required finding
9 of not guilty.

10 MR. DOOLIN: I filed one. I would
11 respectfully renew it, waive argument and
12 reiterate the arguments that both Mr. Flaherty
13 and I made.

14 MR. FLAHERTY: I renew on behalf of Mr.
15 Anderson as to the remaining indictments, waive
16 argument.

17 THE COURT: Thank you. Okay. Now,
18 can the defendants go upstairs?

19 MR. FLAHERTY: I have no objection to
20 the defendants not being present.

21 (Whereupon, the defendants were
22 escorted from the courtroom.)

23 THE COURT: Okay. The first part of
24 this are general principles except for the

1 section that has to do with sources of evidence.
2 I invite your attention to all of it but in
3 particular the plea agreement.

4 I have a consciousness of guilt request
5 from Mr. Robinson. I will be giving that
6 request.

7 MR. DOOLIN: Yes, Your Honor.

8 THE COURT: Instruction, I'm sorry.

9 MR. FLAHERTY: Your Honor, I know this
10 is a draft but Desmond Chatman, that's somebody
11 else?

12 THE COURT: That's somebody else.
13 Where are you, sir?

14 MR. DOOLIN: I think it's page three,
15 Your Honor.

16 THE COURT: At any rate you will have a
17 chance to review it tonight and I do invite your
18 close attention to it because I want to make sure
19 that it's in good shape by tomorrow morning. At
20 any rate, with respect to the plea agreement, I
21 would just invite your attention to that because
22 that is on pages thirteen and fourteen. Any
23 comments about that?

24 MR. TOCHKA: The Commonwealth is

1 content with it, Your Honor.

2 THE COURT: Pardon?

3 MR. TOCHKA: The Commonwealth is
4 content with it.

5 MR. FLAHERTY: In my motion to redact
6 the truthfulness portion included from, I think
7 it's the Royal case, Judge Friendly's instruction
8 about something to the effect of -- that talks
9 about perjury indictments against cooperating
10 witnesses, I would just suggest the language,
11 especially in view of this Court's ruling to
12 allow that portion of the plea agreement in, I'd
13 just suggest it to the Court, but otherwise the
14 defendant, Tanzerius Anderson, is content.

15 THE COURT: I have no personal
16 knowledge of how many perjury indictments are
17 brought.

18 MR. FLAHERTY: Have you ever seen one,
19 Your Honor?

20 THE COURT: Yes.

21 MR. FLAHERTY: In this court?

22 THE COURT: Yes. Not many, but I have.
23 Alright. All theories of first degree murder,
24 and I know that the defendants are preserving

1 their motion for required finding of not guilty
2 to extreme atrocity and cruelty.

3 MR. FLAHERTY: That's correct, Your
4 Honor, and also the defendant, both defendants
5 object to the third prong, malice and frame of
6 mind language.

7 THE COURT: Yes. Let's go off the
8 record for a minute.

9 (Whereupon, a discussion occurred off
10 the record.)

11 THE COURT: Mr. Tochka, do you have any
12 thoughts on that?

13 MR. TOCHKA: No, Your Honor. Whether
14 the Court decides to excise it, I'll leave it to
15 the Court.

16 THE COURT: I don't think it really
17 fits this case so I may just excise the third
18 prong. Alright. We have to give second degree
19 murder, obviously, and armed robbery is a felony
20 punishable with a maximum of life. Where does
21 that leave us with second degree felony murder?

22 MR. TOCHKA: I don't believe it leads
23 us to second degree felony murder.

24 THE COURT: Again let's go off the

1 record.

2 (Whereupon, a discussion occurred off
3 the record.)

4 THE COURT: Let's go back on the
5 record. Nobody is requesting it at any rate?

6 MR. FLAHERTY: I think it's requested,
7 Your Honor, unarmed robbery, along the lines of
8 second degree felony murder.

9 THE COURT: What's the basis in the
10 evidence for giving that charge?

11 MR. FLAHERTY: The lack of any evidence
12 of a weapon being used other than the injury to
13 Mr. Yazbek, the lack of any evidence of an armed
14 robbery. Obviously he was shot, but there is no
15 suggestion that there was a weapon used in the
16 forceful taking of property from Mr. Yazbek.

17 MR. DOOLIN: I concur with that. I
18 suggest, too, it could be two distinct acts.

19 THE COURT: Mr. Tochka?

20 MR. TOCHKA: There is no evidence that
21 it is two distinct acts. I suggest there's only
22 evidence of one thing, that's an armed robbery
23 and during the course of that he was shot.

