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IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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COMMONWEALTH	:	1357-1359
	:	
VS.	:	
	:	
MUMIA ABU-JAMAL	:	1982
	:	
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Room 613 City Hall  
Philadelphia, Pa.

December 21, 1981

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Before: THE HONORABLE PAUL RIBNER, J.

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
For the Commonwealth
- ANTHONY JACKSON, ESQUIRE  
For the Defendant

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MR. JACKSON: Good morning, Your Honor. This is the Wesley Cook case.

Mr. Cook, Your Honor, was shot and injured on December 9th, at or about the time of his arrest. He is now in the Giuffre Medical Center.

THE COURT: We have not had the arraignment, have we, in front of me?

MR. JACKSON: Oh, no, sir. We have not had a Municipal Court hearing; in fact, it's been continued until January 14th.

I would like to have my client photographed, Your Honor. A number of injuries that he sustained are not necessarily relevant to the gunshot wound. I spoke to Mr. Murray --

THE COURT: Other injuries, injuries not related to the gunshot wound?

MR. JACKSON: Yes, Your Honor, some other injuries unrelated to the gunshot wound. I mean, there's a gunshot wound and

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there are some --

THE COURT: Let's assume he was severely beaten and acting in self-defense.

MR. JACKSON: Your Honor, there are injuries to his head, back, to his stomach, to his legs. The gunshot wound was in the chest. And we want to take photographs of those injuries, the injuries other than the gunshot wound.

THE COURT: Are they abrasions or contusions?

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MR. JACKSON: Some of them have required stitches, Your Honor.

THE COURT: Lacerations?

MR. JACKSON: Yes, sir, across the head. I think there were about eight stitches required to close a wound in the head, one of the wounds in the head. And there are some other injuries around and about his body. And the Commonwealth indicates they have no objection to --

MR. MCGILL: That's true, Your Honor, the Commonwealth has no objection.

THE COURT: These are injuries allegedly sustained after the shooting, or before?

MR. JACKSON: Certainly not before, Your Honor.

THE COURT: Then they would be totally irrelevant to the shooting incident.

MR. JACKSON: They may have happened at the same time.

THE COURT: They may be relevant in some other proceeding, but if they happened after the bullets were exchanged they

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would be totally irrelevant to --

MR. JACKSON: Well, I am simply saying that they didn't happen before the shooting. Whether they happened simultaneously, contemporaneously, I don't know. I'm not in a position to say at this point, Your Honor, when they occurred. But because of that, sir, and because they do exist, I would want to preserve, by photograph, those injuries, because I just don't know -  
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THE COURT: All right. Who is going to take the photographs?

MR. JACKSON: Your Honor, his name is in the record here.

THE COURT: Pardon me?

MR. JACKSON: His name is in the record.

THE COURT: All right.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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	:	
COMMONWEALTH	:	1357-1359
	:	
VS.	:	
	:	
MUMIA ABU-JAMAL	:	1982
	:	
	:	

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Room 613 City Hall  
Philadelphia, Pa.

February 22, 1982

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Before: THE HONORABLE PAUL RIBNER, J.

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
For the Commonwealth
- ANTHONY JACKSON, ESQUIRE  
For the Defendant

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COURT CRIER: Commonwealth versus Jamal, Your Honor.

MR. JACKSON: Your Honor, the first matter before this Court is, I believe, another omnibus motion. I would like to file this with the Court. I have given a copy to Mr. McGill, counsel for the Commonwealth.

THE COURT: All right. This is a motion?

MR. JACKSON: Yes, sir.

THE COURT: This is your suppression motion?

MR. JACKSON: Suppression and discovery, that's right.

THE COURT: And discovery?

MR. JACKSON: Yes. There are several outstanding motions that have already been filed with the Court. One is dealing with regard to the lineup. Your Honor will recall, from the original lineup petition, that you denied the lineup request as to two, and then there were other witnesses, eyewitnesses.

Now, one of the matters that I believe is here for today is a motion to strike Cynthia White's testimony, who was one of the parties Your Honor denied the lineup request for. I don't know the name of whoever the second civilian was. So that is still an outstanding matter.

And the other matter is, Your Honor -- and I have spoken to Mr. McGill -- in previous motions and hearings, there

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was a return of property hearing. There were some matters that were to be copied and turned over to us. Mr. McGill assures me now that he will turn over the copies of those items. He returned the things that he said he would return, but the copies of those documents have not been received as yet. Mr. McGill assures me now that they will be.

THE COURT: All right. Your motion to suppress, of course, will be held at the time of trial.

MR. JACKSON: Yes, sir.

THE COURT: Now, do you want any argument on the motion to suppress the testimony?. Is that really proper now, or is it a matter for the trial judge?

MR. JACKSON: I don't see any necessity for arguing that motion now, Your Honor.

THE COURT: That really should either be part of your suppression

motion or a motion to bar her testimony before the trial judge.

MR. JACKSON: Well, on that issue, Your Honor, we have several problems. One is a very practical problem: at each instance that we have a hearing I have to be certain that Mr. Jamal is shielded from the Press, from the taking of photographs. And that is a matter that has been plaguing me - - and, of course, my client as well. He has to come through the corridors with a coat over his head. And I would like to dispose of this matter as quickly as possible so that we can eliminate that kind of -- it's a very circus-type atmosphere, and I just don't think it's necessary. And if Your Honor could

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just hear that motion, the motion with regard to Cynthia White, as well as the lineup motion, then probably from that point on we wouldn't have to go through this fighting with the Press.

THE COURT: You want me to hear the motion to strike her testimony?

MR. JACKSON: Yes.

THE COURT: Is that really appropriate at this time, or is it premature?

MR. JACKSON: I think it's appropriate, Your Honor, because it would obviously give me some idea of who it is who is going to testify at the trial. And, also, it would seem to me that the motion to suppress, while it goes to some other issue, may include this issue as well.

THE COURT: In other words, you are saying you have other reasons than a Constitutional question regarding her testimony?

MR. JACKSON: Yes, sir. Your Honor, if in fact her testimony, based on what representations were made at the lineup request hearing -- if that is in fact stricken, then there is some question as to whether or not the Commonwealth has enough at the preliminary hearing to even hold Mr. Jamal at this time.

If her testimony is stricken, it's a very serious question: Well, what else is there that holds Mr. Jamal?

THE COURT: Mr. McGill?

MR. MCGILL: Well, Your Honor, even if Your Honor would strike the testimony of Miss White, which I would maintain

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there is really no basis for, there would be sufficient to hold Mr. Jamal, sir, from the testimony of Inspector Giordano himself, if you include both the stipulation as well as the testimony of Inspector Giordano that he had shot the policeman.

THE COURT: Are we getting into the merits of the motion to strike the testimony now?

MR. MCGILL: I'm just trying to respond to his point. I don't wish to get into it, Your Honor. I think perhaps this is not the appropriate forum for a motion to strike that testimony.

THE COURT: What's your basis for moving to strike her testimony at this time?

MR. JACKSON: Your Honor --

THE COURT: Normally, if you raise a Constitutional question, that, together with the suppression hearing -- is this the proper forum?

MR. JACKSON: Your Honor, I mentioned that there are other than Constitutional issues involved. Mr. McGill represented to the Court that Cynthia White was there, she was an eyewitness, never lost sight of whoever it was who shot the police officer. Now, I believe that at the bail revocation hearing as well as the preliminary hearing Miss White testified that she saw an individual who had dreadlocks coming across the street and that at the time that she saw someone shoot the police officer -- that that person had a hat on.

So that raises two issues: one is that she lost sight of the person or that there were two people involved.

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And from her testimony, Your Honor, she is never able to reconcile the two. She simply states that she saw one man who she says had the gun run across the street, that he had dreadlocks, and that at the time the officer was shot the man had a hat on, so that she wouldn't have seen any dreadlocks. Again, either the one who started walking across the street ran away or at some time when coming across the street he put a hat on. There is a question in my mind whether she saw what she testified to. And it just goes to the essence of the Commonwealth's representation. And it would seem to me that if in fact we had a lineup, then that issue would have been

resolved at the lineup.

And it would go to any other witness that the Commonwealth might present.

I don't see the burden and inconvenience outweighing the right of Mr. Jamal to a lineup.

THE COURT: Well, actually, just normal inconsistencies in a witness' testimony or inconsistencies between the testimony of different witnesses, such issues really are matters for trial, and, after cross-examination, whatever remedy is appropriate can be applied. Are you urging me to take the position that the testimony is so manifestly incredible that there is no reason to even allow it to stand?

MR. JACKSON: Your Honor, because the damage would be done if she testified, whether we get into the weight of the evidence, and that kind of thing. Because it would seem

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to me that if in fact her testimony is incredible, if in fact an issue with regard to the identification is so substantial -- and I am suggesting to the Court that this is a substantial issue -- particularly since she is being allowed to testify without there having been a lineup -- it would seem to me that the defendant is being prejudiced. She has already seen him in court several times.

MR. MCGILL: If I may briefly respond, I think that the matters that Mr. Jackson points out to Your Honor -- I think they go to factual discrepancies in her testimony. Clearly, Your Honor, a factual matter is for the finder of fact at trial to determine. I think it would be inappropriate at this point for Your Honor -- and I think this is what Your Honor is saying -- to make a finding as to whether or not the testimony is such that it ought to be stricken completely.

THE COURT: I could only do that in a case where it would be obviously clear that the witness wasn't there. If it could be shown that the witness was not there that day, then you might not want to prejudice somebody by even holding them for trial. But this is more in the nature of an inconsistency in her testimony that you are alleging.

MR. JACKSON: Well, Your Honor, it would seem to me -- again, the point is that I am asking, in view of what happened -- I am asking for a lineup, in the first instance. We want a lineup as to all identification witnesses. And the Commonwealth says well, we don't need a lineup,

because our witnesses are going to say this, that and the other. And I

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am saying that the Commonwealth witnesses have not testified to what the Commonwealth has represented to Your Honor, and that for that reason it should be stricken. If they are allowed to come in and say something that isn't developed, then it seems to me that they have to suffer from that defect.

THE COURT: In my original ruling denying the lineup, I think my thought there was that the identification was not the crucial thing to be testified to by her. She saw certain things, the police saw certain things, certain physical evidence was found, and so on. So even if she couldn't identify your client, that still wouldn't have affected the prima facie nature of the case.

MR. JACKSON: I can appreciate that, Your Honor. But she is being used as an identification witness, Your Honor, and there is no testimony that suggests that she was there even when he was arrested, just that she saw something happen. So I understand what you are saying: "Well, she doesn't have to be used as an identification witness." But she is being used as an identification witness.

MR. MCGILL: Your Honor, I think, also, part of Your Honor's ruling was considering the fact that where prior decisions were concerned with a fleeting glance or a quick look at the shooter or the alleged doer in a particular factual situation, and then that individual takes off and is not apprehended until some time later, that there is where a lineup would be necessary. But in making Your Honor's ruling, I

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believe Your Honor had relied pretty heavily on the fact that the defendant was arrested on the scene, was identified by one of the witnesses, a witness other than Miss White, as being on the scene and being in the wagon afterwards.

THE COURT: Basically, that was my ruling.

MR. JACKSON: But there was no testimony to that effect.

THE COURT: The identification question -- I don't think the Commonwealth relied on her picking out an individual. I don't think the identification relied solely on that. She was merely a link in a chain of events. In other words, there was someone on the side, someone found to

have a bullet wound at the time, and --

MR. JACKSON: All right, Your Honor, if you are ruling that in fact she is not going to be used as an identification witness, then, fine, then maybe we have no problem. But she is in fact being used as an eyewitness. You are saying, "Well, he was arrested on the scene," and we go on with that. But she is being used as an identification witness.

THE COURT: You are saying she's going to be asked on the stand, "Can you identify the man you saw that night?"

MR. JACKSON: Your Honor, she has already been asked that on two separate -- she's being used as an eyewitness, and there is no --

THE COURT: An eyewitness to the event. Now, what you are saying is she is being used to pick out the

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individual.

MR. JACKSON: She certainly has done it, Your Honor, at the preliminary hearing and at the hearing before Your Honor: "Yes, he is the one." And, again, it seems to me that there has been no testimony that she was present at the time he was arrested. All we know, at best, is that she saw this individual shoot once towards an officer's back and then over top of him. Well, maybe she didn't see it, but that's the gist of her testimony. Now, we don't know what happened to her at that point. We don't know what happened to her after that. We don't know if she left, went someplace, and after a while they had somebody else arrested. That has not been made a matter of record. So we don't know that she was there at the time of his arrest. The Commonwealth has not met its burden.

MR. MCGILL: I'm not sure that I entirely understand counsel's position, but, if Your Honor pleases, if I may attempt to respond -- again -- and it seems we're going over the same ground -- Your Honor's ruling was based upon all of the facts that Your Honor had heard, sir, what I represented the witness would testify to and also a review of the statement saying that that was substantially consistent with what I represented the witness would say. Also, it appears that there are specific factual discrepancies which, through cross-examination, Mr. Jackson feels he has developed. But they are very specific and very few.

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On the basis of that, Your Honor, I would say that on its face, on the face

of the record, there have not been sufficient substantial discrepancies even alleged so as to make any kind of identification ruling of Your Honor in reference to a lineup in any way in error. He had sufficient time to cross-examine the witness, as he will -- in fact, he had had two times -- as he will at trial.

So the position of the Commonwealth, Your Honor, as to this motion is, number one, that it is not appropriate before this Court, inasmuch as it's concerned with factual considerations and number two, even if it were appropriate before this Court there have not been, even on its face, sufficient discrepancies alleged to this Court in order for this Court to find that her testimony was so substantially different from what was presented to Your Honor.

Now, if at another time Your Honor would want to review the notes, along with the statement of Miss White, and make your own decision concerning this issue, that would be fine. However, I suggest that even the matters alleged, the question of dreadlocks, the question of a hat on his head, the question of where he was at the time of the shooting, they are, at best, minor discrepancies in consideration of Your Honor's basis for the ruling regarding the lineup.

It should be mentioned, Your Honor, that not only was the individual, Mr. Jamal, testified to as being the shooter, he was right there at the time, sitting at the curb. And that was testified to, that he was there and that he was --

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THE COURT: That was the basis of my ruling.

MR. MCGILL: -- and that he was taken to the wagon.

MR. JACKSON: But that's untrue, Your Honor. That testimony counsel is presenting, that was not testified to, where he sat down and was immediately arrested. No one has ever testified to that. No one, Your Honor.

THE COURT: You do have the police inspector's testimony.

MR. JACKSON: That he was found in the wagon.

THE COURT: He was asked, "What did you do with the gun?" And he said, "I dropped it after the shooting." So that alone would really establish a prima facie case. I'm not saying, you know, whether that's true or not.

MR. JACKSON: I understand.

THE COURT: But on the basis of that testimony there is enough to hold him.

MR. JACKSON: The thrust of my argument is really not to challenge the preliminary hearing, Your Honor, as to whether or not the Commonwealth has provided sufficient information --

THE COURT: You want to strike Cynthia White's testimony.

MR. JACKSON: Yes, sir. It seems to me, very simply, if the Commonwealth says, in advance: we have a witness who says that she saw a man come across the street who looked one way and by the time he got to the other side of the street he looked another way, and that she saw this man shoot and then

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later on they had a man arrested and --

THE COURT: Aren't you really --

MR. JACKSON: -- and she identified him, is that --

THE COURT: Aren't you really talking about a motion to suppress her in-court identification on the grounds of suggestivity?

MR. JACKSON: I think we're beyond that point, because I requested a lineup and that was denied. I suppose technically I could make that argument, but it seems to me, after we have requested a lineup -- where there's a request in advance that has been denied, it would seem to me that the Commonwealth would have to have the testimony comport to what it had represented to the Court. And I am saying that based on the testimony that's been presented I don't believe the Commonwealth has done that. And I don't believe that Your Honor would have allowed her to testify as an eyewitness, based on the defects in the testimony.

They have not presented -- there is no link between what she said she saw and the arrest. There's no link between who she said she saw running across the street and the person who pulled the trigger. And those are substantial defects.

It would seem to me that Your Honor, if you had that information at the time of the lineup request -- it seems to me that at least there would have been a substantial question in your mind whether she should be allowed to

testify as an eyewitness.

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It was only because of the police report that Your Honor read -- and I have not had the opportunity to read -- that there was something in the police report and the representations of counsel that suggested to you, "Oh, yes, a lineup is not in issue. But I am saying now, once we have had the hearing, it is in issue. And it seems to me it should not be allowed to continue.

THE COURT: Her testimony?

MR. JACKSON: Her testimony, that's right.

THE COURT: I think basically you are arguing about allowing her to testify to an in-court identification. And that's another issue. I don't think we can strike her testimony. If there is an inconsistency or inconsistencies in her testimony, that's an argument you have to make at the time of trial.

MR. JACKSON: Your Honor, I am not suggesting that it's an inconsistency. I am saying that it's a deficiency based on what the Commonwealth reported to you. It wasn't said. And it would seem to me, Your Honor, if the Commonwealth says she's going to say A, B and C and she comes in and says A -- you are saying, "Well, that's allowed." And I am suggesting to you that she did not testify to what the Commonwealth said she would testify to and that her testimony should be stricken. And when the Commonwealth says, "This is what she is going to say," and she then does not say it, that's wrong. If the Commonwealth says a witness is going to say A, B and C, then the witness must say A, B and C. And if

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not, then they have not met their burden.

THE COURT: Well, I understand the argument that you are making. But, you see --

MR. MCGILL: Your Honor, the basis of what I represented -- excuse me, I don't want to interrupt the Court.

THE COURT: All right.

MR. MCGILL: The basis of what I represented to the Court she would testify to, if asked, was substantially presented.

Using the analogy of Mr. Jackson, if A, B and C were represented to Your

Honor and A and B were actually presented later, A, B and C were presented to Your Honor to alert this Court as to the factual basis for the Commonwealth's opposition to the petition for the lineup. And Your Honor viewed that along with the statement and made a finding that it was substantially as was represented by the Commonwealth. Fine. That was the ruling at that time.

And on the basis of that, the facts were presented to this Court.

Now, what I present at the preliminary hearing in order to prove -- in order to show the Court that a prima facie case exists -- as has been demonstrated -- does not have to include A, B and C and all the way to Z. It only has to include what I want to put on for the judge to review and determine whether or not a prima facie case is established.

So we are looking at two different things: a basis for Your Honor's finding and a basis for a prima facie

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case, which are not the same thing, necessarily.

Now, if what I presented to this Court, A, B and C, or whatever, was substantially different -- or, in fact, completely different than in fact what was the testimony of Miss White, well, then, perhaps there is some view that, if anything, there may be a due process violation by the Commonwealth. None such was the case. And, as a matter of fact, the only factual discrepancies, as pointed out, or alleged, which are hardly substantial, considering the forty-five minutes or an hour that she testified.

THE COURT: I'm going to deny the motion based on the argument that there are inconsistencies. But Mr. Jackson raises another point. If you are using Miss White to establish identity --

MR. MCGILL: Yes, sir.

THE COURT: I denied a lineup on the grounds that she was not a necessary witness for identity, because my understanding at the time was that you had several links in the chain of identification there. You had a witness saying, "I saw a shooting," you had a police officer who came later and found the defendant, who obviously was wounded, you had a statement by the detective that the gun was dropped nearby, and so on. And you had all those things put together. But are you saying she is being used basically to establish the identity of the defendant?

MR. MCGILL: She is an identification witness.

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And I also represented to the Court that she was -- the situation was that she would be -- of course, in addition to an identification witness, -- she would be part of the complete picture. Because at every time from the beginning it was represented that she was -- and the primary reason is the fact of where she was, the proximity to the actual incident. She had actually moved forward, closer to the incident, after having observed it initially. So she is as close as ten or fifteen feet to the individual that she saw, the individual shooting the police officer and then going and sitting at the curb. And she is right there when they take him and put him in the wagon. So she sees him constantly, throughout.

THE COURT: And your view of the law is that a lineup is not necessary?

MR. MCGILL: Yes, Your Honor, on that basis. Because, Your Honor, it's not at all like the cases -- like the Sexton case or the other cases -- where you have a fleeting look, a person sees an individual, he comes into a store, there's a robbery in the store, the witness has never seen him before, he takes off, he's gone.

That's not this case. In this case she sees him running across the street, then she goes forward, she's not more than ten or fifteen feet away, as close as he is to me --

MR. JACKSON: I'm going to object to this.

MR. MCGILL: May I finish?

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MR. JACKSON: Your Honor, he's --

THE COURT: Let him finish.

MR. MCGILL: -- maybe three, ten feet. And she sees him then. And he's then taken to a wagon some distance away.

She has him in view constantly. As a matter of fact, she's saying as she walks over, "He shot the policeman. Can I tell somebody? Can I tell what happened?" This is basically what she would testify to, if asked, Your Honor.

The question is completely a different issue from what Mr. Jackson is

raising. I am now addressing the Court specifically as to why there would be no appropriate lineup in the case of Miss White.

Now, as to what was presented at the preliminary hearing, that has nothing to do with Your Honor's basis for deciding that a lineup is not appropriate in this case. The one has nothing to do with the other, Your Honor. What was presented at the preliminary hearing just had to do with the burden of proof that I had to establish at that time. Cynthia White very definitely is an ID witness, Your Honor.

MR. JACKSON: Your Honor -- and, again, I don't want to belabor this issue -- but counsel has represented a lot of which has never been testified to. I am hearing this for the first time. At the original lineup hearing I heard representations to that effect, but it was not testified to at the preliminary hearing.

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Now, my point is that if the Commonwealth says they are going to present such and such, and a representation is made to this Court as to what they were going to present, and then they don't present it, Your Honor, and they come back and say, "Well, we didn't really have to present it," then where am I going to have the opportunity to test the credibility of the representations of the Commonwealth if they play games and say they're going to present this, that and the other at the preliminary hearing, we go to the preliminary hearing and they don't present it? And then they come back to you and they say, "Oh, well, Your Honor, we didn't have to present all of that at the preliminary hearing."

And that's essentially what counsel is arguing. And I am saying to you, Your Honor, whether the Commonwealth had such and such a burden on the issue of a prima facie case at the preliminary hearing is irrelevant to the argument that I am making. If they are saying she's going to testify to A, B and C, and if that's the basis of your ruling, Your Honor, then they have to have her testify to A, B and C. Because it's not just an insubstantial issue as to whether or not he had a hat on or there were dreadlocks.

And, again, the other issue, Your Honor, that she never testified that she was present when the man was arrested. And it seems to me that if they are saying that in fact it was an on-the-scene arrest -- we have not gotten any testimony from anyone to say that it was an on-the-scene arrest. The inspector says he was in the wagon when he arrived. And

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this woman never testified after she said she saw the shooting.

So it would seem to me that the Commonwealth's representations are seriously defective. And I believe that counsel is saying that I should then argue this issue at the motion to suppress. And the damage would have been done at that point.

THE COURT: I understand the issue. What, basically, are you asking for at this time? Just to strike her testimony, or for a lineup?

MR. JACKSON: I am asking for both, to strike her testimony and --

THE COURT: Are you asking for another lineup now?

MR. JACKSON: Yes, I am, Your Honor, for all the eyewitnesses. I certainly am, Your Honor.

MR. MCGILL: I think today was not, as I understand it, a petition or request for a lineup for all eyewitnesses. I believe the petition -- at least which I am prepared to respond to, and which it is my understanding was specifically to be heard today, as Your Honor had it listed -- I believe the petition scheduled to be heard today was a petition to strike her testimony.

THE COURT: That was scheduled for today, yes.

MR. MCGILL: So that issue, Your Honor -- I think that is what is before Your Honor. As to any other issue, any additional issue --

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THE COURT: Part of Mr. Jackson's reason for that is that she testified to identification.

MR. JACKSON: That's right.

THE COURT: I am not going to strike her testimony for that reason. If you are going to petition for a lineup, that's another question.

MR. JACKSON: Well, Your Honor, as to her, Cynthia White, after she has seen him in court two or three times --

THE COURT: That's what I want to know.

MR. JACKSON: My point is --

THE COURT: Are you asking for another lineup for her?

MR. JACKSON: That's my point: I can do that, Your Honor, but as a practical matter, what good does it do? That's my point. She has seen him two or three other times at least. So now are we saying, "Well, now we're going to find out whether she can identify him"?

That's just my point. And that's why I asked for a lineup for all eyewitnesses. And now it seems we're saying Cynthia White, can Cynthia White pick this man out of a lineup, Your Honor, when she has already seen him at least two times in court. And that's why I am saying I want a lineup for all eyewitnesses. And that's what I originally asked for.

THE COURT: Whether or not any in-court identification is allowed depends upon what opportunity she had to observe him at the scene, and so on. You can always

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argue that point before she is allowed to testify.

MR. JACKSON: I understand that.

THE COURT: You are not foreclosed from taking that approach. That will depend upon whether the Commonwealth can establish a basis for the in-court identification.

MR. MCGILL: That's correct.

THE COURT: Based on what has been presented, I am going to deny the motion to strike the testimony.

MR. JACKSON: Would Your Honor consider certifying this question? I think it's very substantial, Your Honor.

THE COURT: Well, I don't know if it -- if it reaches that level.

MR. JACKSON: Well, Your Honor --

THE COURT: It would delay the trial for a long time.

