

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
SUCR 2000-10975

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COMMONWEALTH OF MASSACHUSETTS

-vs-

JURY TRIAL  
DAY EIGHT

JASON ROBINSON

\* \* \* \* \*

TRANSCRIPT OF PROCEEDINGS

BEFORE: ROUSE, J

APPEARANCES:

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

MICHAEL DOOLIN, Esquire, for Defendant Robinson

TIMOTHY FLAHERTY, Esquire, for Defendant Anderson

March 28, 2002  
Boston, Massachusetts

Mary M. Wrighton  
Official Court Reporter

I N D E X

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17  
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19  
20  
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22  
23  
24

PAGE

Closing argument by Mr. Doolin	10
Closing argument by Mr. Flaherty	37
Closing argument by Mr. Tochka	54

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Jury instructions	111
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1 (Whereupon, the proceedings were  
2 reconvened at 9:25 o'clock a.m., without the  
3 jury.)

4 THE COURT: Okay. We have a few  
5 matters, I think, to clear up before the jurors  
6 come out. First, the photographs, because I  
7 don't find that they meet the requisite  
8 requirements for admission, they will continue to  
9 be marked for identification. With respect to  
10 the plea agreement, further redaction will be  
11 made. The entire paragraph numbered four will be  
12 deleted. With respect to the request by  
13 defendant Robinson for an identification  
14 instruction, that will be given.

15 I think that was all. Have I  
16 overlooked anything?

17 MR. TOCHKA: Yes, Your Honor, regarding  
18 Heather Coady, the unavailability of Heather  
19 Coady. Did you refer to that?

20 THE COURT: No, but I'm going to put  
21 that in the charge but not specifically by name.  
22 I did include -- there were changes to the charge  
23 last night but at any rate I have included two  
24 references. One has to do with the indictments

1 which are no longer before the jury. They are  
2 not to speculate about why they will not be asked  
3 to consider the verdicts with respect to them,  
4 and the second has to do with witnesses, whose  
5 names were read to them to them by me in the  
6 course of impanelment as well as any witnesses  
7 referenced by an attorney in the opening, that  
8 the jurors are not to speculate in any way about  
9 why those witnesses did not appear nor to  
10 consider it in any way in rendering their  
11 verdict. Is there something else that you  
12 wanted?

13 MR. TOCHKA: Just a question in terms  
14 of the plea agreement. Is the Court deleting any  
15 reference to any recourse the Commonwealth has?

16 THE COURT: Yes, I am. After re-  
17 reading Champa, I concluded that it should go  
18 out.

19 MR. TOCHKA: So there is no way that  
20 this jury would have the information, should it  
21 be determined she was not truthful, she could be  
22 prosecuted? This jury won't have that  
23 information?

24 THE COURT: I think to the extent that

1 is an argument which may possibly be made in the  
2 absence of this agreement, depending on how it is  
3 worded, I don't think you're precluded from it  
4 necessarily. In other words, the government  
5 always has the option of prosecuting when they  
6 have reason to believe or probable cause to  
7 believe that a crime has been committed, but I  
8 think that to leave that in is to suggest that,  
9 again, that the government has leverage here  
10 which would prompt the witness to give truthful  
11 testimony and I think it really goes to the heart  
12 of the Court's instruction in Champa.

13 MR. TOCHKA: I would suggest to the  
14 Court, the line in Champa that refers to the fact  
15 that the -- that the plea agreement suggests that  
16 the witness has no motivation to do anything  
17 other than to tell the truth, that by the Court  
18 deleting the reference that the Commonwealth then  
19 can pursue a prosecution against the witness  
20 should she not be telling the truth, it goes  
21 counter to what Champa actually does say.

22 THE COURT: We may disagree on that,  
23 Mr. Tochka, and your exception will be noted.  
24 That is the ruling. As I suggested to you, I'm

1 not sure that you are precluded necessarily from  
2 argument with respect to matters related to that.  
3 I do think, however, the language should come out  
4 in the agreement.

5 Were there any other matters which were  
6 pending which required any ruling from yesterday?

7 MR. DOOLIN: No, Your Honor.

8 MR. FLAHERTY: None from Mr. Anderson,  
9 Your Honor.

10 THE COURT: Okay. Can I have an  
11 estimate, just on scheduling now for the jurors,  
12 how long the defendant's arguments will be?

13 MR. DOOLIN: I would assume thirty or  
14 forty minutes, Your Honor.

15 MR. FLAHERTY: The same for Mr.  
16 Anderson.

17 THE COURT: There was one further thing  
18 I wanted to inquire of. I have included an alibi  
19 instruction on the charge. Mr. Flaherty? Mr.  
20 Doolin?

21 MR. DOOLIN: That's fine with me, Your  
22 Honor.

23 MR. FLAHERTY: I don't have an  
24 objection.

1 THE COURT: Okay. May I have the  
2 jurors, please?

3 (Whereupon, the jurors were escorted  
4 into the courtroom at 9:32 o'clock a.m.)

5 THE COURT: Ladies and gentlemen, I'd  
6 like to welcome you back. As you now know, we  
7 are at the stage where we listen to closing  
8 arguments and to my legal instruction. All the  
9 evidence has concluded. You've heard from all  
10 the witnesses and all the exhibits have been  
11 introduced. We now move to the final phase of  
12 the case which permits each attorney to address  
13 you directly for the second time in the case and  
14 in a moment we are going to move to the closing  
15 arguments.

16 Before we do that, however, again I  
17 just inquire whether there is any among you who  
18 has not complied with my instructions I've given  
19 you concerning your conduct about the case. That  
20 includes not discussing it, not revisiting any of  
21 the sites we saw on the view, or not consulting  
22 any outside source of whatever kind. If you have  
23 not so complied, would you raise a hand, please?  
24 Thank you very much. The record should reflect

1 no juror has.

2 We are about to listen to closing  
3 arguments and that is, the attorneys, the lawyers  
4 have to, as the name suggests, argue the case to  
5 you. In the course of these events, the  
6 attorneys get to summarize the evidence, pull it  
7 together, characterize it in certain ways most  
8 favorable to their clients. They will be  
9 suggesting to you what you should make of the  
10 evidence, what conclusions and judgments they  
11 hope you will draw.

12 It is very important that you listen  
13 carefully, as you have throughout the trial, to  
14 the closing arguments but I want you to keep in  
15 mind that what the attorneys say has been  
16 presented as evidence or what they suggest you  
17 should make of it, what judgments you should make  
18 about it, should be considered by you only if  
19 your recollection, memory of that evidence  
20 coincides with that of the description as well as  
21 your collective judgment about those matters.  
22 You are the only persons in the courtroom who get  
23 to make those decisions, those decisions being  
24 what the evidence was and how much weight to give



1 to it. So if at any time you do hear references  
2 in the argument - I'm sure they will not be  
3 intentional - by counsel to things either that  
4 were not given to you through the evidence  
5 directly or inferentially or if your judgment  
6 about those matters don't coincide with that  
7 that's being urged upon you, then you should  
8 disregard it because these are the critical  
9 decisions you're going to be asked to make after  
10 all of us have completed our work.

11 You may, if you like, take notes in the  
12 course of the closing arguments. I would suggest  
13 that, if you elect to do that, you draw a  
14 horizontal line across your pad of paper to  
15 indicate that what is above the line has come in  
16 through the evidence, the witnesses and the  
17 exhibits, and what is below the line has been  
18 argued to you by counsel.

19 The attorneys are given significant  
20 time to make their arguments so we will most  
21 likely take a break after the defendants have  
22 made their arguments. Then we'll return for the  
23 Commonwealth's argument and then most probably we  
24 will be taking another break before you have to

1 listen to me. Lunch will be brought in today.  
2 There will be no opportunity to go out so you  
3 will be here for whatever time it takes us to get  
4 the case to you which I do expect will take us  
5 into the afternoon.

6 Once again we thank you for your  
7 anticipated attention and cooperation in  
8 connection with the case. At this time we are  
9 going to move to the closing arguments. The  
10 order of the arguments is that the defendants get  
11 to go first, the Commonwealth second and last.  
12 Each side only gets one opportunity to make an  
13 argument, and we thank you again.

14 Mr. Flaherty? Mr. Doolin?

15 MR. DOOLIN: Good morning and thank  
16 you. Thank you for your service as jurors. One  
17 of the most compelling things, one of the most  
18 important things in our system, in our legal  
19 system is what happened a couple of months ago,  
20 that the fourteen of you, fourteen different  
21 people from fourteen different walks of life  
22 received something in the mail, a letter in the  
23 mail from the jury commissioner telling you to  
24 report to Suffolk Superior Court for jury

1 service.

2 There are two very, very fundamental  
3 important rights that we have as American  
4 citizens. One of those is the right to vote and  
5 the second is to sit on a jury, to listen to  
6 evidence, to look at the evidence, to evaluate  
7 evidence, and to come to a conclusion based upon  
8 the law and the evidence presented to you, an  
9 important conclusion in this case, the case of  
10 the Commonwealth versus Jason Robinson. So on  
11 behalf of Mr. Robinson and myself, thank you for  
12 your services as jurors.

13 Now, the law in this case is given to  
14 you by Judge Rouse, what she says to you is the  
15 law. What the lawyers say is argument. My  
16 client is presumed to be innocent. The  
17 government bears the burden of proof in this  
18 case, proof beyond a reasonable doubt, very  
19 important legal concepts that Judge Rouse will  
20 instruct you on, as all of her instructions are  
21 important.

22 But there is one thing that the  
23 fourteen of you, the fourteen people who received  
24 that card in the mail telling them to report to

1 Suffolk Superior Court for jury service have in  
2 common. You come from different walks of life,  
3 different areas of Suffolk County, but you have  
4 something in common, don't you? You have  
5 something that is probably best referred to and  
6 was initially referred to in my experience by  
7 Judge Irwin, former Chief Justice Irwin, who  
8 called it a commonality of experience. It is  
9 sometimes called common sense, but commonality of  
10 experience, the things that bind us as human  
11 beings, our reason, our judgment, our logic, our  
12 experience as adults, people who are called to  
13 sit and listen to evidence on a case, to evaluate  
14 it, without sympathy, without partiality, and  
15 evaluate the evidence that is given to you by way  
16 of evidence, that's all you'll have back in the  
17 jury room with you, and evidence that you've  
18 heard, testimony of witnesses who have testified  
19 in the case.

20 Use your commonality of experience to  
21 judge this case. You are the judges of the facts  
22 of the case, what to believe and what not to  
23 believe, what sounds probable to you, what sounds  
24 improbable. You take that commonality of

1 experience that the twelve deliberating jurors  
2 will have, you take all of the evidence and apply  
3 the law that Judge Rouse gives to you, and you  
4 come to a conclusion on this case, taking into  
5 consideration proof beyond a reasonable doubt.

6 When you go back to deliberate, there  
7 is one thing to focus on. Did the government  
8 prove to you beyond a reasonable doubt that Jason  
9 Robinson and Tanzerius Anderson robbed and killed  
10 Iman Yazbek on March 27 and 28 of 2000? I ask  
11 you not to be swayed by sympathy. There is a  
12 photo that's in evidence of Mr. Yazbek. He was a  
13 human being, did not deserve to die, but I'm  
14 going to ask you, the twelve of you, to focus, to  
15 focus in your deliberations on the issue that is  
16 before you. Who is responsible for this? Has it  
17 been proven to you by the government who is  
18 responsible for this? Not to use sympathy but to  
19 use your judgment, your logic, your reason to  
20 make inferences based upon the evidence, to use  
21 deductive reasoning, to go through the evidence  
22 as to what happened that night and what has been  
23 presented to you over the last two weeks.

24 Now, you've had a chance to go to the

1 scene. You've had a chance to see numerous  
2 photographs of the area, of the Fanueil  
3 development. You have in front of you here  
4 Exhibit 1, the aerial photo of the development  
5 and that area. On March 27 and March 28, the  
6 early morning, you've heard some testimony about  
7 what allegedly happened that night. There are  
8 scores of apartments in that area. Using your  
9 deductive reasoning, you can infer that there are  
10 hundreds of people who live in that area.

11 And what you have in front of you is  
12 the testimony of two people, Joleena Tate and  
13 Eddie Gauthier. What you have to ask yourselves  
14 as jurors, as triers of the facts in this case,  
15 is what has motivated them to come into this  
16 courtroom and to give the testimony that they  
17 have given. What kind of motivation do they  
18 have? What lies behind their testimony? You've  
19 had a chance to listen to that testimony over the  
20 course of the last several weeks.

21 You have had a chance to listen to the  
22 testimony of other witnesses who have come in  
23 front of you. There was a young man, a good  
24 witness, Oscar Vega, who came in here. He got up

1 on the witness stand and he told you about what  
2 he was doing that night. You had a chance to  
3 judge the way that Oscar Vega testified, to use  
4 your commonality of experience to judge Oscar  
5 Vega, whether his testimony made sense to you,  
6 whether Oscar Vega was someone who you would  
7 believe.

8 He has no motivation. He has nothing  
9 to do with this case except as a pure witness.  
10 He was there. He's seated in his home. He's  
11 talking to his girlfriend on his phone, something  
12 that a person around his age would be doing at  
13 eleven o'clock at night. He's doing his homework  
14 on a computer. The testimony that you heard from  
15 Oscar Vega, when you evaluate it, does it sound  
16 logical to you? Of course, it does. He doesn't  
17 have any motivation to fabricate. He doesn't  
18 have any reason to tell you a story that's not  
19 true.

20 Oscar Vega says, I heard some sort of a  
21 whistle that night. I heard some sort of a  
22 noise. I looked out the window, I saw Heather,  
23 Heather Coady. He told this to the police when  
24 they came to see him that first morning on March

1 28, I saw Heather Coady outside. I looked over,  
2 I live near the area where that dumpster is,  
3 where that fence is. It's dark in that area, my  
4 car is parked over in the lot so I'm concerned  
5 about people going back and forth. That makes  
6 sense, doesn't it? A young man who owns a car  
7 and he's concerned about the car. He tells you  
8 that he sees Heather Coady, tells you he sees  
9 another person with her.

10 At no time does he see Gauthier in that  
11 area and I want you to think about that. Now,  
12 granted there's a tree there and he can't see  
13 over at that picnic table area and that's a point  
14 that I want you to consider along with everything  
15 else that Vega says because that's important to  
16 you, but he can see part of that play area. He  
17 never sees Jason Robinson out there that night.  
18 When the police go to see Vega the next morning,  
19 what does he tell them? I saw Heather Coady and  
20 another young woman.

21 So the police go to see Coady. Well,  
22 Coady leads them to Mr. Gauthier. Mr. Gauthier,  
23 who has come into this court and who has  
24 testified in front of you. Now, take a look at



1 what Mr. Gauthier has told the police over the  
2 last several years. On March 28 of 2000 Gauthier  
3 said to the police, I have an alibi as to where I  
4 was that night. I was with Heather Coady. Now,  
5 Gauthier says that he has absolutely nothing to  
6 do with whatever happened that night. He needs a  
7 phony alibi? What do you think about that? Does  
8 that satisfy you, satisfy your judgment? Why  
9 does a person who is a witness in a case, who has  
10 nothing to do with the case, need a phony alibi?  
11 That's completely ridiculous. It doesn't satisfy  
12 your judgment, does it? It doesn't sound right.

13 Now, Gauthier, under his present theory  
14 of the case that he testified to on the stand,  
15 when confronted with this, what he said on March  
16 28, yes, that's a lie. First thing that Gauthier  
17 does is, he lies. Gauthier then has a  
18 conversation with the police on the thirtieth.  
19 In that conversation he denies something, what he  
20 says in his present testimony, that he went and  
21 he saw Yazbek's body.

22 So Gauthier, when confronted with that  
23 in court again, for a second time, when talking  
24 to the police, when talking to authorities in the

1 case, admits under questioning that he lied a  
2 second time on March 30 to the police when  
3 questioned about what happened that night. On  
4 April 7, when they talked to him again, Gauthier  
5 again in his taped statement says that he lied  
6 about going to see that body. He never went up  
7 there, did he? That's what his testimony stood  
8 for at the time. That's what his statement stood  
9 for at the time. Completely different than what  
10 he has said here.

11 Gauthier, on three occasions, the  
12 twenty-eighth, the thirtieth, April 7, says that  
13 he did not tell the truth. How do you judge  
14 that? Does that sound probable to you? Does  
15 that sound real? Someone who lies to the police  
16 on three different occasions, three distinct  
17 separate occasions about various important parts  
18 of the case doesn't tell the truth?

19 Joleena Tate, what's her motivation to  
20 testify? Go back to Joleena Tate's testimony on  
21 the stand. How do you judge somebody? How do  
22 you judge their demeanor? How do you determine  
23 whether this is someone who you are going to  
24 believe or not believe? She is portrayed to you

1 in the Commonwealth's opening as someone who is  
2 manipulated by Mr. Anderson, manipulated by  
3 Anderson, and you had a chance to listen to what  
4 she said when she got up on the stand, and not so  
5 much what she said but how she said it. Did she  
6 come across to you as some sort of a shrinking  
7 violet? Did she come across as some person who  
8 could be taken advantage of? She came across as  
9 intelligent. She came across as calculating,  
10 bold in her demeanor and in her speech.

11 Think about how she testified. And  
12 also think about, if you will, different parts of  
13 her testimony. Think about what Joleena Tate  
14 says that she did in going up to New Hampshire to  
15 her father, to her father. She goes up to her  
16 father's house. Her testimony is that she breaks  
17 into her father's house. She steals from her  
18 father. She has absolutely no, no second  
19 thoughts about going in and taking from a person  
20 in a deceitful way, someone who has been nice to  
21 her, someone who has cared for her, someone who  
22 has loved her her entire life.

23 Think about her activity that she says  
24 that she did with Mr. Yazbek, Mr. Yazbek who

1 befriended her, Yazbek who was nice to her,  
2 Yazbek who paid for various things when they went  
3 out. Cold, calculating, manipulative. I want to  
4 go out tonight, I want to see you, why don't we  
5 go out somewhere? Yes. They went to Wadi's, she  
6 manipulated him. She went to Wadi's with him.  
7 She played up to him. She sweet talked him. She  
8 brought him back to a place of her choosing, a  
9 dark alley, Mr. Yazbek who had been nice to her,  
10 who had befriended her, conned, manipulated,  
11 robbed, and ended up being dead. She manipulates  
12 the father. She steals from the father. She  
13 manipulates Yazbek.

14 Think about what happened on April 29  
15 when she was arrested by the police in the Combat  
16 Zone. What's your name, the police ask her? My  
17 name's Amy Harr. The arresting officer, the  
18 booking officer asked her, what's your name. My  
19 name's Amy Harr. What's your father's name? She  
20 gives Harr's father's name. What's your mother's  
21 name? She gives Harr's mother's name. The bail  
22 bondsman says, what's your name? Amy Harr. She  
23 signs the name, Amy Harr, on the bail slip. Amy  
24 Harr who she grew up with, Amy Harr who was her

1 friend. Manipulation, contrivance, deceit. The  
2 father, Mr. Yazbek, and Amy Harr. Oh, that's not  
3 a big thing, she tries to tell us. I didn't want  
4 to get Amy in trouble, a young woman, Amy Harr,  
5 being linked to a prostitution arrest. Think  
6 about the deceit in that. Think about the  
7 manipulation there.

8 Think about how she was, what she  
9 testified to, and this deal that she has cut with  
10 the government. She's not charged with the  
11 serious crimes in this case. She's charged as  
12 accessory before the fact of robbery. The  
13 government is going to recommend eight to ten.  
14 That's the agreement. Her lawyer can recommend  
15 probation. Manipulation, deceit, you determine  
16 that. When you think about her testimony, go  
17 back through those three scenarios, the one with  
18 Yazbek, the one with the father, the one with Amy  
19 Harr. When you determine, when you use your  
20 judgment, when you use your commonality of  
21 experience to determine whether or not you  
22 believe her, is this the sort of person who you  
23 believe?

24 Now, there is one thing that Gauthier

1 and Ms. Tate have in common and that's their  
2 deceit in this case, but there's one thing that  
3 they do not have in common, something very  
4 important that they do not have in common and  
5 that's a coherent story of what happened because  
6 if you take the testimony of Tate and the  
7 testimony of Mr. Gauthier and you match it up,  
8 there are huge gaping discrepancies between the  
9 two of them, important discrepancies in this  
10 scenario of what happened that night, and I want  
11 you to think about that as you evaluate their  
12 testimony.

13 Think about what they said. Match Tate  
14 versus Gauthier on what happened at the apartment  
15 that day, at Gauthier's apartment during that  
16 early evening or whatever part of the day there  
17 was before any of this activity took place. Who  
18 was at the apartment, they were asked. Well,  
19 Gauthier says Jeffrey Fitzgerald, his friend who  
20 lives upstairs, his close friend, he was not  
21 there, wasn't there at all. What did Tate  
22 testify to on that? Jeffrey Fitzgerald was  
23 there, he was in and out, he was around, came  
24 into the apartment, left the apartment. He was

1 around. Important discrepancy based upon who was  
2 there.

3 Think about the testimony of what they  
4 say, what Tate says and what Gauthier says about  
5 who left the apartment when. Tate went to Dunboy  
6 Street to make that phone call. What did  
7 Gauthier say? Jason Robinson stayed at the  
8 apartment with us. He didn't leave. He stayed  
9 there. Isn't that what he said? He never went  
10 out. Anderson and Tate go out together. Go  
11 through Tate's testimony. What does Tate say on  
12 that point? Jason Robinson came with us. He got  
13 in the car with us. We went to Dunboy Street,  
14 the three of us, I went in to make a phone call,  
15 I came back out, I talked to Tanzerius and Jason  
16 in the car. Completely different version of  
17 events than Gauthier.

18 One of the things about determining  
19 whether somebody is telling the truth and whether  
20 they're lying in your own commonality of  
21 experience, it's whether the story seems  
22 coherent, whether it matches up with the facts.  
23 Think about the testimony of what happens later,  
24 the time that Tate supposedly put in that number,

1 eleven thirty, eleven forty-five. One of them  
2 says eleven thirty, the other one says eleven  
3 forty-five. Think about that.

4 Think about the testimony of Gauthier  
5 who said that as he's seated at the bench area  
6 smoking a blunt, his fourth or fifth of the day  
7 or whatever it was, remember these blunts are  
8 pretty potent, and there's a couple of joints in  
9 each one and it's wrapped in such a way so as to  
10 make it more potent. He says that he is seated  
11 out there at the picnic table area and he looks  
12 over to the side, he looks over to that fenced  
13 area where those dumpsters are, and he says he  
14 sees Jason Robinson. Now, think about that  
15 testimony and compare it to the way that Vega  
16 described it, Vega, who is very sensitive to  
17 noise out there, Vega who says he doesn't hear  
18 any rattling over there as described by Gauthier.

19 Think about Laureano's testimony, very  
20 dark in that area when he came to the scene four  
21 or five hours later. And compare the testimony  
22 of Gauthier who says that Robinson is over there,  
23 but then never sees Anderson, to the testimony of  
24 Tate who says that they both emerge from back in



1 that area and come up and start this activity.  
2 Completely different once again, completely  
3 contradictory. Not only contradictory one to the  
4 other but contradictory as to the other evidence  
5 in the case about what Vega heard, about what  
6 Laureano says about the way that that area was  
7 that night.

8 Think about what she said as the people  
9 supposedly leave 89. Think about the testimony  
10 of Gauthier who says, quote, unquote, I believe  
11 they both come out together, both Robinson and  
12 Anderson leave 89 together. Completely  
13 different, is it not, from what was said by Tate?  
14 Tate says that it's Robinson who she sees up at  
15 the Fanueil side coming in the parking lot up on  
16 the street, up at the top, and yet she also says  
17 that Anderson comes up behind her while she's in  
18 the play area. Tate says to you, Anderson walks  
19 up and goes into the car and that Robinson comes  
20 from another direction. Completely different  
21 from what Gauthier said.

22 Think about this other important point.  
23 Tate says that she never sees Gauthier in the  
24 play area that night, doesn't see him when she

1 comes over to meet Heather, doesn't see him in  
2 that picnic table area, doesn't see him as she  
3 walks across the play area to go up those stairs  
4 to get to the car, doesn't see him at all. Does  
5 that make sense to you?