24 THE COURT: I don't see any evidence

1 warranting the giving of an unarmed robbery
2 charge here, nor, for that matter, do I think the
3 evidence warrants a giving of voluntary
4 manslaughter or involuntary manslaughter.

5 MR. FLAHERTY: Just as to the voluntary
6 manslaughter, Your Honor, I think the record is
7 before this jury through Ms. Tate that the two
8 defendants apparently struggled with Mr. Yazbek
9 and I would suggest, I think there is some case
10 law that says that if any view of the evidence
11 would allow the Court to find an involuntary
12 manslaughter took place, then the Court must
13 instruct as to manslaughter and I would suggest
14 that under the theory of sudden combat, Mr.
15 Yazbek and the defendants were engaged in a
16 struggle and during that struggle a firearm was
17 used resulting in the death of Mr. Yazbek, and
18 that would constitute facts and evidence before
19 this Court and the record from Ms. Tate seems to
20 indicate that that may support or does support an
21 instruction for manslaughter under voluntary
22 manslaughter, but I would agree that involuntary
23 manslaughter, reckless conduct, the evidence as
24 it exists right now may not support that, but for

1 voluntary I would suggest that it does, my view
2 of the evidence does suggest it supports that
3 instruction.

4 MR. DOOLIN: I would agree with Mr.
5 Flaherty as to voluntary manslaughter.

6 MR. TOCHKA: Your Honor, there is no
7 evidence, no evidence in this case so far of a
8 sudden combat, that Mr. Yazbek is involved in a
9 sudden combat. The only evidence is there was a
10 robbery and in the course of the robbery he was
11 shot and killed.

12 THE COURT: I won't be giving voluntary
13 manslaughter or any lesser offenses to armed
14 robbery. Now, you had wanted and requested, Mr.
15 Doolin, an identification charge?

16 MR. DOOLIN: Well, I wrote these
17 instructions before the motions in limine were
18 heard. I would suggest to the Court that in
19 almost any case where someone is being identified
20 from the witness stand, as were the defendants,
21 requires some sort of identification. I
22 understand the Court's concern where the motion
23 in limine was heard and was allowed by the Court
24 concerning the photographic arrays, but I would

1 suggest to the Court that some type of an
2 identification instruction be given.

3 THE COURT: Why?

4 MR. DOOLIN: Well, I would suggest that
5 it's -- under Eddie Gauthier's testimony, that
6 it's dark outside, that --

7 THE COURT: He didn't testify these two
8 defendants were running out of the hallway.

9 MR. DOOLIN: I'm sorry?

10 THE COURT: He doesn't identify your
11 client as running out of the hallway.

12 MR. DOOLIN: He identifies my client
13 along with, I would suggest, Mr. Anderson running
14 out of the hallway, he puts them both running
15 out. It's Joleena Tate --

16 THE COURT: Is that right?

17 MR. TOCHKA: Yes, he identified both of
18 them as running out of the hall.

19 THE COURT: Both of them?

20 MR. DOOLIN: And that's what I would
21 leave to the Court that in any case like this
22 where identity is an issue, I think that the
23 defendant is entitled to it.

24 THE COURT: What do you say, Mr.

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Tochka?

MR. TOCHKA: Your Honor, I would defer to the Court on that, although I would strongly suggest that both counsel argued strongly that this is not an identification case before this jury. They have had all the facts of this case beforehand. I suggest none of the facts have changed from what they had in terms of discovery as to what came out at trial and both of them were saying this is not an identification case. I don't believe it is. It's pretty clear from their arguments and as they have even questioned the witnesses, it's all a question of whether or not Joleena Tate is lying as well as Eddie Gauthier.

THE COURT: I need to think about that as well. Did you have any other questions? You can certainly raise them with me tomorrow after you read this.

From the point of giving the jurors the substantive instructions, because this is a very long charge with all the theories of first degree murder and a lot of other principles of law that have to be explained, I think it's important they

1 have a copy. We cannot give them a transcript
2 immediately after I charge and so I prepared this
3 in advance and I will instruct them that it is
4 what I say and not what I give them. I'm not
5 going to even tell them I'm giving them anything
6 until after I'm done, that is what controls, but
7 it is important to have, I think, the necessary
8 instructions in writing to give them.

9 Anything else? Any other questions you
10 want answered about the charge or your closings
11 before we go?

12 MR. DOOLIN: I just have a question
13 about the closing. Respectfully, I noticed in
14 my opening that the Court, as is your right,
15 interrupted what I was saying and I think it had
16 to do with reasonable doubt, and just so I'm
17 clear that when I close to the jury, I want to be
18 on firm ground with the Court, was it the
19 phrasing that I was using or was it the fact that
20 I mentioned it in my opening? Just so I can have
21 some guidance.