MR. JACKSON: It may delay the trial, but it seems to me what I have is a delay versus the rights of Mr. Jamal.

MR. MCGILL: Your Honor --

MR. JACKSON: If that's the reason --

THE COURT: If you think any rulings have been wrong you will have the right to appeal if your client is found guilty.

MR. JACKSON: But that testimony may be so damaging it may involve a conviction. And I think this issue needs to be resolved. In all due respect to Your Honor, I differ with you with regard to the substantive nature of -- the characterization of the defects that I am suggesting the

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Commonwealth has not met -- again, Your Honor, with regard to the factual discrepancies as well as the deficiencies with regard to the on-the-scene arrest.

MR. MCGILL: I would oppose any certification at this time, Your Honor. I think the issue -- with due respect to Mr. Jackson's arguments -- is simply not substantial, the reason being, sir, that there is a clear -- and I repeat this again -- a clear distinction between factual presentations which form a basis for a decision by this Court -- and that decision being that there would or would not be a lineup for a certain witness -- that's one thing -- and the second thing is the amount of evidence which would be presented at a preliminary hearing for the purpose of showing a prima facie case to that Court.

Under no obligation is the Commonwealth to present all of the factual basis for an unrelated motion at the preliminary hearing.

That simply does not make sense. If he wished to bring it out on his own he could have done so on cross-examination.

If the presentation at the preliminary hearing was so completely different from what was presented -- not so completely different, but substantially different -- from what was presented to this Court, well, then you may have a due process issue. But in this case there were no such substantial discrepancies in the testimony that was presented before Judge Mekel -- for over an hour. And I ask, in the interest of justice and in the interest of resolving this case, that it not be

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delayed by any kind of --

MR. JACKSON: I'm not trying to delay the case.

THE COURT: I'm going to deny the motion to strike. On the motion to certify this question to the appellate court, if you had a novel question of law that had not been decided, and the case goes one way or the other based on it, then it would be appropriate to have it appealed immediately. But here you really don't have that. And a review of my ruling, based on the record, can always be reviewed later. So you are not being foreclosed from raising that at a later date.

MR. JACKSON: I appreciate that, Your Honor. But, Your Honor, in all due respect, I still think that it's not simply a matter -- well, I understand I have the opportunity to ask to have your ruling appealed at a later point, but, again, the testimony with regard to identification was a limited amount of the testimony throughout the hearing. And counsel is saying that there was no -- that it wasn't completely different. Most of the testimony surrounded the substantial facts as to what happened, and I am not arguing that. It's the limited area with regard to identification and being there at the scene. And I am saying to you, Your Honor, that even though counsel is arguing that they don't have to present all this and all that because that is not the issue, even though counsel first says they are going to -- in order for you, Your Honor, to deny my motion for a lineup, the Commonwealth says, "We are going to present 1, 2 and 3." That's what the Commonwealth said. And they didn't present it.

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THE COURT: I understand your point.

MR. JACKSON: Now, whether that rises to the level of prosecutorial misconduct or not, Your Honor, it seems to me that that is an issue that's reviewable before we go through a trial.

MR. MCGILL: Do you think I should respond to that, Judge?

THE COURT: No. Because I understand the issue. If it's misconduct, you're going to have that in the record at a later date, anyway.

MR. MCGILL: Your Honor, I don't particularly care to hear the words "prosecutorial misconduct," whether I am dealing with Mr. Jackson or anyone else. What is a factual basis for a decision on a lineup is entirely different. And it was presented at the hearing before Your Honor.

THE COURT: There are cases of prosecutorial misconduct, of course, where the misconduct is so gross that the ruling is that the prosecution should be barred. There are cases where that has happened. This is not one of those cases.

MR. JACKSON: I agree it doesn't rise to that level.

THE COURT: We don't have a case where there has been a violation of any rights that you want to throw the case out.

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MR. MCGILL: Judge there was no misconduct. Mr. Jackson is confusing the issues involved. There has been no misconduct at all. What I presented to this Court at the lineup hearing was evidence to show why it would not be appropriate for the witness to be subjected to a lineup and those factual presentations she would state if she were asked.

THE COURT: I think I was correct in that ruling. So I don't think we can really --

MR. JACKSON: You are denying the motion to strike and denying the certification as well?

THE COURT: Yes, I'm going to deny the motion to certify. I don't think you have the kind of question that really has to be decided at this point. And, as I say, you are not foreclosed from appealing this decision at a later point if you feel you are correct.

MR. JACKSON: I understand that.

THE COURT: The motion to suppress will be heard at the time of trial.

MR. JACKSON: Sure.

THE COURT: On the discovery, you feel that you have not gotten all of the discovery?

MR. JACKSON: Haven't gotten any.

THE COURT: That should be in the mail, shouldn't it?

MR. MCGILL: It is, Your Honor. It is in the mail.

MR. JACKSON: Well, it may be in the mail, but

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I don't have it.

MR. MCGILL: Well, it's quite extensive, Your Honor.

THE COURT: At the next hearing, if you still have not gotten the discovery materials, then we'll go into it in greater detail. I'm not going to sign an order now, because I don't know --

MR. JACKSON: I understand, Your Honor. There is one other --

MR. MCGILL: Your Honor is aware that we have turned over -- all the items that Your Honor ruled should be turned over, we have turned that over.

MR. JACKSON: But not copies of those documents Your Honor said, should be copied.

THE COURT: You say that's going to be done?

MR. MCGILL: Yes, Your Honor, we can do that and we will do that.

MR. JACKSON: The other thing goes to this lineup request. It was my understanding that the original lineup request that I filed was not a final issue. Whether Your Honor wants me to file another lineup request -- I don't know who the other eyewitnesses are. Cynthia White is the only one that I know. The Commonwealth, again, has not given me any discovery as to that. I would like to argue that issue.

THE COURT: You are going to turn over the names of the eyewitnesses?

MR. MCGILL: Yes, sir.

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THE COURT: What eyewitnesses you have?

MR. MCGILL: Yes, sir. At this point I am not prepared to respond. And I don't think he is making an oral motion at this time.

MR. JACKSON: No.

MR. MCGILL: Could we have a hearing on that?

THE COURT: You will have a hearing on that, yes.

MR. JACKSON: So I will not be precluded from doing that later on?

THE COURT: No.

MR. JACKSON: Fine.

THE COURT: I am making a note that after discovery is received, if you think there are any other motions to be filed, you have leave to file those.

MR. JACKSON: Thank you very much, Your Honor.

THE COURT: How much time do you think you will need to get all of the discovery records, and the motions, and so on?

MR. MCGILL: It really will not be very long, Your Honor. I would say maybe a few weeks. Excuse me, Your Honor. Let me speak with Mr. Brodtkin for a moment, if I may.

THE COURT: All right.

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MR. MCGILL: Your Honor, three weeks. There will be no delay. We are anxious to move this case forward to trial.

THE COURT: How about if we set it up for around March 18th, Thursday the 18th?

MR. MCGILL: That's fine, Your Honor. Whatever you say.

MR. JACKSON: Is that the date when I will receive discovery?

THE COURT: Oh, no. I'm hopeful that you will get that within the next week or so. That will be a status listing, the 18th. You will get the discovery in as soon as possible?

MR. MCGILL: Yes, sir.

THE COURT: Call Mr. Jackson and let him know when it is available, and he can arrange to get it right away, or maybe you can send it over to him. I would like him to have it before the hearing.

MR. MCGILL: I'll have it certainly before then. It's quite a volume of material.

THE COURT: Let Mr. Jackson have that before the next hearing.

MR. MCGILL: He will have it, sir.

THE COURT: We'll reconvene on March 18th, then.

MR. JACKSON: Yes, sir.

MR. MCGILL: May I be excused, Your Honor?

THE COURT: Yes.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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COMMONWEALTH	:	1357-1359
	:	
VS.	:	
	:	
MUMIA ABU-JAMAL	:	1982
	:	
	:	

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Room 613 City Hall  
Philadelphia, Pa.

March 18, 1982

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Before: THE HONORABLE PAUL RIBNER, J.

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
For the Commonwealth
- ANTHONY JACKSON, ESQUIRE  
For the Defendant

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COURT CRIER: Commonwealth versus Abu-Jamal, Your Honor.

THE COURT: I thought we had this scheduled for ten o'clock this morning, Mr. Jackson.

MR. JACKSON: I apologize.

THE COURT: I went to a lot of trouble to call Judge Stout and get Mr. McGill released and you show up fifteen minutes late. The Court has some rights, you know.

MR. JACKSON: I assure you it wasn't a casual matter, Your Honor.

Pursuant to Your Honor's suggestion yesterday with regard to sending Mr. McGill a copy, we had a messenger take all of the copies of the motions that I intend to file. Unfortunately, he still has those motions. I expect him to be here momentarily. I went back to my office to pick them up, and that's the reason for my being late.

If Your Honor pleases, I could at least present the essence of those motions. The formal written motions should be here momentarily. I think, nevertheless, we could proceed with the essence of those motions.

THE COURT: All right.

MR. JACKSON: Fine, sir. Your Honor, the first issue has to do with discovery material that we received from the District Attorney's Office.

MR. MCGILL: Excuse me, Your Honor. I want to make sure that I understand what Mr. Jackson has said.

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Are there additional motions?

MR. JACKSON: Yes.

MR. MCGILL: That I have not received copies of?

MR. JACKSON: That's right. I can list them for you.

There's a motion for a lineup, Your Honor, with regard to the possible witnesses Mr. McGill intends to call in the trial of Mr. Jamal. As Your Honor well knows, there was one witness previously who testified, Cynthia White. Your Honor has made a ruling with regard to the lineup respecting her. However, it is my understanding that there may be at least one or perhaps several other witnesses that Mr. McGill intends to call to identify Mr. Jamal. And, again, we would renew our request for a lineup, in that my review of the discovery materials suggested there may be one other tentative identification, but certainly no positive identification. And

for those reasons, Your Honor, we would request a lineup.

THE COURT: What other motions do you have?

MR. JACKSON: The other motion goes to having Mr. Jamal removed from administrative segregation at the Philadelphia County Prison.

Since his arrest -- well, he was in the hospital, of course, and he is presently detained in the hospital wing of the detention center. He has been in administrative segregation.

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He has fully recovered from his injuries and wounds, Your Honor, and for that reason I would respectfully request that he be removed from administrative segregation, in that he presents no risk of harm to himself or to anyone else. And I would ask that he be allowed to go into the general population within the Philadelphia County Prison.

The next motion would go to -- it would in effect be an omnibus motion to -- in fact, we previously filed an omnibus motion requesting certain documentation from the District Attorney's Office. It would be my contention that the District Attorney's Office has failed to comply with that order. And Your Honor has certainly signed that order previously, with regard to making available to me certain information. I think that I have sixteen different categories of information that I am specifically requesting. Some of it has to do with copies of the property receipt, a great deal of it has to do with information that apparently is either in the possession of the District Attorney's Office or the Police Department.

Pursuant to a civilian complaint filed by Mr. Jamal on December 30th, I filed a letter -- a complaint -- with the Police Department on behalf of Mr. Jamal with regard to his being shot, with regard to his being wounded and beaten a by the police officers subsequent to his arrest.

The Police Department, Commissioner Solomon, just recently sent a letter to me indicating that that information would not be made available to me while these charges are pending. And common-sensically, Your Honor, the information

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wouldn't do me any good if the case is over.

Mr. McGill: -- I have a copy of a letter that he sent to the Police Commissioner indicating that that information should be turned over to

him and he should, in turn, give it to me. And I am not sure that perhaps he does not have it either.

That brings me to the issue, Your Honor, as to whether in fact the Police Department is the appropriate body -- or perhaps the District Attorney's Office -- whether or not they might be the appropriate body to turn that information over to me, in that on the one hand they are prosecuting Mr. Jamal pursuant to the information they received from the Police Department, and while, on the other hand, the Police Department is refusing to give up information that might subject the Police --

THE COURT: You are talking about information in the police files concerning alleged beatings, and so on?

MR. JACKSON: No. Just of Mr. Jamal, not anyone else.

THE COURT: That's what I'm saying, of Mr. Jamal.

MR. JACKSON: That's right.

THE COURT: How did that all arise? By complaint?

MR. JACKSON: Yes, sir.

THE COURT: Whose complaint?

MR. JACKSON: Mr. Jamal's.

THE COURT: So he filed a complaint, the police checked it out --

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MR. JACKSON: I don't know whether --

THE COURT: -- and you want their files as to what they checked out?

MR. JACKSON: Yes, sir. It pertains to the same issue.

THE COURT: Well, purportedly, whatever Mr. Jamal tells you, those are the facts, right? So you already have all the facts.

MR. JACKSON: No, sir, I don't have the facts. I don't have the statements that the police gave to Internal Affairs.

THE COURT: You want statements that the officers gave to Internal

Affairs?

MR. JACKSON: Yes. I don't have the statements that the police got from hospital personnel of Mr. Jamal being beaten in the hospital.

THE COURT: Okay. We'll take that up in a minute. Any other motions?

MR. JACKSON: Yes, sir.

I have an additional motion, Your Honor, that would allow -- that would request an increase in the fees Your Honor has awarded with regard to the various experts that I intend to call. And I would also ask that there be provision made for interim payments.

I have not been able to secure the required experts for the fees. And Your Honor may recall that one hundred fifty dollars has been suggested for each of these experts.

In addition, as Your Honor well knows, normally

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what happens is those fees are paid after the case is over, and sometimes that's nine months to a year afterward. Under those circumstances I have not been able to get those qualified experts that I would need.

THE COURT: Those are the standard fees that we agreed to as a matter of policy. I can't really increase them at this level. You can get interim payments for the amounts that I authorized. As far as any additional payments are concerned, you will have to submit those with your pay petition. The trial judge will know what work was done, and he will either approve them or disapprove them. And then they will go the Administrative Judge.

MR. JACKSON: I am familiar with the procedure. The problem is that at this stage of the trial -- I need the information and the resources of the experts prior to trial.

THE COURT: I know.

MR JACKSON: And I can't secure that. That's my problem.

THE COURT: Well, that's going to be a problem, getting an increase, because then we have to have a general increase. And I don't think it's in the cards at the current state of the court system and the budget and

everything else. What experts are you talking about?

MR. JACKSON: Well, I need an investigator.

THE COURT: You can get him his initial payment of one hundred and fifty dollars and let him submit an itemized bill and submit it with your pay petition.

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MR. JACKSON: Rut again, Your Honor, I'm back to the same problem: I wouldn't be able to pay him for another year from now.

THE COURT: If it's necessary, you can submit itemized bills from time to time.

MR. JACKSON: Would I submit them to you, Your Honor?

THE COURT: Before trial, yes.

MR. JACKSON: And that would be for each of the experts that I need additional funds for?

THE COURT: Yes. But you're going to have to justify them with itemized bills for the work done.

MR. JACKSON: I'm certain that I can justify it.

THE COURT: The experts you want aren't more privileged than the rest of us in the world. None of us gets paid in advance.

MR. JACKSON: I understand that. The problem is that Mr. Jamal is indigent.

THE COURT: That's true in almost every case we have, the bulk of the cases. We don't have any multi-millionaires on the list over there. Everybody is in the same boat. You understand that.

MR. JACKSON: I understand that. But the problem is, what do we do if it's required -- and I am saying that it is required -- and these experts require their money in advance, or certainly in a timely --

THE COURT: Tell them point-blank they are not

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going to get money in advance. You handle your case as you see fit.

MR. JACKSON: I don't mean necessarily in advance.

THE COURT: Now, if you send them out to check everything in the world, at all places and at all times, and they submit a bill for fifty thousand dollars, forget it.

MR. JACKSON: I'm not suggesting that. But I might say, Your Honor, that I get many, many calls from people telling me that they have information. Now, I could, in a very cavalier fashion -- I could take those calls and say it's some crackpot. But it could be someone who has substantive information. And I think I have an obligation to follow those leads.

THE COURT: I think you do.

MR. JACKSON: And many have been followed and have led nowhere. But, again, as an attorney, what am I supposed to do? I have to follow those leads.

THE COURT: I would say you're going to have to spend quite a bit of time in your office interviewing those people.

MR. JACKSON: Sometimes they won't come into the office. It's not that I have any problem spending the time. I assure Your Honor that I have spent a great deal of time in this matter thus far. That's not the problem. My problem is getting additional resources. In other words, in addition to the investigator I need a forensic pathologist. I have not been able to secure a forensic pathologist, for one hundred and

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fifty dollars. Most forensic pathologists won't even review --

THE COURT: Out in California they may be available.

MR. JACKSON: That's what I understand. In California, I understand there's a forensic pathologist available. But unfortunately, I believe I would have to pay his transportation costs to come here.

THE COURT: Retain your experts, have them do their work, let them give you itemized bills. If they are reasonable and fair, I'll act on them.

MR. JACKSON: Fine, Your Honor.

THE COURT: Now, on these leads that you get -- there's a problem in a case that has such publicity. I'm just not sure at this point how much money is going to be available to check out everything that's going to be called in to you.

MR. JACKSON: I'm not, either. And, of course, I have no formula for deciding in advance which leads to follow up, Your Honor.

THE COURT: You're going to have to make a calculated guess. If somebody calls you, and if it sounds like it checks out and they have valuable information, pursue it. If it's somebody who sounds like a crackpot, you should make a careful note of that and not spend your time or money or effort on it.

MR. JACKSON: I'm not suggesting that I am chasing

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red herrings with regard to the information. I think that I am making a concerned decision with regard to the experts that I have named.

THE COURT: We'll handle that as we go along.

MR. JACKSON: Fine, sir.

THE COURT: I'm not going to give you an order one way or the other.

MR. JACKSON: I understand that. The last motion would be to ask the Court to allow me to distribute and forward the questionnaires to the potential veniremen -- to those who would come up as jurors -- who would come up potentially at the time of Mr. Jamal's trial.

As Your Honor might know, according to my research there are several national surveys -- as well as here in Philadelphia -- that would suggest, particularly in a case that has received as much publicity as this case has -- and, also, there's a racial factor, the police officer being white, Mr. Jamal being black -- that, instead of one or three -- forty percent of jurors called believe that if a person is arrested, then in fact that person must be guilty of the crime that's charged.

Notwithstanding that argument -- and I am not suggesting that Your Honor would make a decision with regard to that question, or with regard to that fact -- today I am suggesting that the use of a questionnaire would provide me with additional information that I can use at the time of the voir dire, when the jurors are called in.

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We -- as Your Honor well knows -- we have twenty peremptory challenges in a criminal case. It has been the custom and the tradition of the District Attorney's Office to strike each and every black juror that comes up peremptorily. It has been my experience since I have been, practicing law, as well as the experience of the defense Bar, the majority of the defense Bar, that that occurs. In addition to that, Your Honor --

MR. MCGILL: Excuse me, Your Honor -- I don't want to interrupt any more, but I want to make an objection.

THE COURT: You are going to categorically deny that?

MR. JACKSON: They always do, they always do. I just finished a jury trial --

MR. MCGILL: May I also object to that remark?

MR. JACKSON: -- where the first thirteen black jurors were peremptorily challenged by the district attorney.

THE COURT: The district attorney says he does not agree with that statement.

MR. JACKSON: I'm sure he doesn't. Fine.

In addition to that, Your Honor, we have the other situation, where black jurors will disqualify themselves because they have feelings against the death penalty.

And I am not saying, Your Honor, that that questionnaire or any other procedure that Your Honor might approve would in fact insure any black representation on the jury. What I am saying is that even if it's an all white jury,

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Your Honor, I want to be certain that it's a fair and impartial jury. I want a fair and impartial jury, white or black. So for that reason, Your Honor --

THE COURT: You are entitled to that.

MR. JACKSON: Pardon me?

THE COURT: You are entitled to that. You are entitled to a fair and

impartial jury.

MR. JACKSON: That's right. And for that reason -- I think the questionnaire would assist me in doing that.

THE COURT: It's never been done, as far as I know.

MR. JACKSON: Not in Philadelphia. It's been done in federal jurisdictions, federal courts, across the country. And I would be pleased to present to Your Honor --

THE COURT: You'll have to show me that. At any rate, we're not going to pay for that. The county is not going to pay for that.

MR. JACKSON: No, no, Your Honor, I'm not asking that the county pay for that, because I appreciate the unusual nature of this. I just want to be certain that Your Honor would in fact give me an order, so that I can give it to the jury commissioner, that would allow me to get the names and addresses of those prospective jurors, so that I could conduct that survey.

THE COURT: There are certain dangers to that procedure.

MR. JACKSON: There are certain dangers in Mr.

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Jamal's trial, at best.

I assure this Court that there is no intent to tamper with any prospective juror. We would, in fact, not indicate that the case involves Mr. Jamal, Your Honor, or anyone else in particular. It would be simply a general survey.

THE COURT: What's your Constitutional basis? Are you basing this on some Constitutional right?

MR. JACKSON: His right to a fair and impartial jury, Your Honor.

THE COURT: Are you not given that when you go into the courtroom and given the right to interrogate the prospective jurors in as full a manner as the trial judge allows, and you are given certain challenges for cause and given peremptory challenges, like anybody else whose client has been charged with a crime?

MR. JACKSON: I understand that.

THE COURT: What you are saying is that you don't think the present system, questioning the jurors, gives you sufficient protection under the Constitution.

MR. JACKSON: That's right, particularly in this case. And I am saying -- I am not talking about any other case, I am simply talking about this case, where in fact there has been such tremendous publicity, where, in fact a case holds such a potential for polarizing the community, where in fact there has been so much discussion and suspicion in this case -- I am saying that in this case I think that the only way that I can be assured that I am getting the best possible --

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THE COURT: I don't agree with you that there is going to be such polarization of the community. This is a murder case. You are being given every possible avenue of approach to represent your client. I have spent more time on your petitions than in any other case I have had in a long time. Because of publicity I decided to let you have every opportunity you wanted. But I don't think there has been any indication so far that there has been any concerted attempt to turn this into a racial incident. It's a case. It's a murder case. You're going to have witnesses and a trial. And as far as I am concerned you will get every right that you are entitled to. And so far I haven't seen any evidence that anybody has turned this into a racial incident. I know you have referred to it several times this morning. I understand the facts of life. But I am not going to let you turn this into a political or a racial thing. This is a murder case, and it will be handled in the same fashion -- perhaps with a little more care -- as any other --

MR. JACKSON: Your Honor, I don't want to mislead the Court in suggesting that this incident is a racial case. But I am suggesting that it is there. And --

THE COURT: It's not a case, where somebody says, "Let's go out and have a riot and kill everyone of the opposite race." This is a murder case, where somebody is charged with killing somebody else. The deceased was a human being and the accused is a human being. And I think there have been a lot of unfortunate attempts to bring out racial characteristics

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in this case that aren't there.

MR. JACKSON: I don't want to do that.

THE COURT: Up to now there has been no indication of that on the part

of the Court or the District Attorney's office, has there?

MR. JACKSON: It's implicit, Your Honor.

THE COURT: Implicit in whose eyes?

MR. JACKSON: In the facts of the case.

THE COURT: I disagree with you.

MR. JACKSON: Please understand what I am saying. I am not saying that that is in fact the paramount reason for my request, the racial overtones in the case. Again, I think it goes to the fact that the deceased is a police officer, that Mr. Jamal is a journalist, the case has received a tremendous amount of publicity, and also based on my research of the surveys that have been conducted across the country -- and indeed in Philadelphia -- suggesting indeed that the jurors, prospective jurors, would come in with a bias.

Again, it's my understanding that it's never been done in the Philadelphia Common Pleas Courts, with respect to having the questionnaire done in advance.

THE COURT: If you can show me where it's been done in any area of the country, I'll take a look at that.

MR. JACKSON: I would be pleased to present that to Your Honor.

THE COURT: You have to recognize one fact.

MR. JACKSON: Yes, Your Honor?

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THE COURT: Picking a jury depends upon the skill of the attorney who is doing the picking.

MR. JACKSON: Yes, sir.

THE COURT: And in some cases they have psychologists sitting at their elbows, and in some cases they have done background checks. That's part of the trial process.

MR. JACKSON: I understand that.

THE COURT: And there will be plenty of time for you to question the

jurors and determine in your mind whether you have some challenge for cause. If your instinct tells you something, you have a peremptory challenge. And if the trial court feels it is proper, the court could even permit some more peremptory challenges. That's up to the trial judge.

MR. JACKSON: I appreciate that. I'm not shrinking away from my responsibility as counsel to participate in the selection process. I am simply saying that as expert as I am, I want to become more expert in this process.

THE COURT: Sometimes a juror is apt to fool you by saying something in the questionnaire, then get on the stand and look you in the eye and tell you one thing, then get in the jury box and do something else.

MR. JACKSON: I understand that, Your Honor.

"Have you heard anything about this case?"

"No. Well, yes, maybe a little bit."

"Is that going to affect your decision?"

"No, not at all."

I understand that. And that's the point. They

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will say anything. But the questions that I propose to ask will not in any way indicate what case we are conducting the survey about. The questions would allow me to obtain some information about the background of the prospective juror so that when the juror does come on the stand knowing, "Ha, ha, ha, this is the Jamal case, I want to serve on the jury on this guy, I'll lie, cheat, steal, do anything to get on this case," I want to insure that that doesn't happen. And I think this is an appropriate way to do that.

THE COURT: The questionnaire is not going to ask them about this case at all?

MR. JACKSON: No. Absolutely not.