6 Think about the testimony that they  
7 both give about what happened at the Culgini  
8 house after the incident happened. Well, where  
9 does the conversation with Heather take place?  
10 According to Gauthier it happens in the living  
11 room, that Tate and Coady have the conversation  
12 in the living room. According to Tate it happens  
13 in the bathroom, it's just the two of them.

14 Think about the testimony in the next  
15 several days about this meeting. Was there a  
16 meeting with Jeffrey Fitzgerald? Was there a  
17 meeting at Fitzgerald's house? Gauthier says  
18 that at Fitzgerald's house he sees Joleena Tate.  
19 Tate has absolutely no memory of it. Again we  
20 have various people who seem to be forgetting  
21 seeing Mr. Fitzgerald in all of this activity.  
22 Gauthier, who says that he wasn't around at all  
23 on the twenty-seventh, and Tate who has  
24 absolutely no memory of any sort of a meeting in

1 the days after this that Fitzgerald is present,  
2 and not only is he present at but it's at his  
3 house. Why are they covering up for Fitzgerald,  
4 Gauthier's good friend, lives right up there on  
5 75? When you assess the credibility of those two  
6 individuals, look at all of those factors. Use  
7 your common sense and judgment.

8 Think about the testimony of some of  
9 the other witnesses and how that sounded to you.  
10 The testimony of someone like Vega, the testimony  
11 of Mr. Laureano who is separated from his wife  
12 and goes over that morning at quarter of four to  
13 mind the kids. Pretty good witness, isn't it?  
14 Is that someone you believe? Laureano, he  
15 doesn't have any point of view except the truth.  
16 He doesn't have any reason to manipulate you, to  
17 lie to you, to tell a falsehood. Laureano is a  
18 nice guy, isn't he? Comes in there, he speaks  
19 well, regular guy, speaks from the heart. He  
20 testifies about what he saw. He says that at  
21 some point between three thirty and four thirty,  
22 he's not really sure, but that he comes over to  
23 the house and sees Mr. Yazbek's body out in back  
24 of 89. He does what a good citizen does. He

1 calls the police. He calls them to the scene.

2 And then you heard the testimony, over  
3 the course of the next several hours of what  
4 happens in this investigation. One of the things  
5 I'm going to ask you to consider when you look at  
6 all of the evidence in this case as adults, as  
7 people who live now in the twenty-first century,  
8 with all of the technology that we have available  
9 to us, with all of the science that we have  
10 available to us, with fingerprinting techniques,  
11 with DNA techniques, with this type of science  
12 available to us, go back through the police  
13 investigation as to what was done that morning.

14 You've heard testimony that when the  
15 police arrived at the scene that it's not  
16 raining. It begins to rain as the morning goes  
17 by. You have a scene that is set up. You have  
18 evidence that's out there. Showing you Exhibit  
19 9, you've got keys, you've got a glass lens  
20 that's up on the stoop, you've got a car.  
21 Showing you Exhibit No. 2, newspaper. Crime  
22 scene, and as it's set up, as it begins to rain  
23 that morning, using your common sense as laymen  
24 in the case, as triers of fact, doesn't it make

1 sense to you that the police in some way would  
2 try to tarp over that area, to put up some sort  
3 of covering to preserve the evidence?

4 Think about what Ms. Stevens, the  
5 criminologist, said about preservation of  
6 evidence, about how the elements affect it, that  
7 it's an important factor and it's something that  
8 wasn't done. It's something that's available to  
9 the police. It's common sense that they have  
10 access to these types of things that you could  
11 put up in that area that would keep elements and  
12 rain away. They stick up crime scene tape to  
13 keep people out of the crime scene but what about  
14 the rain? Nothing done at all to preserve the  
15 evidence.

16 And think about what was done with the  
17 evidence in the case. You've got fingerprint  
18 experts at the police department. You've got  
19 criminologists. You've got access to DNA.  
20 You've got all of these things. Think about what  
21 Ms. Wong, Detective Wong fingerprinted in this  
22 case. She has -- the car comes into their  
23 possession on March 28. She does the door, the  
24 driver's door, and she does the passenger door.

1 Look at where the front of this car is and how  
2 far it is or how close it is really to Mr.  
3 Yazbek's body.

4 As human beings, as triers of the facts  
5 in this case, do you think it reasonable, do you  
6 think it probable that someone, a police officer,  
7 an expert in the case, would fingerprint this  
8 area to see who touched the car that night, to  
9 fingerprint the inside of that car, the dashboard  
10 area, the driver's steering wheel, the inside  
11 doors, the back of the car? None of that was  
12 done. Proof beyond a reasonable doubt?

13 If the government bears the burden of  
14 proving to you who did this, not fingerprinted.  
15 Wong was working that day, Detective Wong is at  
16 Schroeder Plaza. They don't even call her out to  
17 the scene. You've got a door there. How many  
18 feet away? A few feet. You have got walls.  
19 You've got an inside hallway. None of that ever  
20 fingerprinted. Who touched the wall? Do you  
21 think that's important? They see blood inside.  
22 They see blood outside. How does it happen? How  
23 does the body end up out here? How does Mr.  
24 Yazbek end up outside in this position when

1 there's blood inside that hallway? Has that been  
2 explained to you with all of these experts who  
3 have testified in front of you?

4 What's the source of the blood inside?  
5 What's the source of the blood outside? The keys  
6 were never fingerprinted. The lens was never  
7 fingerprinted. The batteries were never  
8 fingerprinted. Think about the blood in the  
9 case. The criminologist comes in and says, we  
10 had some blood, a blood sample from the M.E. and  
11 the blood sample was that Mr. Yazbek is in group  
12 B, he has type B blood. Now, they don't even  
13 group the blood that's on the step. They don't  
14 even group the blood that's inside to match it  
15 up. How easy would that be? But they don't even  
16 do it. They don't even group the blood that's on  
17 his clothes to see whether that's his blood.

18 Well, the government will say, of  
19 course, it's his blood, has to be his blood.  
20 We've got an exit wound, entrance wound, exit  
21 wound, something goes in, something comes out.  
22 Exit wound, something comes out of Mr. Yazbek,  
23 the projectile, another person or persons, using  
24 your common sense, it's a close wound, whoever

1 fired that gun is standing close by. Is it  
2 reasonable to infer that there may have been a  
3 struggle that happened? And they don't even type  
4 the blood, much less do DNA. Is that beyond a  
5 reasonable doubt? Does it satisfy you? Does it  
6 satisfy your judgment?

7 Think about the investigation into this  
8 case, what happened on the crime scene. The  
9 police point out that they talked to thirty  
10 people that day. Think about the investigation  
11 over the next several days. What's reasonable to  
12 you when looking for witnesses on the case? You  
13 have gone to the scene, you've seen how it looks  
14 in Exhibit 5, 89 Fanueil. You saw the position  
15 of the car, came out into the driveway a little  
16 bit, didn't it? This building up here is 85  
17 Fanueil Street. We have absolutely no record  
18 from Detective Sergeant Coleman when he testified  
19 that any police officers went into 85 Fanueil  
20 Street on the night in question or after to look  
21 for witnesses.

22 Look at those windows. How far away  
23 are those windows from where this happened? Does  
24 that satisfy your judgment that the police on the



1 night in question and in the morning in question  
2 with all of those officers that were there, with  
3 all of the things that are at their disposal,  
4 that they didn't even go into 85 Fanueil to look  
5 for witnesses? How many buildings did they go  
6 into that day? They went into 89 Fanueil, they  
7 went into the one where Vega lived at 284.

8 Think about the way that this case  
9 developed. Think about this play area where a  
10 lot of this happened. Look at all the buildings  
11 that are around that play area. Does it satisfy  
12 your judgment that the police didn't go into any  
13 of these buildings to look for witnesses, to see  
14 who was out there in that play area that night?  
15 Think of all those windows that are up there, all  
16 those apartments and all those people that live  
17 there in those apartments. Potential witnesses  
18 completely ignored by the police.

19 Does it satisfy your judgment that this  
20 house and the house next to it that are up on the  
21 corner outside of the development, those first  
22 two houses, the houses that are right here a  
23 couple of hundred feet away, that the police have  
24 absolutely no idea who lives in those houses?

1                   The government bears the burden of  
2                   proving to you in this case my client committed a  
3                   crime that night. They haven't done that, have  
4                   they? These are all things that you would  
5                   consider that you would want to have done as  
6                   triers of the facts that are available,  
7                   techniques that are available to the government.

8                   There was a picture that was put up on  
9                   the screen when the criminologist testified. I  
10                  put it up there. You'll have it when you go back  
11                  to take a look at it. Did they get all of the  
12                  evidence in that area? There was a cup, a cup,  
13                  pretty big cup, laying right next to Mr. Yazbek,  
14                  right next to him. They didn't pick it up. They  
15                  didn't preserve it. They didn't analyze it.  
16                  They did nothing.

17                  We're in the twenty-first century,  
18                  2002. We have science. We have DNA. We have  
19                  fingerprinting. We have technology available to  
20                  the police department. You heard about  
21                  fingerprinting. One fingerprint, unique to a  
22                  person. You heard about DNA. One genetic  
23                  fingerprint unique to a person. Are you  
24                  satisfied as triers of the facts to a moral

1           certainty to look at the evidence, the techniques  
2           that are available to the police department, the  
3           blood that wasn't analyzed, all those? They had  
4           it. They have it, but things that were available  
5           to fingerprint, we don't even know whether these  
6           keys go to the car.

7                         When you go back as jurors and you  
8           analyze this evidence, you reach something that's  
9           called a verdict, the verdict in this case.  
10          Don't come to it by way of sympathy. I ask you  
11          not to use conjecture or surmise, but to look at  
12          the evidence, whether the witnesses are  
13          believable and not believable, and whether their  
14          testimony makes sense to you, whether all of  
15          these investigatory techniques that are available  
16          to the police department were done, whether they  
17          should have been done.

18                        There is a question in this case, one  
19          question, whether the government has proven to  
20          you beyond a reasonable doubt whether Jason  
21          Robinson committed this crime. The government  
22          has not proven that to you, ladies and gentlemen  
23          of the jury. I ask you to come to the one  
24          conclusion that you can in this case, that Jason

1 Robinson is not guilty.

2 Thank you for your time.

3 THE COURT: Thank you, Mr. Doolin. Mr.  
4 Flaherty?

5 MR. FLAHERTY: Thank you, Your Honor.  
6 Ladies and gentlemen, on March 28, 2002, in the  
7 early morning hours, Boston Police responded to a  
8 homicide scene at the rear of 89 Fanueil Street  
9 in Brighton. At that scene they saw the body of  
10 Iman Yazbek, obviously the victim of a gunshot  
11 wound, and right there, right then, at 89 Fanueil  
12 Street in the area of Mr. Yazbek, on Mr. Yazbek's  
13 body, on Mr. Yazbek's clothes, on the walls, on  
14 the hallway, on the doors, on the Buick Skylark,  
15 in the blood, in the ballistics, and in the  
16 physical evidence, was the answer, the answer to  
17 the question before you, who did this.

18 Ladies and gentlemen, physical evidence  
19 is not subject to human frailty. Physical  
20 evidence doesn't change because of a deal with  
21 the government. It's why we have crime labs.  
22 It's why we have criminalists. It's why we  
23 respond to a crime scene or put up yellow tape.  
24 It's why we develop the science of DNA typing,

1 blood spatter, blood stain evidence. It's why  
2 physical evidence is analyzed. It is because  
3 physical evidence doesn't change with incentive,  
4 ladies and gentlemen, and the answers to who did  
5 this were right there, right there but there was  
6 a failure. There was a failure to process the  
7 scene.

8 The government may have you believe  
9 something different. They might tell you, well,  
10 it was raining. They might tell you there was  
11 nothing important. They might tell you, we did  
12 what we usually do. But what about McLaughlin  
13 and Torres going back on March 31 and taking  
14 photographs and finding ballistic evidence three  
15 days later? What about that?

16 Right there, right then, ladies and  
17 gentlemen, were the answers to who did this, and  
18 there is not a shred of physical evidence from  
19 blood stain, blood pattern, fingerprint,  
20 ballistics, trace, transfer, DNA, saliva, not a  
21 shred of evidence that connects Tanzerius  
22 Anderson to 89 Fanueil Street. I submit to you  
23 that in and of itself is enough for reasonable  
24 doubt.

1                   You heard from experts, ladies and  
2 gentlemen, so-called experts.    You heard from a  
3 Dr. Chirnov, the forensic pathologist, who is not  
4 board certified.   Dr. Chirnov told you that Mr.  
5 Yazbek was shot in the face and the gasses from  
6 the firearm caused the cut on the front of his  
7 face.   Dr. Chirnov told you that the bullet  
8 entered the front and exited the rear and I made  
9 a big deal about it.   Why is it important which  
10 way the bullet went, ladies and gentlemen?   I  
11 mean, Mr. Yazbek died from a gunshot.   Why is it  
12 important?   Well, Dr. Chirnov agrees that when a  
13 bullet fragments and when there is destruction of  
14 bone as there was, that the exit wound is larger  
15 than the entrance wound.   You recall six inches,  
16 two inches.   He agrees stippling is associated  
17 with an entrance wound not an exit wound.   No  
18 stippling.   Stippling.   But Chirnov said the  
19 bullet went this way, not this way.

20                   Why is it important which way the  
21 bullet went?   Well, it's indicative, ladies and  
22 gentlemen, of the entire case.   Chirnov made a  
23 decision, not based on the evidence.   He made a  
24 decision, not based on the evidence, but on a

1 decision he made independent of the evidence and  
2 it's indicative, ladies and gentlemen, of the  
3 entire case. You can't fit a square piece into a  
4 round hole.

5 Detective Wong testified. Now,  
6 Detective Wong writes a report two years after  
7 the event and Detective Wong tells you that she  
8 waited for the Buick Skylark that was at  
9 Schroeder Plaza to dry before they analyzed it  
10 because it was in the rain and she prints the  
11 outside of the car. What about the radio? What  
12 about the steering wheel? What about the  
13 dashboard? There is a water bottle. She doesn't  
14 photograph where it is. She doesn't process  
15 anything in the car. Christine Stevens didn't  
16 come to process the car.

17 Detective Wong testifies from this  
18 stand, calls herself a fingerprint expert, but  
19 she wouldn't even agree in response to questions  
20 that it was her opinion there was insufficient  
21 ridge detail. She wouldn't even agree to that.  
22 Detective Wong in a cavalier way dismisses  
23 fourteen years -- fourteen years ago she took  
24 some classes, that's the history of

1 fingerprinting. That doesn't have anything to do  
2 with anything.

3 These old things from New Hampshire,  
4 these latent lifts that they took, oh, those are  
5 obsolete, we don't use those any more, there was  
6 nothing on those, there was nothing on the storm  
7 door. There's nothing at the scene. There's  
8 nothing on the doors. There's nothing on the  
9 eyeglasses, nothing on the water bottle.

10 Insufficient ridge detail. No ridge detail at  
11 all. No ridge detail at all. No ridge detail at  
12 all. Why did New Hampshire give these lifts to  
13 the Boston Police? No ridge detail at all. Why  
14 did New Hampshire give the storm door handle to  
15 the Boston Police? No ridge detail at all.

16 You can't fit a square piece into a  
17 round hole, ladies and gentlemen. Detective Wong  
18 is making decisions not based on evidence and  
19 she's testifying as an expert without even being  
20 able to explain analysis, comparison, evaluation  
21 and verification, the process by which  
22 fingerprints are analyzed.

23 Christine Stevens, the senior  
24 criminalist who comes to the crime scene and has



1           been trained in the collection and preservation  
2           of evidence, looks at the cones that Detective  
3           Coleman has set up, and then collects that  
4           evidence. She doesn't process the scene herself.  
5           She doesn't conduct a zone or a strip search.  
6           She doesn't do a systematic search. She looks at  
7           what Detective Coleman has done and she is there,  
8           I think she said, seven forty-five, it's raining.  
9           She's a senior criminalist, ladies and gentlemen.  
10          She retains things. She puts blood, freezes it,  
11          unexamined items remain unexamined. This is  
12          physical evidence from a crime scene, ladies and  
13          gentlemen, not subjected to intensive  
14          examination, unexamined.

15                   Detective Mark Vickers comes and  
16           testifies and he shows you a gun, a revolver, has  
17           nothing to do with this case, but he wants to  
18           show it to you for some reason. There is no gun  
19           in the case. He wants to explain to you how a  
20           gun works. He is a ballisticians. Detective  
21           Vickers was very eager to explain to you how  
22           stippling can be on an exit wound. Detective  
23           Vickers, did he go to a medical school at any  
24           time? Did you hear any evidence about that? Has

1 he ever been trained as a forensic pathologist?  
2 Does he have any idea what happens when a bullet  
3 enters tissue?

4 But Detective Vickers wants to explain  
5 to you that, sure, stippling can be in reverse.  
6 It's physics, ladies and gentlemen. The  
7 gunpowder discharges the projectile, it goes in  
8 the same direction, and Vickers wants to tell you  
9 it turns around and comes back leaving stippling.  
10 And he's very eager to tell you what the slang on  
11 the street for a bullet is, a shell. Doesn't  
12 that fit nicely? Doesn't that fit nicely with  
13 the story you heard in this case?

14 There is not a shred of physical  
15 evidence connecting Tanzerius Anderson to 89  
16 Fanueil Street and that, in and of itself, is  
17 enough to acquit.

18 Now, a person testified from the FBI  
19 named William Duane, and the Commonwealth is  
20 going to ask you to accept his opinion as a  
21 fingerprint -- excuse me, as a handwriting  
22 analysis person, and they're going to ask you to  
23 accept that Tanzerius Anderson's signature  
24 appears on a receipt for a hotel at the Yankee

1 Clipper hotel in New Hampshire, and they are  
2 going to ask you to infer from his signature that  
3 he killed Iman Yazbek.

4 A word about circumstantial evidence,  
5 ladies and gentlemen. Her Honor will instruct  
6 you it's called an inference. In order to make  
7 an inference, it's a logical deduction from  
8 reliable evidence. You'll see what Duane did and  
9 then you're the ones who decide whether or not  
10 it's reliable. He testified that this is a  
11 receipt signature but he didn't use a receipt  
12 signature to compare it to, and you'll see the  
13 chart. He selected a couple of signatures but  
14 not a receipt signature, not the optimal  
15 condition to make a comparison according to the  
16 literature that he agreed with. But you'll  
17 decide if it's reliable and then you'll decide if  
18 that's a logical deduction. I suggest to you it  
19 is not.

20 And don't take the bait, don't take the  
21 leap of faith. Tanzerius Anderson isn't charged  
22 with any burglary in New Hampshire. Tanzerius  
23 Anderson isn't charged with a crime of signing a  
24 hotel receipt. Tanzerius Anderson told the

1 police he was in New Hampshire and he was in a  
2 hotel, and Jonathan Simms also testified. Look  
3 at the receipt and recall Joleena Tate's  
4 testimony, I was there with Tanzerius Anderson,  
5 ten o'clock we checked in. Look at the receipt,  
6 ladies and gentlemen, look at the time, look at  
7 the time of check-in. Twelve fifty-four a.m.  
8 Look at the receipt and remember she said ten  
9 o'clock. There's a problem there, ladies and  
10 gentlemen. It's inconsistent, inconsistent.

11 Look at the Registry of Motor Vehicles.  
12 I drove Tanzerius Anderson's car up to New  
13 Hampshire. Tanzerius Anderson's car was in an  
14 accident on March 22. She says this is March 25.  
15 Look at the receipt. Look at the Registry of  
16 Motor Vehicles, and then consider New Hampshire  
17 submitting evidence to Wong and Wong saying, no  
18 ridge detail. There is not a shred of physical  
19 evidence that connects Tanzerius Anderson to New  
20 Hampshire which leaves us with witnesses.

21 Joleena Tate. Joleena Tate. Now, the  
22 Boston Police said that in the days following Mr.  
23 Yazbek's death they interviewed thirty-five to  
24 forty witnesses, talked to everyone, followed

1 leads. Where did the leads bring them? Where  
2 did the leads bring them? Joleena Tate. Thirty-  
3 five to forty people. Not one, not one witness  
4 except for Joleena Tate puts Tanzerius Anderson  
5 at 89 Fanueil Street. Thirty-five to forty  
6 witnesses. We've got Joleena Tate at Wadi's with  
7 Iman Yazbek. We have got Joleena Tate leaving a  
8 cigarette lighter, physical evidence connecting  
9 her to Iman Yazbek. We have got Joleena Tate  
10 connected to a firearm from her father. We've  
11 got Joleena Tate connected to 89 Fanueil Street.

12 Now, the witnesses that the government  
13 spoke to, Oscar Vega, he testified that he was at  
14 the window. He's concerned about his car with  
15 his off market modifications. So he listens and  
16 he looks out the window. He sees Coady with  
17 another girl. I suggest to you the other girl is  
18 Joleena Tate, walking back and forth, some  
19 whistling. He's paying attention. He hears the  
20 firecracker and he looks out the window. Did  
21 Oscar Vega ever testify he saw Eddie Gauthier?  
22 Does he know him? Yes. Did he see him? No.  
23 Never saw Eddie Gauthier.

24 The picnic table's to the left. The

1 tree doesn't block the picnic table. The  
2 branches are above the picnic table and I'm sure  
3 it will be suggested to you that there is no way  
4 he could see the picnic table from where, he was,  
5 but he can see the stairs leading up to the  
6 garage, to the parking area. Does he see, as you  
7 people saw when you stood at the view at 89  
8 Fanueil Street, can he see directly across the  
9 parking area? Directly into the play area, into  
10 the parking lot? And what did he say? He heard  
11 the firecracker and he looked out. Did he see  
12 Joleena Tate going up the stairs? Did he see  
13 Tanzerius Anderson coming behind her as Joleena  
14 Tate testified going up into the garage? Did he  
15 hear doors shutting and a car leaving? He heard  
16 nothing. He's an important witness, ladies and  
17 gentlemen.

18 There is another witness who is  
19 supposedly out there and supposedly a witness,  
20 Eddie Gauthier. Now, Eddie Gauthier is a witness  
21 I would ask you people to pay particular  
22 attention to. When Her Honor instructs you about  
23 credibility, when a witness takes the witness  
24 stand, you can assess not only what they say but

1           how they say it. And remember Eddie Gauthier,  
2           remember his affect, remember how he testified  
3           and remember what he had to say. Never saw  
4           Tanzerius Anderson. Never saw Tanzerius  
5           Anderson. He says Tanzerius Anderson, according  
6           to his story, left to make a telephone call,  
7           never saw him again. Never saw, according to one  
8           of his statements to the police, Tanzerius  
9           Anderson and Jason Robinson running out of the  
10          back of 89 Fanueil.

11                        He says, according to his testimony,  
12          that Jason stayed in the apartment while  
13          Tanzerius leaves with Joleena. Joleena says  
14          Jason and Tanzerius came with her. He says at  
15          one point Jason and Tanzerius are coming from  
16          Fanueil Street to the car. Joleena says  
17          Tanzerius comes up behind her. These are glaring  
18          inconsistencies, ladies and gentlemen, glaring  
19          inconsistencies. And that might not seem  
20          important as details but when you assess the  
21          case, I ask you, assess it with the absence of  
22          physical evidence and reliance on witnesses, and  
23          this is Joleena Tate with her friend, Eddie  
24          Gauthier, that she has a relationship with, that

1 she's there over four times a week, smoking pot  
2 with, supposedly. What kind of a relationship do  
3 Eddie and Joleena have?

4 So after all of this, ladies and  
5 gentlemen, there's one witness, one witness that  
6 puts Tanzerius Anderson anywhere near any of this  
7 and that's Joleena Tate.

8 Now, the Commonwealth will suggest to  
9 you from the work records of Tanzerius Anderson,  
10 and I ask you to scrutinize them, they'll suggest  
11 to you that the day after this he was late to  
12 work so that again is inferential, you have got  
13 to take the leap of faith, he killed Iman Yazbek.  
14 Look at the week before and see if he's late.  
15 He's late.