22 THE COURT: I don't know. I don't
23 remember.

24 MR. DOOLIN: That's fine. Okay. It

1 was a long time ago.

2 THE COURT: Usually I don't allow
3 references of any detail about the law in
4 openings. That's not what openings are for. I
5 think all of you are familiar with the parameters
6 of closing arguments and I'm going to be very
7 vigilant with each of you about those parameters.
8 They include that you may only argue the
9 evidence, the direct evidence and inferential
10 evidence, that you may not appeal to the jury's
11 sympathies or emotions, that you may not make
12 allusions to matters not presented through
13 witnesses or through the exhibits, that anything
14 that has been contained in a question to a
15 witness which has not been otherwise admitted
16 into evidence through testimony or exhibits
17 cannot be referenced, and that generally the
18 argument should be -- if there is any issue about
19 the law that you wish to include in your
20 arguments, I'd like to know that beforehand. I
21 mean, you know now I have given this to you
22 pretty much what I'm going to say. If you intend
23 in any way to get into any detail about the law,
24 I'd like to know that in advance.

1 MR. DOOLIN: No. I just will mention
2 the presumption of innocence, the burden of
3 proof, and proof beyond a reasonable doubt, and
4 then argue from that and say that what you say is
5 the law, and that's how I've always done closings
6 including ones I've done in front of you.

7 THE COURT: Any other questions?

8 MR. TOCHKA: Your Honor, I just have
9 two matters. One is the folio that has been
10 marked as an exhibit at this point in time.
11 Originally that folio was introduced as an
12 exhibit. At that point the Court had not heard
13 from Joleena Tate and said that the information
14 contained in that folio, Tanzerius Anderson, the
15 address, the motor vehicle registration and the
16 like, that I could not mention at that point as
17 being connected -- as being written by Tanzerius
18 Anderson.

19 Based upon Mr. Duane having just said
20 that the signature is the signature of Tanzerius
21 Anderson after you made that particular ruling,
22 then I have now had Joleena Tate testify that she
23 was with Tanzerius Anderson, that he went inside,
24 he made a comment about how he had placed his

1 name on that particular document, at this point I
2 just want to make clear in terms of the record
3 that I can reference that information on this,
4 Tanzerius Anderson with the address, the license
5 number on that document by Tanzerius Anderson,
6 based on the evidence that the jury has from
7 Joleena Tate, him going in there.

8 THE COURT: Well, sir, Joleena Tate
9 didn't see him do that, she was in the car.

10 MR. TOCHKA: In addition to the
11 evidence that this jury has heard from the
12 manager in the hotel in terms of the information,
13 how that's placed on there, that the information
14 is not by the clerk, it's placed on by the
15 individual themselves.

16 THE COURT: I think you can argue
17 inferentially from the evidence that's before the
18 jury.

19 MR. TOCHKA: And the second thing I
20 would ask the Court, and we spoke about it at
21 side bar earlier, since Heather Coady is not
22 available to the Commonwealth, I'd ask for some
23 type of instruction to the jurors.

24 THE COURT: What kind of instruction?

1 MR. TOCHKA: I would ask for an
2 instruction, however the Court wishes to phrase
3 it, explaining to the jurors that she is not
4 available, that they are not allowed to speculate
5 as to why she is or is not available in
6 connection with this case.

7 MR. DOOLIN: Judge, I'm going to ask
8 the Court not to make any reference at all to Ms.
9 Coady.

10 MR. FLAHERTY: I join in that, Your
11 Honor..

12 THE COURT: I'll think about that as
13 well. Anything else?

14 MR. DOOLIN: No, Your Honor.

15 THE COURT: How long will your closings
16 be, do you know?

17 MR. DOOLIN: I would think I would be
18 forty-five minutes.

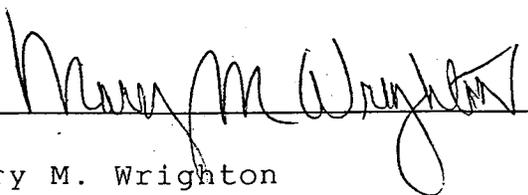
19 MR. FLAHERTY: I don't know that I have
20 ever gone more than thirty-five minutes, Your
21 Honor.

22 THE COURT: Alright.

23 (Whereupon, the proceedings were
24 adjourned at 4:30 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
258, is a complete, accurate and true record of
my stenographic notes as taken by me in the
aforementioned matter to the best of my skill and
ability.



Mary M. Wrighton