THE COURT: You just want to find out if they are truthful, honest, decent people who never tell a lie?

MR. JACKSON: No. I couldn't do that.

THE COURT: What do you propose to ask?

MR. JACKSON: Questions with regard to their background, where they live. I want to know where the people are, Your Honor, so that in addition to the questionnaire I will also have an opportunity to send people to the neighborhood, perhaps, to check to see how they live, what are their relationships to the criminal justice system and what hidden hostilities they have in the hidden recesses of their subconscious mind, what, their childhood problems were that might allow them to be triggered by something in the courtroom. If I could find that certain information I would certainly benefit from it.

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THE COURT: Do you think you could find all that through this questionnaire?

MR. JACKSON: I don't know. But I think the process is essential to --

THE COURT: You know about finding the proverbial snowball someplace? That's about how much chance you'll have to really find out what's in somebody's mind. However, if you say it's been done in other jurisdictions, show me where it's been done, and in what context, and I'll take a look at it. Those are your motions?

MR. JACKSON: Yes, sir. I have the formal motions now, Your Honor.

THE COURT: Do you want to submit copies of them right now?

MR. JACKSON: Yes, sir.

THE COURT: All right.

MR. JACKSON: And, Your Honor, I think -- specifically dealing with the discovery information, I have a specific concern that that be done as quickly as possible. As Your Honor knows, we have the 180-day rule that's coming upon us, and I want to be certain that I have that information prior to the time of trial.

THE COURT: As you pointed out, it won't do you any good after the trial, will it?

MR. JACKSON: No. And that's the whole point. The Police Department has indicated that while this case is

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pending they are not going to give me the information. And it may be of curious interest after the trial, but it serves no substantive purpose then.

And Your Honor, with regard to the lineup, I obviously need Your Honor's decision on that lineup, in that Mr. Jamal as you know, has come through the hallways of this City Hall with a coat hanging over his head, and I think it's an undignified manner for him to come to court. And I have waived his appearance here today because of that, but I would not like to waive his appearance in the future.

And I am asking Your Honor that in fact the district attorney indicate which eyewitnesses they intend to bring in, and that we have the opportunity to have a lineup conducted. It seems to me that the burden on the Commonwealth is very slight, Your Honor, as many facilities as they have.

THE COURT: For the record, I have not subjected Mr. Jamal to any demeaning treatment.

MR. JACKSON: I am not suggesting that the Court in any way has participated in any demeaning conduct, Your Honor. I am suggesting, Your Honor, that the photographers in the hallway, when Mr. Jamal comes to court -- they are clicking away. And I am suggesting that they are infringing upon his right to have an orderly lineup. And for those reasons I have hidden him. And that's the way the man wants to come to court.

THE COURT: Well, we live in a democracy, and because of that I can't really restrict the freedom of the press.

MR. JACKSON: Fine. And because of that democracy,

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I want a lineup. And, as I say, I feel the burden upon the Commonwealth is very slight.

THE COURT: Do you have those motions, Mr. McGill?

MR. MCGILL: Yes, sir.

THE COURT: Let's take them right down the line. First, what possible witnesses are you talking about, as far as a lineup is concerned?

MR. MCGILL: There will be three eyewitnesses, Your Honor. All

statements have been given to the defendant, to Mr. Jackson. There will be three eyewitnesses who will testify to -- what the Commonwealth intends to prove -- was the execution of Officer Faulkner.

MR. JACKSON: May I have those names?

MR. MCGILL: Let me --

MR. JACKSON: I'm sorry. My apologies.

MR. MCGILL: I do have a lot to say, and I am attempting to summarize it as best I can. Two of those witnesses Your Honor has already ruled upon. My suggestion is that the third eyewitness also would not be properly -- excuse me -- the evidence concerning the third eyewitness is such that it would not be appropriate for a lineup. And I will explain why. Mr. Albert Magilton is the name of the third eyewitness.

Mr. Robert Chobert and Cynthia White are the other two.

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Mr. Robert Chobert, as well as Cynthia white, are the witnesses that Your Honor has already ruled on. Now, Mr. Magilton, Your Honor, is very similar to Mr. Chobert, and the same argument, really, applies. I suggest to the Court, in very brief fashion, the Commonwealth states that Mr. Magilton, much like Mr. Chobert, not only observed the incident from a relatively close position, but then walked up to the incident when the police arrived, then was shown the defendant in a wagon and was asked: "Is this the man you saw?"

His response: "Yes."

This is anything but what Sexton wants for a lineup.

As Your Honor well knows, the Sexton case deals with a situation where you have a brief glimpse of someone who then takes off, is not seen, and, because of an investigation later, he is picked up.

And there is a fear that there may have been some suggestiveness or there's a fear that since he had not seen him for a length of time that perhaps there could be a violation there.

In this case, much like all the cases where you have an on-the-scene identification -- that's what this is -- if it's the subject of a motion to suppress, fine, it should be handled at that time. At this point, however, Your Honor, it makes really -- and I suggest to the Court -- and perhaps

Mr. Jackson did

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not know this aspect of it -- that Mr. Magilton in fact went up afterwards, seeing what he could do, what the problem was. Obviously, he saw what happened. But, being concerned, he went up. And he was shown the defendant while he was in the wagon.

"Is this the man who did it?"

"Right."

There he is. He's looking right at him. No brief glimpse, no rushing away, no investigation afterwards.

THE COURT: You are saying that he had the scene in his sight the whole time, never left the scene?

MR. MCGILL: That's right. He never left the scene. And he went directly up to the scene afterwards. In other words, from where he was -- he obviously did not go up to the scene during the course of the shooting. It was after the shooting and when the police officers came that he went up to the shooting, Your Honor, and then looked at the prisoner, the defendant, and identified him as the man that he saw.

THE COURT: Let's take that up right now, Mr. Jackson. This is not a situation where somebody looked at somebody and didn't see him again for a long time later and is going to come to court and say, "That's the person I saw that night a year ago."

MR. JACKSON: Your Honor, if you recall the original lineup petition that I submitted to you, Mr. McGill made certain representations to you. Based on those representations, Your Honor said,

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"Fine, we do not need a lineup." And Your Honor did rule as to two -- I did not know the name of the other individual, and I believe I'm being told now that the second person was Chobert.

MR. MCGILL: That's right. Those statements you have.

MR. JACKSON: Fine. I would like to specifically address Mr. McGill's comments with regard to Mr. Magilton. The statement that I have:

"Did you see the shooting?"

"No. I just heard the shooting. And when I turned around I saw the officer on the ground."

Now, if he didn't see the shooting, how is he going to say that he saw who did it? That's their statement. I could go on. That's their statement.

THE COURT: You're going to have cross-examination at trial.

MR. JACKSON: Of course I'll cross-examine at trial. But the point that I am making is that they are saying that he is an eyewitness and he didn't see it.

THE COURT: That's not the question before me. The question before me here is: is he going to be presented as an eyewitness to something that he saw, or is he just going to say, "I saw somebody on the ground, I saw somebody else sitting there"?

MR. JACKSON: Mr. McGill is saying that he is

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being offered as an identification witness. And I am suggesting that this man cannot be an identification witness, Your Honor, if he didn't see it. And now he's telling Your Honor that yes, he saw the shooting, he saw this and saw that, and he kept him in sight the whole time.

Again, unless they have information that's not been made available to me - - and again, Your Honor, as to that extent, I am relying on the discovery information they have given me. It says, in fact and throughout this statement -- that he didn't see it.

So I don't know what they have told him since then, or what someone has told him since then. I am suggesting to this Court that if he is being offered as an eyewitness, then he needs to see the person do it. He can't come in and say, "Well, when I got there a half an hour or two hours later I saw the officer on the ground and somebody called me over and I looked in the police wagon and told them that's the person I saw on the scene." And that's the essence of this statement.

THE COURT: That's the purpose of trial, to determine who saw what, and so on. We are dealing here with whether or not there is a need for a lineup.

MR. JACKSON: Yes, sir. And I am saying, Your Honor, that if in fact this man is now going to be offered as an eyewitness because he has changed

his statement or there's another statement that indicates that he saw who did the shooting -- I am requesting, if that be the case, that a lineup be

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conducted. That's all. If he is not being offered as an eyewitness I will withdraw my motion as to this man. It's very simple, Your Honor. I will withdraw my motion if he is not going to be offered for that purpose.

THE COURT: You are asking whether he was an eyewitness to the actual shooting?

MR. JACKSON: Not necessarily whether he was an eyewitness. I am asking whether he is going to be called as an identification witness to identify Mr. Jamal as the person who shot Officer Daniel Faulkner.

MR. MCGILL: Your Honor, I was unaware that the statements would be read to the Court, so I did not bring all of my statements over. May I take a look just for a second?

THE COURT: Oh, sure.

MR. JACKSON: Mr. McGill is suggesting that there is another statement. If there is, I only have one statement.

MR. MCGILL: If I might have --

MR. JACKSON: I'm sorry. There is a second statement.

MR. MCGILL: Would Your Honor mind just a moment?

THE COURT: No. Go ahead.

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MR. MCGILL: Your Honor, may I proceed?

THE COURT: Yes, sure.

MR. MCGILL: In reference to these two statements, Your Honor, which were given to Mr. Jackson, in relation to

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Mr. Magilton, the identification testimony of that witness, Your Honor -- and perhaps in my own representations there may have been some

confusion in the way that I expressed it -- Mr. Magilton did in fact confront the defendant in the wagon, sir, and identified him as the individual. What he said --

THE COURT: As what individual?

MR. MCGILL: The individual who did the following: that he had moved across the street -- consistent with Miss White's testimony -- from the area of the parking lot and moved straight across, directly between the Volkswagen and the police car. And he then went there, in that direction.

At that time, when he moved forward there, he did not see the actual shooting at that time. He, however, will identify -- and was confronted with -- the defendant as the man he saw running in that direction a few seconds before the shots were fired. That is what it was, Your Honor.

THE COURT: So it was an on-the-scene situation?

MR. MCGILL: Yes.

MR. JACKSON: Of what?

THE COURT: The man he saw running across the street.

MR. MCGILL: A moment before the shots were fired. Now, if Mr. Jackson wants to argue that he did not see the shots, which he did not see the gun down and being fired, I would agree that that is correct. So that was an error on my part, if I gave that

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impression, Your Honor.

The other fact, Your Honor, is another witness -- and I believe, since there were some -- we're talking, Your Honor, approximately 49 witnesses, statements that were handed over -- I believe that at that time I may have confused the shooting which was observed by Mr. Chobert with Mr. Magilton.

However, one witness, particularly one witness who saw the actual shooting incident, will not be an identification witness, simply because he has said to me that he does not know whether he could or could not identify. So I would not use him as an identification witness.

But, Your Honor, we are talking about -- and what I want to make clear to the Court is, number one, Cynthia White has stated directly, under oath, on

two occasions, once before this Court, that Mr. Jamal was in fact the man who shot the officer while he was on the ground -- and I won't go through all of that. Secondly, the other eyewitness will in fact testify that Mr. Jamal was the man who did that. Third, another witness will testify --

MR. JACKSON: Could we just do one witness at a time, Your Honor.

MR. MCGILL: Your Honor; may I respond?

THE COURT: Yes.

MR. MCGILL: The third witness, Your Honor -- which is not Mr. Magilton -- will testify to the actual shooting of the officer, but he is not sure of identification himself. So he will not be called for the purposes of identification.

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Number 4, Mr. Magilton, will testify that the individual running across the street from the parking lot directly toward Officer Faulkner who, by the way, Mr. Magilton had talked to shortly before -- in other words, Officer Faulkner had talked to Mr. Magilton -- he was the last one he talked to alive, was Mr. Magilton.

At that time, when he stopped and talked to him, Your Honor, at 13th and Locust, the next thing he did was move forward. And then, that's when Officer Faulkner stopped the car that Mr. Cook was driving at the time.

Mr. Magilton will testify that he then turned around and saw an individual being pulled over. He saw that. And he then saw an individual whom he will identify as Mr. Jamal running from the parking lot moments before, if not seconds before, he heard the number of shots. He then goes over and identifies the man who was running across the street just before the shots were fired.

THE COURT: You see, Mr. Jackson, even if he couldn't identify the face at that time, that's irrelevant to the on-the-scene identification later on. You have to cross-examine there as to what opportunity he had at the time to observe --

MR JACKSON: I understand. But the problem is Your Honor, accepting the representations of counsel. I can give you the statement to look at. Number one, he didn't see Mr. Jamal run, he saw a man walk. And he never said that the man ever crossed the street, the man, whoever it was, that he

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saw.

He saw a man walking from a parking lot, never saw the man cross the street, never saw Mr. Jamal do anything at all. Counsel is suggesting to you that he saw Mr. Jamal --

THE COURT: That's not the issue here. The issue is whether there is a necessity for a lineup. What's the necessity for that?

MR. JACKSON: Because he's saying that he's going to identify Mr. Jamal as doing something, and I want to know what he is going to identify him as doing. If he's going to identify that he was the man in the wagon, we'll concede that Mr. Jamal was arrested and was in the wagon.

THE COURT: That's independent of any identification at this stage of the game. In other words, he was asked at the time, "Is this the man you saw a few moments ago doing X, Y and Z?" That's totally independent of any lineup or any in-court identification.

MR. JACKSON: There is nothing in his statement that would indicate that he can identify Mr. Jamal. Again, I'm being placed in a position of accepting Mr. McGill's words -- and I have two statements from Mr. Magilton -- where counsel comes in and says, "Yes, he can identify him." And I think that we have already heard counsel back up from his original position as to what Mr. Magilton saw.

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There is nothing in the four corners of any of those statements that says Mr. Magilton can identify Mr. Jamal. What am I to believe, Your Honor? There is nothing in these statements that says that. Counsel is saying he can identify him. In these statements it says he didn't see anybody shooting, didn't see anybody cross the street.

THE COURT: What's the point?

MR. JACKSON: The point is he's saying he's an identification witness. And I want to know how is he an identification witness.

THE COURT: Well, as to identification, he could say he just saw the clothing and later saw a man with that clothing walking across the street.

MR. JACKSON: Well, I don't even want to get into that, Your Honor, at this point. What I am saying is that Mr. McGill is saying that Mr. Magilton

is an eyewitness. And it would seem to me that if Mr. Magilton is an eyewitness, Your Honor, it should be in some document that I received. And it's not in here.

THE COURT: Well, if he is not an eyewitness to anything, then at the trial

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MR. JACKSON: Am I going to have to wait until trial, Your Honor?

THE COURT: What do you want to do now?

MR. JACKSON: I want to find out if he's going to be an identification witness, Your Honor, so I can have a lineup. It's just that simple.

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THE COURT: I think Mr. McGill has already said he's not going to say that he can identify the face of the person who did the actual shooting.

MR. MCGILL: Right. To make it very clear, Your Honor, in terms of Mr. Magilton, he did not actually see the shooting itself.

THE COURT: All right. He will identify Mr. Jamal as the man who came across from the parking lot area toward the scene shortly before the shots were fired.

MR. JACKSON: Okay.

THE COURT: There's your answer.

MR. JACKSON: Your Honor, Mr. McGill is saying Mr. Magilton is going to say all these things. And I'm saying; "Where is the statement that says that? Where is the statement of Mr. Magilton that says that?"

Mr. McGill could tell you that each of the 49 witnesses are going to identify him. Am I supposed to accept his word?

MR. MCGILL: Your Honor, you know --

THE COURT: You don't have to accept anything.

MR. JACKSON: The point is, this is the statement. I think I have a right to challenge the Commonwealth with regard to identification. He's saying Mr. McGill is saying --

THE COURT: Challenge in what way?

MR. JACKSON: Pardon me?

THE COURT: Challenge the identification witnesses in what way?

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MR. JACKSON: To challenge the Commonwealth to present a lineup for Mr. Jamal.

Again, Your Honor, I'm being forced into a position where Mr. Jamal --

THE COURT: You're not being forced into anything. A lineup is not a matter of right in every situation with every witness, you know.

MR. JACKSON: I understand that. And I am not suggesting that, Your Honor.

THE COURT: If somebody saw something for a couple of fleeting seconds and then sometime later says, "I can identify the person," you give him a lineup to find out. But that's not the situation here.

MR. JACKSON: Why not, Your Honor? Because, obviously, based on the statements that I have, that the Commonwealth has given me, it says in this statement that Mr. Magilton, aside from the fact that he spoke to Officer Faulkner earlier -- he says that he came upon the scene and that he saw someone walking near the parking lot, that he could not identify the person because he was eighty feet away. He didn't see the shooting.

So my question is: who or what can he identify? The statement would suggest that he can't identify anyone. And now counsel is coming in and representing to the Court, "Yes, he can." And I am saying, Your Honor, that according to his statement he can't.

Now, I don't know what has been said to Mr.

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Magilton or what has --

THE COURT: If he can't identify anybody, then at --

MR. JACKSON: So how can we make --

THE COURT: -- the trial you will go into that on cross-examination.

MR. JACKSON: You are saying that at the trial I can get into that. But I am saying that if he is being offered as an identification witness, where we know in fact that this man has not continuously seen any individual, particularly this individual that he may have seen walking --

THE COURT: I don't think -- I understand your argument, but I don't think it's really going to the issue here. I don't see any need for a lineup for Mr. Magilton now.

MR. JACKSON: When will we have the lineup, Your Honor?

THE COURT: I don't see any need for a lineup at all. It's not going to prove anything one way or the other.

MR. JACKSON: I'm saying that this man says in the statement that he can't identify this person he saw walking, and Mr. McGill is saying that he is going to come to court and identify, be an identification witness. And Your Honor is saying I can't get a lineup.

It seems to me that Mr. McGill is contradicting the statement of the witness, that he is going to call him as a witness at trial, put him on the stand in front of a jury and say, "Can you identify Mr. Jamal?"

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And I am saying, Your Honor, if he can identify him, he can; if he can't, he can't. So it seems to me we should have a lineup. What burden is the Commonwealth put to?

THE COURT: Is this witness going to be called to identify Mr. Jamal?

MR. JACKSON: I don't know, Your Honor. According to his statements he can't even identify him as being at the scene. That's according to his own statements. As far as being in the wagon, we'll concede that.

MR. MCGILL: Your Honor --

THE COURT: We don't need anything from the audience. I'm not going to be intimidated by the audience one way or the other. We are giving Mr. Jackson every reasonable opportunity to explore all facets of the case. Now, if some members of the audience don't like my rulings, then we'll have them removed from the courtroom. I won't be intimidated by the audience.

MR. JACKSON: I am not suggesting that the witness is going to come in and say he can identify Mr. Jamal as the shooter.

THE COURT: And Mr. McGill has stated that on the record.

MR. JACKSON: But he is saying, as I understand it, that he is going to come in and identify Mr. Jamal as being somewhere in the area. And I am saying that if the Commonwealth

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is being sincere and acting in good faith and giving me all of the statements of the witnesses, Your Honor, there is nothing in the statement of Mr. Magilton that suggests that he can identify Mr. Jamal as being any place there. And Mr. McGill says that he can offer this witness to testify that he saw Mr. Jamal running across the street.

Number one, this witness doesn't indicate that he saw Mr. Jamal running across the street. In fact, he never said that he saw anyone running across the street. He saw a man walking near the parking lot, approximately eighty feet away, Your Honor, and he can't identify him.

And I am saying to you, Your Honor, how can Mr. McGill say that at the time of trial they are going to put him on the stand, so he can identify Mr. Jamal as being there when the witness never said that.

THE COURT: Well, nobody is going to stop you from cross-examining at the time of trial.

MR. JACKSON: I know that I have the right of cross-examination.

THE COURT: And you can bring out all the statements that you have and confront him with those statements in an attempt to affect his credibility.

MR. JACKSON: I understand that. But it seems to me that under the circumstances, where we have an individual who is alleged to have seen certain things, that a lineup to establish his credibility is necessary.

THE COURT: Where there is a clear-cut issue of

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identification of a person, where there is some question whether the person who comes into court is going to be able to identify the person, identify the face of the individual whom he says he saw at some time previously and where there was a minimal opportunity to observe the face, that's what a

lineup is for.

MR. JACKSON: But this man says he couldn't see --

MR. MCGILL: May I interrupt just for a moment? I do want to clarify something, since there have been comments made about the statements.

I would like to respond by simply pointing out that, if you recall, I said that the witness, Mr. Magilton, after the shooting took place and when the police arrived, then proceeded up to the scene and identified him in the wagon.

Now, the statement, Your Honor, I would like to point out -- and I also said that he was coming from the parking lot area. And I used the word "running" at that point, because the word "running" was mentioned. He said in one of his statements -- and I want to clarify it for the record -- I honestly believe it's not really for Your Honor's decision in this matter, but just to clarify it -- he says on Page 5 of the 12-17-81 statement: "He was moving like a fast walk."

THE COURT: That's a matter of terminology.

MR. MCGILL: Which may be interpreted --

MR. JACKSON: Your Honor --

MR. MCGILL: Let me finish, please.

THE COURT: That's also something that can be

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explored on cross-examination.

MR. JACKSON: But, Your Honor --

MR. MCGILL: Let me just finish, please.

Secondly, he says also, in the last statement that he gave, which Mr. Jackson has -- in the last question:

"Did you ever see the male that you saw walk out of the parking lot again?"

"The police had him on the ground. Then they placed him in the back of

the wagon."

Again, we are talking about what I have stated. And what he will say is that at that point he went up and identified him in the wagon as the one that he saw walk across the street.

So I would wish that counsel, if he's going to make statements, would be at least complete in the statements being made before this Court.

MR. JACKSON: Your Honor, if I may, please, the fact that the police had a man on the ground and then placed him in the wagon -- I am conceding that Mr. Magilton will in fact identify the man in the wagon as the man that they had on the ground.

But Mr. Magilton says earlier in his statement that the man he saw at or near the parking lot -- he gives a description of him, gives a description of his clothing, and says he cannot identify -- he was, eighty feet away.

My point is, Your Honor, how can he -- and, again, remember that he saw this man and that he was moving in a car

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and kept moving -- later on he came back --

THE COURT: That's an argument that you can make.

MR. JACKSON: But the point is, Your Honor, how can he be sure that they are the same person? And I'm saying only a lineup --

THE COURT: No, I don't think a lineup is going to -- a lineup after the incident is not going to help you in that regard. That's your argument to the jury.

MR. JACKSON: To the jury? Fine, sir. If Your Honor makes your ruling, fine.

THE COURT: Yes.

MR. MCGILL: I want to make clear that both Miss Cynthia White and Mr. Chobert will clearly identify the defendant as the man who goes over and shoots the deceased, Officer Faulkner.

Also, a Mr. Robert Harkins will state -- will testify about facts concerned with the shooting of Officer Faulkner, Your Honor, as the man stood over him, reaching, looking down and firing at him when he was on the ground,

although he says that from his vantage point he could not identify -- he cannot identify for sure who it was. So he will not be called to identify Mr. Jamal. He may be called to show the jury the action, which would be consistent with the testimony of the other two witnesses.

THE COURT: I am denying the motion for a lineup as to Mr. Magilton.

MR. JACKSON: Fine, sir. With regard to Mr.

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Chobert, we have the same situation. Mr. Chobert did not see who shot. He heard shots and then turned around. Again, he did not see anybody doing any shooting.

THE COURT: All right.

MR. JACKSON: I don't know what the Commonwealth is -- again, there is nothing in the statement. And, Your Honor --

MR. MCGILL: Your Honor; I would flatly disagree with that statement. And if Your Honor wants to go over both of the statements, I will gladly do that. But that is an inaccurate reflection of what Mr. Chobert's statements say.

THE COURT: Not really. I don't have to decide who is telling the truth in a statement at this --

MR. JACKSON: That's just the point, Your Honor -- and I don't think you should be put in the position of determining who is telling the truth. But again, Your Honor, the only indication that you have and you have made your ruling with regard to Mr. Magilton -- the only indication that you have that Mr. Magilton can identify anyone is from Mr. McGill. But, again, you have made your ruling, Your Honor, and I am not going to debate that.

We now have the same situation with regard to Mr. Chobert. I suppose counsel is going to say, "Oh, yes, he can." But the statement says, "I did not see the shooting." The statement does not --

MR. MCGILL: I object.

MR. JACKSON: May I finish, counsel?

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MR. MCGILL: May I finish?

THE COURT: Let Mr. Jackson finish.

MR. JACKSON: Thank you. The statement does not indicate that he can identify Mr. Jamal. All I am saying, Your Honor, is if in fact Mr. McGill has these witnesses, Mr. Magilton, Mr. Chobert, any of the 49 witnesses -- if they are saying they can identify Mr. Jamal, I think I have a right to know that, Your Honor. And I am coming in here today and being told --

THE COURT: That's what the discovery rules say: eyewitnesses have to be provided to you.

MR. JACKSON: Yes, sir. And I am being told that Mr. Magilton is an eyewitness. His statement doesn't indicate that, but I am being told that. I am being told today that Mr. Chobert is an eyewitness, and his statement doesn't indicate that, Your Honor.

THE COURT: You are not being denied the names of any witnesses. Basically, that's what the rules of discovery provide. As far as I can see, you are being given the identity and the names of all witnesses. Right?

MR. JACKSON: Yes, sir.

THE COURT: Now, if those discovery rules are violated I want to know about it. You are entitled to get the names of all witnesses, eyewitnesses, those who were on the scene, and so on. And as far as I can see, you are being given all of that information.