16 If you're looking for consciousness of  
17 guilt evidence in the case, ladies and gentlemen,  
18 don't look any further than Joleena Tate because  
19 in the days after this event who takes off? Who  
20 takes off? Joleena Tate does. She disappears.  
21 She runs. Who provides a false name? Joleena  
22 Tate does. Who lies? Joleena Tate does. Why  
23 does she do this? Because she is hiding from the  
24 police. Why is she hiding from the police?



1 Joleena Tate is no dummy, ladies and gentlemen.  
2 Wadi's was desolate. I picked Yazbek because he  
3 was passive. She is no dummy. She knows that  
4 all this evidence points to her and she knows the  
5 police are going to get her so she leaves.

6 She gets arrested, my name is Amy Harr.  
7 And it works. It works. She's out. She uses  
8 Amy Harr and she's gone. Bail bondsman, booking,  
9 everything, she's on the street. And then she  
10 goes back to the Combat Zone, gets out of a cab  
11 and gets arrested again and now there's people  
12 there who really know who she is.

13 So the jig is up now, but she meets  
14 with a lawyer, meets with her father, who is up  
15 in New Hampshire when the police did the  
16 investigation, and after, I suggest to you, some  
17 serious thought and some discussion with her  
18 lawyer and with her father, Joleena Tate has a  
19 story now and suddenly Tanzerius Anderson has a  
20 glass cutter and gloves and flashlight and crow  
21 bar. This criminal mastermind has all of these  
22 things and signs his name to the hotel receipt in  
23 the same event. Does that have the ring of truth  
24 to you, ladies and gentlemen?

1 Joleena Tate, maybe you might find  
2 based on her testimony, realizes maybe this  
3 doesn't have the ring of truth because at trial  
4 she throws in another fact. There was a bottle  
5 of champagne stolen, too. Nice touch. Does that  
6 have the ring of truth? Does that have the ring  
7 of truth? I suggest to you, ladies and  
8 gentlemen, that it's very convenient but it  
9 doesn't have the ring of truth.

10 Joleena Tate, after meeting with her  
11 father and meeting with her lawyer, entered into  
12 an agreement with the government. She doesn't  
13 come forward and say, look, I had nothing to do  
14 with this, I didn't know it was happening. She  
15 entered into an agreement with the government.  
16 She has every reason in the world to come and  
17 testify. When she was grabbed in the Combat Zone  
18 presumably selling herself, she decided to sell  
19 these two to the government and she got a good  
20 deal. She made the best of her bargain and you  
21 read that plea agreement, that recommendation,  
22 and ask yourself, does it say she's going to be  
23 sentenced to jail or does it say there will be a  
24 recommendation? And can her lawyer say whatever

1 he wants to the judge including how good she  
2 looked and how well she answered the questions  
3 put to her and how helpful she was in the case?  
4 Is all that going to be taken into consideration?

5 Ladies and gentlemen, I submit to you  
6 that's incentive. That's incentive. That is  
7 every reason in the world to come up with the  
8 story that she came up with. But there is a  
9 problem. Eddie Gauthier is not consistent. The  
10 Mazda is not consistent. The receipt is not  
11 consistent. The physical evidence is not  
12 consistent with what Joleena Tate has testified  
13 to.

14 You have to ask yourself a question.  
15 In spite of the physical evidence or lack thereof  
16 connecting Tanzerius Anderson to any of this, in  
17 spite of the inconsistencies between Eddie  
18 Gauthier and Joleena Tate, in spite of the plea  
19 deal with all of its incentive, accessory before  
20 the fact to robbery, in spite of all that, can  
21 you trust it beyond a reasonable doubt to a moral  
22 certainty? Because that's it, ladies and  
23 gentlemen, that's the evidence against Tanzerius  
24 Anderson. Joleena Tate. That's the evidence.

1 All of you have a duty as jurors and  
2 that's to truly try the evidence without passion  
3 or prejudice, without any ignoble motivations, to  
4 truly try the evidence. And when you do, that,  
5 ladies and gentlemen, I ask you to consider the  
6 evidence, the evidence very carefully. Presume,  
7 as is your obligation, Tanzerius Anderson  
8 innocent. Hold the government to their burden  
9 beyond a reasonable doubt, to a moral certainty,  
10 and apply the law as instructed by Her Honor,  
11 Judge Rouse. That is your job in this case.  
12 That is your oath. That is your responsibility.  
13 Embrace it. Embrace it.

14 And then when you consider that there  
15 is no evidence, no physical evidence, no  
16 scientific evidence, no blood spatter evidence,  
17 no evidence other than Joleena Tate with her plea  
18 deal against Tanzerius Anderson, no proof, come  
19 to the conclusion. Answer that question. Why  
20 isn't there any proof? Because Tanzerius  
21 Anderson didn't do it, ladies and gentlemen.  
22 Find him not guilty.

23 THE COURT: Thank you, Mr. Flaherty.  
24 Ladies and gentlemen, we are going to take a

1 recess before we move to the closing argument of  
2 the Commonwealth. Please leave your notes on  
3 your seats and don't discuss the case over the  
4 recess. More is yet to come. Thank you.

5 (Whereupon, the proceedings were  
6 recessed at 10:48 o'clock a.m., and reconvened at  
7 11:04 o'clock a.m.)

8 THE COURT: Ladies and gentlemen, we  
9 are now ready to proceed to the closing argument  
10 which will be made on behalf of the Commonwealth  
11 by Mr. Tochka.

12 MR. TOCHKA: The only evidence against  
13 Tanzerius Anderson is Joleena Tate. That's where  
14 Mr. Flaherty left off. That's the last thing he  
15 told you. You took notes. You listened to the  
16 witnesses in the case. You listened to Eddie  
17 Gauthier. Eddie Gauthier sat on that stand,  
18 pointed to this defendant and said that's the  
19 person he saw running out of the back of 89  
20 Fanueil. Eddie Gauthier pointed out Tanzerius  
21 Anderson as the person in that parking lot who is  
22 running towards the car. Eddie Gauthier pointed  
23 out this defendant as the person who came back to  
24 the park and the person who had the conversation

1 about getting rid of it, suggesting the gun.  
2 Eddie Gauthier, who pointed out this defendant  
3 and said that this is the defendant who days  
4 later had him go to the Store Twenty-four and had  
5 him go to the Scrub-A-Dub and said that he had  
6 done it.

7 Why? They shot Iman Yazbek when he  
8 kept on saying please, please, how he thought he  
9 was a cop calling for back-up. The evidence  
10 against Tanzerius Anderson is just Joleena Tate?  
11 You took notes, ladies and gentlemen. You heard  
12 the evidence. You decide.

13 Mr. Doolin and Mr. Flaherty want you to  
14 believe that this case is about forensics, that  
15 we are in the twenty-first century so I guess  
16 that means that what you do is throw out your  
17 common sense. I guess what that means is that  
18 you don't listen to witnesses, you don't pay  
19 attention to other evidence in connection with  
20 this case. Was there forensic evidence in the  
21 case? Was there forensic evidence? It seems  
22 like they want it both ways. There wasn't  
23 enough done. Well, there was a medical examiner  
24 at the scene. There was a fingerprint expert who

1 looked at items. There is a handwriting expert  
2 from the FBI in terms of experts in connection  
3 with this case.

4 You heard experts and you heard the  
5 results of the fingerprints, you heard the  
6 results of the Boston Police investigation in  
7 that particular area. The question about blood,  
8 the blood being typed, does anyone have any idea  
9 other than the fact that that blood on those --  
10 spattered on the wall, that pool of blood, is  
11 there any evidence of any blood down the hallway  
12 as an individual is running? Is there any  
13 evidence of bloody footprints down the walkway?  
14 What is that about? Forensic evidence?

15 You have to look in a different  
16 direction. They also asked about the glasses.  
17 Is there anybody who has any other idea than the  
18 idea those are the glasses of Iman Yazbek? Look  
19 at the photograph of the man. He's wearing  
20 glasses. Look at the glasses. They are nearby  
21 his hand. Look at the fact that one of the  
22 lenses is blown out, is on the corner.  
23 Fingerprint Iman Yazbek's glasses? Is there any  
24 doubt that those keys belong to the car that is

1 just feet away? Fingerprint the keys?

2 Ladies and gentlemen, this case comes  
3 down to this, that you have two independent  
4 witnesses that pointed out these two men, as being  
5 involved in that robbery and being involved in  
6 that murder. Two independent witnesses. You  
7 have got evidence that corroborates and when I  
8 say corroborates, it corroborates portions of  
9 their statements, what they told you. That  
10 evidence consists of the Yankee Clipper hotel  
11 receipt. The evidence that corroborates what the  
12 witnesses have told you, Joleena Tate and Eddie  
13 Gauthier.

14 Consistent with the defendant's  
15 statement, the taped statement? Listen to that  
16 statement. I suggest listen to it a number of  
17 times. You have evidence that corroborates not  
18 only the Yankee Clipper, not only the statement,  
19 but you have the defendant's work records. Late.  
20 Sure, he was late one week before. I have no  
21 idea as to why he was late one week before. That  
22 was the only time he was late in December, in  
23 January, in February, in March, but you have  
24 evidence as to why he was late, the longest time



1 he's been late, almost an hour and forty minutes  
2 late on that Tuesday.

3 You also have evidence that  
4 corroborates in terms of Mr. Vega, the  
5 observations that he made, and I'll go into that,  
6 and also you have to consider in this case the  
7 motivation. Joleena Tate, what's her motivation  
8 to come forward and to admit, admit her  
9 involvement? You heard no independent evidence  
10 other than her saying they went up to New  
11 Hampshire, to admit that she went to New  
12 Hampshire and got the gun, to admit that that gun  
13 was used in the case, to admit that she is the  
14 one who picked out Yaz, that she is the one who  
15 brought him there. Do people lie to incriminate  
16 themselves? When people tell lies, it's to  
17 exonerate themselves, not to put themselves in  
18 the middle. Have you got motivation for Joleena  
19 Tate? No axe to grind that she pointed out these  
20 two defendants.

21 Go to Eddie Gauthier. He's an  
22 independent witness. Seventy-two hours after  
23 this incident he picks out these two individuals.  
24 What is his axe to grind? Is there a suggestion

1 that he is the murderer? There is no evidence at  
2 all of that. What's his axe to grind seventy-two  
3 hours later to point to these people? So this is  
4 what you have in this case. You have three --  
5 two independent witnesses, corroboration, and  
6 absolutely no motivation for the individuals who  
7 testified to do other than to tell you the truth  
8 as to who these two people are.

9 How do you decide this case, ladies and  
10 gentlemen? And Her Honor is going to give you  
11 instructions. It isn't anything that you need to  
12 know in the twenty-first century. How you are  
13 going to decide the case doesn't mean that you  
14 have to go to DNA, you have to have an expert in  
15 stippling, questioned documents or a medical  
16 examiner. It's common sense. It's the same way  
17 you're going to decide this case that jurors for  
18 hundreds of years before DNA, before blood  
19 spatter, before any of that, decided cases, and  
20 it's using your common sense.

21 And what do you do when you use your  
22 common sense? By that I mean it's something that  
23 you do every single day of your life. You size  
24 up witnesses and that's what this is about,

1 sizing up witnesses. You look at individuals and  
2 decide, and Her Honor in her instructions will  
3 tell you what you do, actually puts it basically  
4 in words. You look at whether or not a person  
5 has an interest in the case. That's obvious.  
6 You look at whether they have a motive to lie,  
7 they have a bias in the case, a prejudice in the  
8 case. You look at not just what they say but you  
9 look at how they say it when they're sitting on  
10 that particular witness stand. Then you look to  
11 whether or not what they say is corroborated.  
12 You look to other witnesses, other evidence.  
13 What they say, is it supported in any way by any  
14 other witnesses or not? And then what you do us  
15 you come to a decision.

16 In that framework I would like to go  
17 through the witnesses and the evidence in the  
18 case. Let's take Joleena Tate. Is there any  
19 doubt that she entered into a plea agreement?  
20 There isn't any doubt. You will have that plea  
21 agreement, her plea agreement, her obligation  
22 under that plea agreement to tell the truth, and  
23 if she doesn't, she could be prosecuted. That's  
24 her obligation.

1                    Now, with that obligation, what  
2                    motivation is there for her to lie? What reason  
3                    would she come in and say I did this, this, this  
4                    and this, and lie and put it on these two  
5                    individuals, in other words, saying, yes, I was  
6                    involved in this whole thing, yes, I was involved  
7                    in setting it up, yes, I understand that the  
8                    Commonwealth is going to recommend that I go to  
9                    jail for up to ten years, eight to ten years, and  
10                   I'm going to let the people that were really  
11                   involved, the people that really did this  
12                   robbery, escape, walk free, and I'm going to put  
13                   it on two innocent men that I have no motive, no  
14                   axe to grind. That's where the common sense  
15                   comes in. There is no motivation for her to do  
16                   anything but to tell the truth in this case.

17                   That goes to my second point in terms  
18                   of -- well, actually going back to the first  
19                   point, the eight to ten years. You have heard  
20                   both counsel say to you, eight to ten, she might  
21                   get probation, it's up to a judge to decide what  
22                   she will get, and you heard that she knows that  
23                   and she understands the Commonwealth will stand  
24                   before a court similar to this court right here,

1 a judge will have heard the facts, a judge will  
2 decide what that sentence is. Is it eight to  
3 ten? is it less? Sure, it could be less. Could  
4 it be more? Sure, it could be more. A judge  
5 will make that decision. There's no hidden  
6 deals, no hidden agenda.

7 That plea agreement is what she's  
8 doing, knowing that she had a potential of  
9 walking into jail when she was sixteen years old,  
10 seventeen when she signed that agreement, walking  
11 into jail for up to ten years in state prison.  
12 Her obligation is to tell the truth and if she  
13 hasn't done that, it can be broken. That's the  
14 other thing in connection with her obligation in  
15 the case. It's a common sense obligation.

16 She came forward and she told you, we  
17 went to New Hampshire and got the gun. Why did  
18 she have to say that? You have no independent  
19 evidence that she went up. I'll get to that in  
20 terms of corroboration, what she says, but when  
21 she came to the police and gave that statement  
22 that she went up to New Hampshire, why do you  
23 incriminate yourself? Why do you incriminate  
24 yourself and say, I went up to New Hampshire and

1 got a gun with the defendant? You don't. You  
2 would just say -- what would you say? Hey, I  
3 took him to that scene, I didn't know what they  
4 were going to do, I didn't know that they were  
5 going to kill this man, I didn't know that they  
6 were going to rob him. I took him there. Okay.  
7 Well, I'm responsible.

8 You wouldn't turn around and say,  
9 incriminate yourself and say, the gun, I even  
10 suggested to do the robbery, I went and took, got  
11 him to go to the restaurant, I brought him back  
12 to that scene, picking out the scene where we're  
13 going to do the robbery and after the shot was  
14 fired, I saw this defendant with the handgun that  
15 we had just stolen twenty-four hours ago from my  
16 father's house. There is no motivation for her  
17 to say that other than the fact that that is what  
18 happened and that is the truth. People lie to  
19 protect themselves. They don't lie to  
20 incriminate themselves.

21 What else do you have in this case?  
22 The motivation, because that is an important  
23 decision. It's yours when you size up an  
24 individual's credibility, what's the reason, why

1 would they sit on the stand and point out these  
2 two defendants? Why would she make up a story  
3 and point out two? If she's going to lie, the  
4 easiest thing obviously is to point out one  
5 person, not to point out two, so that one can be  
6 one side of the city and the other one the other  
7 side of the city and the police go to talk to  
8 them and come back to her and say, wait a second.  
9 That doesn't make sense. You keep the story  
10 simple if you're out to lie. What's the  
11 motivation to point out these two individuals?  
12 And you heard nothing in terms of, she has any  
13 axe to grind against these two individuals and  
14 say, oh, yes, I'll go to jail and I'll let the  
15 real person who did it stay outside on the  
16 street. For what? What does she get out of that?  
17 Nothing.

18 What corroborates, what supports  
19 independently what she's telling you? Look at  
20 the evidence there. Mr. Flaherty says the Yankee  
21 Clipper, he wants you to have it both ways  
22 really, ladies and gentlemen. Well, if he went  
23 up there, mastermind, signed their own name so it  
24 must have been an innocent reason why he went up

1 to New Hampshire with you, but in the other  
2 argument, but he didn't go up to New Hampshire  
3 into that hotel. You can't have it both ways,  
4 ladies and gentlemen.

5 The Yankee Clipper hotel, you have  
6 Duane telling you, the FBI individual, you don't  
7 need him. You don't need him in terms of an  
8 expert from the FBI to tell you what you can see  
9 with your own eyes when you look at the signature  
10 on that hotel receipt. You look at all the  
11 signatures that he provided to the investigators  
12 in the case and look at his work records, look at  
13 the signature on his work records months before.  
14 You can use your common sense and determine, is  
15 that the same signature? It most definitely is  
16 the same signature. Is that Conway, New  
17 Hampshire? It most definitely is Conway, New  
18 Hampshire. Is Conway, New Hampshire where that  
19 receipt was given less than two to three miles  
20 from where the robbery, from where the gun was  
21 taken, the gun stolen? It most definitely is.  
22 Is it anywhere near Manchester, New Hampshire?  
23 It most definitely is nowhere near Manchester,  
24 New Hampshire.



1                   Is that the signature that he has  
2                   there? Does that have other information in terms  
3                   of Tanzerius Anderson that would only be known to  
4                   the person who signed that? Because you heard  
5                   from the lady, the general manager, says a person  
6                   comes in, a person signs, fills out the relevant  
7                   information there, the name, the car, the license  
8                   number and the like. The person who is checking  
9                   in does that. Look at the Registry of Motor  
10                  Vehicles certificate that I introduced. Name,  
11                  Tanzerius Anderson, address, 25 Bearnse Street,  
12                  the car, the type of car, the same car that's on  
13                  the Registry that he owned, the license number, a  
14                  six-digit license, not a social security but a  
15                  license number, a six-digit number, his license  
16                  number on the Registry of Motor Vehicles, the  
17                  same.

18                  So let me get this straight. Somebody  
19                  walked in there, went to the Yankee Clipper on  
20                  this date and decided to say, well, you know,  
21                  probably down the road, twenty-four hours, forty-  
22                  eight hours later there's going to be a dead body  
23                  so as I'm going up there I may as well forge  
24                  somebody's signature. Whose signature? Well,

1 let me forge Tanzerius Anderson's signature. A  
2 week before, I go up to the Yankee Clipper hotel.  
3 It didn't happen.

4 It's common sense. That is why it  
5 comes down to common sense. He went up to the  
6 Yankee Clipper hotel, he signed his name.

7 Joleena Tate told you the room they checked into,  
8 302 is on that receipt. Look at what the manager  
9 told you. 302 is in the back. She said it was  
10 in the back. It's on the first floor. She said  
11 it was on the first floor. 302 was the second  
12 door. She said it was the second door. She was  
13 up there.

14 Tanzerius Anderson was up there, signed  
15 his name and made the mistake, not thinking it  
16 was going to connect him to a break-in that took  
17 place three miles away because who would think  
18 that anyone is going to look at a break-in, go  
19 around and check all the hotels. To use an  
20 analogy, if there is a break-in in a house here  
21 in Boston in your neighborhood, in your house, do  
22 you think the police then are going to go around  
23 to the hotel rooms to check who is in the hotels  
24 on this particular date They don't do it. So he

1           figured there was not going to be a problem  
2           signing his own name at that point in time.

3                       So that corroborates what she told you.  
4           She has no motive to lie in that. It  
5           corroborates what she said. It independently  
6           corroborates what she said.

7                       What else independently supports what  
8           she told you? Well, let's go to Oscar Vega.  
9           Oscar Vega told you he's looking out his window.  
10          First off, he told you he's talking to his  
11          girlfriend on the phone. So I suggest to you, is  
12          he hearing rattling? Eddie Gauthier tells you,  
13          he said I think it was five minutes before he saw  
14          Heather. He was on the phone. You're on your  
15          phone talking to your girlfriend, you're not  
16          going to listen and hear a rattling a block away  
17          in that area. Think of your own common sense  
18          when you're at home. When you're at home are you  
19          listening to everything that goes on on the  
20          street, every noise, every little twitch? You're  
21          saying, oh, my car? You're not listening. He's  
22          on the phone. He has got other things on his  
23          mind. He's not thinking, you know what, I bet  
24          you two years from now I'm going to come to

1 testify in a case to what I heard so I might as  
2 well listen very carefully. He's not.

3 What does he tell you that corroborates  
4 what Joleena tells you? He tells you that he  
5 sees Heather walking in this direction which  
6 would be consistent with going down to the play  
7 area to the right of the building which would be  
8 going toward 89. That's what Eddie Gauthier  
9 tells you. That's what Joleena Tate told you  
10 happened. They're both consistent. He supports,  
11 independently corroborates what Joleena Tate told  
12 you and what Eddie Gauthier told you.

13 What happened next? What does Oscar  
14 Vega tell you? He says then, not Joleena Tate,  
15 but I then see Heather Coady who I know walk past  
16 me with another girl who I don't know. Makes  
17 sense, Joleena Tate is from a different area of  
18 Brighton, he doesn't know Joleena Tate, but it  
19 corroborates what Joleena Tate told you, that she  
20 is walking with Heather Coady in that direction  
21 so that corroborates what Eddie Gauthier told  
22 you. What, do you think Eddie Gauthier is not  
23 out there? Eddie Gauthier just made that up?  
24 How would he know that? Because he saw them, he

1 saw them walk in that direction.

2 What happens next that Vega tells you  
3 that corroborates what Eddie Gauthier tells you  
4 and what Joleena tells you? He says the next  
5 thing that happened is he hears the firecracker,  
6 about a minute or two later. That's what Joleena  
7 Tate told you. That's what Eddie Gauthier told  
8 you. So Joleena Tate is not up there at 89 in  
9 the back when those shots are fired. She's  
10 walking with Heather. Exactly corroborating  
11 Joleena, exactly corroborated by Eddie Gauthier,  
12 by Mr. Vega who is friends with Eddie Gauthier,  
13 who knows Eddie Gauthier.

14 The question they bring up is, why  
15 didn't he see him in the play area? Ladies and  
16 gentlemen, once again, two years later, people  
17 are going to be asking what exactly did you see  
18 and where did you look. What did he tell you on  
19 the stand? I heard the firecracker, a glimpse  
20 was his word, opened the Venetian blinds, a  
21 glimpse, didn't see here. You saw that  
22 particular area. You were at that area. In  
23 order to look at that play area, you're going to  
24 have to stick your head out, scrunch up against

1 the blind and try to look, in terms of that play  
2 area. He's not looking at that play area. He  
3 did a glimpse, he said. I can't see that play  
4 area where Eddie was. Even if I could, he says I  
5 saw a glimpse.

6 He corroborates what Eddie Gauthier  
7 told you he saw. He corroborates what Joleena  
8 Tate told you. So you have the Yankee Clipper  
9 corroborates Joleena, you have Mr. Vega  
10 corroborates Gauthier and Tate. Move on to the  
11 next thing that corroborates what they're telling  
12 you.

13 You have the statement of the  
14 defendant, Tanzerius Anderson, and I urge you to  
15 listen to that statement a number of times.  
16 Listen to that statement and that corroborates.  
17 It does it in a number of ways but I suggest I'm  
18 trying to highlight some of the ways right now.  
19 He says on Monday -- they ask him, he volunteers,  
20 yeah, I might have gone to the Fanueil  
21 development. Well, this is only a week  
22 afterwards. They're asking him this Tuesday.  
23 The man works forty hours a week. He doesn't  
24 know where he went Sunday or Monday because he's

1 trying to play it both sides just in case  
2 somebody does see him there. Well, yeah, I was  
3 there for a short period of time.

4 Well, what a coincidence. He's there  
5 with Jason Robinson and what a coincidence, when  
6 you listen to that tape, he first said, I went in  
7 the afternoon. Then he later says, I was only  
8 there for thirty, thirty-five minutes. By the  
9 end of the tape when he's getting rattled, as you  
10 listen to the tape, listen to how his demeanor  
11 changes during that tape. By the end of the  
12 tape, what was the latest that you would have  
13 been in that development? Eight thirty. Big  
14 difference from between starting out Sunday or  
15 Monday, going in the afternoon, moving from the  
16 afternoon, says I was only there thirty to  
17 thirty-five minutes, now thirty to thirty-five  
18 minutes takes you to eight thirty in the evening.  
19 Because he's thinking all along, now, what  
20 evidence do the police actually have against me?  
21 What evidence do they have, are they going to  
22 come back with down the road?