MR. JACKSON: We'll get to that issue, Your Honor,

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as to whether or not I'm getting everything.

THE COURT: All right. That's another question. That takes care of your motion as to Mr. Chobert, right?

MR. JACKSON: So you are going to deny the motion as to Mr. Chobert as well? Even though there is no indication that Mr. Chobert can identify him, you are going to let him get on the trial stand and identify him?

MR. MCGILL: If I may interrupt, it's a matter of fact -- first of all, this lineup hearing is getting into the area of arguing over statements --

MR. JACKSON: Because the statements don't say --

MR. MCGILL: May I finish, please?

THE COURTS: There is one point you have to keep in mind: how are you going to handle these witnesses? What is Mr. Chobert going to get on the stand and say?

MR. MCGILL: I have already made up my mind. And I told the Court at the last hearing, when we talked about a lineup. And that has not changed.

THE COURT: And your answer then was what?

MR. MCGILL: They are not going to get up in the courtroom and identify the defendant as the shooter. They will do just as I said before. Miss White and Mr. Chobert will -- may I finish, please?

MR. JACKSON: I haven't said a word.

MR. MCGILL: On Page 2 it says this --

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THE COURT: If they are going to say --

MR. MCGILL: May I finish, please? I would like to point this out, Your Honor, because I am hearing inaccuracies stated before this Court.

THE COURT: All right.

MR. MCGILL: "Would you be able to identify the man that shot the cop if you saw him again?"

The answer in the statement is: "Yes."

And I would ask Mr. Jackson would he read the statement before he starts making comments.

MR. JACKSON: Whose statement is that?

MR. MCGILL: Mr. Chobert's.

MR. JACKSON: Did you see the shooting?"

"No."

THE COURT: Do you want a lineup as to Chobert?

MR. JACKSON: Yes, sir. The questions is: "Did you see the shooting?"

"No."

That's in his statement.

MR. MCGILL: Your Honor; again, it's an inaccuracy.

MR. JACKSON: Your Honor, I'll give you the statement.

THE COURT: Let him finish.

MR. MCGILL: Your Honor has already ruled on the lineup as to Mr. Chobert. And you have already ruled upon Mr. Magilton's identification.

THE COURT: But if you are telling me that they

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are going to get up in court and identify the defendant, then I think perhaps a lineup might be in order. If you are saying that Mr. Magilton is not going to take the stand and say he can identify the person who actually did the shooting because he didn't see the actual shooting, then a lineup is totally irrelevant.

MR. MCGILL: Your Honor, I -- if the Court can recall, I did in fact state at the first time the lineup motion was argued, which was before the preliminary hearing -- and going through a rather long argument -- with Mr. Jackson being present -- Your Honor had ruled then -- and I had stated that they would identify the defendant -- and particularly Mr. Chobert, since, as a matter of fact, in his statement he says yes, he can do it, that is, identify the man who shot the cop. He says, "Yes, I can identify him."

And I explained the circumstances of the identification, how he went up to the scene and was shown the defendant and identified the man at the time.

Your Honor, I think that this is an on-the-scene identification, again. And Your Honor has already ruled on this. And it's exactly the same, what I have stated before. They have identified the defendant as the shooter.

THE COURT: Who?

MR. MCGILL: Miss White and Mr. Chobert.

THE COURT: All right. As to Mr. Magilton, I am denying the lineup. As to Chobert and White, I am going to review -- I will reserve decision with regard to Chobert

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and White. I want to see exactly what was said at those hearings. I want to review exactly what was said by counsel.

MR. JACKSON: And that's the argument that I made earlier, after the initial ruling with regard to the lineup, that counsel came to you and made certain representations as to what the witnesses would say. I said Cynthia White didn't say all of those things, that it was only counsel who said all of those things.

THE COURT: Well, I will review the situation with regard to Chobert and White.

MR. MCGILL: I would also point out that on Page 3 of Mr. Chobert's statement, at the end, it does in fact say that the officers came over to him, asked him if he saw the man that did the shooting again would he be able to recognize him. And Mr. Chobert says, in the statement on Page 3: "Yes." The answer is: "Yes."

"Then he" -- this is Mr. Chobert talking -- "Then he" -- the officer -- "took me over to the wagon and opened the door, and I saw the male in the back of the wagon. And I told the officer it was him that I saw do the shooting."

Judge, isn't that exactly what I said? He saw the shooting. He said it. That part was not read by Mr. Jackson.

THE COURT: That is Magilton's statement?

MR. MCGILL: This is Mr. Chobert's statement, sir. He said he could identify the man. He said it then, he

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will say it at trial.

THE COURT: Well, I want to give consideration to the lineup as to Chobert and White. The next matter is removing Mr. Jamal from administrative segregation.

MR. JACKSON: That's correct.

THE COURT: What's your position as to that, Mr. McGill?

MR. MCGILL: Your Honor, I have -- whatever Your Honor feels is appropriate. I'm not ---

THE COURT: Why was he put in administrative segregation?

MR. JACKSON: Well, Your Honor, what, in effect, happened -- after he was shot and wounded he was in the hospital wing of the detention center. And he was placed there for medical reasons. After he recovered, Your Honor, it just dawned on us that they just kept him there. And he has had an opportunity to speak to and see about six people since his arrest on December 9th.

The detention center itself -- I'm sorry -- the hospital wing is just a wing of the detention center. And we have requested that he be allowed to go into the general population. There is no reason for him to be there.

I'll be very candid with the Court: Superintendent Owens has indicated that he thought it would be good for Mr. Jamal's protection to be there, Your Honor, because there might be some psychopath that might want to get some publicity and do something to Mr. Jamal.

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But my point is that if he wanted to punish Mr. Jamal he would do the same thing, he would put him in segregation. There is no reason for him to be there. Mr. Jamal wants to be among the general population.

THE COURT: Segregation is not a form of punishment. He just has a cell in an administrative area.

MR. JACKSON: No, sir, it is a form of punishment. If you look at the prison regulations with regard to -- they have infractions -- there is Prison Infraction 3, the most severe of which is administrative segregation.

THE COURT: He's still in a cell, the same type of cell.

MR. JACKSON: Well, he's in the same type of cell, Your Honor, but --

THE COURT: It's not like burying him in the ground in a box. You make it sound like he's being --

MR. JACKSON: I'm not saying --

THE COURT: All right, I'll order him returned to the general population.

MR. MCGILL: May I state for the record --

THE COURT: That's your request?

MR. JACKSON: Yes, sir. Thank you.

MR. MCGILL: I would like to state our position now. And I completely agree with the Court's ruling. I would state that --

MR. JACKSON: Great.

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MR. MCGILL: I understand what Mr. Jackson is saying. But in this case, Your Honor, he was put there for his own protection. However, if he wants to go into the general population, that's fine with us, as long as he stays in custody.

MR. JACKSON: Fine. Thank you very much, Your Honor.

THE COURT: He's not going to be released from custody.

MR. JACKSON: I'll prepare an order, Your Honor.

THE COURT: And I'll sign it. Now, the next matter has to do with the Internal Affairs files on the alleged brutality charge.

MR. MCGILL: Yes, sir.

Mr. Jackson, basically, has used the authority of Mayor Green's Executive Order 180, Your Honor, and has pressed this, stating that it was essential and important that he receive the information.

However, I would bring to the attention of the Court that Executive Order 180 -- it's not a question of the police not wanting to give anything -- it says, Your Honor, that -- and I am referring to "Public Access and Maintenance of Records" -- "Where the incident which is the subject of the complaint has resulted in criminal investigation or prosecution of any party, the investigative report shall not be available until the criminal charges have been resolved or the investigation is completed."

The criminal charges obviously have not been

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resolved, Your Honor, and the investigation, which was initiated by the complaint of Mr. Jamal, is not concluded.

Your Honor, that is what the Executive Order says, and I have read the restriction placed upon it. And this is the authority that Mr. Jackson uses to --

MR. JACKSON: I --

MR. MCGILL: May I finish, sir, please? You may be pleased with my position at the end, counsel. I have received, also, a letter from Mr. Jackson requesting information. I have written Mr. Jackson a letter, dated March 9th, stating that the District Attorney's Office has already supplied discovery relating to the shooting death of Officer Daniel Faulkner, in compliance with the court order.

I understand, Your Honor, that Mr. Jackson has also requested interviews relating to the investigation of Internal Affairs that originated through Mr. Jamal's complaint. In order to assure full compliance with the discovery rules, I am now requesting that all statements from police and civilian witnesses be provided to our office so that they we may distribute them to the defendant and his attorney.

So, Your Honor, my position is as follows: well, let me first say that this is a police investigation, Internal Affairs investigation, which was initiated solely by the complaint of the defendant and counsel for the defendant. The District Attorney's Office has not been requested to conduct an investigation into this. It is a police investigation,

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Internal Affairs.

So the order is clear. However, under the discovery rules, Your Honor, it would be my position that I believe the Court can well order the Police Department to hand over the interviews of the witnesses, police and civilian. That is my belief, Your Honor, because I am interested in the defendant getting everything in terms of discovery. And I have attempted to show -- there are fifty statements, Your Honor, all in his possession. Anything that I could get, or copies of these things that we retained, have been given to him at various dates in the past.

Our position as to these interviews from policemen and civilians -- we would like the defendant to have them and the defendant's attorney to have

them. As a matter of fact, they may be discoverable, Your Honor, in the narrow outline of the discovery rules -- it is most likely within the portion of "discretionary" material, which, in the interests of justice, he should have.

This is also Mr. Rendell's position, Your Honor. Everything I have said today is the position of the District Attorney.

THE COURT: Well, that material -- I don't know if it is really relevant, or if it will really help him, because the events presumably occurred after the incident in question.

MR. JACKSON: No, sir. That's just the point. There are some beatings that occurred afterwards, no question. But I am saying --

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MR. MCGILL: I object to that, Your Honor. I object to those gratuitous statements, Your Honor.

THE COURT: You are saying there were some beatings after the shooting?

MR. JACKSON: Yes. We have demonstrable proof that he was beaten. And if a police witness comes in and testifies and we can show that he may have a certain bias because that police witness may be subject to criminal prosecution, I feel that's relevant.

THE COURT: You want this, then, for the purpose of cross-examining police witnesses?

MR. JACKSON: Absolutely.

MR. MCGILL: May I, Your Honor --

MR. JACKSON: Excuse me.

MR. MCGILL: I'm on your side on this one. May I encourage Your Honor to give the interviews to Mr. Jackson?

THE COURT: You want an order directing the Police Commissioner to turn over those files?

MR. JACKSON: Everything in those files, yes, sir.

MR. MCGILL: I object to that. Now, Your Honor, that flies --

THE COURT: We don't know what --

MR. MCGILL: That flies right in the face of the Executive Order.

MR. JACKSON: Could I say --

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MR. MCGILL: Mr. Jackson, may I finish, please?

MR. JACKSON: He's going on and on, Your Honor.

MR. MCGILL: Mr. Jackson says that I have been going on and on. Did you hear that, Your Honor?

THE COURT: What's your argument?

MR. MCGILL: Your Honor, the Executive Order is clear on the restrictions. As to the extent that Your Honor would rule in accordance with the Rules of Criminal Procedure, it would be appropriate that the interviews be handed over, I believe. And I am willing to have that done.

As far as anything else -- of which I am unaware -- whether they be, as I say, white papers, analyses, whatever, that has not been completed. So that certainly should not be made available.

But the interviews that have been taken to date should certainly be made available to the defendant and I believe to anybody else, Your Honor, in compliance with the order.

MR. JACKSON: May I speak to the Court?

THE COURT: Yes.

MR. JACKSON: Your Honor, several issues.

THE COURT: Briefly.

MR. JACKSON: Very briefly, Your Honor.

Number one, an Executive Order cannot be issued to contravene the Pennsylvania Rules of Criminal Procedure or the Pennsylvania Constitution or the United States Constitution.

Secondly, this Executive Order says while there are criminal charges pending they don't have to give me the

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information -- or unless the investigation is completed.

So when they tell me they don't have to give me the information while the case is pending -- and again, Your Honor, it doesn't do me any good after the case is over, after Mr. Jamal's case is over --

THE COURT: You want the interviews?

MR. JACKSON: I want everything in that file, Your Honor.

THE COURT: But I don't know what that --

MR. MCGILL: I object to that, sir.

MR. JACKSON: Because there are items in there, Your Honor -- there are leads in there. What I am suggesting, Your Honor, is that in fact -- as an example, if you will, Your Honor, there may be -- Inspector Giordano, who testified against Mr. Jamal -- and this is hypothetical, Your Honor -- another Chief Inspector -- Inspector Frank Goldberg, I think -- is assigned to Mr. Jamal's internal complaint. He investigates the complaint that Mr. Jamal made, he talks to police officers, he talks to hospital personnel, and he finds out that indeed there is a great likelihood that Inspector Giordano struck Mr. Jamal while he was in the vehicles.

Inspector Giordano --

MR. MCGILL: Is this --

MR. JACKSON: Hypothetical.

MR. MCGILL: -- hypothetical?

MR. JACKSON: Yes.

MR. MCGILL: Make sure you make that clear.

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MR. JACKSON: It's hypothetical.

THE COURT: All right.

MR. JACKSON: If, then, Inspector Giordano --

MR. MCGILL: I heard there were leaflets handed out, and apparently --

MR. JACKSON: Your Honor, if I may --

THE COURT: Let him finish.

MR. JACKSON: If, based on those interviews that one inspector would take pertaining to the investigation of an assault by another inspector, that inspector, Inspector Giordano, might be subject to criminal charges if the District Attorney's Office would do their job and arrest him for that assault -- my point is, Your Honor, if that were the case, then Inspector Giordano would obviously have a bias when he testifies in court. And if so, I need to know that, I need to have that information, Your Honor, to know that he may have that bias in his testimony to protect himself from criminal charges.

I think it's very clear. And, as Your Honor well knows, in all criminal charges we have a right to go into a witness' background to see if there's a bias on the part of the witness when he testifies. And I am not able to determine that at this point, Your Honor, because the information is within the sole and exclusive control and custody of the police department. So I need that information.

THE COURT: The problem is, you see, at this point I don't know what's in those files, and I don't know what's

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relevant or irrelevant.

MR. JACKSON: I don't believe that you need to make a determination as to whether it's relevant or irrelevant, Your Honor, if Mr. Jamal has a right to have that information as to the complaint that he initiated.

MR. MCGILL: If it's relevant to your case --

MR. JACKSON: There may be things in there that are not relevant to our case at all. Who's going to make that determination? The police department?

THE COURT: That was my question. We don't know what in those files is

relevant or irrelevant.

MR. JACKSON: Well, it seems to me that the only way that that could be determined --

THE COURT: Can I request that the files be turned over to me and I'll decide what has to be turned over, I'll issue an order and put my reasons in the order?

MR. JACKSON: Your Honor, I would like to participate along with you in making that determination. If you don't give it to me, you don't give it to me. And Your Honor can make your own ruling with regard to that.

And while you're at that, Your Honor, because there's another issue with regard to the Executive Order -- I'm sorry -- the directive, the police directive, Number 10 -- there's a Police Directive Number 10 that was issued by Commissioner Solomon. There are shooting incident reports that are to be made, every shooting that occurs in the police department. And I am saying that there is a report of every

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shooting by or of an officer. I have not received any information as to that through discovery. I am requesting that Your Honor issue an order directing the police department or the District Attorney's Office to make that information available to me. That information would contain the report -- a shooting report prepared by the Internal Affairs Unit and/or the Homicide Unit.

I would like that information, Your Honor, as well as the recommendations of -- I believe it's called the Firearms Review Board. I would like that information as well, sir.

MR. MCGILL: All right. Well, Your Honor, I think most of what -- under the order and under the discovery rules, most of what Mr. Jackson asks for is not required at all. As a matter of fact, I believe that the interviews -- most of the interviews, most likely, since they are after the fact -- there's a serious question of relevance.

It is our position that he received all of the interviews from police and civilians. From that information, obviously, can be gleaned any kind of alleged bias -- if it exists, Your Honor, on the part of the witnesses who may testify.

THE COURT: I want to see whether I can get the files. And if so, I'll look

them over and make a record.

MR. JACKSON: You do appreciate the fact that we are talking about two separate files, one pursuant to the Executive Order --

THE COURT: And the other is the investigation

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of the shooting.

MR. JACKSON: Yes, sir. Pursuant to Directive Number 10, sir.

THE COURT: All right.

MR. JACKSON: May I go on with the omnibus motion?

I also want a copy of all property receipts that were issued in this case. I have not gotten any property receipts at all.

THE COURT: Are they going to be turned over or not? Is there any objection to turning that material over, Mr. McGill?

MR. MCGILL: No, sir. If he doesn't have them -- I don't think the rules require it, but we'll be glad to furnish them.

THE COURT: All right. If you don't get them, let me know. What else do you want turned over to you?

MR. JACKSON: I want a complete copy of the medical examiner's report.

THE COURT: Is that ready yet?

MR. JACKSON: They have given me what purports to be a complete copy of the medical examiner's report.

MR. MCGILL: Whatever we had we gave him.

THE COURT: Why do you think it's not the whole report?

MR. JACKSON: I know it's not the whole report.

THE COURT: How do you know that?

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MR. JACKSON: Well, Your Honor, is Mr. McGill saying that in fact --

THE COURT: He's saying he has given you everything he's got.

MR. JACKSON: I'd like to be certain that he did, because it's important.

THE COURT: I know it's important.

MR. JACKSON: If he says he has given me everything that he has, then my issue -- then I have to go someplace else with my issue. Because it is an issue that's very important.

MR. MCGILL: Everything we have, Your Honor, in reference to the post-mortem report has been given to Mr. Jackson. If Your Honor would like, I would further check with the medical examiner to make sure that the report is complete.

MR. JACKSON: Okay.

THE COURT: If the medical examiner says, "That's my report," and Mr. McGill says, "That's the report we got," what more can you do?

MR. JACKSON: I'll show you what I can do if they come back and they don't give me anything more. And I don't mean to be facetious, Your Honor, but --

THE COURT: No, no, no. If you think there's more --

MR. JACKSON: I know there's more.

THE COURT: -- in the record that has not been

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turned over to you --

MR. JACKSON: I know there's more.

THE COURT: And who has not turned it over to you?

MR. JACKSON: I don't know. That's what I am trying to find out, whether it's Mr. McGill, the police or the medical examiner.

THE COURT: Well, there's nothing I can do, since it is not in front of me. If you can prove that in front of me, then we'll take action.

MR. JACKSON: You mean now?

THE COURT: Anytime you want. You can file a petition later and claim that you were deprived of information.

MR. MCGILL: I'll have another county detective, Mr. Bill Thomas, contact the doctor who conducted the autopsy.

THE COURT: All right. Check it out. If you think there's more and have reason to believe there's more, Mr. Jackson, you have certain remedies you can pursue. Anything else in your omnibus motion?

MR. JACKSON: Copies of any and all lab reports. I don't believe that I have all of the lab reports.

THE COURT: This is something that should have been done before this.

MR. JACKSON: Well, I'm presenting it to you now, Your Honor.

THE COURT: I don't want to take up the valuable time of this vast audience.

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MR. JACKSON: I filed my omnibus motion. I'm entitled to get the information. I didn't get it, so I'm coming back in here.

THE COURT: Is he going to get it or not, Mr. McGill?

MR. JACKSON: There's an FBI report that I didn't get.

MR. MCGILL: I understand that the lab reports were given to Mr. Jackson and he had said, according to what Detective Thomas said, that he felt this was all that he needed. We gave him all that we had. If there's anything else around, we'll be glad to give it to him, Your Honor, in terms of lab reports.

MR. JACKSON: Detective Thomas came to me -- and I am not disparaging Detective Thomas here, but I find that all of the lab reports are not here.

THE COURT: How do you know that?

MR. JACKSON: Based on the information that they did give me, I know, pursuant to a property receipt, Property Receipt Number 854922, that there

was an FBI report. And I'm saying that I need to have that.

THE COURT: An FBI report or a lab analysis?

MR. JACKSON: There was a lab analysis conducted, apparently by the FBI. And the FBI or someone else apparently has possession of it. And I would like to have it. And it's in their lab report that the FBI has a report.

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MR. MCGILL: If there is anything that he does not have -- and Mr. Thomas, Detective Thomas, tells me we have given him everything -- if there is anything he does not have, we will be very glad to give him what we believe is a copy, Your Honor, in terms of lab reports.

THE COURT: All right. What else?

MR. JACKSON: Copies of all police -- well, we have done this. I would like a transcript of the radio broadcasts and transmissions of Officer Daniel Faulkner on December 9, 1981.

THE COURT: Immediately preceding this whole incident?

MR. JACKSON: Yes, sir.

THE COURT: Is that available?

DETECTIVE THOMAS: Yes, sir.

MR. JACKSON: And I would like a transcript of any and all radio broadcasts and transmissions of other police officers immediately after this incident, other police officers who responded to the scene.

THE COURT: For how long a period after?

MR. JACKSON: Five minutes.

THE COURT: Is that available?

DETECTIVE THOMAS: Yes, sir, Your Honor, I can give them that.

THE COURT: Those that are relevant, concerning this case.

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MR. JACKSON: Yes. Just this incident.

MR. MCGILL: That will be done.

MR. JACKSON: I would like to have the fingerprint card of Officer Daniel Faulkner and Mr. Jamal. I would also like to have any and all information pertaining to the fingerprint identification, development, comparison, or any of that.

MR. MCGILL: The fingerprint cards, of what possible relevance are the fingerprint cards of the Philadelphia Police Department?

MR. JACKSON: A copy would do.

THE COURT: Do you have some physical evidence where you are going to have fingerprints compared with these?

MR. JACKSON: It would be relevant to the next two issues, and that is: if the police department has developed, identified, compared or in any other way developed fingerprint identifications or fingerprint evidence, I would like to have a copy of that and know the process by which those comparisons or analyses were done. I have received nothing.

THE COURT: Fingerprints of what, the evidence?

MR. JACKSON: Anything at the scene -- the weapons, in particular, of course.

MR. MCGILL: If there is any report in reference to fingerprints, we will certainly provide it to Mr. Jackson.

THE COURT: You will provide any record of any fingerprint comparisons, or anything of that nature?

MR. MCGILL: Yes, sir.

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MR. JACKSON: Could I be told when I will be told if this information exists?

The problem is: "We'll give it to you if it exists."

THE COURT: I am presuming that anything that is promised to you will be given to you today or tomorrow. Let's get this show on the road.

MR. JACKSON: The only reason I would like to know is because Your Honor has issued rulings before and they have not been complied with in a timely manner. That's why I asked the question.

MR. MCGILL: I would object to that, Your Honor.

THE COURT: All right. That's a self-serving statement. What else?

MR. JACKSON: The criminal record of any and every civilian witness.

MR. MCGILL: Your Honor, I don't believe that they would be relevant. Certainly at the time of trial, those individuals we would call as witnesses - - we would provide to the defense -- if there are any -- those criminal records. However, there may be a number of witnesses -- as I pointed out, he was given nearly fifty witnesses -- well, less than fifty civilians -- but I think that's really an invasion of their privacy.

Now, as to those witnesses I would call to testify at trial, Your Honor, I would make that information available

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to him. That will be done at the time of the motion to suppress, so that he will have plenty of time to get whatever he needs.

THE COURT: All right. I think that's fair enough. As to those who are not called, the information is not relevant, certainly.

MR. JACKSON: Fine. I would like all photographs of Mr. Jamal -- all photographs that the police department or the Commonwealth has taken since his arrest.

THE COURT: Photographs of whom?

MR. JACKSON: Mr. Jamal.

THE COURT: Were there photographs taken?

MR. MCGILL: Photographs were taken, and we will be glad to make them available.

MR. JACKSON: Your Honor, pursuant to my original omnibus motion I received what I call, you know, the "boilerplate" response you get from the District Attorney's Office: "Call for an appointment to come in and see the information."

Well, I called. And I'm still waiting for an appointment.

THE COURT: You think the District Attorney's Office is deliberately trying to avoid you?

MR. JACKSON: I don't know.

THE COURT: Mr. McGill, did you refuse to meet with Mr. Jackson? He says he called for an appointment to go over these --

MR. MCGILL: If he called for an appointment to

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go over them, I certainly didn't get that message.

THE COURT: Well, I do not believe -- and I am stating this for the record -- that anybody in the District Attorney's Office would dare try to avoid your phone calls.

MR. JACKSON: And I am not suggesting that.

THE COURT: I know. You are speaking for the public -- your public.

MR. JACKSON: Your Honor, you are saying I am speaking for the public. It's a fact. What am I supposed to do? The letter says: "Call the District Attorney's Office."

I called, Your Honor, and I can't get in. You say I'm speaking for the public. I'm telling you what happened, Your Honor.

THE COURT: From here on in, you document every phone call and letter and let's see whether they are in compliance with the court order on discovery.

MR. JACKSON: How would you want me to document a phone call?

THE COURT: Come to my chambers, make the call from my chambers. My secretary will be right there. All right?

MR. JACKSON: Yes, sir.

THE COURT: Will that be good enough for you? We'll find out if they are avoiding your phone calls.

MR. MCGILL: Is Mr. Jackson saying that as a matter of course I have not

returned his phone calls, or only recently?

MR. JACKSON: Just recently.

THE COURT: Make the phone Calls from my chambers.

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We'll find out if anybody is avoiding your calls.

MR. JACKSON: Your Honor, you are saying I'm speaking to my public. And I want to find out from Mr. McGill why, if I get a phone call to come in and see the information -- I want to know why I can't go in and see the information. I'm not playing games. I'm serious.

MR. MCGILL: We have one photograph of Mr. Jamal, and I believe it was taken at the hospital, when he was being taken care of.

THE COURT: Will that be available? Yes or no.

MR. MCGILL: Sure.

THE COURT: Anything else?

MR. JACKSON: Would you also tell Mr. MCGILL now that I can come over to see all the other information that he says that he will make available to me, Your Honor. Again, Your Honor --

THE COURT: I'm not going to make any specific comment in that regard. I want to know if anybody is refusing to show you what they promised to show you. And you can document that.

MR. JACKSON: When am I supposed to do that? How long am I supposed to wait on this, Your Honor?

THE COURT: All depends on what time you get out of here. If you get out of here by the end of the day, I'm sure you can make arrangements today.

MR. MCGILL: If the Court pleases, Your Honor knows that I am on trial.

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THE COURT: You were due back five minutes ago.

MR. MCGILL: I'm not sure that I will have an opportunity either today,

tomorrow or Monday to meet with Mr. Jackson.

MR. JACKSON: Again, when I called, that's the information they gave me: "Mr. McGill is busy."

THE COURT: I happen to know he is on trial.

MR. JACKSON: I know it too, Your Honor. And I am not disparaging Mr. McGill. I'm simply saying I want to see the information, I call and they say he's busy. So how am I going to see it?

MR. MCGILL: I'll be glad to see Mr. Jackson sometime next week -- preferably at the end of the week -- to go over what we have.

MR. JACKSON: Your Honor, couldn't someone else in his office do it? I understand Mr. McGill is busy. I'm simply saying that if I'm supposed to prepare for this case, it seems to me that if the information is going to be made available to me, then it should be made available.

THE COURT: I'm not going to take a case out of a trial assistant's hands.

MR. JACKSON: Fine, sir.

THE COURT: If you have any problems, let me know. I don't think there will be any problems. What else?

MR. JACKSON: May I have the addresses of all of the eyewitnesses and informative witnesses?

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MR. MCGILL: I would object to that.

THE COURT: The policy of this Court is not to turn over addresses of witnesses except in certain situations.

MR. JACKSON: I am suggesting that this should be a "certain situation," Your Honor.

THE COURT: Why do you need the addresses?

MR. MCGILL: I object to this.

MR. JACKSON: Because I want to interview the witnesses -- or, at least, if I don't interview them I want an investigator of my own choosing to

interview them, Your Honor, to try to determine what happened.

Very briefly, it goes to the very issue that we spoke of earlier, where a witness says this, that and the other when Mr. McGill says he's going to say something else.

I would like to have some kind of information as to what these witnesses saw and what they will say. And at this point I have to rely on the police department and the district attorney to give me information about these witnesses.

And I think I have a right to know who they are and where they live so that I can conduct an investigation and interview, that's all.

I would assure this Court that I will keep the information between me and my investigator, and that's all. I am an officer of this Court, Your Honor, and I don't intend to intimidate or in any other way harass any of the witnesses.

THE COURT: As a practical matter -- and I have announced this as my policy in the past, in other cases -- if

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there is a confrontation between the Constitutional right of a witness not to be harassed or bothered and the right of a defendant to interview anybody he wants at any time, I will always lean in favor of the witness. I think the Constitution applies to other people besides defendants.

Now, if you want to indicate which witnesses you think you want to interview and work out something with the District Attorney's Office where you can perhaps interview them when they are made available to you, I think you can work that out.

MR. JACKSON: Must my defense depend upon the Commonwealth making witnesses available?

THE COURT: I'm not suggesting that.

MR. JACKSON: I ask Your Honor's advice in this matter. As a practical matter --

THE COURT: You don't have to go out and see everybody who has had anything at all to say about this incident, you know.

MR. JACKSON: I understand that. And I don't plan to do that.

THE COURT: Pick out those witnesses whom you think you want to interview.

MR. JACKSON: I know who they are: every witness they plan to call. It's just that simple: every witness they plan to call I want to interview.

THE COURT: Well, Mr. McGill?

MR. MCGILL: First of all, if Your Honor pleases,

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my position would be that I would object to witnesses' addresses being given to anyone.

Secondly, Your Honor is quite right in terms of the rights of witnesses at times. And also, they have a right not to speak to people. I have witnesses who don't want to talk to me anymore about the case. They'll say, "I simply am not going to talk to you."

MR. JACKSON: That's true. And I --

MR. MCGILL: And if they don't wish -- and several of those witnesses that Mr. Jackson has indicated may be called by the Commonwealth have told me that they wish to talk to no one anymore about the case. They don't want to talk to defense counsel or newspaper people or anybody. They don't want to be bothered. They are very upset. And I think, Your Honor, that this is another example of what you are talking about: harassment of witnesses.

MR. JACKSON: Harassment of witnesses? I'm sorry, I thought you were -  
-

THE COURT: Mr. Jackson, come on. You have been around, as I have. We have had witnesses in cases shot and killed.

MR. JACKSON: Are you suggesting that I am going to shoot and kill somebody? Your Honor, I resent that.

THE COURT: I resent your attitude. We have had witnesses shot and killed. And I am not suggesting that anybody in this case would ever do anything to hurt a witness. I'm telling you why I have had a policy of not disclosing the

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addresses of witnesses.

MR. JACKSON: I understand that.

THE COURT: If you don't like that policy, you have your redress before the appellate courts.

MR. JACKSON: I am not arguing the policy. I am saying I just want to interview the witnesses. That's all I am saying, Your Honor. I don't need any addresses. They can make them available in court, in my office, someplace else. That's all I am saying, Your Honor.

THE COURT: Mr. McGill will work out a system with you where he will try to get those witnesses to come in and talk to you or an investigator. If they don't want to talk to anybody, that's the end of the line.

MR. JACKSON: But you appreciate the problem we have: a county detective or police officer or district attorney goes to a witness and says, "Well, you know, they are representing Mr. Jamal."

THE COURT: I understand.

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MR. JACKSON: "They want to talk to you. Do you want to talk to them?"

"No."

That's what I am afraid of. I would like to go to the witness and say, "Would you talk to me?"

What do you think they are going to say after they go and get them?

"No, I don't want to talk to him."

THE COURT: You get together with Mr. McGill and see if you can work out something whereby you can talk to those witnesses who can be brought in. But we're not going to publish in the newspapers the addresses of these witnesses.

MR. JACKSON: I don't want that, Your Honor.

THE COURT: And that's my ruling. I'm not going to retreat from that

ruling no matter what you say. So --

MR. JACKSON: Your Honor, I'm not asking you to change that policy. I'm simply saying I just want them to make the witnesses available to me.

THE COURT: Mr. McGill, will you try to work out a system where Mr. Jackson can talk to these witnesses and, if they are willing to talk to him, perhaps bring them in at a certain time when he and his investigator can sit down and talk?

MR. MCGILL: I will proceed accordingly, Your Honor.

MR. JACKSON: And you are suggesting that Mr. McGill will tell me whether or not they are willing to talk

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to me?

MR. MCGILL: Didn't you hear the judge?

MR. JACKSON: I don't know if I heard him say that.

THE COURT: First let's find out who doesn't want to talk to anybody. If you think there's something wrong with that procedure, I'll look into it further. I'm just not going to have people going out and contacting witnesses and have them say, "I don't want to talk to you."

MR. JACKSON: I would then have to accept the representation of counsel, again, that they don't want to talk to me. And I am simply saying, your Honor, as an officer of this court, that I object to the unequal position of Mr. McGill. I think that I should have equal rights.

THE COURT: I am not favoring anybody. First let's see who says that. There may not be anybody who is going to take that position. So it's worthless to argue it.

MR. JACKSON: I'll tell you in advance, if those guys go out, if they contact them --

MR. MCGILL: I object to that. Your Honor has made a ruling.

MR. JACKSON: I'll tell you who's going to say it.

THE COURT: Who's going to say it?

MR. JACKSON: Cynthia White is, and Chobert and Magilton.

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THE COURT: Why do you think they're going to say it? Do you think they're going to say it because they have been told to say it?

MR. JACKSON: Yes, sir.

THE COURT: By whom?

MR. JACKSON: I don't know, Your Honor.

THE COURT: Now you're getting very close to accusing someone of impropriety.

MR. JACKSON: Yes, sir, I understand I am.

THE COURT: And you think somebody from the District Attorney's Office is telling these witnesses not to talk to you?

MR. JACKSON: I don't know, Your Honor. You have asked me and I have said I don't know. I said "someone." I don't know whether it's someone in the District Attorney's Office or --

THE COURT: Then you know of your own personal knowledge that someone has contacted those witnesses and said, "Don't talk to Mr. Jackson"?

MR. JACKSON: I don't know personally.

THE COURT: Then this is all speculative on your part?

MR. JACKSON: Not totally, Your Honor.

THE COURT: In what way isn't it totally?

MR. JACKSON: I have reason to believe that these witnesses -- or at least some of these witnesses -- have been told not to talk to the defense.

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THE COURT: Okay. What's your reason?

MR. JACKSON: Based on some privileged investigation that has been

provided to me, Your Honor.

THE COURT: Specifically what?

MR. JACKSON: I am not in a position to disclose that, Your Honor.

THE COURT: What's the big secret? You're asking the District Attorney's Office to reveal everything but the kitchen sink. What's the reason for not divulging that information?

MR. JACKSON: I think the rights and duties of the Commonwealth, as opposed to the defendant, are different. Whether we agree or not, we are different.

THE COURT: What reason do you have to believe that someone in the District Attorney's Office told a witness not to say anything to you?

MR. JACKSON: I never said anyone in the District Attorney's Office has done that.

THE COURT: If you are going to give the impression that somebody in this case is conspiring to keep information from you, let's get it out in the open. If not, you're going to have to back off. Because there is no conspiracy that I can see here.

MR. JACKSON: I cannot go into that right now, Your Honor.

THE COURT: I spent hours listening to arguments in this matter, trying to give you everything you can possibly

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get.

MR. JACKSON: There are innuendoes to suggest that I am overburdening the Court with my requests. And for some reason --

THE COURT: Who said that?

MR. JACKSON: You are saying you are spending hours with me, like I'd better back off with my requests.

THE COURT: I said I have spent a lot of time listening to arguments here to make sure that there is no avenue that has been closed off to you.

MR. JACKSON: Yes, sir.

THE COURT: There are certain limits, though.

MR. JACKSON: Yes, sir. And I believe -- and correct me if I am wrong -- I believe you indicated that I am suggesting that there is a conspiracy and you don't believe that it's based on anything at all.

THE COURT: You are suggesting that there is a conspiracy here?

MR. JACKSON: I don't know. I am simply saying --

THE COURT: I want to hear your statement. Is there -- are you telling me that there is some conspiracy here to keep information from you in this case?

MR. JACKSON: I don't know, Your Honor. All I'm saying --

THE COURT: Then your statement was ill-advised, wasn't it?

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MR. JACKSON: No, sir, Your Honor.

THE COURT: Tell me what the basis for your statement is.

MR. JACKSON: Your Honor, I am simply saying that there is certain information that's not being supplied to me. And I don't know who's keeping it from me. So I can't say it's the District Attorney's Office or the police department or Joe Blow. I don't know.

THE COURT: What information is not being given to you?

MR. JACKSON: I'm referring to the medical examiner's report, the information that I requested, the lab reports -- and I am being told that I'm going to get all of that information, that there's nothing going to be withheld from us from the medical records, the lab reports, FBI reports, fingerprint cards, photographs and everything else.

THE COURT: You're going to get all of that. There's nothing going to be withheld from you.

MR. JACKSON: Your Honor, all I'm simply saying is I filed that motion before, and now I'm being told --

THE COURT: Can we agree that your statement that there is some

nebulous conspiracy to keep you from getting this information was totally an ill-advised statement?

MR. JACKSON: I never said, Your Honor --

THE COURT: All right. Fair enough. You never said it. Okay. Anything else? What about increase in fees? I told you to get

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itemized statements.

MR. JACKSON: Yes, sir.

THE COURT: You're probably going to have to take that up with Court Administration, because we do have a limit on how much we will allow preliminarily. However, I will leave the door open as to that. On the questionnaire, you're going to show me what has been done in other jurisdictions.

MR. JACKSON: Yes, sir.

THE COURT: I'll tell you frankly that I'm not inclined to open the door to all kinds of questionnaires being sent out to prospective veniremen. However, I am willing to look at what has been done in other jurisdictions, and if you can show me some good reason for it and present some cogent argument, I will consider it.

MR. JACKSON: Thank you very much, Your Honor.

THE COURT: Is there anything else?

MR. JACKSON: I think that concludes my business with the Court.

MR. MCGILL: May I have one statement, Your Honor, in reference to everything that has been said here? I would like to say that even though we have provided counsel, on March 1st, the discovery material that's included in this letter here, which lists 49 statements plus a number of other items which are necessary under the rules, also, the possessions of the defendant, as well as the location of those things we retained -- that being done in January, Your

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Honor, I would state that to date we have received nothing from the defendant -- no statements, laboratory reports, notice of alibi defense,

notice of insanity, any kind of medical examination records or physical records.

Also, any listing of names and addresses of eyewitnesses whom the defense intends to call in the case in chief -- under Rule 305--that has not been supplied to us.

So I am assuming, then, that there are none at this point. And, of course, we would then petition that any witnesses who would be called be excluded from testifying, because although great effort has been made by Detective Thomas and the police department and the District Attorney's Office in giving Mr. Jackson this material, the volumes of material that he has received, we have received, to date, nothing.

MR. JACKSON: Nothing to give them.

THE COURT: He says he has nothing along those lines to give you.

MR. MCGILL: Then I will make the appropriate motion at trial, Your Honor, if he intends to present witnesses.

THE COURT: If he tries to. If you say there's nothing now, you may be barred from using it.

MR. JACKSON: I have nothing now, Your Honor.

THE COURT: All right. The matters I have taken under advisement will be taken care of within the next week. What's your run date here?

TRIAL ADMINISTRATOR: Six-seven.

THE COURT: Suppose we set this down for two weeks.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

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COMMONWEALTH	:	1357-1359
	:	
VS.	:	
	:	
MUMIA ABU-JAMAL	:	1982
	:	
	:	

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Room 613 City Hall  
Philadelphia, Pa.

April 1, 1982

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Before: THE HONORABLE PAUL RIBNER, J.

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
For the Commonwealth
- ANTHONY JACKSON, ESQUIRE  
For the Defendant

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COURT CRIER: This is the matter of Commonwealth versus Mumia Abu-Jamal, Your Honor.

MR. JACKSON: Good morning, Your Honor.

MR. MCGILL: Good morning, Your Honor.

THE COURT: Mr. Jackson, are you ready to go ahead?

MR. JACKSON: Yes, sir.

THE COURT: We have several rulings that have to be made this morning. First, as to the contents of the Internal Affairs file. Frank, will you give a copy of this to both counsel?

Now, I have gone through the entire file, and I have given you a list of everything that I find is in this file.

Mr. McGill, are there any portions of this which you object to turning over to Mr. Jackson? I think most of it is self-explanatory.

MR. MCGILL: May I have just a second to read through it, Judge?

THE COURT: Sure.

MR. MCGILL: I have had an opportunity to review this sheet, Your Honor, which lists sixteen separate categories. Your Honor, I have no objection to any of this information being handed over to Mr. Jackson for the purposes of his defense.

There is only one request that I would make, Your

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Honor, and that is that in keeping with this Court's practice -- and certainly I would state that it's also the Commonwealth's position that this should be done -- I would ask that the addresses of the civilians be deleted.

Now, if the Court would want, rather than cause the Court or some middle party to have to provide the manpower to do that, sir, I would supply the manpower to do that, if the Court wishes -- whatever you want, sir. But that's the only request I make of the Court, which I believe is a request consistent with Your Honor's past rulings.

THE COURT: Yes, I will grant that request. What I propose doing -- this list contains a list of interviews, assignment sheets, newspaper clippings, transcripts of radio transmissions, various interviews, hospital personnel interviews, and so on. And the material also contains a recording of an interview of a witness, a tape recording of an interview of a witness.

What I propose doing is to return this file to the Internal Affairs Unit. I

have reviewed this entire file. I would return this file to the Internal Affairs Unit -- counsel has a list of the information in the file -- and direct that the file be made available to Mr. Jackson.

MR. MCGILL: Yes, sir.

MR. JACKSON: You may recall, Your Honor, that in addition to my request pursuant to the executive order I also filed a request pursuant to Directive 10, with respect to the review board, concerning the shooting. It is my

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understanding, Your Honor that that review, that investigation, is a separate and distinct investigation. And I also requested the results of any investigation with respect to that.

THE COURT: I don't know if I reviewed that. Is that a separate file?

MR. JACKSON: It's my understanding that it is indeed a separate investigation, sir. My review of Directive 10 suggest that it is something separate and apart from Internal Affairs. My understanding is that the investigation conducted by Internal Affairs is pursuant to the executive order and that the investigation with regard to a shooting incident, a review of a shooting incident, is pursuant to Directive 10.

THE COURT: Mr. McGill, is there a separate file with respect to that?

MR. MCGILL: I know of no such separate file, sir. I believe all of it is consolidated in the material that Your Honor has reviewed. There is a police shooting record, which I have handed over to Mr. Jackson, but that's largely made up by the homicide detectives themselves. As I say, he has a copy of that. I handed it to him, to Mr. Jackson, this morning. If there is any other material anywhere, Your Honor, I will certainly alert this Court with respect to that. But I would say that as of now any material at all involving this incident is before Your Honor right now, any information pursuant to Mr. Jackson's request.

MR. JACKSON: I would only point out to the

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Court that I don't believe Mr. McGill is in a position to make that representation to the Court, sir, that in fact it is all there. In fact, it's my understanding that Mr. McGill has not even seen the material. So I don't

see how he can say it's all there.

THE COURT: He says he knows of no other files.

MR. JACKSON: I understand that.

MR. MCGILL: That's what I am saying.

MR. JACKSON: I understand that, sir. And that's my point.

THE COURT: Implicit in that statement is that it's either all there or it's not in existence.

MR. JACKSON: My point is that he doesn't know if it indeed exists. All he knows is that it hasn't been produced. And what I am saying is that in fact there is -- or there should be -- another investigation file.

THE COURT: Is that part of your motion anywhere?

MR. JACKSON: Yes, it is. It's in my omnibus pretrial motion, the motion that I filed. I believe it's Paragraph 14 or 15.

THE COURT: Mr. McGill, will you file a written answer saying there is no other information that you know of, or that your investigation discloses none, or whatever?

MR. MCGILL: I will have that filed immediately, sir, certainly by the end of this week.

MR. JACKSON: May it please the Court, I don't think that that is a satisfactory response to my request.

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You may recall that the last time here you indicated that you would request both files of investigation.

THE COURT: I asked for everything from Internal Affairs. And this is it, this file.

MR. JACKSON: Well, Your Honor, you asked for both files from Internal Affairs. And my point is that Internal Affairs is not authorized to receive the information that I am requesting. They may have it, but it's not their major responsibility. That's what I am saying.

THE COURT: I am asking Mr. McGill to check and see if there is a

separate file as a result of any other investigation.

MR. MCGILL: I will do that, sir.

MR. JACKSON: Your Honor, fine.

THE COURT: What more can I do? I can't order something turned over if it's not in existence.

MR. JACKSON: Your Honor, the point is you requested it once and you are assuming that it doesn't exist, with no one giving you any indication to the contrary.

THE COURT: No, not at all. I am asking Mr. McGill to check it out, to determine whether there is another file. In other words, I want a complete statement from him.

MR. MCGILL: You will have that statement, sir.

THE COURT: So we will have that in writing and it will be part of the file in this case. That's as strong a position as I can take.

MR. JACKSON: Fine, sir.

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THE COURT: I'm putting the burden on Mr. McGill to check it out. All right, that takes care of the Internal Affairs file. I will return the file to Internal Affairs, from whence it came, and you can get it through channels. And I have a list, and so does counsel, of everything that's in there.

MR. JACKSON: Yes, sir.

THE COURT: So with that you should have everything available to you.

MR. JACKSON: Fine. Very well, Your Honor.

THE COURT: I made a complete list of everything that I found in the file.

MR. JACKSON: Thank you, very much.

THE COURT: Now, the next motion has to do with the lineup. I have reviewed the law very carefully and I have reviewed the transcripts of other hearings, earlier hearings, and I am denying any further request for a lineup.

MR. JACKSON: Very well, Your Honor.

THE COURT: On the defendant's segregation, I spoke to Superintendent Owens, and he advised me that he was going to transfer Mr. Jamal back to the general population.

MR. JACKSON: He has been so transferred.

THE COURT: Superintendent Owens explained that the order was not a punishment aimed at Mr. Jamal, but to make sure that he was protected. I said that I would leave such matters up to him, but I did request that he be returned to

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the general population. Now, if there is any problem, then Superintendent Owens can do whatever he feels is necessary and report back to me, and I'll let you know.

Now, on the jury questionnaires of the potential veniremen, I am going to deny your request with respect to that. I think the scope of the voir dire should be left to the trial judge, and that's where you're going to have to make the argument as to how deeply you should be allowed to question individual panel members.

So that I will leave those matters up to the trial judge, the jury questioning, the questionnaires, and so on. Those will be decisions for the trial judge to make.

MR. JACKSON: I can appreciate that, Your Honor, with regard to sending them out to their homes. My thought, nevertheless, is perhaps a fall-back position, sir, and that is that once the jurors are brought to City Hall, to the jury room, before coming to the trial courtroom -- I'm talking now about the questionnaires -- the questionnaires could be distributed at that point, before coming into the courtroom.

THE COURT: Well, that's part of the voir dire process, really, so I'll leave that up to the trial judge. Whoever the trial judge is, he or she should have discretion as to that.

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MR. JACKSON: Fine. Do I understand Your Honor's order to be that when in fact a trial date is scheduled we will have sufficient time to distribute and collect the questionnaires then, sir, prior to going into the courtroom? I guess I'm wondering whether or not the trial judge would be

assigned in sufficient time to --

THE COURT: As soon as the case is assigned to whatever trial judge is going to get it, he or she will call a conference with the attorneys and you will sit down and discuss scheduling. If you need more time, you will express that request to the trial judge. I just don't think that should be taken up as a pretrial matter now. So I'm denying your request to send out questionnaires now.

MR. JACKSON: To send them out now?

THE COURT: Yes. On the fall-back motion, you still have your argument before the trial judge.

Now, on the increase in costs, I will sign an order granting the normal amounts that our policy allows. I'm leaving the question open, however, to this extent: if your experts give you an itemized bill, I will consider that at that point. But I would rather do it after a bill is submitted. You won't be foreclosed from submitting an itemized bill later on, however. In other words, I just don't want to set an amount that I do

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not set in other cases and have you go out and say, "I can go and hire all kinds of expensive experts." However, if you hire an expert and he has to do extensive work, have him submit an itemized bill to that effect. And you can do that before trial.

MR. JACKSON: The practical problem I have -- if I go to an expert and say, "I have one hundred and fifty dollars now, but maybe you can get more a year from now" --

THE COURT: Tell them, the calendar judge said, "Trust me."

MR. JACKSON: Okay, Your Honor. But it hasn't worked thus far. I haven't been able to secure the experts that I need, sir, because of the money problem, I really haven't. There has been no expert that I can get, other than the investigator.

THE COURT: Go out and get your best expert and tell him to give you bills. You know, if you're going to have your eyes examined you would ask the doctor what he's going to charge you.

MR. JACKSON: I understand that, Your Honor.

THE COURT: I just don't want to give you a blanket amount.

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MR. JACKSON: I understand that, Your Honor. But most of the experts I need -- the ballisticsian is three hundred dollars, the other experts charge three to three hundred fifty dollars, in advance.

THE COURT: You can submit an itemized bill at any stage of the proceedings. Give a copy to Mr. McGill, and if he has any objections he can express them. That way we have some control over it. I don't think we'll have any problems.

MR. MCGILL: May I make one observation, sir? Is there some kind of a defense fund that is available to the defense in this case?

THE COURT: I don't know.

MR. MCGILL: I have heard about it. Now, maybe there isn't one. But I think the Court, in the interest of justice should be made aware of that, sir, if such a fund does exist, so that you can have all the facts in front of you.

MR. JACKSON: There is an independent defense fund. Some use of that money has been made. The problem is, Your Honor, it isn't that much.

THE COURT: Well, all right. We can have a

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conference with counsel, if need be, on this matter. If you have an itemized bill from an expert, the Court will consider it. I just do not want to give you a blank check, because we don't do that in any other case. But the Court will call a conference with you and Mr. McGill at any time that you have any problem.

MR. JACKSON: Very well.

MR. MCGILL: Yes, sir.

THE COURT: Any other rulings on the omnibus motions? Anything else open?

MR. JACKSON: I think that would be it, Your Honor.

THE COURT: All right. If there is any --

MR. JACKSON: May I have one moment, please?

THE COURT: Yes.