23 What does he say initially on that  
24 tape? He says Sunday, Monday, I went to see

1 Jason Robinson's grandmother, says nothing about  
2 who else he saw out there. Towards the end of  
3 the tape he realizes other people have seen him  
4 so toward the end of the tape they ask him about  
5 Heather Coady and he tries to back off a little,  
6 I saw her a day or two before I saw Jason. I'm  
7 asking you whether you saw Heather Coady, sir.  
8 So are you saying it's the day you were in the  
9 Fanueil development? Yes, when I went to see  
10 his grandmother, that's when I saw Heather Coady.

11 That corroborates what Joleena Tate is  
12 telling you that he's in that neighborhood, he's  
13 in that neighborhood because he is driving to  
14 that neighborhood. He drove to the neighborhood.  
15 He drives, I suggest you can infer, in his own  
16 car and he's in that car and he's with his  
17 friend, Jason Robinson.

18 Move on to Tuesday into Wednesday.  
19 Tuesday, the question is, what time did you get  
20 to work on Tuesday. Now, this is only five days  
21 after, this is the following Tuesday, he's being  
22 questioned. Look at his chart. If anything, he  
23 is a model of consistency, a model. December,  
24 the latest he ever gets there is seven twenty-



1 two. January, seven twenty-two, February, seven  
2 twenty-two. They say to him on Tuesday, a week  
3 before, a week after this death, they say, what  
4 time did you get there on Tuesday to work? I  
5 always get there on time, you know. I'm always  
6 there seven fifteen. Seven fifteen, okay.

7 Now, you know when you listen to that  
8 tape and you can infer it and it's obvious, you  
9 have heard it from the detectives, they had  
10 already looked at his records and you know that  
11 he is caught off guard because the police have  
12 just come looking for him and have talked to his  
13 mother to try to question him and he calls up  
14 right then so he doesn't have much time to think,  
15 and so he doesn't realize the police have now  
16 looked at his records.

17 So then they said, well, what time  
18 Wednesday did you leave work? Because they  
19 looked at his records and he left early, and he  
20 says, he laughs, kind of giggles, same thing,  
21 five o'clock, I'm always punctual, and then  
22 Detective Traylor says on the tape, you can hear  
23 it, the question is, what time did you get off  
24 work Wednesday. His answer was five o'clock, I

1 work the same hours every day. This is Tuesday,  
2 he's being asked about what he just had done that  
3 Wednesday, and he's never leaving late. Look at  
4 his record and what his answer was.

5 The question then, after he says five  
6 o'clock, I work the same hours every day,  
7 Detective Traylor then says, you didn't get off  
8 work early Wednesday? Listen to the answer,  
9 yeah, Wednesday, I got out, I did get out of work  
10 early, I got out of work, I got out of work early  
11 Wednesday, I got out about, I'm not sure if it's  
12 Wednesday. I think Wednesday night I worked, one  
13 of the days I got into a car accident while I was  
14 at lunch. No, that wasn't Wednesday. Wednesday,  
15 I did leave early. Yup, I left about three  
16 thirty, four o'clock. Three thirty, he's caught  
17 in that particular question, he's leaving early.  
18 What's going on here? Why don't you remember  
19 that? And why, all of a sudden, have you a huge  
20 problem with memory? What you just did on that  
21 Wednesday? The one time, I believe -- look at  
22 his records, I believe it's one time, but you  
23 check yourself, that he's leaving early like  
24 that.

1           So then Detective Traylor goes back to  
2 Tuesday and says, well, what about Tuesday? Did  
3 you leave early? Because he has that he left --  
4 that he came in late Tuesday. I don't punch in  
5 every time. I can't clock myself or whatever.  
6 He's caught. He's caught, and you might say to  
7 me, well, geez, you know, what does that have to  
8 do with whether he committed that particular  
9 crime? And what does it really have to do with  
10 it?

11           What it does have to do with this,  
12 ladies and gentlemen, is that he is the man of  
13 punctuality. He is the man who, look at that,  
14 that record, is on time, comes very early, leaves  
15 late, month after month after month. All of a  
16 sudden not only is he late, exceptionally late,  
17 not only does he leave early the next day, then  
18 he never comes back. Something major happened in  
19 his life. Just look at that record. Something  
20 major.

21           Let's go on then to Tuesday and  
22 Wednesday. Now he contradicts himself. What  
23 happened, they say to him. Wednesday, okay, so  
24 you left early Wednesday. What did you do when

1           you left early Wednesday? What did you do? I  
2           got a lift, I got a shave-up, went to go to the  
3           barber, it was crowded. He's leaving work early  
4           to get a shave-up and go to the barbers? They  
5           said, okay, well, what did you do Thursday?  
6           Thursday, my day off, went to the barbers. What  
7           does that tell you? What does that tell you in  
8           terms of your judging credibility, judging  
9           whether or not that has a ring of truth to it?  
10          What's going on here? What's going through his  
11          mind?

12                                And why is that important, Thursday?  
13          Why is that important, Thursday, as to what's  
14          going on now on Thursday? Because when he's  
15          asked about Thursday, what he did on Thursday,  
16          because Thursday is important here because  
17          Thursday is particularly important because that's  
18          when Eddie Gauthier says on Thursday they are at  
19          the Scrub-A-Dub. Thursday, they're at the Store  
20          Twenty-four. Thursday they're at the Burger  
21          King. Joleena Tate tells you Thursday, that's  
22          the same day that they then leave and go to the  
23          Watertown Arsenal Mall.

24                                So what happened on Thursday? And they

1 ask him, Detective Traylor asks him, so when is  
2 the last time you have been in Brighton that you  
3 know? When is the last time that you have been  
4 in Brighton that you know of anywhere near the  
5 Fanueil housing projects? What's his answer?  
6 Probably once or twice last week. Listen to the  
7 tape. He's asked day by day what he did. He  
8 says he's only in the development once that week.  
9 Now it's once or twice but not Thursday.

10 Is he slipping up here? Is that the  
11 second time, other than Monday night, once or  
12 twice last week? Remember the question, when is  
13 the last time you had been in Brighton. Nothing  
14 about Thursday. When is the last time you were  
15 in Brighton that you know of, anywhere near the  
16 projects. Probably once or twice last week but  
17 not Thursday. He's not asked about Thursday.  
18 Why is that on his mind right now? But not  
19 Thursday, and then he says, I was off Thursday  
20 and I know I tried to look for him, called  
21 around, meaning Jason Robinson, called around  
22 some of the old numbers, no one has seen him, no  
23 one has heard of him. He is asked a question,  
24 when is the last time you were in the

1 development, not when is the last time you saw  
2 Jason Robinson. That is the question earlier.  
3 All of a sudden his mind is now concerned about  
4 Jason Robinson.

5 And why is it that he's saying, Jason  
6 Robinson, I called around, called some of the old  
7 numbers, no one has seen him, no one has heard of  
8 him, that was it. He just said in the tape  
9 statement minutes earlier he had paged Jason  
10 Robinson on Monday and Jason called him back,  
11 Sunday or Monday, and that's why they went into  
12 the development. So why is he now all of a  
13 sudden -- that's how he gets in touch with Jason  
14 Robinson and he says, I'm paging him, I'm looking  
15 for him, I'm trying to find him.

16 Because, the reason why he's doing  
17 that, ladies and gentlemen, is because he's not  
18 looking for Jason Robinson, he's not trying to  
19 find Jason Robinson on that Thursday. He's  
20 trying to suggest to the police, I didn't see him  
21 because I couldn't find him. That goes to his  
22 consciousness of guilt that that Thursday he is  
23 with Jason Robinson.

24 And what does he tell you on that tape

1 about the pager? He says that whenever he  
2 contacts Jason, Heather, sometimes, not all the  
3 times when he contacts Jason, Heather Coady will  
4 answer the page. Does that corroborate what  
5 Joleena Tate told you and what Eddie Gauthier  
6 said? Is that corroboration that they share the  
7 pager, Jason Robinson and Heather Coady, his  
8 girlfriend? That's also corroboration.

9           What happens then on Friday? What does  
10 he say on Friday? Wednesday he leaves early,  
11 Thursday he has the day off, Friday, this man of  
12 punctuality, who works sometimes, as the man  
13 said, forty-four hours a week, what happens on  
14 Friday? Calls in sick, I was tired, called in  
15 sick. Thursday is your day off, Wednesday  
16 afternoon you're not working. What then happens  
17 next? Well, what happened on Saturday? Saturday  
18 my brother came into town, birthday party. What  
19 did Joleena Tate tell you? What did she tell  
20 you? The last time she saw him he said he'd pick  
21 her up because his brother is coming into town  
22 for his birthday. Joleena Tate, how did she know  
23 that? She knew it because that's her boyfriend  
24 and he said he's picking her up and she never saw

1 him again. How would she know that?

2 What about New Hampshire? Did you go  
3 to New Hampshire? New Hampshire, yeah, went to  
4 see my uncle. Really? Where is that?  
5 Manchester. How does that corroborate, support  
6 what Joleena Tate told you, independently support  
7 what she tells you the defendant told her, the  
8 defendant, Tanzerius Anderson, when he was  
9 leaving, when they were coming back having stolen  
10 that gun? What does he say to her? If I'm ever  
11 asked I'm going to say I was in Manchester  
12 visiting a relative. How would she know that?  
13 She's not a psychic, ladies and gentlemen. She's  
14 not a mastermind. She's a sixteen-year-old  
15 individual who has the statement from the  
16 defendant and that's what he says to the police a  
17 week later, I am in Manchester visiting.

18 Now, the defense has told you, contrast  
19 and compare the demeanor of the witnesses in this  
20 case and I would ask you to do that. Then  
21 contrast and compare, when the police then bring  
22 Jonathan in, what does Jonathan tell you on the  
23 stand? Because the defendant in his statement  
24 about New Hampshire says what? I'm in New



1 Hampshire with Jonathan, going to visit my uncle,  
2 and we stayed together at a hotel.

3 Jonathan, on the stand, what's your  
4 relationship to the defendant, Tanzerius  
5 Anderson? We're close, we're like brothers.  
6 Jason Robinson, we're like brothers. Did you  
7 ever go to New Hampshire with the defendant?  
8 Yeah, one time. Did anybody in the room believe  
9 him when he says one time? And then when I  
10 asked, did you stay in a motel with him? I don't  
11 remember. I then showed him the grand jury  
12 minutes. That doesn't refresh your memory? Did  
13 you testify under oath, sir, in the grand jury?  
14 And you heard me read those three questions. I  
15 asked him, did you ever stay at a motel with the  
16 defendant? No. Are you certain of that? Yes.  
17 So your testimony, sir, I asked him at the grand  
18 jury, is that you never stayed at a hotel with  
19 the defendant up in New Hampshire? Yes.

20 Why is he lying? Why is the defendant  
21 saying that he stayed at the hotel with Jonathan  
22 Simms, his brother, his brother will maybe cover  
23 for you, but what happened? Jonathan Simms --  
24 and think about this, why did Jonathan Simms go

1 to the police station? Why did Tanzerius  
2 Anderson say, let me be questioned, oh, can  
3 Jonathan Simms come with him? Jonathan was going  
4 to be a back-up. The problem though was, he  
5 didn't have enough opportunity between the time  
6 he called the police, Tanzerius Anderson, and the  
7 police got there to give Jonathan the details.

8 So Jonathan says, yes, and once he's  
9 interviewed, he says he doesn't recall. Jonathan  
10 says to the detectives, after Tanzerius Anderson  
11 has said I went up to visit my uncle, my uncle  
12 wasn't there, Jonathan Simms was then questioned  
13 and, I suggest, his story on the stand was not  
14 credible and he was impeached. In the statement  
15 he gave to the detectives, moments after he  
16 talked with Tanzerius Anderson, we went up to see  
17 his uncle -- his cousin actually, we didn't find  
18 the cousin but we found his uncle, I believe he  
19 said Uncle Frank, but that's for you to decide.  
20 We found his uncle and we talked to him for a  
21 couple of hours. Tanzerius Anderson, that wasn't  
22 his statement. They didn't see the uncle.

23 So what does that tell you, that  
24 statement? Does that corroborate Joleena Tate,

1           what she told you about going to New Hampshire?  
2           Does that corroborate Eddie Gauthier, Joleena  
3           Tate about Thursday? And think about this.  
4           Thursday morning he's at the development all day  
5           basically. She said nine thirty he called, she  
6           told you she understood him to work forty hours a  
7           week. If she understood him to work forty hours  
8           a week, how did she know he didn't work on that  
9           Thursday? Did she go and call and check the  
10          records to see whether or not he was coming into  
11          work on Thursday? How did she know on Thursday  
12          that he was not at work, therefore he could be at  
13          the development?

14                         How did Eddie Gauthier know on that  
15          Thursday when he said that they were at the  
16          Scrub-A-Dub and Store Twenty-four? He works  
17          forty, forty-five hours a week. How would they  
18          know that he was going into the development?  
19          They couldn't have. They independently could not  
20          have other than the fact that he was in the  
21          development and they saw him and they told you  
22          what they saw.

23                         Then finally in terms of his statement,  
24          he's asked, do you know -- the defendant,

1 Anderson, do you know Eddie Gauthier? No. No?  
2 Does that corroborate what Joleena Tate told you  
3 this defendant said he would say when asked  
4 whether he knew Joleena Tate, he says, I don't  
5 know you. When asked, what does he say about  
6 Eddie Gauthier? No. Eddie Gauthier knows him  
7 and Eddie Gauthier has no axe to grind in the  
8 case. You have that in terms of the statement.  
9 You have in terms of the Yankee Clipper, in terms  
10 of corroboration.

11 There's a third thing you have in  
12 corroboration in this case. I have touched on  
13 it. It's his work records, and I ask you to look  
14 at that work record. That work record, sure,  
15 there is no crime to be late, everybody is late,  
16 but look at that work record. That is kind of  
17 like a pulse, a record of his life, of how he is  
18 as a human being, and look at this record. Look  
19 at it from December, January, February, look at  
20 the times he starts, look at the times he leaves,  
21 how punctual he is. Look at, all of a sudden  
22 what happens to unravel on that last week?

23 The body is found on March 28, he comes  
24 in late. He never came in late. Sure, he came

1 in late the last week before one time. That was  
2 it. You look. I might be mistaken. That was  
3 it. You have no idea of what happened last week?  
4 There is no evidence about any crime being  
5 committed. You have evidence at this time on the  
6 twenty-eighth of what happened. So he's late.

7 Then go into Wednesday, this man of  
8 punctuality, leaves early. For what reason? To  
9 get a haircut. And the next day he's going to  
10 get a haircut. Thursday he says is his day off,  
11 this man of punctuality who doesn't miss work,  
12 who does, when you add it up, at least forty,  
13 forty-five hours a week. He takes off early.  
14 Sometimes in terms of a holiday coming up, he  
15 makes sure that he works forty-five hours a week.

16 He doesn't come to work on Friday. He  
17 doesn't go to work on Saturday. He never comes  
18 back to work. He doesn't even collect, and use  
19 your common sense on this, ladies and gentlemen,  
20 he doesn't even collect his last check. He has  
21 worked two and a half days and doesn't collect  
22 his check, his last check. He lives around the  
23 corner. Late, comes in, comes in late, leaves  
24 early, doesn't come back.

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1                   What does that tell you? It tells you  
2                   -- does it tell you he did this? Independently,  
3                   alone, with just that, of course it doesn't tell  
4                   you, but put this in conjunction with everything  
5                   else, it tells you this, a major change has just  
6                   happened in the man's life and there are much  
7                   more important things in his life right now that  
8                   he has to be concerned with, much more important  
9                   things like getting Eddie Gauthier, like getting  
10                   Joleena and getting Heather, getting them all  
11                   together to make sure that Jason and that some of  
12                   these guys will all get together and stick to a  
13                   story that he wants them to stick to. That's  
14                   what that tells you.

15                   Let's go to Eddie Gauthier. Now, Eddie  
16                   Gauthier, the man is an independent witness. He  
17                   is not a defendant in the case. He is a witness.  
18                   As a matter of fact, if you look at it like this,  
19                   he is not only a witness against these  
20                   defendants, Tanzerius Anderson and Jason  
21                   Robinson, he is a witness against Heather Coady.  
22                   He's not a defendant, he's a witness, because he  
23                   incriminates her in terms of her involvement in  
24                   this case. He is an independent witness,

1 independent of Heather Coady, other than a pure,  
2 pure speculation, that they got their stories  
3 together. Seventy-two hours afterwards, he is  
4 the first witness to come to the police, and say  
5 what he saw. Joleena, it's not until three  
6 months later that she is picked up and she tells  
7 what she saw independent of Eddie Gauthier. He  
8 is a witness. She is a possible suspect and  
9 their stories mesh, what they saw is  
10 corroborated.

11 THE COURT: May I see you a moment?

12 (Whereupon, a discussion occurred off  
13 the record at side bar.)

14 MR. TOCHKA: I apologize. I misspoke.  
15 I'm talking about Joleena Tate. Contrast and  
16 compare. I'm talking about Eddie Gauthier in  
17 terms of how he is an independent witness and the  
18 devil is in the details. This is what you should  
19 do in the case. Contrast and compare what Eddie  
20 Gauthier and Joleena Tate tell you independently  
21 about what they saw that night and what happened  
22 versus what the defendant, Tanzerius Anderson,  
23 along with his friend, his brother, Jonathan  
24 Simms tells you.

1                   That shows us, when you contrast and  
2 compare, the devil is in the details.  
3 Manchester, New Hampshire versus Conway, New  
4 Hampshire. Whether you saw an uncle, whether you  
5 didn't see an uncle. Whether you stayed at a  
6 hotel, whether you didn't stay at a hotel. The  
7 devil, it's in the details. They didn't get them  
8 down because when you tell the truth, ladies and  
9 gentlemen, you don't have to worry about making  
10 up a story, you don't have to worry about the  
11 details because you just tell what you saw and  
12 what happened.

13                   And look at the comparison with Joleena  
14 Tate and with Eddie Gauthier. What's the  
15 comparison in this case? That night they're all  
16 together. Eddie Gauthier tells you that, Joleena  
17 Tate tells you that. Now, there is one  
18 difference and Mr. Doolin brought that out and  
19 that is, it's clearly something you have to  
20 resolve. Joleena Tate tells you she left with  
21 both defendants to go to Dunboy Street. Eddie  
22 Gauthier says that Jason Robinson stayed behind.

23                   That's one thing that you have to  
24 resolve and I suggest to you it's resolved in



1                   That shows us, when you contrast and  
2                   compare, the devil is in the details.  
3                   Manchester, New Hampshire versus Conway, New  
4                   Hampshire. Whether you saw an uncle, whether you  
5                   didn't see an uncle. Whether you stayed at a  
6                   hotel, whether you didn't stay at a hotel. The  
7                   devil, it's in the details. They didn't get them  
8                   down because when you tell the truth, ladies and  
9                   gentlemen, you don't have to worry about making  
10                  up a story, you don't have to worry about the  
11                  details because you just tell what you saw and  
12                  what happened.

13                   And look at the comparison with Joleena  
14                  Tate and with Eddie Gauthier. What's the  
15                  comparison in this case? That night they're all  
16                  together. Eddie Gauthier tells you that, Joleena  
17                  Tate tells you that. Now, there is one  
18                  difference and Mr. Doolin brought that out and  
19                  that is, it's clearly something you have to  
20                  resolve. Joleena Tate tells you she left with  
21                  both defendants to go to Dunboy Street. Eddie  
22                  Gauthier says that Jason Robinson stayed behind.

23                   That's one thing that you have to  
24                  resolve and I suggest to you it's resolved in

1 this way, two ways. One is, if they had been in  
2 cahoots, Joleena Tate and Eddie Gauthier, there's  
3 absolutely positively no evidence of that.

4 That's kind of an easy thing to do that you get  
5 that mixed up, that they all went together, that  
6 they all stayed behind. At that point in time  
7 who left is not as important to Eddie Gauthier  
8 because no crime is being committed at this  
9 point. Eddie Gauthier's mind is not thinking  
10 about who is going to stay with me, who is going  
11 to go with Joleena Tate. Eddie Gauthier is in a  
12 room smoking, Eddie Gauthier is in a room with  
13 Heather Coady. The door is closed. You heard  
14 that there's Nintendo games, I believe, in the  
15 room. You heard that there is a stereo.

16 They call out -- Tanzerius Anderson  
17 calls out his friend, as you read in the taped  
18 statement, his friend since kindergarten, Jason  
19 Robinson. Jason Robinson comes out, they then  
20 leave. Joleena Tate tells you they are gone  
21 about fifteen minutes. You have driven that  
22 route from the development to Dunboy Street.  
23 They drive that route and a short conversation,  
24 phone calls, yes, Yaz, Mr. Yazbek, he's coming.

1 Eddie and Heather Coady are in that  
2 room. They could be playing video games, they  
3 could be talking, laughing, listening to music.  
4 Five minutes goes by quickly. They are not out  
5 in the living room at this point. Jason  
6 Robinson, it's only fifteen minutes. It wouldn't  
7 stick out at this point in time. Eddie Gauthier  
8 is not thinking, there is going to be a robbery,  
9 there's going to be a murder down the road in  
10 this case.

11 Compare those two in terms of  
12 corroboration, Eddie Gauthier and Joleena Tate.  
13 What happens? He tells you, Eddie Gauthier tells  
14 you that he sees Jason out there, Joleena Tate  
15 tells you that Jason is out there behind that  
16 particular fence. Joleena Tate tells you that  
17 there is a shot and that before the shot she  
18 meets up with Heather in the area of Oscar Vega's  
19 house. Oscar Vega tells you that, Eddie Gauthier  
20 tells you that. After the shots, Eddie Gauthier  
21 tells you that both are running out the back of  
22 the development. She tells you at that point  
23 where she is, she is on the stairs going into the  
24 parking lot.

1                   You went out to the back of that  
2                   development. You have seen how you can go to the  
3                   fence in the back of 89, you can come through one  
4                   of those buildings and you come right out to the  
5                   back of the parking lot. Eddie Gauthier is  
6                   walking through that development, through the  
7                   playground, not standing there the whole time.  
8                   He's walking, he sees them running, he continues  
9                   to walk, he then sees them in the parking lot.  
10                  Joleena Tate tells you she sees them next in the  
11                  parking lot. Joleena Tate sees them in the area  
12                  of the parking lot.

13                   What else corroborates what they're  
14                   saying? The car, where is the car parked? The  
15                   car is parked across from the building on the  
16                   other side. How do Joleena Tate and Eddie  
17                   Gauthier get that together? What else do they  
18                   tell you? They say that afterwards they go to  
19                   the park. Joleena Tate and Eddie Gauthier tell  
20                   you that, they tell you about the conversation in  
21                   the park. Joleena Tate and Eddie Gauthier tell  
22                   you about the conversation in the park. She  
23                   tells you afterward where she sees him again.  
24                   She sees him in her mother's house. Whether the

1 conversation is in the bathroom on in the  
2 hallway, do you think people are paying attention  
3 to that particular level of detail? It's  
4 corroborated they're in the house together.

5 What does she tell you afterwards about  
6 a couple of days later? She doesn't remember the  
7 exact date. She remembers that Veronica Blaykman  
8 has called her and has said that the police have  
9 just talked to her and that they have got  
10 Joleena's name. Detective Coleman tells you it  
11 was a Thursday we talked to Veronica Blaykman.  
12 Thursday is the same day Eddie Gauthier tells you  
13 these two defendants are with him at the Store  
14 Twenty-four.

15 Heather Coady -- sorry, Joleena Tate  
16 tells you that they're at Store Twenty-four.  
17 Eddie Gauthier tells you they go in the first  
18 stall at the Scrub-A-Dub. Joleena Tate tells you  
19 that they are in the first stall of the car wash.  
20 Eddie Gauthier tells you they go to Burger King.  
21 Joleena Tate tells you they go to the Burger  
22 King, even to the point, there's one person  
23 eating at the Burger King, one person with an  
24 appetite at the Burger King. Eddie Gauthier

1 tells you they dropped him off at Vineland  
2 Street. She tells you they dropped him off at  
3 Vineland Street.

4 That's the corroboration. That's  
5 independently from Eddie Gauthier who is not  
6 involved in terms of a defendant in this case,  
7 who is not even a suspect in the case, other than  
8 the machinations of defense counsel they want  
9 you to believe. What else about Eddie Gauthier  
10 tells you that he's truthful? Seventy-two hours  
11 after the incident what does he do? He goes to  
12 the police with his mother. A man who just does  
13 a shooting does not go to the police seventy-two  
14 hours later with his mom when there is no  
15 evidence against him. The police had nothing.  
16 Do you think he went to the police at this point  
17 in time if he's really the shooter?

18 And then what does he do? You've heard  
19 Detective Coleman that as a result of his story,  
20 as a result of the stories of the other witnesses  
21 they talked to, they were led to Joleena Tate.  
22 Eddie Gauthier, let's get this straight. Eddie  
23 Gauthier is a suspect in the case, he's possibly  
24 the shooter, he then goes to the police and he

1 identifies a person who you know from Joleena  
2 Tate that she was involved with, he identifies  
3 his conspirator? The person who goes to the  
4 police who commits a crime does not point out the  
5 person that they committed the crime with.

6 A person who goes to the police who  
7 committed a crime who is going to say I had  
8 nothing to do with it does not point out the  
9 person they were involved in the crime with.

10 That person can come back and say, what are you  
11 talking about, why are you putting it on me, you  
12 are the one who did it. The person who was  
13 involved gives a story, I don't know where it  
14 was, I don't know what happened that day, all I  
15 saw was two individuals running, I don't know  
16 anything about it.

17 Eddie Gauthier is a witness in the  
18 case. Eddie Gauthier is the first person to come  
19 to the police in this case. Eddie Gauthier is  
20 the one who pointed these two defendants out.  
21 Eddie Gauthier who has no axe to grind. Eddie  
22 Gauthier is a person who is friends with Yaz,  
23 whose brother worked with Yaz. Eddie Gauthier,  
24 you saw his demeanor on the stand when he saw

1 that picture. Eddie Gauthier is not the  
2 perpetrator. He is the witness in the case, and  
3 he is the witness who corroborates what Joleena  
4 Tate tells you.

5 Ladies and gentlemen, this is what I  
6 suggest happened on that evening. On that  
7 evening, as Joleena Tate told you, she asked the  
8 defendant if he wanted to do a robbery and her  
9 credibility, her demeanor speaks volumes to you.  
10 Why did you ask him that? Because he had to go  
11 to work the next day, he said he was going to  
12 leave. That speaks volumes to you. She's  
13 sixteen years old. You might want to think she's  
14 not, her vocabulary is extensive by saying  
15 desolate, whatever. She is a sixteen year old  
16 girl. Does it have the ring of truth? She is  
17 saying to him she doesn't want him to leave so  
18 she comes up with the idea to do the robbery.

19 What else has the ring of truth is when  
20 she told you the first time they went to New  
21 Hampshire, what was the conversation after they  
22 couldn't get into the house? I told him I was  
23 sorry. A sixteen year old girl with a nineteen  
24 year old man. That's what she is. That's the



1 way she was. That's who she was. I'm sorry.

2 That goes to her demeanor.

3 So what happens? She says, do you want  
4 to do a robbery? He says, fine. He calls his  
5 friend, his lifelong friend, Jason Robinson, you  
6 down for a robbery? You might say, well,  
7 Tanzerius Anderson is working, why does he have  
8 to rob, why does he have to get money? Because  
9 in his mind, as Joleena Tate tells you, he is  
10 interested in doing some type of group and he's  
11 interested in trying to -- he has these visions  
12 or whatever and this man, Yaz, he's been told  
13 carries a lot of money, it would be a quiet hit,  
14 so he gets his lifelong friend, Jason, you down  
15 for a robbery? Yes.

16 Joleena Tate then sets it up and she  
17 tells you she sets it up. Other than her coming  
18 forward and testifying and telling you what  
19 happened, you would not know she set that up.  
20 She could lie and say he is the one who set him  
21 up, he's the one who told me to do it, but I  
22 suggest she told you based on what she did.

23 So what do they do? Plans are made.  
24 Yaz is brought back to that development. What

1 happens? She does her oh, oh, it's a robbery,  
2 and that's all she thought it was going to be.  
3 Yaz was a person that would give up the money  
4 easily. Yaz was the person that she knew that  
5 she could get money from in terms of going to  
6 restaurants at any point in time. She had no  
7 interest in doing anything to Yaz in terms of  
8 harming him. It was to impress her boyfriend  
9 that she can get some money from the guy, who  
10 would just give up the money. So she walks away  
11 and you think that she is involved in this? She  
12 is going to the restaurant, putting -- letting  
13 people see her and the like if she knows there is  
14 going to be this shooting? She knows there is  
15 going to be the criminal activity of this  
16 magnitude? No.

17 What does she do? She starts walking  
18 away. These two defendants come from the back of  
19 this area. They grab him by his car. You can't  
20 have emotion in the case, I agree a hundred  
21 percent. I'm not standing here showing you these  
22 photographs. You can look at the photographs, I  
23 suggest you have seen them, again because this  
24 case should not be decided on emotion. They then

1 start marching him towards that hallway. She  
2 walks down there, consistent with Eddie Gauthier,  
3 consistent with Oscar Vega. They are walking,  
4 they are in the hallway, here's two young guys,  
5 thirty-five year old man, two young men, two  
6 strong men grabbing him, one of them armed with a  
7 gun.

8 He knows now he is in a desolate area.  
9 He knows as he is being marched into that  
10 hallway. He can infer there is nobody in that  
11 hallway. Marching him into that hall. What  
12 happens? Please no, please no, I know people in  
13 the development, I know people, I'm a nice guy,  
14 and as he's being marched into that hallway this  
15 defendant says to him, Tanzerius Anderson, keep  
16 your face forward because he doesn't want him to  
17 turn around, and that's what Joleena tells you he  
18 said, keep your face forward.

19 And why is that spatter on the wall?  
20 She tells you that he said, Tanzerius Anderson  
21 said to her that he had him up against the wall.  
22 Where is the spatter on the wall? She tells you  
23 that Tanzerius Anderson told her he was reaching  
24 for the doorknob, that he was reaching and he

1 kept on saying, don't reach, don't reach, as he's  
2 trying. I suggest he is on the threshold, he's  
3 trying to get out as he's saying, please, no,  
4 please no, as he's saying, I'm not police. Why  
5 would he be saying I'm not police? Why would he  
6 be saying that? Would he be calling for police?  
7 Why would he be saying, I'm not police? Would he  
8 be saying please but in terms of his accent it  
9 sounds like police? You'll never know.

10 As he's saying please, please, or  
11 police, police, Joleena tells you this defendant  
12 kept on saying to him, don't turn around. Do you  
13 see the gash on his left forehead? I suggest it  
14 could be inferred -- he got it before or after  
15 this incident. I suggest you can infer that he  
16 got it before because I suggest that he got it,  
17 he's there saying please, no, what do you do?  
18 What's the common sense thing to do? Don't turn  
19 around, the victim, please, no, please no. As  
20 he's saying please or police or whatever, this  
21 defendant who is standing above him as he's  
22 crouching down has the gun, has the gun directly  
23 in this fashion that I have it right now and has  
24 the gun and pulled that trigger. The blood then

1 spatters. These two defendants are there with  
2 the body in the hallway.

3 Now, how does that body get out in that  
4 street? I suggest you can infer that it was  
5 dragged. I suggest that when you look at the  
6 photographs, if you look close at those  
7 photographs, I suggest it doesn't help you come  
8 to the conclusion as to who did this, but I  
9 suggest when you look at these photographs, the  
10 man was dragged. And how can you do that? When  
11 you look at it, look at how he is against the  
12 wall. His legs are parallel to that wall. There  
13 is the corner right here to the door, his legs  
14 are parallel. That's not as if he just fell.  
15 They're parallel, they're straightened out.  
16 Because he has been moved.

17 What else? You're heard testimony that  
18 there is spatter on his hip area and there's  
19 spatter on his shirt area. Look at the  
20 photographs. There is nothing on his stomach,  
21 there is no spatter there because as he already  
22 has the blood on him, he's moved, and that's why  
23 there's spatter there because he's been dragged.  
24 That doesn't help you to come to the conclusion

1 in the case but I suggest that you can infer that  
2 all that blood is his blood, the spatter on the  
3 steps and obviously the blood next to the body.

4 What happens at this point in time, the  
5 individuals run. Eddie Gauthier sees what  
6 happens. He sees Tanzerius Anderson. He sees  
7 Jason Robinson. And you all have heard, in terms  
8 of what happened after that, Joleena Tate knows  
9 that the police are going to look for her because  
10 she can be identified, not because there's any  
11 witnesses who can identify her as doing anything  
12 in the back of that hallway, not because anyone  
13 can say she has anything to do with it. She  
14 knows the police are going to be looking for her  
15 because she is the last one to see Yaz. That's  
16 why she runs.

17 Eddie Gauthier, seventy-two hours  
18 later, goes to the police station, tells his  
19 mother, tells them what he saw in terms of these  
20 two defendants. What does Eddie Gauthier do?  
21 The police have him go back home. Ten hours  
22 later on that Thursday morning these two  
23 defendants are over at his house -- I'm sorry,  
24 Heather Coady goes to his house, brings him to

1 Store Twenty-four where Joleena Tate is there as  
2 well as Jason Robinson and Tanzerius Anderson.

3 What does Eddie Gauthier do after he  
4 leaves, after they drop him off on Vineland  
5 Street? You have heard from the detective there  
6 is a phone call made. I suggest you can infer it  
7 was on that Thursday. They got the phone call  
8 because Eddie Gauthier had just gotten back to  
9 his house, and later on comes back and gives a  
10 statement about what happened that second time.  
11 That statement, the reason for that is what  
12 happened on that Thursday in terms of these two  
13 defendants trying to cover their tracks. That's  
14 where that evidence comes in, ladies and  
15 gentlemen.

16 And, ladies and gentlemen, then what  
17 happens? Joleena Tate, that Thursday, leaves.  
18 She goes on the run. She is the only witness  
19 She is the only one who knows in terms of the  
20 participation of the robbery. They don't have to  
21 go anywhere at this point in time. Months pass.  
22 Joleena Tate is picked up. There is a grand jury  
23 investigation, warrants issue, police go to Jason  
24 Robinson's house, bang on the door. Jason

1 Robinson has nothing to do with this? Eddie  
2 Gauthier has no motive against him. Joleena Tate  
3 has no motive against him. Bangs on his door.  
4 Is there anyone who doesn't believe the officer  
5 who testified? Twenty-five minutes where he's  
6 saying there is a warrant, you need to come out,  
7 we don't want anyone to get hurt. They go in.  
8 They have to bust the door in. They go in.  
9 What's he doing? He's hiding under a blanket and  
10 sitting in a chair. That goes to his  
11 consciousness of guilt in this case, ladies and  
12 gentlemen.

13 Ladies and gentlemen, when you add up  
14 all that evidence, when you add up Eddie Gauthier  
15 independently, when you add up Joleena Tate, when  
16 you add up the Yankee Clipper, Oscar Vega, the  
17 defendant's statement and his work schedule, when  
18 you add up all that evidence, ladies and  
19 gentlemen, you should come to the conclusion that  
20 Tanzerius Anderson and Jason Robinson shot and  
21 killed Iman Yazbek during the course of the  
22 robbery and that that murder, it was premeditated  
23 in the sense that when he goes into the car,  
24 Anderson says, I've got my body. It was



1 premeditated and it was committed with extreme  
2 atrocity and cruelty when that man is begging for  
3 his life with a gun less than a fraction of an  
4 inch or an inch or so, whatever your memory is,  
5 shot with a three fifty-seven magnum, a high-  
6 powered gun, with the injury that you saw, it was  
7 committed with extreme atrocity and cruelty.

8 And these two defendants acted as a  
9 team, Jason Robinson and Tanzerius Anderson,  
10 lifelong friends, acted as a team, and they are  
11 responsible as a team for what happened. I'd ask  
12 you to find them both guilty. Thank you.

13 THE COURT: Thank you, Mr. Tochka.  
14 Ladies and gentlemen, what remains is to listen  
15 to my legal instruction which will take longer  
16 than I'm sure you'd like it to be. So we are  
17 going to give you a recess at this time for  
18 lunch. We are going to take a somewhat shorter  
19 luncheon recess so that we can give you as much  
20 time this afternoon as remains after I have  
21 completed my work to discuss the case.

22 Please understand that although the  
23 arguments have been made and the evidence  
24 concluded, it is still -- the case is still not

1 ready for your determination because you have not  
2 yet been instructed on the law and until that  
3 happens you are still under the strictures about  
4 not discussing the case, even among yourselves.

5 So would you please leave your notes in  
6 your envelopes. Lunch has been brought in for  
7 you and we will come back in about forty-five  
8 minutes. Thank you.

9 (Whereupon, the jury was escorted from  
10 the courtroom at 12:01 o'clock p.m.)

11 MR. DOOLIN: May we approach?

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

14 MR. DOOLIN: Judge, I object to certain  
15 parts of Mr. Tochka's closing about the  
16 obligation of Ms. Tate to tell the truth and the  
17 consequences therein. I would suggest to the  
18 Court that that is impermissible at this point.  
19 I also object to an inference that was made about  
20 halfway through Mr. Tochka's closing that because  
21 of something that was said during Mr. Anderson's  
22 statement, that you could draw an inference that  
23 on Thursday, from that statement, he was with  
24 Robinson. I would suggest to the Court that that

1 is an impermissible inference based on the  
2 testimony that has gone in regarding that  
3 statement.

4 I also respectfully object to  
5 references made to the demeanor on the stand of  
6 Mr. Gauthier when he saw that picture. That was  
7 something that both Mr. Flaherty and I  
8 specifically objected to and I believe it was  
9 stricken by the Court during Mr. Tochka's  
10 redirect of Mr. Gauthier, and to make reference  
11 to that, I would suggest to the Court, plays to  
12 the jury's sympathies and I also object to that  
13 as well.

14 I also object, and I think it's an  
15 impermissible inference to argue to the jury as  
16 to what Gauthier had said in the second taped  
17 statement in terms of calling the police and then  
18 giving a second taped statement that  
19 inferentially you could infer that he was talking  
20 about this meeting that happened at Scrub-A-Dub.  
21 That's not in evidence from that statement and I  
22 would suggest to this Court that that is an  
23 invitation for the jury to speculate.

24 And I also respectfully object to, at

1 the end, to the begging for life. Again, I would  
2 suggest there is no evidence of that. That's  
3 speculative as well.

4 And, for all of those reasons, I object  
5 to Mr. Tochka's closing.

6 MR. FLAHERTY: On behalf of Mr.  
7 Anderson I also join in Mr. Doolin's objections  
8 to the references of Ms. Tate to tell the truth,  
9 if not, she can be prosecuted, if she doesn't  
10 comply with the agreement, it can be broken. I  
11 also join in the objections to the reference to  
12 the demeanor of Eddie Gauthier when the  
13 photograph was shown to him. I object to the  
14 characterization of the business records as  
15 records of Tanzerius Anderson's life. I object  
16 to the reference of Heather Coady during the  
17 final argument, and I would object --

18 THE COURT: With reference to Heather  
19 Coady, Mr. Tochka did misspeak and I drew him to  
20 side bar.

21 MR. FLAHERTY: I agree the record is  
22 clear. Just for the record I do object and then  
23 for the -- with respect to the receipt, Your  
24 Honor.

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THE COURT: What receipt?

MR. FLAHERTY: The receipt from the Yankee Clipper hotel when Mr. Tochka made the argument that the handwriting that appears on there could only be known by the person who is signing it. I object again to the argument along the lines of the motion in limine -- or the oral motion that I had brought an objection to that, what I called totem pole hearsay, appearing on the receipt, so I again object.

THE COURT: Anything more from you?

MR. TOCHKA: No.

THE COURT: Okay. With respect to any impermissible inferences, the jury will be properly instructed on inferences and they are entitled to draw any inferences which they think are rationally based on the evidence. With respect to the demeanor of Eddie Gauthier, any demeanor of any witness is a part of the jury's duty to assess the credibility of the witness and there is nothing improper there.

With respect to Mr. Tochka's reference to the victim begging or pleading for his life, there was testimony, as I recall it, from Joleena

1 Tate having to do with what she said Anderson, I  
2 think, told her about that so I think that was  
3 proper argument. With respect to the plea  
4 agreement of Tate, the obligation to tell the  
5 truth, it's reflected in the plea agreement which  
6 has been introduced in a redacted form and,  
7 therefore, is fair argument. The receipt I think  
8 I dealt with before, sir.

9 So any other matters you raise I think  
10 will be adequately dealt with in my charge.

11 Thank you.

12 (Whereupon, the proceedings were  
13 recessed at 12:05 o'clock p.m., and reconvened at  
14 12:55 o'clock p.m.)

1 THE COURT: Ladies and gentlemen,  
2 before I begin, I'm going to ask the clerk to  
3 announce the appointment of the foreperson.

4 THE CLERK: The juror in seat number  
5 fourteen, juror 2-1, Michael Panichas, the Court  
6 appoints you the foreperson of this jury.

7 THE COURT: Members of the jury, will  
8 you please stand and rise with me for a moment?  
9 It has been a tradition in the Superior Court of  
10 the Commonwealth of Massachusetts that at the  
11 time the judge explains the law to the jurors -  
12 it's called the judge's charge - that the jurors  
13 and the judge rise to face one another. The  
14 reason we do this is to take a moment to reflect  
15 on the important and serious task that you are  
16 about to undertake and that task is to ensure  
17 that both the citizens of the Commonwealth and  
18 these defendants have what they are  
19 constitutionally entitled to - which is a fair  
20 and impartial trial.

21 Now, at the beginning of the proceeding  
22 you heard the clerk say that these two defendants  
23 had pled not guilty to the charges the  
24 Commonwealth had made against them and had placed

1 themselves upon the country for trial. In this  
2 case you have been selected as representatives of  
3 this country to hear the evidence and to decide  
4 the case. When I have completed my instructions,  
5 you will be going to the jury room to sort  
6 through all the evidence, to make critical  
7 decisions about that evidence, primarily how much  
8 of this evidence do you feel collectively is  
9 deserving of weight and consideration, and then  
10 you will be following or applying the law to  
11 those decisions that you made.

12 Your job will be to determine whether  
13 or not the Commonwealth has proven the guilt of  
14 each of these defendants on the indictments that  
15 have been brought against them. When you do so,  
16 you should fairly and impartially evaluate the  
17 evidence, do so without favor or bias or  
18 prejudice for or against one side or the other,  
19 and come to your decision which you must do  
20 unanimously.

21 If, after you have done so, you  
22 determine that the Commonwealth has proven each  
23 and every one of the elements of the crimes that  
24 the Commonwealth has charged these defendants



1 with committing, then you should say so and you  
2 should find the defendants guilty. Equally  
3 importantly, if, after you've carefully compared  
4 and considered all of the evidence, you decide  
5 the Commonwealth has failed to satisfy its burden  
6 on one or more of the essential elements of these  
7 crimes, then you must say so and find the  
8 defendant not guilty.

9 So we just take a moment before I get  
10 into the substance of the law here to make sure  
11 that each and every one of you appreciates and  
12 understands the seriousness of the work you're  
13 about to undertake. All of us are confident,  
14 having observed you throughout the trial, that  
15 you will continue to discharge your oath in the  
16 case to decide it fairly and impartially. Thank  
17 you. You may sit down for the remainder of the  
18 charge.

19 Ladies and gentlemen, you may, if you  
20 like, take notes with respect to this  
21 instruction. I will advise you that it is long  
22 by necessity because there are many legal  
23 concepts here which I am required to explain to  
24 you so I would invite you to take notes if it

1 will assist you in understanding what I'm saying  
2 or in recalling what I have said later.

3 Please understand that everything I am  
4 about to explain to you has to be accepted in its  
5 entirety. You can't ignore anything, you can't  
6 single out any instruction for special attention,  
7 nor can you question the wisdom of any rule of  
8 law. You must follow the law, apply it as it  
9 were, to the facts which you as a group decide  
10 are worthy of belief.

11 Now, I'm going to begin my instructions  
12 with some general principles. I will explain  
13 what is not evidence, what you cannot use as a  
14 basis for your verdict. I will move on then to  
15 talk about the sources of evidence, in other  
16 words, how did the evidence come in before you,  
17 then the types of evidence, direct and  
18 circumstantial, which you may consider. I will  
19 then move on to define what we mean by proof  
20 beyond a reasonable doubt, and then I'll move  
21 into explaining what the elements of the crimes  
22 that the Commonwealth has charged these  
23 defendants with committing are, and there are  
24 some legal principles I must also explain such as

1 joint venture, a theory that the Commonwealth has  
2 used in this case in suggesting that these  
3 defendants committed these acts in concert or  
4 together.

5           Alright. Let's start with what is not  
6 evidence in the case. The opening statements and  
7 closing arguments made by the lawyer are not  
8 evidence. At the beginning the attorneys had an  
9 opportunity to tell you what they hoped to do and  
10 at the end what they hoped they had done, but if  
11 at any time in the course of these events you  
12 heard an attorney express a personal opinion  
13 about the believability of a particular witness  
14 or the guilt or innocence of a particular  
15 defendant, if that assessment doesn't coincide  
16 with your collective judgment, then you are to  
17 disregard it. Also, if at any time you heard  
18 some references or allusions to matters that were  
19 not put in through the witnesses or the exhibits  
20 then you must disregard that as well. Your job  
21 is going to be to decide what the evidence was  
22 and then to decide how much of it to give credit  
23 or consideration to.

24           Secondly, the questions asked by the

1 lawyers are not evidence. Only the answers  
2 actually given by the witness constitute  
3 evidence. Occasionally, and perhaps more than  
4 you'd like, you heard an attorney object to a  
5 question. I had explained that attorneys have  
6 obligations in those matters, as I do, to ensure  
7 that what you hear is admissible under our rules  
8 of evidence and those are the rules that we must  
9 conduct our trials by. If I sustained the  
10 objection, the witness was not permitted for  
11 whatever legal reason to answer the question so  
12 you can't guess or speculate about what that  
13 answer might have been. If I overruled it and  
14 the witness went ahead and answered the question,  
15 of course that answer constitutes evidence for  
16 your consideration together with all other  
17 evidence. Please do not hold anything against an  
18 attorney for making an objection. They have  
19 obligations, as I said, as I do, to ensure that  
20 our trials are conducted in accordance with our  
21 rules.

22 Next, what is not evidence is anything  
23 having to do with speculation or guesswork. The  
24 only sources of evidence given to you here were

1 the testimony of the witnesses and the exhibits.  
2 You cannot guess or speculate about other matters  
3 that were not put before you.

4 Next and very importantly, the  
5 indictments are not evidence. I believe you took  
6 them, Mr. Clerk, if I could have them? An  
7 indictment, as I explained before, is the formal  
8 mechanism by which the Commonwealth says to  
9 someone we are accusing you of committing a  
10 crime. Now, in this case there are six  
11 indictments, three against each defendant, three  
12 against Tanzerius Anderson and three against  
13 Jason Robinson. Each defendant is charged with  
14 the murder of Iman Yazbek on March 28, 2000.  
15 Each defendant is charged with the crime of armed  
16 robbery of Iman Yazbek that same date, and the  
17 third indictment concerns the unlawful possession  
18 of a firearm. Each defendant is also charged  
19 with that crime.

20 The indictments will be with you in the  
21 jury room, together with the verdict slips, so  
22 that you may refer to them, but understand and  
23 please keep in mind, that the indictments are not  
24 any evidence of guilt on the part of either

1 defendant nor any basis from which guilt can be  
2 inferred. These defendants, like anyone charged  
3 with a crime, are presumed innocent until proven  
4 guilty and that is a very important  
5 constitutional safeguard.