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MR. JACKSON: Your Honor, one other matter --

THE COURT: Incidentally, before you begin, I did

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get a letter from Superintendent Owens. I'm going to put the letter in the file. The superintendent wants to make it very clear that there was no reason directed against Mr. Jamal for his being segregated. He says he will move to comply with my order. And he also says, "I would, however, like to take this opportunity to express my grave concerns. It is my view that the needs of the institution can best be carried out with Mr. Jamal in administrative segregation." So the superintendent indicates that this was solely an administrative decision.

MR. JACKSON: Yes, sir.

THE COURT: The letter will be entered into the file.

MR. JACKSON: I understand Superintendent Owens' attitude.

MR. MCGILL: Yes, sir.

MR. JACKSON: And my feeling has always been that if he wanted to punish Mr. Jamal he would put him in administrative segregation.

THE COURT: Well, he says that's not so. And I

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believe him. He has always been a complete gentleman.

MR. JACKSON: I'm not saying that he was attempting to punish him. I'm simply saying that the impact and effect on Mr. Jamal is punishment, whether or not it's being done for what are called good reasons.

THE COURT: Well, he says he will comply with the request. And I'm putting, this in the record.

MR. JACKSON: One other matter: if you will recall, Your Honor did

order that Mr. Jamal be permitted to receive certain types of food. Mr. Jamal has substantially been able to receive that food up at the prison and has been getting that diet. Now, he was bringing his food to City Hall today --

THE COURT: I asked about the raw vegetables, raw turnips, garlic, everything else.

MR. JACKSON: Fine. He was bringing food with him today, down to City Hall, and the sheriff took that food from him. And I am requesting the Court to have the food returned to him.

THE COURT: Sheriff, do you know anything about that?

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Well, we'll check with the sheriff's office upstairs. If the food is available we'll see that it's made available to him.

MR. JACKSON: Your Honor, it's my understanding that it was not put on the bus with Mr. Jamal when he came down.

THE COURT: There is a limit to how far we can go. As I say, the foods that are being made available are those that are in season and are easily obtainable in this area of the country. Beyond that, I'm not going to --

MR. JACKSON: I understand Your Honor's position.

THE COURT: If the food was provided to Mr. Jamal today we'll get it to him. I'll check with the sheriff's office. If it wasn't put on the bus, and if there's another bus coming down, maybe they can send it down.

MR. JACKSON: Can it be understood in the future that the sheriff's office can be directed to know that Mr. Jamal is permitted to have --

THE COURT: I'll talk to the sheriff's office.

MR. JACKSON: Fine, sir. Very well.

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THE COURT: Just a moment, please.

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THE COURT: About the food, Mr. Jackson, can you arrange to get it to

him today, or arrange to have it brought to him?

MR. JACKSON: If I can have an order from you, Your Honor.

THE COURT: Okay. When he gets his lunch today.

MR. JACKSON: Fine.

MR. MCGILL: Is that it, Judge?

THE COURT: Well, Mr. Jackson may have a few other things.

MR. JACKSON: I think that would complete my business before the Court today with regard to Mr. Jamal.

THE COURT: You may not have liked all of my orders today, Mr. Jackson, but rest assured I spent many hours going over what was submitted to me, many hours researching the law involved, and I think I'm right.

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MR. JACKSON: Yes, sir.

MR. MCGILL: Thank you, your Honor.

THE COURT: When do you think you will be ready to talk about preparation for trial?

MR. JACKSON: Your Honor, we have a tentative schedule -- I have a tentative appointment to meet with Mr. McGill this Friday to review the other evidence. I am on trial, as you know, before Judge Stout, but I am hopeful that I will be able to do that on Friday, meet with Mr. McGill. And then I would like to review the materials Your Honor has just received. If I can complete those things in a couple of weeks, I think I would be in a good position to suggest to Your Honor a trial date.

THE COURT: All right. Do you want to come back toward the end of April sometime? You have a June 7th run date here.

MR. JACKSON: The run date, I believe, is June 6th.

MR. MCGILL: June 7th.

THE COURT: How about if we give you another listing

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toward the end of April?

MR. MCGILL: That's fine, Judge.

THE COURT: How about Thursday the 29th?

MR. MCGILL: That's fine with the Commonwealth, Your Honor.

THE COURT: That gives you four weeks.

MR. JACKSON: Fine, sir.

THE COURT: All right. April 29th will be the next date for a status listing, and by that time, hopefully, we'll have some idea about trial.

MR. MCGILL: Yes, sir.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

# FIRST DAY OF TRIAL

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 17, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

## APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Backup Counsel for the Defendant
- MUMIA ABU-JAMAL  
pro-se

1.2

(The following took place at sidebar on the record as follows:)

THE COURT: What do you want to see me about?

MR. MCGILL: I think Mr. Jamal has some comment and I also had some comment with reference to procedure I want to find out.

THE COURT: Whoever wants to go first.

MR. MCGILL: Do you have any objections?

MR. JAMAL: Go ahead.

MR. MCGILL: Your Honor, in terms of procedure, as I understand it, the defendant is still representing himself and, consequently, will be opening and examining, cross-examining, etcetera. I would just state to the Court and also, of course, remind Mr. Jamal -- and it may very well not be intentional -- but, of course, the only thing that we can really state in an opening, is he chooses to open or deal with in terms of procedure in this trial is evidence, and anything outside the record, opinions, anything that is outside the scope of the relevant evidence, for the trial would be inappropriate.

I normally would not say this at the

1.3

beginning of the trial but only because of the fact that Mr. Jamal has never really tried a case. He is not a lawyer. Of course, I would consequently object if there were other things that are occurring. I would hope there wouldn't be constant objections, and I would ask the Court at times to instruct Mr. Jamal to stick with evidence or what he intends to show or whatever, however he wishes to present himself.

Secondly, Your Honor, I have a request to make of the Court, that is because of the volume of material in this particular case I would ask that Detective William Thomas be in the courtroom. He does not have to be beside me. As a matter of fact, he will not be beside me but there may be times when I will have to consult with him particularly because of the number of statements, and to expedite the trial as opposed to my looking around for something that I may not be able to find, it may be a lot easier for him to find out. I will make that request.

THE COURT: Is he going to testify?

MR. MCGILL: He may testify but not to any facts, sir. Of course it's within the Court's discretion to permit some individuals

1.4

in the Court connected in the case for purposes that are reasonable. This man is an assigned detective and I just -- I may physically find it a little difficult to find something in a minute's notice because of the volume of the material. That's the only thing.

Of course, Mr. Jamal will assist Mr. Jackson one way or the other. I, of course, have no objection. It's a Court order requirement of law.

He, of course, will not be sitting at my table unless it will be absolutely necessary. But at least he will be aware of where different things are and how to get it. I make that request.

Also, Mr. Jamal has made a request to view the photographs in this case. I have shown my entire file during the course of discovery matters to Mr. Jackson and he recognized that. However, Mr. Jamal now is representing himself and wants to see photographs. I am prepared to show him these photographs right now, Judge. We should take about five or ten minutes. I'm quite sure that he's familiar with some of them, most of them, but I'll show him all the photographs that I have. I believe I have the

1.5

full set with me and I will show him that.

He's also asked to hear a tape of witnesses. I also have no objection that he hear the tape of the witness. That tape, however, practically speaking would not be -- I don't think I should show or have Mr. Jamal hear it at this time now. He may at the end of the day, however, hear it when the jury is out. We can perhaps leave at 4:00 o'clock or whatever the Court wants.

THE COURT: I want to alert you that we may have to break at 3:00 o'clock for the simple reason that one of the jurors would have to be escorted by one of our tip staff to a settlement at 3:30.

MR. MCGILL: Okay.

THE COURT: And, of course, the Court officer will be with that juror at all times during the course of that settlement and then bring him back immediately.

MR. MCGILL: Okay. Well, that would give me an opportunity then if they were to leave to have a tape played for Mr. Jamal as he wished.

In as much as I will probably be putting on the Crime Lab early in the evidence I could

1.6

show him the photographs now. He, of course, has already seen the sketch, just a big sketch, of the same area that he's seen that is associated

with all the statements.

THE COURT: All right.

MR. MCGILL: Let's see what else.

THE COURT: The only thing is you say that Thomas -- I want to hear the Position about Thomas sitting in the courtroom since he will be a potential witness.

MR. MCGILL: Potential, Judge, I guess, yes. Search warrant, he's not a fact witness. Certainly not an eyewitness. He didn't take a statement. The defendant --

THE COURT: The only testimony will concern the search warrant.

MR. MCGILL: Judge, he's the assigned detective.

THE COURT: I know that.

MR. MCGILL: I can't be limited to that. The reasons I can't tell you is because I don't know. It may become of importance at a later time. I also might add, I have no objection that Mr. Jamal's relatives stay in the courtroom

1.7

except potential witnesses. For example, his brother is a potential witness. I don't think he should be in the courtroom. If he has a strong objection I may withdraw that, but at any point -- as a matter of fact, if he does want both of his brothers in the courtroom I will not object to that. His entire family may stay in the courtroom whether they testify or not, whether they testify as to facts or not. I think, Judge, that probably covers it. I'm hopeful that I don't have anything else unless Mr. Jamal --

THE DEFENDANT: Okay. An omnibus motion filed before Judge Ribner, one of the things we were looking for were the criminal police records --

MR. MCGILL: That's right.

THE DEFENDANT: -- of all witnesses --

MR. MCGILL: That's right.

THE DEFENDANT: That was promised but yet to be delivered and it was promised before trial. I didn't think it was five minutes before trial. We

also were supposed to hear those

1.8

tapes. I haven't heard them yet. I mean, if you're suggesting that we listen to them after you begin your opening, you know, again, the agreement was to have them heard before trial. I haven't seen those photographs.

MR. MCGILL: Photographs?

THE DEFENDANT: Yeah.

THE COURT: He said he is going to show them.

MR. MCGILL: Now.

THE DEFENDANT: We're talking about police records of witnesses, we're talking about tapes, we're also talking about photographs. I haven't seen any of those.

MR. MCGILL: All right. Now the fact of the matter is, it is true that he -- I assume he has probably seen something or talked with Mr. Jackson over a period of six months that he's been representing him. However, Mr. Jamal is correct about the criminal records and I do have the criminal records and I could, in fact, and will show the criminal, records to -- and it is an updated criminal record. I checked that out and he will receive that before

1.9

the witness takes the stand.

THE DEFENDANT: The agreement was before trial not before the witness took the stand.

MR. MCGILL: It is my view --

THE DEFENDANT: The difference is having that information now --

THE COURT: Just a minute. What's the difference in giving it to him now? Is that what the agreement was?

THE DEFENDANT: Before trial.

THE COURT: I don't want to be held up on lousy technicalities. If you're going to give it to him, give it to him. What do I care?

MR. MCGILL: Fine. For the sake of the witnesses, Judge, until they take the stand it was my concern that, again, because of the press he may just send it out to the press for all I know, with what's been going on.

THE COURT: What difference does it make? Who cares if he sends it out to the press? The jury is sequestered. I don't really care.

MR. MCGILL: It's an embarrassment and surprise to the individual involved.

1.10

THE COURT: Why didn't you contend his order? Is this his order?

MR. MCGILL: I don't know specifically if that was his order, but if Your Honor feels that he should receive it then I'm not going to argue with it.

THE COURT: I don't know.

MR. MCGILL: I'll give it to him.

THE COURT: They're saying to me you had an order or agreement, or whatever you had. I don't know what you did. I'm coming into this case cold. I don't know anything.

MR. MCGILL: I think I do recall Judge Ribner saying, one, with the criminal records, due privacy -- I believe I did say before trial.

THE COURT: Okay. Then give it to him.

MR. MCGILL: I will.

THE COURT: No problem.

MCGILL: If he wishes I will.

DEFENDANT: What about the tapes?

Mr. MCGILL: There was never an agreement as to when they would be played. I don't see any problem at all with them being

1 . 11

played this afternoon because the witness will not go on the stand, the witness will not be on the stand before the tape.

THE DEFENDANT: Well, the agreement was, again, that we set up some procedure where I could hear those tapes and view the photographs before trial. You remember very clear, this is not new to you.

MR. MCGILL: Well --

THE DEFENDANT: That agreement was made before Judge Ribner.

MR. MCGILL: There was no agreement made before Judge Ribner about that.

THE DEFENDANT: Sure.

MR. MCGILL: The first time I heard about your desire to see the photographs and the tape was through Mr. Jackson after you made the decision to represent yourself. He said that to me maybe ten days ago, maybe a week ago. I don't remember exactly when. That was the first time I heard that. Up until the last hearing we had was the first time you said you were going to represent yourself. There was no need to show you tapes and photographs at the hearing with Judge Ribner. All of them

1. 12

were shown and Mr. Jackson had listened to them. It had to happen after that.

I am prepared to show them to Mr. Jamal now. I am saying as of time the witness won't go on until tomorrow or Saturday or Sunday, whatever the Court wants. And he will hear the tape this afternoon. There's no problem with that. There's no specific agreement and he will hear it. In fact, I'll get the photographs now. You want to go back there?

THE COURT: You can show them here. I don't care.

MR. MCGILL: Okay.

THE COURT: What's this tape say? What they said in writing? Is it the same thing?

MR. MCGILL: No. The tape is Cynthia White's statement.

THE COURT: It wasn't put down in writing?

MR. MCGILL: It was not a written thing. The writing was a different statement she made and I also had a tape of her made. But I'm going to

play it. It's just a question of whether it's now or I'll do it after court today.

THE COURT: But you are not going

1.13

to use that witness and you are not going to --

MR. MCGILL: Right.

THE COURT: You are going to play that tape today?

MR. MCGILL: Right.

THE COURT: But you will play the tape for him this afternoon?

MR. MCGILL: That's correct.

(A discussion was held off the record.)

THE DEFENDANT: Obviously, what's necessary is to hear that tape and to examine the information on that tape. I don't know what's on that tape. I have absolutely no idea. There's no transcript existing. So to suggest that I should hear the tape when everyone else in court hears the tape is absurd.

MR. MCGILL: No. No. No. I'm sorry. I did not mean to say that to you if that's what you thought.

THE DEFENDANT: You suggested I should hear it after the trial.

MR. MCGILL: After it begins. No one's going to be there. Everybody here is going to leave at 3:00 o'clock because court will be

1.14

recessed. It will just be you, me, Mr. Jackson and the detective. At that point we will play the tape so we'll hear it before everybody else hears it. That's all it is. It's much to-do about nothing.

THE DEFENDANT: Easy for you to say.

MR. MCGILL: Not really, Mr. Jamal, because you will hear it alone. That's it. You will hear it alone or with your counsel.

(A discussion was held off the record.)

THE COURT: Is there anything else, gentlemen?

MR. MCGILL: Let me show the photographs to him.

THE COURT: It's 10:45. If you're going to show photographs --

THE DEFENDANT: The point about the tape is I don't know what's on the tape, I don't know what information at all is on the tape. To suggest that I read certain statements that the tape should be consistent with, that is -- I mean, you know, I don't want to make that assumption, obviously. I think you had ample time and opportunity to have that tape played.

1.15

THE COURT: You can play the tape if you want to during the lunch hour.

THE DEFENDANT: Before trial. I'm talking about before trial so that I can analyze that information.

THE COURT: The only thing before trial now is going to be my opening remarks to the jury, your pleading to the charges, his opening remarks, your opening remarks, if you want to give them now or you can wait until after the District Attorney finishes his case completely, and before you present any of the evidence you can have your opening. You can reserve your right to open. Do you understand what I'm talking about? Mr. Jackson will explain it to you so that that's no problem. And he's evidently just going to go into some background information.

MR. MCGILL: I will put the Crime Lab man on first for identification of the body.

THE COURT: And things of that nature, background, which is not really material to what you want. And during the lunch hour, if you want to, you can play the tape. You can eat lunch at

1.16

3:00 o'clock. It doesn't make any difference to me.

(A discussion was held off the record.)

THE DEFENDANT: Could I speak with Mr. Jackson?

THE COURT: Yes.

(A discussion was held off the record.)

THE DEFENDANT: Tony Jackson wants to make a message of a technical violation in regard to that tape thing.

MR. JACKSON: Your Honor, I had spoken to Mr. McGill at least ten days ago with regard to Mr. Jamal's request for the tape. He agreed that he would hear that tape, review the photographs in evidence prior to trial. I've talked to him several times subsequent to that and I think that there's no contradiction of that. I believe in the spirit of the discovery rules consistent with the discovery rules, notwithstanding the fact that I may have heard the tape, Your Honor well understands that Mr. Jamal represents himself. Mr. McGill indicates now that he's going to put on some background people

1.17

like the Crime Lab and things of that sort. This tape of an alleged eyewitness will contain information relative to positions, activities and things of that sort. To say that you're going to give the tape to Mr. Jamal after several, one or several, witnesses testify will deny him that information that may be pertinent and relative.

THE COURT: Let me ask you this: Is there an order? Is there a Judge's order on this?

MR. JACKSON: There is an order that the tapes and statements and all be turned over to counsel. The problem is that it was turned over to me and not Mr. Jamal.

THE COURT: You were counsel at that time?

MR. JACKSON: That's right. The only thing, photographs and tape he could not hear them and he could not view the photographs. He's been given all the statements, Your Honor. I'm saying just as the statements have been turned over to Mr. Jamal the tape and photographs can be as well since he is counsel, Your Honor. And to deny him that I think is going to put him at a disadvantage.

1. 18

THE COURT: Well McGill, what do you want to to? It's 20 minutes of 11:00.

THE DEFENDANT: Also the criminal records.

THE COURT: You're going to give it to him? Not criminal records?

THE DEFENDANT: We also want the criminal records.

THE COURT: I don't know anything about this order. As far as I am concerned it can wait until lunch time. Whatever you want to do but let's do something. I have a jury waiting out there, there are people in this courtroom.

MR. MCGILL: Judge, I'm ready to proceed. There was no definite agreement with Mr. Jackson. He couldn't very well find an order since it was based on what he's talking about is --

THE COURT: He says he's got some kind of written order from the Judge. I don't know. I don't know what people have. I don't understand. Why didn't you say something yesterday?

MR. JACKSON: Judge, I said it to him

1. 19

yesterday. He said, "We'll do it at the end of the day or tomorrow morning." I've been telling him.

MR. MCGILL: I said the end of the day or tomorrow morning. In terms of the tape, I don't know, the photographs, yes. However, Judge, there's definitely no order because Judge Ribner was not even involved in it.

THE COURT: Where is the original order?

MR. JACKSON: There's no order saying prior to the trial. It was in the omnibus motion.

THE COURT: What did it say?

MR. MCGILL: That referred to when he was counsel and he heard everything.

MR. JACKSON: I understand --

MR. MCGILL: You're not saying you didn't hear the tape?

MR. JACKSON: Yes, I heard it. I'm not denying that. It was pursuant to the omnibus motion, Judge.

THE COURT: How long does it take to play the tape?

MR. MCGILL: Let me see if it's here. If it's not here it's a different problem.

1.20

(A discussion was held off the record.)

THE COURT: What's the situation, Mr. McGill?

MR. MCGILL: The tapes are over at the office. He can go get them. If you want to, Judge, we can play it now, but unfortunately it's a delay. But we can do it. He may be looking in an omnibus motion but this, however, was filed when Mr. Jackson was counsel and was complied with. So the only thing we're talking about is Mr. Jackson's statement after the last hearing when Mr. Jamal indicated he was going to represent himself.

THE COURT: I have to cut the cord. Why don't we show him the pictures now that you have --

MR. MCGILL: Right.

THE COURT: -- play the tape for him at lunch time -

MR. MCGILL: Right.

THE COURT: -- and we'll move ahead.

MR. MCGILL: What I'll do is I'll

1.21

have -- during the course of the morning session, however it is, you give an opening, my opening --

THE COURT: He may not want to open now.

MR. MCGILL: Whatever. Whatever, Judge. Thomas will go over and get it and we'll then have it. I'll have a record.

THE DEFENDANT: Okay. I still haven't gotten the criminal records and that was part of it.

THE COURT: He will give it to you. One other thing, the Court Crier wants to know how does he want to be arraigned. Under Mumia Abu-

Jamal, or the other name down there?

MR. JACKSON: Yes.

MR. McGILL: Yes.

THE COURT: You don't want to say also known as? No?

MR. JACKSON: It was formally changed, the Bill of Information was formally changed.

THE COURT: Mr. Jamal has indicated that he wants to be arraigned under Mumia Abu-Jamal. We won't use the Wesley Cook.

1.22

What Bills are we proceeding on? There's only two Bills, Murder, Possession of Instrument count.

MR. McGILL: First count only.

THE COURT: You can't proceed on the other one anyway.

MR. McGILL: Judge, it might be better, if Your Honor wouldn't mind, if we could have the three of us or at least two plus maybe Thomas in the room looking at the photographs. Could we do that?

THE COURT: Well, the jury's there. I think it's better not going in chambers. The jury's right next to me.

MR. McGILL: Your chambers?

THE COURT: Yes, they're right back there. There is a room in here, or you can sit at the table.

MR. McGILL: Is there a room in there?

THE COURT: There is a room here. You can take a look.

MR. McGILL: Fine.

THE COURT: You can go in there,

1.23

take a look at the pictures, and do what you want. Let's try to push it. It's

quarter of 11.

(Side-bar conference ended.)

(A short recess was taken.)

(A side bar conference was held on the record as follows:)

THE COURT: All right. Gentlemen, can I see you over here a minute. Please, let's get moving.

MR. MCGILL: Your Honor, I've shown the photographs to Mr. Jamal. I've also given him a copy of criminal records of the witnesses that I may call. I don't have the criminal records of any other person, I think he may call -- I don't know whether he will or not -- Hightower or Pickford, Robert Pickford, I have to find them. I think they have one. Michael Marscarland does not have a record so there's none there. As far as I know, Your Honor, I would ask the Court to make an order to counsel as well as the defendant that those records should not be made public. Irrespective of the jury, Your Honor, I think in the privacy of the

1.24

witnesses --

THE COURT: I agree. I will make such an order that those records are to be sequestered and not to be shown to anybody else and not to be publicized in any way except what may come out in this courtroom of course, Jackson knows what he can advise Mr. Jamal, what convictions can be used for impeachment purposes, if that's what he intends to do. But under no circumstances are those records to be given to anybody.

MR. MCGILL: I will have a side bar before I call them so that we can clarify on the record the extent to which the law permits cross-examination.

THE COURT: All right. But in the meantime, they should not be shown to anybody else. I agree. I don't think that's fair. I think Mr. Jackson and Mr. Jamal will agree to that.

MR. MCGILL: Do you agree, Mr. Jackson?

THE COURT: Criminal records are not public information.

1.25

MR. MCGILL: It's an order.

MR. JACKSON: You understand that there is no secret about Cynthia White's record. There is no secret about that so if it comes out tomorrow --

THE COURT: I just want to make sure that you are not the one disseminating this information because a person's criminal record is their own and should be used only in official business. It's no one else's right to know.

THE DEFENDANT: These are my copies?

MR. MCGILL: Yes.

THE COURT: It was brought to my attention, though, that you have engaged a private stenographer. Who is that?

MR. JACKSON: Judge, she is a student up at Temple School. We're attempting to accommodate Mr. Jamal's wishes. On Monday we would have a motion for Your Honor to allow two certified stenographers who would be able to provide him daily copy. She is --

THE COURT: All I want to know is, who is paying for this. The Court is not going

1.26

to pay for it. In other words, the City is not paying for this.

THE DEFENDANT: At all?

THE COURT: This is coming from Mr. Jamal's funds.

MR. JACKSON: She's right there.

THE COURT: He just wants that for his own?

MR. JACKSON: It wouldn't be used to contradict; it's only for a daily study.

THE COURT: I don't know. What is your position? Do you know any law on this? Anybody have any law on this?

MR. MCGILL: Whether or not is strictly within the discretion of the Court, I'm convinced. I don't think there's any law prohibiting counsel to have such things presented. There are problems and I think Mr. Jackson

recognizes them. For one reason, we've already basically agreed that it cannot be used for purposes of impeachment since it's not official. As a matter of fact, unless the Court here would permit the actual court certified stenographer in

1.27

this particular room only those stenographers and what they have on their machines can be used for purposes of impeachment.

THE COURT: There's no doubt about that.

MR. MCGILL: I'm just putting it on the record, Judge.

MR. JACKSON: Sure.

MR. MCGILL: Secondly, if he wants, Mr. Jamal wants something, in order words, to have his daily evidence, the evidence of the Commonwealth or his own recalled for his benefit, and he's providing them at his own expense, I don't know that the Commonwealth can prevent that. It's within the discretion of the Court. There may be some feelings with the stenography staff as far as being a precedent and so far, it might be considered. However, I cannot say, Judge, that we have an objection to that because we're --

THE COURT: The only thing I can say, since you don't know the law about this, that's all, I'll take it up with President Judge Bradley.

1. 28

MR. MCGILL: Fine.

THE COURT: That's the only thing I can say at this time as far as I'm concerned.

THE DEFENDANT: What about in the meantime?

THE COURT: What do you mean, "In the meantime?"

THE DEFENDANT: I mean, you know, today?

THE COURT: You should have let me know this in advance and I could have checked it out and we could have been ready for it.

THE DEFENDANT: It's been several weeks.

THE COURT: I don't particularly care if somebody's taking notes. They are not official. The only official notes is what the official stenographer takes.