6 Now, at the beginning of the case you  
7 heard mention of some other indictments which are  
8 not before you for consideration. You are not to  
9 guess or speculate about why that is the case.  
10 The only indictments for your consideration are  
11 three against each defendant for murder, armed  
12 robbery, and unlawful possession of a firearm.

13 Anything having to do with sympathy,  
14 favor, bias or prejudice for or against the  
15 Commonwealth or any of its witnesses or for or  
16 against either of these defendants or any of  
17 their witnesses must be set aside. Your job is  
18 to judge the case solely on the evidence, fairly  
19 and impartially, without fear or favor for or  
20 against one side or the other.

21 And finally what is not evidence are  
22 any actions that you have seen me take in ruling  
23 on any motion or objection or in terms of making  
24 any comments to the attorneys or to a witness.

1 If at any time you think any of that has  
2 suggested or expressed an opinion on my part as  
3 to the facts of this case, you should disregard  
4 it. Fact finding is your exclusive province and  
5 sole responsibility and I favor no outcome over  
6 any other outcome.

7 Alright. We have talked about what is  
8 not evidence in the case. Now let's move on and  
9 talk about the sources of evidence, in other  
10 words, how did it come before you and what is  
11 your job with respect to evaluating the evidence.  
12 There were two primary sources of evidence  
13 proffered here, the testimony of witnesses and  
14 the exhibits. I'm going to start first with the  
15 witnesses.

16 How do you go about judging the  
17 testimony of witnesses? And before I enumerate  
18 some factors which you should find helpful in  
19 making these assessments about the believability  
20 of a witness - credibility is a synonym for  
21 believability, by the way - let me make clear  
22 that your job with respect to each and every  
23 witness is the same and that job is to determine  
24 how much of each witness's testimony is

1 believable or credible, how much perhaps is not.  
2 You may decide to accept everything a witness has  
3 told you as believable and true, so you credit  
4 the entire testimony, or you may decide that  
5 nothing a witness has said is reliable or  
6 believable, and so you decide to disregard it or  
7 reject it or set it aside, or you may decide that  
8 certain portions of a particular witness's  
9 testimony ring true to you so you say, I'm going  
10 to believe those portions, but other portions of  
11 the same witness's testimony do not ring true to  
12 you and you decide to set aside or to disregard  
13 them.

14 Now, what factors may you use in making  
15 these judgments or assessments about each and  
16 every witness? You should consider not just what  
17 a witness has told you but how did a witness  
18 present to you here in the courtroom. We refer  
19 to that generally as a witness's demeanor. What  
20 that means is, how did the witness look, sound,  
21 what about the emotional effect of the words, do  
22 they ring true, do they not.

23 What about the probability or  
24 improbability of the testimony or the



1           reasonableness or lack of reasonableness of it?  
2           What opportunity did that witness have to make  
3           the observations about which that witness  
4           testified? You should also consider the  
5           intelligence demonstrated by a witness on the  
6           stand as well as the accuracy of the witness's  
7           memory or recollection. What interest, if any,  
8           does the witness have in the outcome of the case?  
9           Is there a particular motive to testify in a  
10          certain manner or not?

11                        You heard some questions asked of  
12          witnesses about what they said before trial.  
13          Generally those are referred to as prior  
14          inconsistent statements and are asked of the  
15          witness to tear down or to impeach their  
16          credibility. If you decide that prior statements  
17          were made, if they are material or important to  
18          an issue in this case and if they were  
19          inconsistent with trial testimony, then you may  
20          use those prior inconsistent statements, if you  
21          find that they are helpful, in evaluating a  
22          witness's testimony, but you may not accept any  
23          facts contained in those prior statements for the  
24          truth of the matters contained in them.

1                   Now, with respect to the witnesses'  
2 testimony, we had two types of witnesses, lay  
3 witnesses and expert witnesses. Lay witnesses  
4 are people like you and me who come into court to  
5 testify about what they have seen or heard or  
6 observed. Expert witnesses are people who come  
7 from a variety of disciplines or professions, and  
8 in this case you heard from several, a  
9 ballistics expert, fingerprint expert or  
10 criminologist, medical examiner, a handwriting  
11 expert. If I missed any, it's your job to decide  
12 who testified, but an expert witness is a person  
13 who by virtue of having certain background,  
14 training, education, and experience has gained a  
15 certain level of expertise in a particular field  
16 or in a science and is therefore allowed to give  
17 you an opinion about those matters about which  
18 the person has that expertise.

19                   In evaluating an expert's testimony, in  
20 addition to the factors I talked about in  
21 evaluating a lay person's testimony, you should  
22 also use, in assessing the credibility of an  
23 expert witness, the testimony you heard about  
24 that person's qualifications which consist

1 generally of a person's education, background,  
2 training, credentials. And before you consider  
3 any opinion given by an expert, you must first  
4 determine that the facts upon which that opinion  
5 are based have been proven beyond a reasonable  
6 doubt by the Commonwealth, and if you determine  
7 those facts have not been proven beyond a  
8 reasonable doubt, then you must disregard that  
9 opinion.

10 But keep in mind you are not bound to  
11 accept an opinion given by an expert merely  
12 because that person is an expert. You must  
13 evaluate the testimony in the manner that I have  
14 laid out for you, given all the factors, and  
15 decide whether to accept or reject in whole or in  
16 part that expert witness's testimony.

17 Now, what other considerations or  
18 instructions relate to evaluation of the  
19 witnesses? You heard some testimony about  
20 statements allegedly made by one or both of these  
21 defendants concerning the offenses that they are  
22 charged with in this case. Before you can  
23 consider any statements as evidence, the  
24 Commonwealth must prove to you beyond a

1 reasonable doubt that a defendant who is alleged  
2 to have made the statement: one, that he did  
3 make it; and, two, that he made it voluntarily,  
4 freely and rationally. And with respect to the  
5 second element you have to be persuaded beyond a  
6 reasonable doubt that under the totality of the  
7 circumstances the statement was the product of a  
8 defendant's free will and rational intellect.

9 The burden falls on the Commonwealth to  
10 prove beyond a reasonable doubt that a  
11 defendant's will was not overcome; that is, that  
12 he was not coerced, he was not tricked or cajoled  
13 into making the statement, and that he made that  
14 statement with a rational intellect and when he  
15 was competent. In addition, the Commonwealth  
16 must prove that a defendant received the Miranda  
17 warnings, that he understood them, and that he  
18 knowingly and voluntarily gave up or waived the  
19 right to remain silent.

20 If the Commonwealth does not satisfy  
21 its burden that a defendant made a statement  
22 freely, voluntarily, and as a product of his own  
23 free will and rational intellect, and that he  
24 received, understood and waived his Miranda

1 rights, then you may not consider those  
2 statements in any manner. If the Commonwealth  
3 has met its burden, then you may consider a  
4 defendant's statement for all purposes together  
5 with all other evidence.

6 Now, you heard evidence of acts or  
7 statements made by one or more of the individuals  
8 who are allegedly involved in the incident. The  
9 Commonwealth is offering the evidence against the  
10 defendants to show their alleged joint venture in  
11 this case. It is going to be up to you to decide  
12 during the course of your deliberations whether a  
13 joint venture existed. However, before you reach  
14 that issue, you have to be satisfied beyond a  
15 reasonable doubt that one or more individuals  
16 committed the crimes alleged, and, if you are so  
17 convinced as to the identification of those  
18 individuals, then you may consider any evidence  
19 of acts done or statements made by each  
20 individual in the joint venture against one or  
21 both of the defendants.

22 However, before you may consider  
23 evidence of acts or statements allegedly made by  
24 one of the participants against a defendant under

1 a joint venture theory, you will first need to  
2 decide whether the Commonwealth has presented  
3 sufficient evidence independent of those acts and  
4 statements to support a fair inference that there  
5 was a joint venture between participants and a  
6 defendant. You may not use any of those  
7 statements in making that determination. That  
8 determination will be up to you as part of your  
9 deliberations in this case.

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

22 Now, also with respect to your  
23 consideration of the evidence proffered by the  
24 witnesses here, you heard the testimony of

1 Joleena Tate, an alleged accomplice, and you have  
2 heard that she has entered into an agreement with  
3 the prosecution in exchange for her testimony.  
4 Ms. Tate has been charged with the crime of  
5 accessory before the fact to robbery. In  
6 exchange for her testimony against the defendants  
7 and upon Ms. Tate's change of plea to guilty to  
8 that charge, accessory before the fact to  
9 robbery, the Commonwealth has agreed to recommend  
10 to the Court a sentence of not less than eight  
11 nor more than ten years in prison.

12 You should examine Ms. Tate's  
13 credibility, that is, her believability, with  
14 greater caution than you would that of other  
15 witnesses. You may not consider Ms. Tate's  
16 agreement to plead guilty as evidence against  
17 these defendants. You may consider the agreement  
18 and any other hopes, expectations, or promises  
19 that Ms. Tate expects to receive or has received  
20 in evaluating her credibility. You may consider  
21 any expectations that Ms. Tate had that  
22 cooperation with the Commonwealth would give her  
23 more favorable treatment in a pending case or any  
24 further cases.

1                   Simply because Ms. Tate is testifying  
2                   pursuant to an agreement does not mean that the  
3                   prosecution, the Commonwealth, has any way of  
4                   knowing that her testimony is truthful or that  
5                   the Commonwealth is vouching for her credibility.  
6                   Any evidence that Ms. Tate was represented by an  
7                   attorney at the time she entered into her  
8                   agreement with the Commonwealth does not mean  
9                   that the attorney was vouching for her  
10                  credibility either. Only you, as the jury, will  
11                  ultimately decide whether any witness's testimony  
12                  is truthful or untruthful. So, in sum, Ms.  
13                  Tate's testimony should be scrutinized with great  
14                  care and you should give it whatever weight you  
15                  feel it deserves.

16                         One of the most important issues in the  
17                         case is the identification of the defendants as  
18                         the perpetrators of the crimes. The Commonwealth  
19                         has the burden of proving the identity of these  
20                         defendants as the ones who committed the crimes  
21                         and the Commonwealth must do that by proof beyond  
22                         a reasonable doubt. It is not essential that the  
23                         witness who offers identification testimony  
24                         himself or herself be free from doubt as to the



1           correctness of his or her statement. However,  
2           you, as members of the jury, must be satisfied  
3           beyond a reasonable doubt as to the accuracy of  
4           the identification of the defendant before you  
5           may convict him. If you are not so convinced  
6           beyond a reasonable doubt that a defendant was  
7           the person who committed the crime, you must find  
8           that defendant not guilty.

9                        What is identification testimony? It  
10           is simply an expression of belief or impression  
11           by the witness. Its value depends on the  
12           opportunity that that witness had to observe the  
13           offender at the time of the offense and to make a  
14           reliable identification later. In appraising  
15           identification testimony of a witness, there are  
16           several things you should consider. The first is  
17           whether you're convinced that the witness had the  
18           capacity and an adequate opportunity to observe  
19           the offender, and whether that witness did have  
20           an adequate opportunity depends on things such as  
21           how far or close the witness was to the offender,  
22           what the lighting conditions were like, how long  
23           or short a time did the witness have to make the  
24           observations, and whether the witness had

1 occasion to see or to know the person in the  
2 past.

3 The second thing to consider is whether  
4 you are satisfied that the identification made by  
5 the witness subsequent or after the crime was the  
6 product of his or her own recollection and you  
7 may take into account the circumstances under  
8 which the identification was made. If the  
9 identification by the witness was or may have  
10 been influenced by the circumstances under which  
11 a defendant was presented to him or her for  
12 identification, you should scrutinize that with  
13 great care. You may also consider the amount of  
14 time that passed between the time of the crime  
15 and the opportunity the witness had to see and  
16 identify a defendant as the offender as a factor  
17 bearing on the reliability of the identification.

18 You may also take into account that an  
19 identification made by picking a defendant out of  
20 a group of similar individuals is generally more  
21 reliable than one which results from presenting a  
22 defendant alone to the witness. You may also  
23 take into account any occasions on which the  
24 witness failed to make an identification of a

1 defendant or made one which was inconsistent with  
2 the identification made at trial.

3 Are you convinced that the witness was  
4 not mistaken about the identification? That is  
5 not to say the witness lied but rather that he or  
6 she made a good faith mistake about the  
7 identification. And, finally, with respect to  
8 assessing the testimony given by a witness  
9 relating to identification, you should consider  
10 the other factors that I had laid out for you  
11 earlier in assessing credibility of witnesses.  
12 Consider whether that person is truthful, whether  
13 the witness had the capacity and opportunity to  
14 make a reliable observation on the matters that  
15 were covered in that witness's testimony.

16 So, in sum, with respect to  
17 identification, the Commonwealth has the burden  
18 of proving beyond a reasonable doubt the identity  
19 of these defendants as the ones who perpetrated  
20 or committed the crimes. If you have a  
21 reasonable doubt as to the identification of a  
22 defendant as a perpetrator, you must find that  
23 defendant not guilty.

24 And, finally, with respect to matters

1 relating to testimony, you know that the  
2 defendants did not testify in this case. As I  
3 have explained throughout this trial, these  
4 defendants, like anyone charged with a crime,  
5 have an absolute right not to testify because  
6 these defendants are presumed innocent until  
7 proven guilty and at no time in the course of the  
8 trial are they under any obligation to do  
9 anything, say anything, put on any evidence, and  
10 that, of course, includes taking the stand.

11 The fact that these defendants did not  
12 take the stand here has nothing to do with  
13 whether or not they are guilty. You cannot draw  
14 any inferences which are adverse to them, that  
15 means against them, for the fact that they did  
16 not testify. You must evaluate the evidence in  
17 the case based on what was given to you here  
18 through the witnesses and the exhibits and decide  
19 whether the Commonwealth has proven a defendant  
20 guilty beyond a reasonable doubt. So you should  
21 not even discuss this matter in the jury room.  
22 It should play no part in your consideration in  
23 rendering your verdicts. Focus solely on the  
24 evidence given.

1                   So those are the instructions, ladies  
2                   and gentlemen, as they relate to your assessment  
3                   of the witnesses. One final note and that is  
4                   this, during the impanelment procedure you will  
5                   recall that I read a rather long list of  
6                   prospective witnesses, people who may come to  
7                   testify at trial, and I had told you then and I'm  
8                   reminding you now, that not everyone whose name  
9                   was read would appear so there were many more  
10                  persons on that list than persons who actually  
11                  testified. You can't guess or speculate about  
12                  why anyone whose name was on that list did not  
13                  testify and also, if an attorney mentioned in an  
14                  opening statement or talked about the anticipated  
15                  testimony from a person who did not testify in  
16                  this case at trial, you cannot speculate or guess  
17                  about why that person did not appear here at  
18                  trial nor hold that against the attorney who did  
19                  mention that in an opening statement. You must  
20                  assess the testimony of witnesses who did appear.

21                   That is one primary source of evidence,  
22                   the witness's testimony. Let's talk now about  
23                   the second primary source, exhibits. There are  
24                   many in this case, the number of which is fifty-

1 four. If something was introduced into evidence,  
2 it will be with you in the jury room. There are  
3 fifty-four exhibits, that is, it received a  
4 number, one through fifty-four. If it didn't, if  
5 it got a letter, it means, for whatever legal  
6 reason, I did not admit it into evidence. It  
7 will not be with you in the jury room so please  
8 don't ask to see it. The exhibits that are  
9 there, you should review, you should consider  
10 what oral testimony, if any, you heard about it,  
11 and also decide how much weight or consideration  
12 to give to the exhibit.

13 Among the exhibits are photographs of  
14 the deceased, Iman Yazbek. Some of them can be  
15 said to be gruesome so you must evaluate those  
16 photos for whatever evidentiary value you  
17 determine that they have. You are not to base  
18 your verdict on any sympathy or emotion for Iman  
19 Yazbek which might be occasioned by those  
20 photographs. So consider all the exhibits,  
21 decide what, if any, weight to give to them, and  
22 use those in arriving at your verdict as well.

23 You went on a view, as you know, we  
24 went to various locations at the Fanueil housing

1 development in Brighton as well as various  
2 locations in Brighton and Watertown. You may use  
3 or consider any observations you made on the view  
4 in evaluating the evidence. The purpose of the  
5 view was to give you a better visual context for  
6 understanding some of the testimony.

7 With respect to an exhibit, and I meant  
8 to add this when I was talking about exhibits,  
9 you were shown a three fifty-seven magnum firearm  
10 in the course of Mark Vicker's testimony, a  
11 ballisticsian. Understand that these defendants  
12 have not been charged with any crime in  
13 connection with that particular firearm and Mr.  
14 Vickers was permitted to use it to illustrate his  
15 testimony but you can't use the fact that he  
16 displayed it in any way to infer that these  
17 defendants have bad character or are likely to  
18 commit crimes.

19 You've heard some evidence and  
20 testimony about things that the Commonwealth did  
21 or failed to do; that is, with respect to doing  
22 certain investigations or performing certain  
23 scientific tests or otherwise following standard  
24 procedures in the course of investigating these

1 crimes. Now, a failure on the part of the  
2 Commonwealth to do any of that can be considered  
3 by you with respect to the instruction I'm about  
4 to give you.

5 You should consider whether the omitted  
6 tests or other actions which the defendants  
7 contend were not taken were standard procedure or  
8 steps that would otherwise normally have been  
9 done or been performed under the circumstances.  
10 You should consider whether any tests or actions  
11 which weren't taken or tests which were not  
12 performed could reasonably have been expected to  
13 lead to significant evidence of a defendant's  
14 guilt or innocence, and whether the evidence  
15 provides a reasonable and adequate explanation  
16 for the omission of the tests or other actions,  
17 and if you find that any omissions in the  
18 investigation were significant, were not  
19 adequately explained, you may consider whether  
20 those omissions tend to affect the quality or  
21 reliability of the evidence presented by the  
22 Commonwealth, in other words, whether the  
23 Commonwealth has proven the defendant's guilt  
24 beyond a reasonable doubt.



1                   Alternatively, you may consider whether  
2                   the omissions tend to show the existence of any  
3                   police bias against the defendant in conducting  
4                   the investigation. So you should consider all  
5                   those things. They involve factual  
6                   determinations that are entirely up to you and  
7                   you are free to give this matter whatever weight,  
8                   if any, you determine it should receive.

9                   You've heard some evidence suggesting  
10                  that a defendant may have acted to hide or to  
11                  conceal his involvement in these crimes. If you  
12                  determine that the Commonwealth has proven such  
13                  acts beyond a reasonable doubt you may consider  
14                  whether such actions indicate feelings of guilt  
15                  by a defendant and whether, in turn, such  
16                  feelings of guilt might tend to show actual  
17                  guilt.

18                  You are not, however, required to draw  
19                  such inferences and you should not do so unless  
20                  you are persuaded beyond a reasonable doubt of  
21                  those inferences. If you find that they have  
22                  been proven and appear reasonable in light of all  
23                  the circumstances, then you may consider them.

24                  I want to caution you that you can

1 never convict a person of any crime based on  
2 consciousness of guilt alone. Evidence of  
3 concealment or hiding or other actions of that  
4 kind may often be prompted by something other  
5 than feelings of guilt. There are numerous  
6 reasons why an innocent person might hide or  
7 conceal evidence or act in a certain way and such  
8 conduct does not necessarily reflect feelings of  
9 guilt. Even where a person's conduct does  
10 demonstrate feelings of guilt, it does not  
11 necessarily mean that the person is, in fact,  
12 guilty because feelings of guilt are sometimes  
13 held by innocent people.

14 Finally, and very importantly, such  
15 evidence is never, in and of itself, enough to  
16 convict a person of a crime and you may not  
17 convict a defendant on this evidence alone. If  
18 you do believe this evidence, it may be used only  
19 with respect to your evaluation of the case in  
20 connection with all the other evidence in  
21 determining whether the Commonwealth has proven a  
22 defendant's guilt beyond a reasonable doubt.

23 Now, you heard some mention of other  
24 acts allegedly done or proposed by the defendant,

1           Tanzerius Anderson. Mr. Anderson is not charged  
2           with the commission of crimes other than those  
3           contained in the indictments which you will have  
4           with you in the jury room. You may not take any  
5           evidence or testimony of acts, other acts  
6           allegedly done or proposed to be done by  
7           defendant Anderson as a substitute for proof that  
8           he committed the crimes that he stands charged  
9           with committing in this case, nor may you  
10          consider such evidence as proof of the defendant  
11          Anderson with respect to whether he has a  
12          criminal personality or bad character. You may  
13          not consider it in any regard with respect to  
14          that.

15                 If you believe such testimony, you may  
16          consider evidence of the acts allegedly done or  
17          proposed by defendant Anderson solely on the  
18          limited issue of his state of mind and his  
19          intent. You may not use it to conclude that if  
20          the defendant proposed to commit other crimes, he  
21          must also have committed these crimes.

22                 Alright. We've talked about the  
23          sources of evidence now and I want to move on to  
24          the types of evidence contained in the testimony

1 of the witnesses and the exhibits, direct  
2 evidence and circumstantial evidence, because you  
3 may use both kinds of evidence in evaluating --  
4 excuse me, in rendering your verdicts here.  
5 Direct evidence, fairly straightforward, is  
6 evidence which, if you believe it, by virtue of  
7 having a witness say it or it is expressly  
8 contained in an exhibit, resolves a matter at  
9 issue in the case without having you engage in  
10 any drawing of inferences or deductions.

11           Circumstantial evidence you are also  
12 entitled to consider and circumstantial evidence  
13 is a little more complicated than direct evidence  
14 because it requires making a connection between a  
15 known fact and a fact which is sought to be  
16 proved. Now, circumstantial evidence exists when  
17 a witness can't testify directly about something  
18 but you are presented with the evidence of other  
19 facts and then asked to draw reasonable  
20 inferences from them about the fact which is  
21 sought to be proved.

22           In considering circumstantial evidence  
23 you will be considering something we call an  
24 inference. We all use these every day, and an

1 inference is essentially a reasonable, logical  
2 deduction from direct evidence. I am going to  
3 give you a very ordinary example of an inference  
4 to illustrate the explanation. On the first day  
5 of trial which was a week ago Tuesday, when you  
6 were seated in the rear of the courtroom, you saw  
7 me enter the courtroom from this area over here,  
8 wearing a black robe. Now, at this point no one  
9 had introduced or identified me as the judge nor  
10 had I yet introduced myself but you could  
11 reasonably, logically infer that I was the judge  
12 by virtue of the fact that I was wearing this  
13 black robe.

14 You're entitled to draw inferences in  
15 this case but keep in mind that any inference you  
16 draw which is adverse to or against either of  
17 these defendants, you cannot draw unless you're  
18 first persuaded of the truth of that inference  
19 beyond a reasonable doubt. Circumstantial  
20 evidence, to justify the inference of guilt, must  
21 exclude to a moral certainty every other  
22 reasonable theory except guilt. Guilt is not  
23 proven by circumstantial evidence beyond a  
24 reasonable doubt if the circumstances are as

1 consistent with the theory of innocence as well  
2 as the theory of guilt. Put another way, the  
3 facts must not only be consistent with and point  
4 to the defendant's guilt, they must also be  
5 inconsistent with a defendant's innocence.

6 Let's turn now to explaining what we  
7 mean by proof beyond a reasonable doubt. It is  
8 the standard to which the Commonwealth is held in  
9 every criminal case. Now, given the popularity  
10 of these law and order shows on television,  
11 everyone thinks they know what proof beyond a  
12 reasonable doubt is. Put it out of your mind  
13 because I'm about to tell you what it is and the  
14 standard which you must apply in evaluating the  
15 evidence in this case.

16 Proof beyond a reasonable doubt does  
17 not mean proof beyond all possible doubt for  
18 everything in our lives and relating to human  
19 affairs is open to some possible and imaginary  
20 doubt. A charge is proved beyond a reasonable  
21 doubt if, after you have compared and considered  
22 all of the evidence, you have in your mind an  
23 abiding conviction to a moral certainty that the  
24 charge is true. I have explained and emphasized

1 throughout that these defendants, like anyone  
2 charged with a crime, are presumed innocent until  
3 proven guilty. The burden of proof remains on  
4 the Commonwealth at all times, and all of the  
5 presumptions of law independent of evidence are  
6 in favor of innocence, and these defendants enjoy  
7 that presumption until proven guilty beyond a  
8 reasonable doubt.

9 If, after you have evaluated all the  
10 evidence, you still have a reasonable doubt  
11 remaining, then a defendant is entitled to the  
12 benefit of that doubt and must be acquitted. It  
13 is not enough for the Commonwealth to establish a  
14 probability, even a strong probability, that a  
15 defendant is more likely to be guilty than not.  
16 That is not enough. Instead, the evidence must  
17 convince you of a defendant's guilt to a  
18 reasonable and moral certainty, a certainty that  
19 satisfies your judgment and convinces your  
20 understanding and satisfies your reason and  
21 judgment as jurors who are sworn to act  
22 conscientiously on the evidence. So that is the  
23 definition of proof beyond a reasonable doubt  
24 which you must use in evaluating the evidence put

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before you.

I'm now going to turn to explaining what it is that the Commonwealth has to do to prove these defendants guilty of the crime of first degree murder. Each defendant, Tanzerius Anderson and Jason Robinson, is charged with the murder of Iman Yazbek on March 28, 2000. The language of the murder indictment for each defendant is as follows: On March 28, 2000, the defendant did assault and beat one Iman Yazbek with intent to murder him and by such assault and beating did kill and murder Iman Yazbek. That's rather old-fashioned language. It is a murder indictment, it says so expressly on here, so please understand that the archaic language is the language used to charge someone with murder in the first degree.

What is murder? Murder is the unlawful killing of a human being either with malice or in the commission or attempted commission of certain felonies. Murder committed with deliberate premeditation and malice is murder in the first degree. Murder committed with extreme atrocity or cruelty and with malice is murder in the first

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1 degree. Murder committed in the commission or  
2 attempted commission of a felony punishable by a  
3 maximum sentence of imprisonment for life is  
4 murder in the first degree.

5 In this case the Commonwealth has  
6 alleged that these defendants committed first  
7 degree murder under all three theories; that is,  
8 with deliberate premeditation, with extreme  
9 atrocity or cruelty, and during the commission of  
10 a felony which in this case is alleged to be an  
11 armed robbery. Now, I'm going to explain to you,  
12 as I must, all three theories, deliberate  
13 premeditation, extreme atrocity or cruelty, and  
14 felony murder, and explain to you all the  
15 elements that have to be proven beyond a  
16 reasonable doubt before you may convict either  
17 defendant on one or more of these theories of  
18 murder in the first degree. Murder which does  
19 not appear to be murder in the first degree is  
20 murder in the second degree, and the degree of  
21 murder is left to you, the jury, to decide.

22 Let's start with murder with deliberate  
23 premeditation. What are the elements of this  
24 crime? What is it that the Commonwealth has to

1 do to prove that these defendants committed the  
2 murder of Iman Yazbek with deliberate  
3 premeditation? There are three elements. I'll  
4 list them and then I'll go back to flesh out each  
5 one in more detail. The Commonwealth must prove:  
6 number one, that the defendant committed an  
7 unlawful killing; two, that the killing was  
8 committed with malice aforethought; three, that  
9 the killing was committed with deliberate  
10 premeditation.

11 Let's go back and define each of these  
12 three elements in more detail. First, an  
13 unlawful killing. An unlawful killing is the  
14 first element the Commonwealth must prove beyond  
15 a reasonable doubt. For a killing to be murder,  
16 it has to be unlawful. The word "killing" refers  
17 to causing a death and death must occur as a  
18 result of a defendant's acts. An unlawful  
19 killing is a killing done without excuse. Not  
20 all killings are unlawful. For example, a  
21 killing may be excused in the case of self-  
22 defense, defense of another, or in some cases,  
23 accident. The evidence in this case does not  
24 raise any of those, however. The burden of proof

1 here is for the Commonwealth, with respect to  
2 each of these defendants, to prove that they  
3 unlawfully killed Iman Yazbek.

4 The second element is malice., The  
5 Commonwealth must prove beyond a reasonable doubt  
6 that the killing was committed with malice. Now,  
7 the definition of malice, as it applies to  
8 deliberately premeditated murder, means an intent  
9 to cause death. So the Commonwealth must prove  
10 that a defendant actually intended to cause the  
11 death of Iman Yazbek.

12 Element number three, deliberate  
13 premeditation, what do we mean by that? The  
14 Commonwealth must prove that the defendant  
15 thought before he acted, that is, a defendant  
16 decided to kill after deliberation. This element  
17 of deliberation, however, does not require an  
18 extended time span nor does it mean that the  
19 deliberation must be accomplished slowly.  
20 Rather, it refers to the purposeful character of  
21 the premeditation. Deliberation may be a matter  
22 of days, hours or even seconds. It is not so  
23 much a matter of time as it is of logical  
24 sequence. First, the deliberation and

1 premeditation, then the decision to kill, and  
2 lastly the killing in furtherance of the  
3 decision. All of this can happen in a few  
4 seconds. However, deliberate premeditation  
5 excludes any action which is taken so quickly  
6 that there is no time to reflect on the action  
7 and then decide to do it. The Commonwealth must  
8 show that a defendant's resolution to kill was,  
9 at least for some short period of time, the  
10 product of reflection or thought.

11 If, after you have carefully considered  
12 all the evidence as it applies to each of these  
13 defendants, you conclude that the Commonwealth  
14 has proven these three elements beyond a  
15 reasonable doubt, that a defendant committed an  
16 unlawful killing, that he did so with malice,  
17 that is, he had an actual intent to kill, and he  
18 did so with deliberate premeditation, then you  
19 should find the defendant guilty of the crime of  
20 murder in the first degree committed with  
21 deliberate premeditation. If, however, after you  
22 have considered all the evidence, you find that  
23 the Commonwealth has not proved any one of these  
24 three elements beyond a reasonable doubt, then

1 you must find the defendant not guilty of murder  
2 in the first degree on the theory of deliberate  
3 premeditation.

4 Now, the Commonwealth has advanced a  
5 second theory by which it contends each of these  
6 defendants is guilty of murder in the first  
7 degree and that is a theory that the defendant  
8 committed murder with extreme atrocity or  
9 cruelty. What is it the Commonwealth has to do  
10 to prove the guilt of the defendant under this  
11 theory of first degree murder? Again, there are  
12 three elements. I will list them first and then  
13 go back and give you a definition in more detail.  
14 The Commonwealth must prove: number one, the  
15 defendant committed an unlawful killing; two,  
16 that the killing was committed with malice; and,  
17 three, that the killing was committed with  
18 extreme atrocity or cruelty.

19 The first element I just defined for  
20 you in conjunction with my definition, my  
21 explanation of murder with deliberate  
22 premeditation. It is the same definition here so  
23 I won't repeat it for you, just refer back to it.

24 The second element the Commonwealth

1 must prove under this theory of first degree  
2 murder is that a defendant committed murder with  
3 malice. Now, in the context of this theory of  
4 extreme atrocity or cruelty malice has an  
5 expanded definition. There are two kinds of  
6 malice, either one of which the Commonwealth may  
7 use to prove malice as long as it does so by  
8 proof beyond a reasonable doubt. The first is  
9 that malice includes an intent to cause death or,  
10 two, the Commonwealth can satisfy its burden  
11 under this theory of first degree murder by  
12 proving beyond a reasonable doubt that a  
13 defendant intended to cause the deceased, in this  
14 case, Iman Yazbek, grievous bodily harm. So with  
15 respect to this theory of first degree murder,  
16 the Commonwealth can satisfy its burden of  
17 proving malice in one of two ways, either by  
18 proving that a defendant intended to cause Mr.  
19 Yazbek's death or intended to cause grievous  
20 bodily harm.

21 The third element is extreme atrocity  
22 or cruelty. What is it that the Commonwealth  
23 must prove with respect to this theory of first  
24 degree murder. What does this mean? Extreme

1 cruelty means that a defendant caused the  
2 person's death, in this case, Mr. Yazbek, by a  
3 method that surpassed the cruelty inherent in any  
4 taking of a human life. Extreme atrocity means  
5 an act that is extremely wicked, brutal,  
6 appalling, horrifying, or utterly revolting. You  
7 must determine whether the method or mode of the  
8 killing is so shocking as to amount to murder by  
9 extreme atrocity or cruelty. Your inquiry here  
10 focuses on the defendant's actions in terms of  
11 the manner and means of inflicting death and to  
12 the resulting effect on the victim.

13 In deciding whether the Commonwealth  
14 has proved that a defendant caused the death of  
15 the deceased with extreme atrocity or cruelty you  
16 must consider the presence and the degree of the  
17 following factors: one, whether a defendant was  
18 indifferent to or took pleasure in the suffering  
19 of the deceased; two, the consciousness and  
20 degree of suffering of the deceased; three, the  
21 extent of the injuries to the deceased; four, the  
22 number of blows delivered; five, the manner,  
23 degree and severity of the force used; six, the  
24 nature of the weapon, instrument or method used;

1 and, seventh and finally, the disproportion  
2 between the means needed to cause death and those  
3 which were employed. The seventh factor refers  
4 to whether the means used were excessive and out  
5 of proportion to what could be needed to kill a  
6 person.

7 You cannot make a finding of extreme  
8 atrocity or cruelty unless it is based on one or  
9 more of the factors I just listed and you, as  
10 members of the jury, should determine, based on  
11 the factors previously stated, whether the crime  
12 was committed with extreme atrocity or cruelty.

13 So if, after you've carefully  
14 considered all the evidence, you determine the  
15 Commonwealth has proved beyond a reasonable doubt  
16 each of the three elements I have just defined,  
17 that a defendant unlawfully killed Iman Yazbek,  
18 that the killing was done with malice, that is,  
19 either with an intent to cause death or an intent  
20 to cause grievous bodily harm, and, three, that  
21 the killing was committed with extreme atrocity  
22 or cruelty, then you should find the defendant  
23 guilty of murder in the first degree with extreme  
24 atrocity or cruelty. If, however, after you have

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1 evaluated all the evidence, you determine that  
2 the Commonwealth has failed to prove one or more  
3 of those three elements beyond a reasonable  
4 doubt, then you should find a defendant, that  
5 defendant not guilty.

6 Let's move on to the third theory of  
7 law by which the Commonwealth may prove the  
8 defendant guilty of first degree murder, and that  
9 is a theory that we call felony murder. What is  
10 felony murder? A defendant is guilty of felony  
11 murder if the Commonwealth has proved beyond a  
12 reasonable doubt that Iman Yazbek was unlawfully  
13 killed during a defendant's commission or  
14 attempted commission of a felony with a maximum  
15 sentence of life imprisonment. So this is the  
16 principle of law known as the felony murder rule.

17 Now, in this case the Commonwealth has  
18 alleged that the murder of Iman Yazbek took place  
19 during an armed robbery. I will instruct you  
20 that an armed robbery is a felony punishable with  
21 a maximum sentence of life imprisonment. Now, in  
22 order for you to find a defendant guilty of first  
23 degree felony murder, the Commonwealth has to  
24 prove three elements beyond a reasonable doubt.

1 Let me list them and then I will define them  
2 further. First, that a defendant committed or  
3 attempted to commit armed robbery; two, that a  
4 killing, the killing of Iman Yazbek occurred  
5 during that commission of that armed robbery or  
6 attempted commission of it; and three, that the  
7 felony was inherently dangerous.

8 The first element the Commonwealth has  
9 to prove is that a defendant committed or  
10 attempted to commit an armed robbery of Iman  
11 Yazbek. Now, in order for you to evaluate this,  
12 you have to know, of course, what the crime of  
13 armed robbery is so I'm going to at this point  
14 explain to you what that crime is because you  
15 will need to know what the elements of the crime  
16 of armed robbery are not only in connection with  
17 your assessment of the first degree murder  
18 indictment under a theory of felony murder, but  
19 also because each defendant is charged with the  
20 crime of armed robbery, and that indictment  
21 alleges that on that same date, March 28, 2000,  
22 that each defendant, while being armed with a  
23 dangerous weapon, to-wit, a handgun, did assault  
24 Iman Yazbek with intent to rob him and thereby

1 did rob and steal from his person certain  
2 personal property.

3 I will just paraphrase that. I'm going  
4 to interrupt -- not interrupt, but in conjunction  
5 with explaining to you what felony murder is, I  
6 have to explain armed robbery so let's turn to  
7 what armed robbery is. There are four elements  
8 the Commonwealth must prove beyond a reasonable  
9 doubt: first, that a defendant was armed with a  
10 dangerous weapon; second, that a defendant either  
11 applied actual force or violence to the person of  
12 Iman Yazbek or used threatening words or gestures  
13 to put him in fear; third, that a defendant took  
14 money or other property from him with the intent  
15 to steal it; and, fourth, that a defendant took  
16 money or other property from Iman Yazbek's person  
17 or from his immediate control.

18 Let's start with armed with a dangerous  
19 weapon. The Commonwealth has to prove that the  
20 defendants were armed with a handgun, a dangerous  
21 weapon. The crime of armed robbery is based on  
22 the potential for injury and that potential for  
23 injury does not depend on the precise moment at  
24 which the defendant becomes armed so long as he

1 becomes armed at a point directly related to the  
2 commission and completion of a robbery.

3 And a dangerous weapon is any  
4 instrument which by the nature of its  
5 construction or the manner of its use is capable  
6 of causing grievous bodily injury or death. The  
7 law of armed robbery does not require the  
8 Commonwealth to show the instrument was actually  
9 used. It is sufficient if the Commonwealth  
10 proves beyond a reasonable doubt that a defendant  
11 was actually armed with a dangerous weapon.

12 Now, the Commonwealth has proceeded  
13 against the defendants on a theory of joint  
14 venture and I'm going to explain that more fully  
15 in a few moments, but with respect to this crime  
16 of felony murder and armed robbery, there are  
17 some instructions in that regard that I'm going  
18 to give you at this time, and those are this,  
19 armed robbery has as one of its elements, as you  
20 know, the possession of a weapon, and the  
21 Commonwealth has to prove beyond a reasonable  
22 doubt that a defendant possessed a gun or knew  
23 that his accomplice had one. However, mere  
24 knowledge in and of itself, that an accomplice

1 was armed is not sufficient to hold a defendant  
2 liable for the act of his accomplice.

3 It must be proved that a defendant  
4 intentionally assisted him in the commission of  
5 armed robbery and the defendant did so while  
6 possessing the mental state that is required for  
7 the commission of this crime. If the  
8 Commonwealth has not proved beyond a reasonable  
9 doubt that a defendant knew that his accomplice  
10 had a weapon and that the defendant shared the  
11 mental state for armed robbery, then you must  
12 find a defendant not guilty of felony murder and  
13 not guilty of armed robbery. So the first  
14 element of armed robbery is being armed with a  
15 dangerous weapon. It is alleged here that that  
16 was a handgun.

17 The second element the Commonwealth  
18 must prove on the crime of armed robbery is that  
19 a defendant either applied actual force and  
20 violence to the body of Iman Yazbek or used  
21 threatening words and gestures to put him in  
22 fear, and the actual force and violence or  
23 assault and putting the victim in fear must be  
24 the cause of the defendant obtaining possession

1 of the property of Iman Yazbek.

2 The third element the Commonwealth must  
3 prove beyond a reasonable doubt is that a  
4 defendant took the money or other property of  
5 Iman Yazbek with the intent to steal it. That  
6 means that the Commonwealth has to prove a  
7 defendant took and carried away property against  
8 Iman Yazbek's will and with the intent to deprive  
9 him of those possessions permanently.

10 And fourth, in connection with the  
11 crime of armed robbery, the Commonwealth must  
12 prove beyond a reasonable doubt the defendant  
13 took the money or other property of Mr. Yazbek  
14 from either his person or from his control. The  
15 victim doesn't have to have actual physical  
16 possession of the property at the time. It is  
17 sufficient if it comes within his area of  
18 control, and property is considered in the  
19 control of the victim if it is within his reach,  
20 his inspection, observation or control so he can  
21 readily obtain possession of it if he wants and  
22 if he is not overcome by violence or fear.

23 The property doesn't have to be owned  
24 by Iman Yazbek as long as it was in his

1 possession or control at the time it was taken.  
2 And finally, the value of the property doesn't  
3 matter. The Commonwealth is not required to  
4 prove the property was worth any particular  
5 value. The indictment alleges no particular  
6 value and the Commonwealth has no burden in that  
7 regard.

8 Alright. So the first element of  
9 felony murder is that a defendant committed or  
10 attempted to commit the crime of armed robbery  
11 and I have just explained to you what armed  
12 robbery is. I'm not going to go back over those  
13 elements when I get to that indictment.

14 The second element of felony murder the  
15 Commonwealth must prove is that the killing of  
16 Iman Yazbek occurred during the commission or  
17 attempted commission of armed robbery. So it has  
18 to prove that the killing occurred in connection  
19 with the armed robbery and at substantially the  
20 same time and place. If the Commonwealth has  
21 proved beyond a reasonable doubt that a defendant  
22 committed an armed robbery or attempted to commit  
23 an armed robbery and that Iman Yazbek was killed  
24 in the course of that armed robbery or attempted

1 armed robbery, then that element of felony murder  
2 has been satisfied.

3 Third and finally, the Commonwealth  
4 must prove in felony murder that the felony was  
5 inherently dangerous and, as a matter of law, I'm  
6 instructing you that the crime of armed robbery  
7 is inherently dangerous to human life.

8 If, after considering all the evidence,  
9 you find that the Commonwealth has proved beyond  
10 a reasonable doubt each and every one of the  
11 elements, that is, a defendant committed or  
12 attempted to commit an armed robbery, that Iman  
13 Yazbek was killed during the course of that  
14 robbery, armed robbery, and that the armed  
15 robbery was inherently dangerous to human life,  
16 then you should find a defendant guilty of the  
17 crime of felony murder, a theory of murder in the  
18 first degree. If, however, after you have  
19 considered all the evidence, you determine that  
20 the Commonwealth has failed to prove one or more  
21 of the elements of the crime of felony murder and  
22 that would include, of course, the four elements  
23 of armed robbery, then you must find that  
24 defendant not guilty.



1           If, after your consideration of all the  
2 evidence, you determine that the Commonwealth has  
3 not proved the elements necessary to find a  
4 defendant guilty of murder in the first degree  
5 under any theory, deliberate premeditation,  
6 extreme atrocity or cruelty, or felony murder,  
7 then you must go on to decide whether the  
8 Commonwealth has proven a defendant guilty under  
9 murder in the second degree because it is up to  
10 you as the jury to decide the degree of murder.

11           In order for the Commonwealth to prove  
12 a defendant guilty of murder in the second  
13 degree, it must prove two elements beyond a  
14 reasonable doubt: first, that a defendant  
15 committed an unlawful killing; and, second, that  
16 he did so with malice. The first definition of  
17 unlawful killing, I'll have you harken back to  
18 the definition I gave you initially in connection  
19 with my instruction on deliberate premeditation.  
20 I'll not repeat it here.

21           Now, malice as it is defined in  
22 connection with second degree murder may be  
23 proved in any one of two ways. Malice in this  
24 context includes either an intent to cause death

1 or an intent to cause grievous bodily harm. So  
2 with respect to second degree murder, the  
3 Commonwealth must prove that a defendant actually  
4 intended to cause Iman Yazbek's death or intended  
5 to cause Iman Yazbek grievous bodily harm. So  
6 if, after you have carefully evaluated the  
7 evidence, you determine the Commonwealth has  
8 proved beyond a reasonable doubt that a defendant  
9 committed an unlawful killing and that he did so  
10 either with an intent to cause Mr. Yazbek's death  
11 or intended to cause him grievous bodily harm,  
12 then you should find the defendant, that  
13 defendant guilty of murder in the second degree.  
14 If, however, after you've considered all the  
15 evidence, you determine the Commonwealth has  
16 failed to prove one or both of those elements  
17 beyond a reasonable doubt, then you must not  
18 convict the defendant of murder in the second  
19 degree.

20 If the evidence convinces you beyond a  
21 reasonable doubt that a defendant is guilty of  
22 murder, you have a duty to find a defendant  
23 guilty of the murder to the highest degree that  
24 the Commonwealth has proven beyond a reasonable

1           doubt. If the Commonwealth does not prove that a  
2           defendant is guilty of murder in the first or  
3           second degree, you must find that defendant not  
4           guilty.

5                   Keep in mind that the Commonwealth is  
6           not required to prove motive. It may offer  
7           evidence of motive and, if it has, it is offered  
8           only to the extent to help you to understand why  
9           a defendant or defendants may have acted as the  
10          Commonwealth alleges he or they did, but you are  
11          not required to accept any motive evidence  
12          advanced by the Commonwealth as to why a  
13          defendant acted in a certain way, but keep in  
14          mind there is no burden on the Commonwealth to  
15          prove motive with respect to either first or  
16          second degree murder.

17                   And finally, in conjunction with your  
18          consideration of the murder indictments, and this  
19          applies to all three theories of first degree  
20          murder as well as your consideration of second  
21          degree murder, whenever a defendant's knowledge  
22          or intent must be proved, the defendant's  
23          culpability rests upon proof of such knowledge or  
24          intent, the Commonwealth must prove that beyond a

1 reasonable doubt. Whenever the Commonwealth must  
2 prove a defendant intended to do something, you  
3 should consider any credible evidence of the  
4 effect of a defendant's consumption of alcohol or  
5 drugs in determining whether the Commonwealth has  
6 met its burden.

7 Likewise, whenever the Commonwealth is  
8 required to prove a defendant's knowledge of any  
9 facts or circumstances, you should consider any  
10 credible evidence of the effect on a defendant of  
11 his consumption of alcohol or drugs in  
12 determining whether the Commonwealth has met its  
13 burden of proof. More particularly, you should  
14 consider any credible evidence of a defendant's  
15 consumption of drugs and alcohol in determining  
16 whether a defendant deliberately premeditated the  
17 killing of Iman Yazbek; that is, whether the  
18 defendant thought before he acted and whether a  
19 defendant reached the decision to kill after  
20 reflection for a short period of time. You  
21 should also consider that evidence, the evidence  
22 as to whether or not a defendant intended to kill  
23 or to cause grievous bodily harm to Iman Yazbek,  
24 whether a defendant acted in a cruel or atrocious

1 manner in causing the death of Iman Yazbek, and  
2 finally, whether the defendant intended to commit  
3 the armed robbery which is a predicate for the  
4 felony murder charge.

5 I reiterate that whenever the  
6 Commonwealth has to prove under any theory of  
7 first degree murder or second degree murder that  
8 a defendant intended to do something or had  
9 knowledge of certain facts or circumstances, you  
10 must consider any credible evidence of  
11 intoxication in determining whether the  
12 Commonwealth has met its burden of proving a  
13 defendant's intent or his knowledge.

14 Ladies and gentlemen, you have been  
15 very patient. I'm coming to the end but we will  
16 have a little more so I appreciate your continued  
17 attention. Perhaps this would be a good time  
18 maybe to stand and stretch, just take a little  
19 break in listening to me. Thank you.

20 Alright. Let's move on to the final  
21 indictment here which is unlawful possession of a  
22 firearm. Each defendant is charged with the  
23 commission of this crime and each indictment  
24 alleges, and I'm paraphrasing the indictment -

1 again you will have it with you in the jury room  
2 - that Jason Robinson and Tanzerius Anderson on  
3 March 28, 2000, did unlawfully and knowingly have  
4 in his possession a firearm; that is, a weapon  
5 from which a bullet could be discharged, the  
6 length of the barrel being less than sixteen  
7 inches, and the said Jason Robinson and Tanzerius  
8 Anderson not being present in his residence or  
9 place of business and not having in effect a  
10 license to carry a firearm under state law. The  
11 complete language of the indictment will be with  
12 you in the jury room, but basically this makes  
13 out a charge for unlawful possession of a  
14 firearm.

15 So what is it the Commonwealth has to  
16 do to prove its case against the defendant on  
17 this criminal charge? The Commonwealth must  
18 prove three elements, all beyond a reasonable  
19 doubt: first, that the defendant possessed an  
20 item; two, that the item meets the legal  
21 definition of a firearm; three, that a defendant  
22 knew he possessed a firearm.