THE DEFENDANT: Judge --

MR. JACKSON: Judge, I think technically you could characterize whatever she does on the machine being the very same on everyone else's machine taking notes in the courtroom.

1.29

THE COURT: That's the status of it.

MR. JACKSON: There's only one true copy and I don't think anybody's debating that.

THE COURT: I think for the record we ought to have her name.

MR. JACKSON: Patricia Draper.

THE COURT: Do you know where she lives?

THE DEFENDANT: Student at Temple University.

THE COURT: Why don't you find out? Let her come up here. Tell her to come up here. It's easier to let her put it on the record.

Will you give us your name and address for the record?

TEMPLE STUDENT: Pat Draper, 1936 Independence Street.

THE COURT: And you are the stenographer, or are you learning?

TEMPLE STUDENT: I'm a Temple student at this time.

THE COURT: You're a student?

1.30

TEMPLE STUDENT: Yeah.

THE COURT: And you're learning how to take down the dictation?

TEMPLE STUDENT: Dictation, yeah.

THE COURT: All right. Okay.

TEMPLE STUDENT: Is that all, sir?

THE COURT: Yes. What year are you in?

TEMPLE STUDENT: Pardon me? I'm in my fourth semester at this time.

THE COURT: It's your second year?

TEMPLE STUDENT: Yeah.

THE COURT: And how long have you been taking this?

TEMPLE STUDENT: Two years.

THE COURT: For the two years. All right. You may have a seat. I'll try to reach Judge Bradley during the luncheon recess and find out if there's any problems that I have. See, this is the first time anybody has brought anybody else in. I'm not familiar with her violating any union contracts or something of that nature.

1. 31

I don't want to get involved in that if we are, you know what I mean.

MR. MCGILL: Really, in a sense it constitutes having like a secretary at your table. That's basically what it constitutes.

THE COURT: I'm not worried about that. I don't want to get any flack about any unions that we're somehow violating their contract with the courts or something. I'm not that familiar with it because I've never had this before. But I will check with Judge Bradley during the noon recess and we'll find out what the status is. Anything else we have?

MR. MCGILL: That's all, Judge.

(Side bar conference ended.)

(The following took place in open court in the presence of the jury:)

THE COURT: Good morning.

THE COURT CRIER: Swear the jury, Your Honor?

THE COURT: Yes, please.

1. 32

MR. MCGILL: Your Honor, the Commonwealth formally moves to trial, Commonwealth versus Mumia Abu-Jamal, 8201, Number 1358 charging this defendant with Murder, also 6210, Number 1357 charging this defendant with Possessing Instruments of Crime generally. Your Honor, the Commonwealth is prepared to proceed.

THE COURT CRIER: Swear the jury, Your Honor?

THE COURT: Yes, please.

(The jury was duly impaneled and sworn.)

THE COURT CRIER: May I arraign the defendant, Your Honor?

THE COURT: Yes, please.

THE COURT CRIER: Mumia Abu-Jamal, on Bill of Information Number 1358, January Term, 1982 charging you with Murder, victim Police Officer Daniel Faulkner, to this Bill of Information how do you wish to plead, sir?

THE DEFENDANT: (No response.)

THE COURT CRIER: No response,

1.33

Your Honor.

THE COURT: The Court will enter a response of not guilty to that charge.

THE COURT CRIER: On Bill of Information Number 1357, January Term, 1982 charging you with Possessing Instruments of Crime generally, to this Bill of Information, sir, how do you wish to plea?

THE DEFENDANT: (No response.)

THE COURT CRIER: No response, Your Honor.

THE COURT: All right. The Court will enter a response of not guilty.

MR. MCGILL: Your Honor, may I see you at side bar?

THE COURT: Yes.

(A side bar conference was held on the record  
as follows with the defendant present:)

MR. MCGILL: I think we should put of record that the defendant was plainly in view and in hearing range of Judge Sabo as well as the Crier who, in fact, was almost right next to Mr. Jamal, and I clearly heard him some ten

1.34

or 15 feet away. He was arraigned on both of the charges and Mr. Jamal failed to respond. Under the law it is appropriate under these circumstances for the Judge to enter a plea of not guilty but I wanted the record to reflect clearly that Mr. Jamal in no way was in a position of not being able to hear what the Crier stated. And if there is any objection to what I just said, Mr. Jamal has an opportunity to respond to that since he is right beside me. There is no response to that, Your Honor. I'm prepared to proceed.

THE COURT: Did you know he was not going to respond, Mr. Jackson?

MR. JACKSON: I did not.

MR. MCGILL: I am not sure Mr. Jackson really knows what's going on.

THE COURT: You did this of your own volition, you know.

THE DEFENDANT: I need a microphone, Judge.

THE COURT: What's that?

THE DEFENDANT: I need a microphone.

1.35

THE COURT: You don't need a microphone to plead --

THE DEFENDANT: I'm talking about speaking --

MR. MCGILL: Judge --

THE DEFENDANT: -- so that everyone can hear me.

MR. MCGILL: He doesn't have to willingly do that. He's made his decision. There's no question about it. He's allowed to do that.

(Side bar conference ended.)

(A discussion was held off the record.)

THE COURT CRIER: Jurors, to these Bills of Information Numbers 1358 and 1357 a plea of not guilty has been entered by the Judge. Mr. Jamal, how do you wish to be tried, by a Judge without a jury or by a jury, sir?

THE DEFENDANT: (No response.)

THE COURT CRIER: No response, Your Honor.

1.36

MR. MCGILL: Your Honor, under those circumstances, Your Honor, he has an absolute right to a jury and that, I think, is preserved at this point.

THE COURT: Yes. Go ahead. Proceed.

THE COURT CRIER: Jurors, to these Bills of Information 1357 and 1358 a plea has been entered by the Judge of not guilty and Mr. Jamal is being tried by a jury. If you find the defendant at the bar of the court guilty, you will say so. If you find the defendant at the bar of the court not guilty, you will say so and no more. Jurors, good and true, stand together and harken to the evidence. Please be seated.

THE COURT: Ladies and gentlemen of the jury -- you may sit down -- you have been selected to perform one of the most solemn duties of citizenship. You are to sit in judgment upon criminal charges made by the Commonwealth against one of your fellow citizens. The services you render as jurors in this case

1.37

are as important to the administration of justice as those rendered by me as Judge and by the attorneys.

You should pay close attention to what is said and to what occurs throughout the trial so that you can faithfully perform your sworn duties as jurors. I shall describe in a general way what will take place. First, the District Attorney may, if he wishes, make an opening statement in which

he outlines the Commonwealth's case against the defendant. The defendant may make a statement outlining the defense either immediately following the District Attorney's statement or later in the trial.

Second, the District Attorney will present evidence. He may call witnesses to testify and he may offer exhibits such as documents or physical objects. The defendant has a right to cross-examine witnesses called by the Commonwealth in order to test the truthfulness and accuracy of their testimony.

1. 38

At the close of the commonwealth's case the defendant may present evidence for the defense. The defendant has no obligations to offer evidence or to testify himself. Under the law every defendant is presumed innocent and has the right to remain silent. The burden is on the Commonwealth to prove him guilty beyond a reasonable doubt. The District Attorney may, of course, cross-examine any witnesses called by the defense.

Third, after all the evidence has been presented, the attorney for each side will have an opportunity to address arguments to you. I shall then give you my final charge which will include instructions on the rules of law pertinent to this case and whatever additional guidance I think you need for your deliberations. You will then retire to the jury room to deliberate and decide what your verdict will be. It is the responsibility of the Court to decide all questions of law. I am not, however, the Judge of the facts. It is not for

1.39

me to decide what are the true facts concerning the charges against the defendant. You, the jurors, are the sole judges of the facts. It will be your responsibility to weigh the evidence, to find the facts and apply the rules of law which I give to the facts as you find them to decide whether the defendant has been proven guilty. I am likely to give other instructions during the trial in addition to these preliminary instructions and my final charge. You should consider all of my instructions as a connected series. Taken together they constitute the law which you must follow. You are not permitted to take notes on the testimony nor on anything said by me or by counsel. When you deliberate on your verdict you will have to rely on your own memories of what was said in the courtroom. We have a court reporter who will make a record of the testimony. If you fail to hear a question or an answer while a witnesses is testifying, please raise your hand immediately. The court reporter

1.40

can read back whatever you missed. You are the judges of the credibility and weight of all the evidence including the testimony of witnesses. By credibility of testimony or other evidence I mean its truthfulness and accuracy. In judging credibility and weight you should use your understanding of human nature and your common sense. Observe each witness as he testifies, be alert for any thing in his words, demeanor or behavior on the witness stand, or for anything in the other evidence in the case which might help you to judge the truthfulness, accuracy and grade of his testimony. I shall give you further instructions on this subject later in the trial. Each of you must keep an open mind throughout the trial. In the oath you just took you swore to do so. You should avoid forming opinions about the guilt or innocence of the defendant or about any other disputed questions until you begin your deliberation. You should not talk with each other about the evidence or any other matter relating

1.41

to whether the defendant has been proven guilty until I send you to the jury room to deliberate on your verdict. Only then will you know enough about the evidence and the law to discuss the case intelligently and fairly.

During the trial you must not talk with anyone about the case, or listen to others talk about the case including members of your own family. There are some persons with whom you must avoid even casual conversations having nothing to do with the case. These persons are the defendant, counsel for both sides and the witnesses. Do not read newspapers or other stories about the trial or about the defendant. You should also avoid radio or television broadcasts which might refer to the trial or the defendant. Your only information about this case should come to you while you are all present together acting as a jury in the presence of the Court, the attorneys and the defendant.

As I told you earlier, although you must follow my instructions regarding rules of law, you are the sole judges of the facts. It

1.42

is your recollection of the evidence and not mine or counsel's on which you must rely during your deliberations.

You are not bound by any opinion you might think counsel or I have expressed concerning guilt or innocence, credibility of witnesses, weight of evidence, facts proven by the evidence or inferences to be drawn from the facts. Even though statements and arguments of counsel are not

binding on you and are not evidence, you should consider them carefully. It is proper for you to be guided by them if the statements and arguments are supported by the evidence and appeal to your reason and judgment.

The questions which counsel put to witnesses are not themselves evidence. It is the answers of witnesses which provide evidence. You should not speculate that a fact may be true merely because of the lawyers asked questions which assume or suggest that the fact is true.

I may question some of the witnesses

1.43

myself. The questions will not reflect any opinion on my part about the evidence or about the case. My only purpose will be to inquire about matters which counsel may not have fully explored.

The admission of evidence at a trial is governed by rules of law. It is my duty to rule on objections to the evidence made by counsel. If I overrule an objection that means you are entitled to consider the evidence. If I sustain the objection then you will not be entitled to consider it. You must not concern yourselves with the objections or with the reasons for my rulings. You must disregard evidence or any other matter to which I sustain an objection or which I order stricken from the record.

Counsel and I are required by law to take up certain matters out of your hearing. We may do that at the bench, or in my chambers or I shall ask you to leave so that we may do this in the courtroom. You should not concern yourselves with any such proceeding.

1. 44

Remember, a jury's verdict must be unanimous to be valid. In the jury room you will discuss the case among yourselves but ultimately each of you will have to make up his or her own mind.

After the verdict is announced in open court you may be called on individually to say whether you agree with the verdict. Each of us has a responsibility as a juror which you cannot shirk. You must do your best throughout the trial to fulfill this great responsibility. Now I'll call upon the District Attorney for his opening remarks.

THE DEFENDANT: Judge, I have a statement.

THE COURT: If you have anything to say you say it at side bar.

(A side bar conference was held with the defendant present on the record as follows:)

THE DEFENDANT: I need the microphone at the table.

THE COURT: I don't have one.

THE DEFENDANT: You get one.

1. 45

THE COURT: You should have asked for one before.

THE DEFENDANT: I need one now.

THE COURT: You have to speak up and if you can't speak up then I may have to remove you and put Mr. Jackson in.

THE DEFENDANT: I don't care.

THE COURT: You can do whatever you want.

THE DEFENDANT: You can do whatever you want.

(Side bar conference ended.)

THE DEFENDANT: I need a microphone.

THE COURT: I do not have a microphone.

THE DEFENDANT: You can get one, Judge.

THE COURT: Let's go.

THE DEFENDANT: I need a microphone, Judge.

THE COURT: I'm sorry.

THE DEFENDANT: You're sorry?

THE COURT: Mr. McGill, please.

1. 46

MR. MCGILL: Yes, Your Honor.

THE DEFENDANT: I'm not finished.

THE COURT: Mr. McGill, please.

THE DEFENDANT: I need a microphone.

THE COURT: You don't need a microphone now.

THE DEFENDANT: I do need one.

THE COURT: You're speaking loud enough. I can hear you.

THE DEFENDANT: I need everyone in the courtroom to hear me. I want everyone on the jury to hear me.

THE COURT: Speak loudly.

MR. MCGILL: Your Honor, may I see you at side bar with Mr. Jamal and Mr. Jackson?

(A side bar conference was held on the record with the defendant present as follows:)

MR. MCGILL: I will request, Judge, that any remarks that Mr. Jamal will make other than what is his opening and objections and cross-examination be made at side bar.

THE COURT: I told him that.

MR. MCGILL: Not before this jury.

1. 47

THE COURT: I told you that if you have anything to say to me you go at side bar.

THE DEFENDANT: I need a microphone.

THE COURT: I don't care if you need a microphone.

THE DEFENDANT: You don't care. I care. I speak softly.

THE COURT: You should have told me yesterday.

THE DEFENDANT: I want to be heard.

THE COURT: I'm telling you now, the case has already started.

THE DEFENDANT: We can stop now.

MR. MCGILL: Your Honor, I have no problem hearing what Mr. Jamal is saying and the jury will have no problem.

THE DEFENDANT: That's four feet away from me.

MR. MCGILL: The jury will have no problem.

THE DEFENDANT: I want to make sure everyone in this courtroom hears me.

MR. MCGILL: That's the point, Judge.

1.48

This trial is not a political platform for all the people and the media to hear what Mr. Jamal has to say. The purpose for a public trial is that this man get a fair trial and people be able to observe it.

THE DEFENDANT: This is not a fair trial. I haven't had the counsel of my choice.

MR. MCGILL: Your Honor, I would state to this Court respectfully that what Mr. Jamal clearly wants is a way in which he can speak to the jury that is in a position to judge his guilt or innocence --

THE DEFENDANT: How can he assume what I'm going to be speaking to? I want to be heard.

MR. MCGILL: Once the law or procedure is changed and those people out there become the jury, that's something else. But right now he has no right to speak generally to people.

THE DEFENDANT: I'm not talking about speaking generally to the people. I want to speak to the jury and I do want to be heard. I do speak softly.

1.49

THE COURT: You get up to the jury and go up to the box. You can speak as softly and --

THE DEFENDANT: And I want a microphone and counsel of my choice.

THE COURT: I'm sorry. I have ruled to all those points.

THE DEFENDANT: You have ruled, Judge? This is not to my satisfaction.

THE COURT: I don't care.

THE DEFENDANT: This is my life and my trial.

THE COURT: If you step out of line --

THE DEFENDANT: Judge, that warning doesn't mean anything to me. If you want to find me in contempt -- I'm on this trial for my life. You know those warnings mean nothing to me.

MR. MCGILL: I think it's now at the point where I think that he may be attempting to get ejected from this courtroom so Mr. Jackson can take over for him.

THE DEFENDANT: I'm attempting to

1.50

get counsel of my choice. I'm attempting to get John Africa.

MR. MCGILL: And I feel --

THE COURT: I'm telling you, Mr. Jamal, if you disrupt the proceedings, I'm warning you --

THE DEFENDANT: Judge, your warning means nothing to me. Do you understand that?

THE COURT: And I'm telling you, you may very well be removed as counsel.

THE DEFENDANT: You do whatever you have to do.

THE COURT: And Mr. Jackson will be put in.

THE DEFENDANT: Do whatever. It's not your choice, not his choice or Jackson's choice. I want my own counsel of my choice, someone I have faith in, someone --

MR. MCGILL: Is that Mr. Africa that he's referring to?

THE COURT: John Africa he's talking about.

THE DEFENDANT: That's right. You

1.51

haven't ruled to my satisfaction trial. This is my trial.

THE COURT: I don't care about your satisfaction.

THE DEFENDANT: Listen, I do.

THE COURT: There's satisfaction --

THE DEFENDANT: I do.

THE COURT: -- in Appellate Court.

THE DEFENDANT: Your satisfaction, your own rights.

THE COURT: No. No. If I don't satisfy the Appellate Court that my ruling is right and proper --

THE DEFENDANT: Right and proper. This is my only trial.

THE COURT: -- they will reverse it.

THE DEFENDANT: This is my only trial. You can make that decision now.

THE COURT: I've made it. I've made it five, six times.

THE DEFENDANT: I don't want that man as my defense.

THE COURT: I don't care what you

1.52

want.

THE DEFENDANT: Damn what you want. This is my trial. It's my life on the line. You're talking about procedure.

MR. MCGILL: May I make a suggestion at this time? I would suggest a

recess of about ten or 15 minutes. I think if the situation were called right now perhaps the jury can be led from the courtroom at this time.

THE COURT: All right.

(The jury was excused.)

(Side bar conference continued as follows:)

MR. MCGILL: All right, Judge. I made a request the jury leave the room so that we can conduct the proceedings at this point out of the hearing of the jury. My hope, Judge -- and I'm sure the Court's --

THE COURT: I want to correct it. It has been out of the hearing of the jury.

MR. MCGILL: Excuse me. Yes.

THE COURT: I don't want you to get the opinion that this has been in the hearing

1. 53

of the jury. We've been at side bar out of the hearing of the jury but rather than have them sit there and look at us at side bar indefinitely --

MR. MCGILL: You're right, Judge.

THE COURT: -- indefinitely, so as not to prejudice Mr. Jamal here -- and I think that he should know that his conduct may not very well fit well with the jury, and if he wants to act that way that's so at his own peril. That's what happens when you represent yourself.

THE DEFENDANT: I want John Africa.

THE COURT: I ruled on that.

THE DEFENDANT: You did not rule.

THE COURT: Yes, I have.

THE DEFENDANT: What does that rule mean to me?

MR. MCGILL: My hope, not my hope but my thought is that perhaps Mr. Jamal is if not the most, I would say the most intelligent defendant by far

that I have ever run across, and I'm quite sure that everything he's doing,

1.54

and in particular right now, is purposes of strategy. I believe not only "A" the political philosophy that he wishes for us to espouse or the anti establishment -- and I just note --

THE COURT: Please, don't.

MR. MCGILL: -- he raised his right hand and fist up in the air which I think is a power sign during the course of this proceeding. Which leads me again to believe, Judge, that this is becoming more of an attempted diversion from the important decision that the jury is trying to make. I think perhaps Mr. Jamal is attempting to not only divert their minds from guilt or innocence and to some sort of the condition that he believes he is in unjustifiably, but that he may well wish to have himself ejected so that learned counsel would be in a position to try a case, and since he has a great deal of experience in it, and gain some sort of sympathy from the jury. Because of that I would not put it past him one moment with what I've seen going on in the last couple of weeks.

1.55

Judge, I would ask the Court to instruct one more time Mr. Jamal that he is and I believe he still wants to be his own counsel, unless that has changed. Now that has not changed to anybody's knowledge unless you're telling me now that he doesn't want to be his own counsel, that he wants somebody else. If it just means the request he has made before about John Africa, that's one thing. If he wants to remove himself, well that's another. If he wants to stay in himself -- can we find out what he wants first?

THE DEFENDANT: Let me respond to what he had to say about your assumptions, Mr. McGill's assumptions about political reasons are purely his own assumptions. I could care less. It's not important to me what Mr. McGill assumes. What is important to me and the point I'm making and trying to make to you is that I want counsel of my own choice no matter whether he's a member of ABA, because members of the ABA have represented people that are at Holmesburg Detention Center and, you know, prisons

1.56

throughout the country. That's not important to me. I want a representative of my choice, and that is John Africa.

Now, whether you choose to believe that, that's unimportant to me. Whether you call it a political statement, that's, again, horse shit to me. I have a right to counsel of my choice and whether you agree with it, whether you disagree with it, and whether you like it or dislike it is not important to me because my life is on the line.

THE COURT: Mr.--

THE DEFENDANT: You can't tell me this man is representing me if he doesn't want to represent me or if he doesn't want to function as backup counsel for me or if I don't want him to work for me. He can't make any promises of qualifications to me. I want who I want and that is John Africa, and I don't care if the jury hears it. I don't care if everyone on the planet hears it because it is true, it is true. This is no political game. It's my life at stake and John Africa is the only

1.57

representative I would have faith in and trust in; not paid by the Court, not paid out of the same pocket as the D.A. , not court appointed. I want John Africa in this trial as backup counsel for me and I will defend myself.

MR. MCGILL: Judge, the Court is pledged and duty bound to follow the law of this Commonwealth. Even if the Court wanted to set a procedure up which would be different than the law allows it would be itself violating the law which would be a mockery of the law and the justice system. The law is clear that a non-attorney cannot be backup counsel. The law, is clear that Mr. Jamal has a right to represent himself, does not have a right to the backup counsel of his choice from the State, but rather has the right and, as a matter of fact, the Court, I believe, has the duty to see that his backup counsel is a member of the legal profession, is aware of the laws and certified to practice in this Commonwealth.

Therefore, by permitting Mr. Africa to be not co-counsel but backup counsel violates

1.58

the law in itself. We're here to be judged -- strike that. Mr. Jamal is here to be judged by this jury under the laws of the Commonwealth. And until they change -- and perhaps he can try to do that in his own way at another time. But, Judge, we are required to follow the laws as they are today, and it is clear that Mr. Africa is not a counsel and has not been conceded, excuse me, which has been conceded, and any further discussion as to his being backup counsel would be inappropriate for this Court to consider.

THE COURT: Well, I have ruled before and I rule the same way today that John Africa cannot be backup counsel. You have an exception to that ruling and if and when it ever becomes necessary to contest that ruling the Appellate Court --

THE DEFENDANT: I contest it now.

THE COURT: I know that.

THE DEFENDANT: You know that?

THE COURT: I know that.

THE DEFENDANT: I contest it now.

1.59

I do not want to be backed up or represented by Attorney Jackson or any other lawyer of the ABA anywhere in America. I want John Africa as my counsel.

THE COURT: I'm sorry, but the Court is bound by the law just as you are. I can't change that.

THE DEFENDANT: Well, I'm telling you that I cannot participate without John Africa, not in this trial. It's my life on the line.

MR. MCGILL: That surprises me. I didn't think he would pull this one.

THE DEFENDANT: Pull what? Pull what?

MR. MCGILL: Pull out of the case. You're saying you want to be tried, you want to be tried.

THE DEFENDANT: Did you hear what I said?

MR. MCGILL: Why don't you do it?

THE DEFENDANT: Did you hear what I said?

1.60

MR. MCGILL: You said you don't want to participate.

THE DEFENDANT: Unless John Africa is here. Did you hear the whole

statement?

MR. MCGILL: I heard what you said.

THE DEFENDANT: Don't put words in my mind.

MR. MCGILL: Let's see. You stay here and represent yourself and don't try to chicken out.

THE DEFENDANT: I'm not chickening out. That's unimportant for me. What I want is a representative of my choice, not of your choice, not of his choice, he's court appointed.

THE COURT: You don't understand I'm bound by the law as well as you are, and the law is clear on this; that John Africa cannot represent you. You can represent yourself.

THE DEFENDANT: Sure he can.

THE COURT: Just as you can represent yourself but he cannot represent you.

THE DEFENDANT: Why can't he?

THE COURT: Because that's what the

1.61

law says. I don't make the law. The Supreme Court makes the law and ultimately they will decide the issue for you again if you want to raise it.

THE DEFENDANT: I'm raising it now.

THE COURT: I've ruled now. I'm just following the law as it is. If you are convicted you can always raise that issue on appeal and the Appellate Court will decide whether the law should be changed or not. But the law is pretty clear.

THE DEFENDANT: It's nonsense, man, because what is the appeal of a death sentence? Coming back to life? It's nonsense, man. I need a representative of my choice. That's how serious it is. This is a life and death matter. I can choose my own counsel.

MR. MCGILL: Let me just tell you -- I'm stating that Mr. Jamal wonders that if he has an appeal from the death sentence -- I assume he means that if he's dead he doesn't have an appeal. Well, the fact of the matter is that

on a death penalty case of all cases that

1.62

is the most closely watched and as a result of that all the death penalties that have occurred in the last ten or 15 years, 20 years, the last person to actually die died in 1962, which is 20 years ago, which gives you an idea of what the appeal status is. So don't tell me that you don't have the right of appeal.

THE COURT: Not only that --

THE DEFENDANT: The point is --

THE COURT: -- it's an automatic appeal to the Superior Court.

THE DEFENDANT: The point is if I have counsel of my choice I don't need an appeal because there will be no conviction, I'm sure, I'm convinced. Obviously, that's what the Court is trying to do.

THE COURT: No, the Court is not trying to do anything.

MR. MCGILL: No.

THE DEFENDANT: Sure, it is. Sure, it is. When you denied the Motion to Suppress that was to support a conviction.

THE COURT: I'm ruling on the law.

1.63

THE DEFENDANT: No. You're ruling on the conviction. You're ruling on the D.A.'s office --

THE COURT: I don't think --

THE DEFENDANT: Every time he comes up with something it's supported and defense is knocked to the side. I seen that and you act like it's not happening.