23 The first element requires proof the  
24 defendant possessed an item and what does that

1 word mean, possessed? It essentially implies  
2 control and power over an item. A person who  
3 knowingly has direct control of the item at any  
4 given time is in possession of that item. Now,  
5 possession does not depend on any particular  
6 length of time that one has the item in his  
7 control. Momentary contact with an item may  
8 constitute possession if at any time of the  
9 contact the person has the control or the power  
10 to do with that item as he wills. Possession  
11 does not have to be exclusive. It can be joint  
12 and it may be proved by circumstantial evidence.  
13 So that's what we mean by possession.

14 The second element requires proof  
15 beyond a reasonable doubt that the item meets the  
16 legal definition of a firearm. What does that  
17 mean? A firearm is defined as a pistol,  
18 revolver, or other weapon, loaded or unloaded,  
19 from which a bullet or shot can be discharged and  
20 the length of the barrel being less than sixteen  
21 inches. So in defining a firearm, it first has  
22 to be a weapon, secondly, it has to be capable of  
23 discharging a shot or bullet, and third, the  
24 barrel length has to be less than sixteen inches.

1           What do we mean by the barrel length? The barrel  
2           length refers to that portion of the firearm  
3           through which the shot or bullet is driven,  
4           guided or stabilized. It also includes the  
5           chamber of the firearm. The Commonwealth must  
6           prove finally that a defendant knew he possessed  
7           the item and that that was a firearm. The  
8           Commonwealth doesn't have to prove a defendant  
9           knew that the item met the legal definition of a  
10          firearm, but must show that he possessed it.

11                         Third, and finally, the Commonwealth  
12          must prove beyond a reasonable doubt that the  
13          defendant knew that he possessed a firearm, that  
14          he possessed it voluntarily, consciously, and  
15          purposefully. There is no evidence in the case  
16          that the defendant had a license and for that  
17          reason the issue of a license is not relevant to  
18          your determinations in the case. It therefore  
19          should not be considered by you.

20                         So with respect to the indictment  
21          charging each of these defendants with unlawful  
22          possession of a firearm, you should consider all  
23          of the evidence as it applies and relates to a  
24          particular defendant and determine whether the



1 Commonwealth has proven, one, that a defendant  
2 possessed an item, two, that it met the legal  
3 definition of a firearm, and three, that the  
4 defendant knew that he possessed it, that is,  
5 that he possessed that firearm consciously,  
6 voluntarily, and purposefully.

7 And if you decide all these three  
8 elements have been satisfied beyond a reasonable  
9 doubt, you should find the defendant guilty of  
10 that indictment. However, if you determine one  
11 or more of those elements has not been satisfied,  
12 you should find that defendant not guilty of that  
13 crime.

14 Now, the next instruction I'm going to  
15 give you applies to all three crimes, murder,  
16 armed robbery, and unlawful possession of a  
17 firearm, and the instruction relates to the  
18 Commonwealth's contention that these crimes were  
19 committed by the defendants under a theory of  
20 joint venture.

21 In order to convict a defendant of a  
22 joint venture, the Commonwealth has to prove  
23 three elements to you: first, that a defendant  
24 was present at the scene of the crime; second,

1 that a defendant had knowledge that another  
2 intended to commit the crime and shared that  
3 mental intent himself; and, third, that a  
4 defendant by agreement was willing and available  
5 to help the other in carrying out the crime if  
6 need be.

7 Let me back up and flesh out each one  
8 of these elements in more detail. I think the  
9 first one is self-evident, that a defendant has  
10 to be present at the scene of a crime, although  
11 that, in and of itself, is not sufficient to  
12 convict someone under a theory of joint venture.

13 Second, the Commonwealth must persuade  
14 you beyond a reasonable doubt that a defendant  
15 had knowledge that another intended to commit the  
16 crime. Now, this requirement is satisfied if the  
17 Commonwealth proves that a defendant knew there  
18 was a substantial likelihood that another would  
19 commit the crime. The Commonwealth must also  
20 prove beyond a reasonable doubt that a defendant  
21 shared the mental state or intent of a person  
22 perpetrating the crime. In this case, the  
23 defendants, each of them, are charged with first  
24 degree murder, armed robbery, and unlawful

1 possession of a firearm and to convict a  
2 defendant under a theory of joint venture, you  
3 have to be persuaded beyond a reasonable doubt  
4 that the defendant shared the intent relevant to  
5 the commission of that particular crime.

6 You are permitted but are not required  
7 to infer the necessary mental state from the  
8 defendant's knowledge of the circumstances and  
9 subsequent participation in the offense. You may  
10 draw all reasonable inferences which you feel are  
11 proven. In doing so, you may rely upon your  
12 experience and common sense in determining a  
13 defendant's intent. So you need to go back to  
14 the intent as I explained it to you for each of  
15 the three crimes, the intent required for the  
16 underlying crime of murder - I defined it with  
17 respect to each of the three theories of first  
18 and second - and also the intent necessary for  
19 armed robbery.

20 With respect to the third and final  
21 element necessary to convict a defendant under a  
22 theory of joint venture, the Commonwealth has to  
23 show beyond a reasonable doubt that a defendant  
24 agreed to participate in the crime. However,

1 agreement alone is insufficient. To establish  
2 joint venture liability, the Commonwealth must  
3 also show beyond a reasonable doubt that a  
4 defendant actually did participate in some  
5 meaningful way in the commission of the crime  
6 either by counseling, hiring, agreeing to stand  
7 by at or near the scene to render aid,  
8 assistance, or encouragement if that becomes  
9 necessary or to assist the perpetrator of the  
10 crime in making an escape from the scene.

11 The Commonwealth is not required to  
12 show that a defendant physically participated in  
13 the actual shooting or the armed robbery but it  
14 must show that a defendant somehow participated  
15 in the venture to the extent that he sought to  
16 make it succeed. If a defendant was, by  
17 agreement, in a position to render aid or  
18 assistance, and otherwise shared the intent of  
19 the principal, he was an abettor even if he did  
20 not participate in the actual perpetration of the  
21 crime because his presence may have encouraged  
22 the principal by giving him hope of immediate  
23 assistance.

24 Mere knowledge that a crime is about to

1 occur or to be committed is not sufficient to  
2 convict on the theory of joint venture. The  
3 evidence must also show something more than mere  
4 association with the perpetrator of the crime  
5 either before or after its commission. The  
6 evidence must show more than failure to take  
7 steps to prevent the crime. It must show more  
8 than mere presence at the scene, even when  
9 coupled with knowledge of the planned act. Mere  
10 acquiescence, passive acquiescence, is not  
11 sufficient to warrant a conviction. There must  
12 be evidence of some actual active participation  
13 in the crime.

14 The burden is on the Commonwealth to  
15 prove all three essential elements beyond a  
16 reasonable doubt before you may find the  
17 defendant guilty under a theory of joint venture  
18 and if the Commonwealth fails to prove all three  
19 elements then you may not convict a defendant  
20 under that theory.

21 Now, you've heard some testimony and  
22 evidence suggesting that a defendant was not  
23 present at the place and time when the offense or  
24 the crimes charged in the indictments were

1           alleged to have occurred. That kind of testimony  
2           is commonly referred to as alibi evidence. Don't  
3           give that word any sinister meaning. It is only  
4           a term that we use to explain a very important  
5           issue in this case: did a defendant commit the  
6           crime as charged or was he elsewhere at the time  
7           that the crime was committed?

8                         In considering this matter, please  
9           remember that the Commonwealth has the burden of  
10          proving beyond a reasonable doubt that a  
11          defendant committed the offense or offenses  
12          charged and that includes proving that a  
13          defendant was present at the scene and not  
14          somewhere else. A defendant has no duty to call  
15          witnesses or produce evidence on this or any  
16          other element of the crime. The fact that there  
17          was some evidence adduced by the defendant in no  
18          way shifts the burden to him. So please give  
19          this matter your careful consideration since in  
20          some cases an alibi may be the only refuge of an  
21          innocent person.

22                         After you consider all the evidence, if  
23          you find that the Commonwealth has proven beyond  
24          a reasonable doubt that a defendant was present

1 and committed the crime as charged, you should  
2 find a defendant guilty. On the other hand, if  
3 you have a reasonable doubt as to whether a  
4 defendant was present at the time and place that  
5 these crimes allegedly occurred, then you must  
6 find that defendant not guilty.

7 Alright, ladies and gentlemen, I have  
8 essentially come to the end, I'm sure you'll be  
9 relieved to hear, of the substance of the charge,  
10 but we need to do something very, very important  
11 yet and that is to go over the verdict slips and  
12 how they should be filled out. You will have in  
13 the jury room with you the six indictments. As I  
14 said, each relates to each defendant, each  
15 charged with murder, armed robbery, unlawful  
16 possession of a firearm. Each indictment is  
17 attached to a verdict slip which gives you  
18 various options with respect to your verdict.

19 Now, when I've completed my  
20 instructions the clerk is going to place the  
21 cards of all of the jurors in the barrel that he  
22 has there on his desk except that of the  
23 foreperson, and he will then withdraw two cards  
24 and the jurors whose names appear on those cards

1 will be designated as alternates. The reason we  
2 are required to do this is because under our law  
3 only twelve jurors can constitute the  
4 deliberating jury in a criminal case. We have  
5 impaneled more to make sure that we had twelve at  
6 the time that the verdicts were rendered and that  
7 we don't have to mistry a case. This is done  
8 entirely at random, let me assure you, and is  
9 done in the manner I have just described.

10 When that is done and the jury is  
11 reduced to twelve, the twelve members will  
12 constitute the deliberating jury. For every  
13 verdict you render on every indictment you must  
14 have unanimous agreement among all twelve jurors  
15 as to whether the Commonwealth has satisfied its  
16 burden of proving a defendant's guilt or not.

17 Now, with respect to these verdict  
18 slips, let's start with the murder indictments.  
19 The indictments will be exactly the same for  
20 Tanzerius Anderson as they will be for Jason  
21 Robinson. The options that you have on the  
22 verdict slip for murder are as follows. You must  
23 first determine whether the Commonwealth has  
24 proven a defendant's guilt beyond a reasonable



1           doubt on one, two, three or no theory of first  
2           degree murder; that is, you should, I would  
3           suggest to you, carefully evaluate the evidence  
4           as it relates to each of these theories. You may  
5           decide that the Commonwealth has proven a  
6           defendant guilty of murder in the first degree  
7           under a theory of deliberate premeditation and a  
8           theory of extreme atrocity or cruelty and felony  
9           murder or you may determine the Commonwealth has  
10          proven the guilt of a defendant under only one of  
11          those theories or two of those theories, or you  
12          may determine the Commonwealth has failed to  
13          satisfy its burden on any one of those theories  
14          so you find a defendant not guilty, but before  
15          you do that, you must, if you find that the  
16          Commonwealth has failed to prove a defendant  
17          guilty of murder in the first degree under any  
18          theory, you must go on to determine whether the  
19          Commonwealth has proven the guilt of a defendant  
20          under second degree murder.

21                        So the three main options will be  
22                        guilty of murder in the first degree under one,  
23                        two or three of the theories of first degree  
24                        murder, or guilty of murder in the second degree,

1 or not guilty. That agreement has to be  
2 unanimous.

3 Now, you are further required, however,  
4 if you find the defendant guilty of any theory of  
5 first degree murder or second degree murder, you  
6 must determine whether the Commonwealth has  
7 proven the guilt of that defendant either as a  
8 principal in the crime or as a joint venturer or  
9 as both. So you must tell us, with respect to  
10 any theory of first degree murder that you find  
11 the defendant guilty of as well as second degree  
12 murder, whether you are finding that defendant  
13 guilty based on his participation in the crime as  
14 a principal or as a joint venturer, or you may  
15 decide both, but you must indicate the level of  
16 participation of each defendant under each theory  
17 of first degree murder if you determine the  
18 Commonwealth has proven guilt under that theory,  
19 and the same applies for murder in the second  
20 degree.

21 So let me just summarize that again.  
22 You will choose one of three main options, either  
23 guilty of murder in the first degree or guilty of  
24 murder in the second degree or not guilty. If

1 you find a defendant guilty of murder in the  
2 first degree, you must also tell us whether it is  
3 guilty under a theory of deliberate premeditation  
4 and/or extreme atrocity or cruelty and/or felony  
5 murder, and for each of those, you must also tell  
6 us whether you have determined the participation  
7 of the defendant as a principal or as a joint  
8 venturer or as both, and all of those decisions  
9 must be reached unanimously, all twelve jurors  
10 must agree.

11 The verdict slips, as I said, are  
12 identical for each defendant on that crime. The  
13 job of the foreperson, one of two main jobs you  
14 have, is to complete the verdict slip after  
15 agreement has been reached by twelve jurors by  
16 placing a check or X next to the line that is  
17 appropriate and agreed upon. Don't write in any  
18 numbers, no symbols, just a check or an X, and  
19 then you sign it and date it and let the court  
20 officer know that you have completed your work.

21 With respect to the verdict slip for  
22 armed robbery, again the verdict slips are  
23 identical. You have two choices on armed  
24 robbery. You either determine the Commonwealth

1 has proven the guilt of a defendant of the crime  
2 of armed robbery or you find him not guilty.  
3 Again, all twelve jurors must agree. If you find  
4 a defendant guilty of armed robbery, again you  
5 must tell us what the level of participation in  
6 the crime you determine the Commonwealth has  
7 proven that defendant has had. Has he acted as a  
8 principal, as a joint venturer or as both a  
9 principal and a joint venturer? So you need to  
10 check at least one of those two lines when  
11 agreement has been reached, signed by the  
12 foreperson, and dated again.

13 Third and finally, the indictment  
14 alleging unlawful possession of a firearm, the  
15 main options, again guilty or not guilty, and, if  
16 guilty, you must tell us whether you're finding  
17 that defendant guilty of involvement in that  
18 crime as a principal or as a joint venturer or as  
19 both.

20 Now, I have a few more things to say  
21 about what you should be doing in the jury room  
22 but let me first consult with counsel to see if I  
23 have overlooked or misstated anything.

24 (Whereupon, the following discussion

1 occurred at side bar:)

2 MR. TOCHKA: The Commonwealth is  
3 satisfied, Your Honor.

4 THE COURT: Mr. Flaherty?

5 MR. FLAHERTY: Quickly, Your Honor, the  
6 first is to indictments that don't go to the  
7 jury. I would object that they cannot speculate  
8 and also cannot speculate about witnesses and ask  
9 the Court to instruct the jury that there was a  
10 required finding of not guilty as to those  
11 indictments. Just the Court telling them there  
12 is a legal reason excludes evidence.

13 Secondly, the final instructions, I  
14 just noted that -- I may be wrong. I didn't hear  
15 beyond a reasonable doubt mentioned on the first  
16 instruction, when you're talking about  
17 identification.

18 On the Bowden instruction, the Court  
19 used the language that tests were not performed.  
20 I would object and suggest the language should  
21 have been evidence of a failure on the part of  
22 the Commonwealth.

23 As to the Webster charge, I think the  
24 Court used the language, the defendant's enjoy

1 the presumption of innocence, and I object to the  
2 use of that word, enjoy as opposed to that they  
3 are entitled to the presumption.

4 On the murder indictments, on a couple  
5 of occasions when the Court -- on each of the  
6 occasions when the Court described intent, I  
7 would object to just intent and ask the Court to  
8 include the language, specific intent.

9 And then the instruction on felony  
10 murder where the Court, as its charge reads,  
11 instructed as a matter of law that armed robbery  
12 is an inherently dangerous felony, I would just  
13 object to that language.

14 THE COURT: That is in this case.

15 MR. FLAHERTY: I just object for the  
16 record, Judge, and what I'm saying is that that  
17 is, in my opinion, that's tantamount to a court  
18 taking judicial notice of an element of a crime  
19 against the defendant and I would object on that  
20 basis.

21 The instruction that the Commonwealth  
22 has no burden to prove motive, that's the only  
23 place in the charge where the Court instructs  
24 what the Commonwealth does not have to prove. I

1 would object to that instruction.

2 As to the last unanimity instruction,  
3 the court went over a bunch of different options  
4 for the jury and I would just ask the Court to  
5 let the jury know that as to each of the options,  
6 the main options, the primary options, the Court  
7 described it if they so choose. Everything has  
8 to be beyond a reasonable doubt or not guilty.

9 THE COURT: Okay. Thank you. Mr.  
10 Doolin?

11 MR. DOOLIN: I just join with Mr.  
12 Flaherty.

13 THE COURT: Okay. Thanks.

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

16 THE COURT: Ladies and gentlemen, let  
17 me just say a word or two about what's going to  
18 happen in the jury room or what should happen.  
19 The other primary job of the foreperson is to act  
20 as the moderator of the discussions, make sure  
21 that everyone has a chance to be heard and  
22 express a view about the case which is very  
23 important, that you all participate in the  
24 rendering of the verdicts and in the discussion.

1 You all heard exactly the same evidence. No  
2 juror is any more qualified or less qualified  
3 than the next to render the verdicts. So it is  
4 important that you not only speak up and express  
5 a view but also that you listen courteously to  
6 what others have to say about the case in a  
7 considered fashion.

8 I would suggest that you not start by  
9 taking any poll, any head count of where you  
10 stand. It is important that all the evidence get  
11 discussed and so I would suggest that you not do  
12 that and begin your discussions on the case,  
13 keeping in mind that you must assess the evidence  
14 as it relates to each individual defendant.

15 If you have taken notes throughout the  
16 case you may use them to assist you in the jury  
17 room to recall the evidence, closing arguments,  
18 or my charge but the good news of my charge is  
19 that you will have it in writing. This is not  
20 verbatim because we don't have that kind of  
21 technology. Everybody else has it but we don't  
22 have it here in this courthouse. What I have  
23 attempted to do in preparing the charge is to  
24 give you the substance of the law. I may not



1 have spoken exactly what I have on these papers,  
2 and I'm sure I did not, but at least it will be  
3 some guidance to you if you want to go back and  
4 refer to it, and I have a table of contents here  
5 for you so that it will help you go to the page  
6 or pages about which you might want to refresh  
7 your recollection or refer back to the charge,  
8 but please understand that it is what I've said  
9 which is the official charge and if at any time  
10 there was a variance between what you find I have  
11 here in writing and what I have said, it is what  
12 I have said that controls.

13 I can't assist you at all with respect  
14 to the evidence and if, at any time in the course  
15 of your work you say who said what or was that  
16 present or what should we make of it, those are  
17 your decisions and yours alone to make. I can  
18 assist you only in understanding the law and if,  
19 notwithstanding the written materials I'm going  
20 to give you, if you do have a question about the  
21 law at any time, another function of the  
22 foreperson is to write the question out and to  
23 sign it, give it to one of the officers, and we  
24 must have you back out to the courtroom so that I

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can explain the law to you.

There is no deadline at all with respect to deciding the case. I had told you that because of the holiday tomorrow that we would not be in session. That will be the case. By the time you get released in another five minutes, it will be about quarter of three. I want to give you a little time today at any rate to get started on your work and then we are going to return you to the courthouse Monday to continue your work but there is no set time or schedule for you to render your verdicts. It is important that you take whatever time that you deem you need to thoroughly discuss the case and reach your verdicts.

With respect to the indictments, as I indicated, they will be with you in the jury room. The verdict slips for each one of the indictments, you must determine whether the Commonwealth has satisfied its burden beyond a reasonable doubt and also make sure that you've completely filled out, if you find a defendant guilty, under what theory, and what the involvement of that defendant was by way of being

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1 a principal and/or a joint venturer.

2 I think at this time we will have the  
3 clerk place the cards of all the jurors except  
4 that of the foreperson in that barrel and he is  
5 going to withdraw at random two cards.

6 THE CLERK: Your Honor, fourteen jurors  
7 being present, I will now place the names of the  
8 jurors excluding that of the foreperson into the  
9 barrel and withdraw the names of two jurors who  
10 shall be designated as alternate jurors.

11 The juror in seat number four, juror 2-  
12 14, Heather Lyle-Webster, and the juror in seat  
13 number eleven, juror 11-12, Deborah Berman, if  
14 those two jurors could step down, you are  
15 designated as alternate jurors.

16 THE COURT: Ladies and gentlemen, let  
17 me explain the role of alternates. If, for any  
18 reason, a juror who is now on the deliberating  
19 jury gets ill or has to be excused for some other  
20 reason, then one of the alternates will be called  
21 to take the place of that juror and the  
22 deliberating jury will be reconstituted.

23 (Whereupon, the court officers were  
24 sworn at 2:45 o'clock p.m.)

1 THE COURT: Let me just say one final  
2 thing about the schedule to the foreperson. It  
3 will be my intention to keep you until about four  
4 thirty or so unless for some reason someone wants  
5 to observe the holiday or whatever. Okay. Well,  
6 if the foreperson could just put that in writing  
7 to me, I'd appreciate it when you get to the jury  
8 room. Thank you.

9 (Whereupon, the jury was escorted from  
10 the courtroom at 2:45 o'clock p.m.)

11 THE COURT: Could we have agreement on  
12 the exhibits, please?

13 THE CLERK: Your Honor, I think the  
14 parties still have to, on the plea agreement,  
15 agree on the redaction.

16 THE COURT: They don't have to agree on  
17 anything. I've ruled. The time for agreement  
18 has passed. The time for action is now.

19 (Exhibit No. 54, being a document, was  
20 marked and admitted into evidence.)

21 THE COURT: Okay.

22 THE CLERK: That's been marked Exhibit  
23 54, Your Honor.

24 THE COURT: Is there agreement on the

1 other exhibits? Have you all reviewed them to  
2 make sure that they are in order and proper?

3 THE CLERK: The only other question was  
4 51 as far as the redaction on that. I don't know  
5 if Mr. Tochka had a chance --

6 THE COURT: Okay. Anything else? I'm  
7 going to allow the transcript to go in.

8 MR. TOCHKA: The only other thing Your  
9 Honor, is, I looked at the Registry of Motor  
10 Vehicles certificate. It does have on that the  
11 defendant has an OUI and I assume Mr. Flaherty  
12 does not want that to go to the jurors.

13 THE COURT: Are we set with the  
14 exhibits?

15 THE CLERK: I think they should go  
16 through them one by one.

17 THE COURT: Why don't you do that.

18 MR. TOCHKA: The Commonwealth is  
19 content with the exhibits and the verdict slips.

20 MR. FLAHERTY: The defendant Anderson  
21 is content.

22 MR. DOOLIN: The defendant Robinson is  
23 content as well. Thank you.

24 (Whereupon, the proceedings were

1 recessed at 2:58 o'clock p.m., and reconvened at  
2 4:10 o'clock p.m.)

3 THE COURT: Ladies and gentlemen, as we  
4 have promised, some of you have commitments with  
5 respect to the holidays and we are going to let  
6 you go now and ask that you return on Monday at  
7 nine thirty to continue your work. It's very,  
8 very important now that you've begun your  
9 deliberations that you continue to comply with  
10 the instructions I've given you about the case.  
11 These instructions also apply to the alternates  
12 who are essential to assuring that we have twelve  
13 jurors when we render the verdict, that you not  
14 discuss the case, allow anyone to talk to you  
15 about it, that you not consult any outside source  
16 of whatever kind, whether it's book, treatise,  
17 internet, or whatever, and that you not revisit  
18 any of the scenes that we saw on the view.

19 You have now had an opportunity to hear  
20 what others think about the case and perhaps  
21 expressed your own view, and it is only through a  
22 candid exchange in the jury room that you can get  
23 to a verdict, and everyone has to feel  
24 comfortable that the views shared by fellow

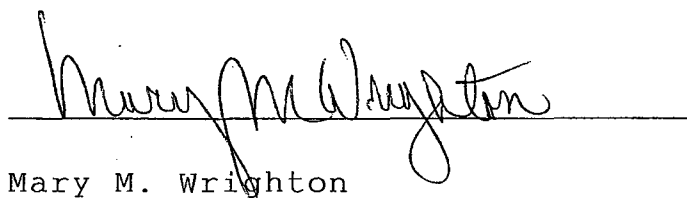
1 jurors in the jury room are going to be kept  
2 there and that the considerations you're giving  
3 to the verdict are based only on the witnesses  
4 testimony and the exhibits.

5 I want to thank you very much for the  
6 work that you have done thus far. I want to wish  
7 all of you a good holiday and we'll see you  
8 Monday at nine thirty.

9 (Whereupon, the proceedings were  
10 adjourned at 4:12 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  
192, 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