MR. JACKSON: May I say something, not on my behalf but Mr. Jamal's? I most respectfully request to be removed from this case.

THE COURT: You can't be removed. You know that, Mr. Jackson.

MR. JACKSON: I understand. Judge --

THE COURT: You --

MR. JACKSON: Judge --

THE COURT: You made the request before and you can understand that.

MR. MCGILL: Your Honor, may we proceed with the opening statements?

THE COURT: Yes, it's your turn.

MR. MCGILL: Yes.

1.64

THE COURT: It's not your turn.

THE DEFENDANT: Regardless, it's my trial. His turn, my turn, it's not important to me. Why should I proceed without counsel of my choice, counsel that I have faith in? Why should I proceed with a man who just stood here five minutes ago and said, "Can I get out of here, can I withdraw?"

THE COURT: He wants out because you want him out.

THE DEFENDANT: Let him speak. He knows his reason. Why do you want --

MR. JACKSON: The reasons are many fold, Your Honor. I feel uncomfortable in this position being backup counsel. I figured, number one, because my legal training I could probably be a better lawyer than Mr. Jamal; at the same time, I recognize Mr. Jamal's right to self-representation and his choice of his own counsel. I understand what the law says. I don't want to be in a position of interfering with his right or in his selection of counsel.

1.65

It puts me in an unenviable position of being forced to do something that, number one, I don't feel qualified and comfortable to do and, number two, it's not being accepted by Mr. Jamal.

Your Honor, as you can well imagine, in any situation where you're representing someone, whether it's in this case or any other case, one of the keys to that defense is the cooperation of the client. But of course I don't

have a client in this situation in that Mr. Jamal is representing himself. And I think to force me to remain in this situation where Mr. Jamal has said in no uncertain terms that he doesn't want me puts me in a position of trying to force advice on someone who doesn't want that advice.

THE COURT: No. You don't have to force any advice on him. You're there to give him advice if he seeks it. If he doesn't seek it he does so at his own peril.

THE DEFENDANT: Yeah, right, but I don't want his advice.

MR. JACKSON: He has no faith in

1.66

anything I say.

THE DEFENDANT: I want the advice of someone that I have respect in and that's John Africa.

MR. MCGILL: May I say something?

THE DEFENDANT: And you can --

MR. MCGILL: Your Honor, just a brief response. First of all in terms of competency as an attorney, Mr. Jackson is well known and has appeared before this Court as well as other Courts, also with me personally in other proceedings. That is unquestioned in this case.

Secondly, Your Honor, the fact of whether or not Mr. Jamal seeks to take advice from backup counsel is not the issue he is able to accept or reject. The purpose of backup counsel is to be sure that a defendant is represented within the law by someone who is familiar with the law. It is also set up so that there will be no delays, as for example possibly might appear to be occurring, and that the case would be continued or in a case where

1.67

something should happen where Mr. Jamal would not be present or able to continue in accordance with the Court's instructions.

Lastly, in terms of Mr. Jackson's participation, as well as, the Motion to Suppress, as well as, jury selection, one would have to be deaf, dumb and blind not to see, number one, considerable times where advice was given, I don't know whether accepted but at least given. Number two, several times in questioning, in pointing out areas of concern for a defendant in the

selection of jurors, Mr. Jackson, with the allowance of the Court, questioned jurors for a very long time, each and every one of them and then conferred with the defendant. It is clear that we have had here an active representation with Mr. Jackson and Mr. Jamal.

I would suggest, Your Honor, that it appears to me based on what has occurred in the last proceeding, including jury selection and Motion to Suppress, that this is one more tactic to delay, to divert attention --

1.68

THE DEFENDANT: No tactic.

MR. MCGILL: I would ask to continue.

THE DEFENDANT: No tactic to delay and divert.

MR. MCGILL: I would ask to continue.

THE DEFENDANT: It's been several weeks ago when I first raised the issue of John Africa. You could have approved that then. That would have been in my best interest. My interest is to have John Africa representing me. That was raised several weeks ago. This is nothing new to you. And as far as that Motion to Suppress is concerned, well, the motion was obviously denied. So, I mean, to say that was very competent and it was good, that's horse shit. In terms of jury selection that's because I was removed from selecting my own jury. That was your jury. It was your order. It wasn't my decision. It wasn't Mr. Jackson's. It was your order. I wanted to select my own so-called jury of my peers.

THE COURT: You did. You conferred with him.

1.69

THE DEFENDANT: Confer is not selecting.

THE COURT: Yes, that's selecting.

THE DEFENDANT: No, it's not selecting. It's conferring. It's not the same thing. I wanted to do that. I wanted to ask questions of these people who are going to decide my life or my death.

THE COURT: We're going to have to proceed.

MR. MCGILL: Well, if he wishes to participate he can, if he doesn't I encourage him to do so. He said he was going to live up to that. I'm very

anxious to try a case with Mr. Jamal, but let's do it and don't try to get out of it.

THE DEFENDANT: No trying to get out of it. I want to try this case with John Africa as my backup lawyer, that's all. Not Anthony Jackson.

THE COURT: Do you want to make your opening statement?

MR. MCGILL: Yes, sir.

1.70

(The following took place in open court in the presence of the jury:)

THE DEFENDANT: I am going to renew my motion, Judge.

THE COURT: I already ruled on your motion.

THE DEFENDANT: You haven't ruled on it before I have spoken about it. I want John Africa to represent me.

THE COURT: I already ruled on that.

THE DEFENDANT: You have not ruled on it to my satisfaction, Judge.

THE COURT: That may be unfortunate. I ruled on it.

THE DEFENDANT: Say what?

THE COURT: I ruled on it.

THE DEFENDANT: You have not ruled on it to my satisfaction, Judge. This man can't represent me. I do not want him sitting there in a position of defense in defense of my life. I want you to speak to the issue, Judge. I want you to address the issue, Judge, about my right

1.71

to counsel of my choice, not your choice --

THE COURT: Let's Proceed.

THE DEFENDANT: -- or the Commonwealth's choice.

MR. MCGILL: Your Honor, if it please the Court --

THE DEFENDANT: I'm not finished.

MR. MCGILL: Your Honor --

THE DEFENDANT: I'm not finished speaking, Judge.

MR. MCGILL: Your Honor, we've just had about a half hour, 20 minutes, anyway, of side bar conference and I believe Your Honor has ruled.

THE COURT: Yes, I have.

THE DEFENDANT: He has not ruled to my satisfaction. This is my trial. This is my trial and it isn't your trial. I need counsel of my choice, Judge.

THE COURT: Are you going to allow the District Attorney to address the jury?

THE DEFENDANT: Are you refusing to allow me counsel of my choice?

1.72

THE COURT: I did rule on that before, yes.

THE DEFENDANT: I need counsel that I can have faith in, that I trust, that I respect --

THE COURT: This is --

THE DEFENDANT: -- that is not a member of this court, that is not an officer of this court --

THE COURT: Mr. Jamal, are you refusing to allow the District Attorney to proceed?

THE DEFENDANT: Are you refusing to give me counsel of my choice?

MR. MCGILL: Your Honor, as I understand it Your Honor has said that --

THE COURT: Take the jury out.

(The jury was excused.)

(The following took place in open court out of the presence of the jury:)

THE COURT: Mr. Jamal, it is quite evident to this Court that you are

intentionally

1.73

disrupting the orderly procedure of this court. I have warned you time and time again that if you continue with that attitude that I would have to remove you as counsel in this case.

THE DEFENDANT: Judge, your warnings to me are absolutely meaningless. I'm here fighting for my life. Do you understand that? I'm not fighting to please the Court, or to please the D.A. I'm fighting for my life. I need counsel of my choice, someone I have faith in, someone I have respect for; not someone paid by the same pocket that pays the D.A., not a court-appointed lawyer, not a member of the ABA, not an officer of this court but someone I can trust and I have faith in. Your warnings are absolutely moot, they're meaningless to me.

MR. MCGILL: Your Honor, so the record could be clear I believe Mr. Jamal is speaking about a Mr. John Africa --

THE COURT: Yes.

MR. MCGILL: -- who is not a member of the Bar of the Commonwealth of Pennsylvania and is, therefore --

1.74

THE COURT: Not a bar of any court.

MR. MCGILL: Of any. But specifically in the Commonwealth of Pennsylvania, Your Honor. As a result of this, Your Honor is not only obligated under the law to prevent a non attorney to represent the defendant even though the defendant wants that, literally the Court is required to do that to literally protect the defendant against himself. There are specific Commonwealth decisions, Supreme Court decisions on that.

Your Honor I believe has already mentioned to this Court but so the record can be clear, rather than denying the defendant, whose rights you're attempting to assure, that he is guaranteed his rights under the constitution and the law of this land. Furthermore, if Your Honor permitted such non-lawyer to represent a non-lawyer, Your Honor, you would be yourself violating the law. So it is clear that Your Honor in accordance with the law of this Commonwealth is acting appropriately. That I believe would be a response to what

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Mr. Jamal is attempting to do.

THE DEFENDANT: That may be a response but it is not true. This man has gone to law school, right, but he cannot guarantee me my freedom; he cannot guarantee me victory.

THE COURT: Nobody can do that.

THE DEFENDANT: Well, how do you know?

THE COURT: Well, how do you know?

THE DEFENDANT: I do know. I do know. John Africa can do that.

THE COURT: No, nobody can.

THE DEFENDANT: Well, you don't know that. I do know.

THE COURT: Neither do you.

THE DEFENDANT: Well, do you know John Africa?

THE COURT: I don't have to know him.

THE DEFENDANT: Well, I do.

THE COURT: I don't have to know him.

THE DEFENDANT: I do.

THE COURT: I don't want any comments from the audience.

1. 76

THE DEFENDANT: The point I am making, Judge Sabo --

THE COURT: You're very loud. You're doing good without a microphone now.

THE DEFENDANT: Well, I could use a microphone.

THE COURT: You don't need a microphone.

THE DEFENDANT: I could use a microphone.

THE COURT: Everybody can hear you. I can. I can hear you perfectly.

THE DEFENDANT: The point I am making is that if Mr. Jackson can guarantee me acquittal, can guarantee me freedom, or can tell me that every defendant he's representing won their case then fine, I have no problem with that.

THE COURT: There is no lawyer in the whole world that can guarantee that.

THE DEFENDANT: Then I don't want any lawyer in the whole world. I want John Africa as my counsel. You don't know what

1.77

John Africa can guarantee.

THE COURT: Neither do you.

THE DEFENDANT: But I am telling you that I want counsel of my choice.

THE COURT: You know --

THE DEFENDANT: You're sitting here to protect my rights --

THE COURT: Mr. Jamal --

THE DEFENDANT: -- you --

THE COURT: Mr. Jamal, I'm only going to tell you one more time. If you do not wish to obey the order of this Court and you do not intend to conduct yourself as an attorney should, you leave me no other alternative but to remove you as counsel and to insist that Mr. Jackson proceed in your presence.

THE DEFENDANT: Do whatever you want to do, Sabo. What I am telling you is that he cannot represent me whether I am my own counsel or client of his.

THE COURT: And let me --

THE DEFENDANT: I don't want him to do anything, not to say a word or

do anything

1.78

in my defense. I want John Africa here. That point's been made for several weeks to you but you've been rejecting as if you're doing it in my best interest.

THE COURT: I'm following the law.

THE DEFENDANT: My best interest is to have counsel I can have faith in and respect, not someone paid by the City, the same City that's trying to exterminate me.

MR. MCGILL: Your Honor, if I may respond? Again, the Court has already indicated it really has no other choice but to follow the law of this Commonwealth if the law means anything. Now perhaps what Mr. Jamal would like to do is change the law. He may some day have his opportunity to do that. As it stands right now this Court is governed by the law of the Commonwealth of Pennsylvania which specifically states that backup counsel must be an attorney.

Secondly, during the course of this time he had the court-appointed attorney, which Your Honor is well aware of as is Judge Ribner, that has strenuously and vigorously fought for

1.79

his rights from the very beginning. I have seen Mr. Jackson in all of the hearings before Judge Ribner and this Court. I have seen a jury selection process go from six or seven days. I have yet to see anyone in my nine years to try more earnestly and to be more competent than Mr. Jackson in representing Mr. Jamal. Your Honor, I think that I have some kind of experience to speak of that. And I think Your Honor yourself has already seen Mr. Jackson in this Court before yourself. This leads me to believe plainly, Judge, that it appears to me that if Mr. Jamal is saying, "I don't want Mr. Jackson because he hasn't won all of his cases and he can't guarantee me that he's going to win," if he's saying that, Judge, what he is saying is that he simply does not want anymore to really represent himself; that he wants this Court to specifically hold him in contempt and eject him from this courtroom since he would continue deliberately violating this Court's law.

My suggestion is, Your Honor, that

1. 80

perhaps Mr. Jamal -- and he has an absolute right to have Mr. Jackson come in and take over. I recognize that, and the Court has encouraged that from the very beginning. It is my suggestion that perhaps Mr. Jamal is beginning to get a little cold feet in the situation of representing himself and hopes for the sympathy of the jury in order to be ejected from this courtroom. For anyone to require an attorney to represent him who will always win every one of his cases is purely illogical, at least in this world.

THE DEFENDANT: Well, speaking of illogical --

MR. MCGILL: So, Your Honor, I object to Mr. Jamal's comments and I object to Your Honor -- he's admitted to this conduct --

THE DEFENDANT: Well, I would object to his statement. In terms of lawyers it's very clear that there are 1300 people at Holmesburg Detention Center, House of Correction. All of them have lawyers, either private or Public Defenders and it's very clear for those

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1300 people that those lawyers have not served their needs in terms of obtaining freedom for them, in terms of finding them innocent of charges. And, you know, it doesn't matter to me that Mr. Jackson has gone to law school and has practiced for nine years and all of that. That's not important to me. This is my only trial. I have no criminal record. You see what I'm saying? I have never been before the bar of the Court before in terms of a defendant. So what's important to me to have is a representative that I have faith in, that I can trust; it's not Attorney Jackson, it's not Joe McGill, it's not Sabo. It is John Africa and that point has been made for several weeks now.

And in terms of him representing me in case I'm removed, I don't want him to do anything on my behalf. I don't want him to participate in any role if I'm removed, because it's my life at stake, not his. It's his career; it's my life.

THE COURT: Well, I take it --

1.82

THE DEFENDANT: And I need and I am demanding a representative that I can have faith in for counsel and that counsel is John Africa.

THE COURT: What you're saying to me is, if you don't have John Africa

you are not going to proceed in any way with this trial; you're going to do everything within your power to disrupt the orderly proceeding. Is that what you're saying?

THE DEFENDANT: No. That's what you're saying to me.

THE COURT: Well, I'm observing that from your conduct.

THE DEFENDANT: I said that's what you're saying to me. You can ask the stenographer to read it back.

THE COURT: I have refused your John Africa because that's the law and I have to do that again.

THE DEFENDANT: What I'm saying to you --

THE COURT: Will you proceed with

1. 83

the orderly proceeding in this courtroom?

THE DEFENDANT: What I'm saying to you --

THE COURT: And I'm telling you if you don't you leave me no choice but to remove you as your own counsel and to direct that Mr. Jackson be put in as your counsel.

THE DEFENDANT: What I'm saying to you is that I have no faith --

THE COURT: I know that.

THE DEFENDANT: You're going to speak to me now?

THE COURT: I know. You said you have no faith and you said that several times over and over again.

THE DEFENDANT: You keep asking me and I -- see, I'm telling you what I'm saying so you won't have to ask me anymore and you won't have to reinterpret my words into another sense. My interest is not disruption. My interest is freedom. That's my interest. And my freedom can best be served by having counsel of my choice that I have faith in.

1.84

It's unimportant to me that, as you say, John Africa is not a member of

ABA. To me that's a badge of honor. That's something to be very proud because every inmate in every prison in the State of Pennsylvania has some lawyer who is a member of ABA who didn't do him a damn bit of good.

MR. MCGILL: Your Honor --

THE DEFENDANT: Now, my choice is my choice. My life is my life, and I want to be represented by counsel of my choice that I can have faith in for backup counsel. That is John Africa.

THE COURT: It seems I have to make a decision.

THE DEFENDANT: Well, so what, Judge?

MR. MCGILL: I can see Your Honor obviously has to make a decision on this and it does appear that Mr. Jamal will continue in the same vein. I know that Your Honor has specifically stated from the very beginning that you wished and hoped that he would recognize the

1. 85

importance of having counsel. This may be a way in which, as I said, Mr. Jamal feels he can have it both ways, a defense counsel present, competent to represent him and in some way a figure of sympathy before jurors. Perhaps this is another tactic.

I'll point this out again, Your Honor. As this man is without a doubt one of the most if not the most intelligent defendants I've ever had and everything he does is with a particular reason in mind. He's not just sprouting off philosophy. He knows exactly what he's doing.

Your Honor, I would suggest in order to make the record complete and I would ask this Court before you would make a decision that perhaps you could give -- and I realize that the time is a problem and that we started late -- perhaps you could give an early luncheon recess at this point and have Mr. Jamal and Mr. Jackson further confer before you make your final decision on this matter.

THE COURT: All right. I will recess

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court until 1:30 giving you, Mr. Jamal, time to talk to Mr. Jackson. And you know what my position is. Unless you want to proceed as your own attorney and put in Mr. Jackson, I will have no choice but to remove you

as your own attorney and direct Mr. Jackson to proceed in your behalf.

THE DEFENDANT: Can I respond? What you said about representation --

THE COURT: I'll give you an hour and a half to think about it.

THE DEFENDANT: That threat about removal, but again, that's unimportant to me. As far as him talking about tactics and stuff like that, that is not an issue here. My only reason -- there's no ulterior motive -- my only reason for asking for John Africa is, obviously, to have him here.

THE COURT: I've already told you.

THE DEFENDANT: I have more.

THE COURT: I already told you that under the law I cannot do that.

THE DEFENDANT: What I'm saying is

1.87

that under law --

THE COURT: I told --

THE DEFENDANT: I'm speaking about satisfaction. I fighting for my life. This ain't no satisfaction. I'm fighting for my survival. Do you understand that? In terms of having someone there that I can have faith in.

THE COURT: I don't think you're fighting for your life.

THE DEFENDANT: Say what?

THE COURT: I don't think you're fighting for your life. If you were you wouldn't be using such tactics.

THE DEFENDANT: Again, you assume these are tactics. You're not on trial here. I am. So what you think and you assume, you know what I mean, that's moot.

MR. MCGILL: Judge --

THE DEFENDANT: The point I'm making is that I need counsel that I have faith in. This is not a tactic of some sort. He's talking about some ulterior reason. My reason is life.

THE COURT: I'll give you an hour

1. 88

and a half to think about it.

THE DEFENDANT: Can you give me an hour and a half to confer with John Africa? Can you have him come up to the cell room and, and come up to see me?

THE COURT: I don't have anything to do with him.

THE DEFENDANT: Sure you do. If you order the sheriff to have him come up and speak to me he can come up and speak to me. He would be my counsel. I'll tell you I don't want him --

THE COURT: I'm saying you cannot have John Africa as your attorney.

THE DEFENDANT: What I'm saying to you is you can issue an order to the Sheriff's Department so they can allow him to come up and speak to me up in the cell room.

THE COURT: What good is that going to do?

THE DEFENDANT: Conferring with me, isn't it? What is this time for but conferring with me for my defense.

1.89

THE COURT: Your decision as to whether or not you're going to proceed in an orderly fashion.

THE DEFENDANT: I'm proceeding in an orderly fashion.

THE COURT: No, you are not.

THE DEFENDANT: Yes, I am. I am not disrupting, there is no disruption.

THE COURT: All right.

THE DEFENDANT: You're disrupting my rights.

(A luncheon recess was taken until 1:30 p.m.)

1.90

## AFTERNOON SESSION

(The following took place in open court out of the presence of the jury:)

MR. MCGILL: Good afternoon, Your Honor.

THE COURT: Let the record indicate it's ten minutes after 2:00. We've been in recess for two hours to give Mr. Jamal an opportunity to think over what I said to him at the close of the morning session. Have you thought over what I said, Mr. Jamal?

THE DEFENDANT: Sure have.

THE COURT: Are you going to allow the Court to proceed in an orderly fashion?

THE DEFENDANT: I'm going to allow the Court to proceed in an orderly fashion with the understanding that I still have a right, a choice, to counsel of my choice. I am representing myself. That decision has been made before you even entered this case. I have a right to represent myself. What I have demanded of this Court time and time again is that I have the right of advice and counsel. It's very clear

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that Mr. McGill can have the advice of whomever he wishes; it can be Gwen Thomas, officer Thomas, Detective Thomas, it can be Brad Richman: from the D.A.'s office, it can be whomever he selects. As a matter of fact, this morning you heard him say that Detective Thomas will be assisting him. If he can have his assistance in prosecution why can't I have my assistance as my own counsel in my defense? And the issue that you've raised about being a member of the bar is not even germane, because I didn't say that I wanted him to represent me. I want him to assist me in my defense. And in that understanding that poses no problem to the Court. You don't have to pay John Africa.

THE COURT: It's not a question of paying anybody.

THE DEFENDANT: Right.

THE COURT: The only thing is I told you that Mr. Jackson will act as your back-up counsel. He is a member of the bar.

THE DEFENDANT: Mr. Jackson is a member of the bar. That point is not contested.

1.92

Again, what I said to you and what you cannot contest is that members of the bar have defended people in jails, jails are full of people that have been defended by members of the bar. If you --

THE COURT: People with money walk the street that are also represented by members of the bar and that doesn't mean anything one way or the other.

THE DEFENDANT: The point is not whether it moves you or not. The point is it's true. It can't be debated. If you want Mr. Jackson to stay there that will be your decision, obviously. It is not mine. I am saying that for my advice and counsel in this matter I'm demanding the representative of MOVE known as John Africa. Now, he can stay there.

THE COURT: What you do on the outside you can do on the outside.

THE DEFENDANT: I'm not talking about the outside. I'm talking about right here at this defense table.

1.93

THE COURT: Right here in this courtroom at this defense table the only one you will have is Mr. Jackson.

THE DEFENDANT: It's no problem when Theresa Africa was meeting with me the other morning.

THE COURT: Not during the course of the trial.

THE DEFENDANT: The course of the trial is obviously the most important matter that we're discussing. That matter has not been resolved.

THE COURT: Mr. McGill?

MR. MCGILL: Your Honor, may I respond to Mr. Jamal's comments and Your Honor's discussions with Mr. Jamal?

THE COURT: Yes.

MR. MCGILL: Your Honor, the Commonwealth's position in the case has always been that the Court must follow the law in having an attorney represent him, a backup attorney being present with him. Your Honor, as had occurred during the course of almost most

1. 94

of the jury selection, as well as the Motion to Suppress, I believe Miss Theresa Africa was here during most of the time. I believe Mr. Gerald Africa was here off and on during the course of both proceedings. There was a lot of traffic, so to speak, from the standpoint of individuals who support Mr. Jamal's defense and do have certainly their own philosophy which they are entitled, certainly, to have.

These individuals, Your Honor, have been out in court -- I don't really see some of them now, maybe I missed some of them but I don't see them now. But the Court -- excuse me. If I may say to the Court, the Commonwealth has no objection if Mr. Jamal wants to bring in John Africa, wants to bring in anyone who is not incarcerated, that is, into the courtroom and place them in the chairs back there behind the barriers there exactly where my officers are. Detective Bill Thomas, Officer Gwen Thomas, right here, I have stated to the court that I will be here at this table alone during the course of the trial. I have stated that

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Detective Bill Thomas will be in the room; however, he will be back where he is now, which is the second row or someplace there. I have no objection and unless the Court has an objection if John Africa or anybody sits in those chairs back there providing an opportunity for Mr. Jamal at recess or in between witnesses to go and discuss matters and that would include discussing matters before Court. We could have Mr. Jamal down here at quarter after nine instead of 9:30, or some kind of arrangement consistent with the administrative needs and procedures of the Sheriff's Department so that he can discuss with them there anything he wishes about his defense.

I also, Your Honor, would have no objection if along with Mr. Jackson there would be times when Mr. John Africa would go up to his cell room; that is, consistent with the needs of the Sheriff's Department. I do not want to go necessarily against the regulation's there. However, in the interest of expediting this matter, in the interest of justice of the

1.96

one issue in this case which is the guilt or innocence of the defendant, Mr. Jamal, in the shooting death of Officer Faulkner, that is our sole issue involved here.

In terms of the Court's procedures, in terms of following the law, which is necessary to this case, Mr. Jackson's presence as an attorney, we must

follow that. I will follow it. I ask Mr. Jamal to follow it. There will be no one up here. It may cause me a little problem in terms of getting all the exhibits but there will be no one here except me. Mr. Jamal can be there and bring in anybody. I have not seen Mr. John Africa for the ten days that we've been operating in both the Motion to Suppress and the jury selection. Perhaps he was here. I'm not even sure if I would know who he was. However, the fact of the matter is that he is welcome to come as part of the audience. But Your Honor must follow the law and also continue in expediting this case with present parties as assembled.

THE DEFENDANT: Judge, what you know

1.97

is that there is no order or procedure to bar anyone from sitting at this table once that's agreed upon. Throughout the Motion to Suppress, throughout the jury selection, he kept someone assisting him in making decisions. He keeps saying that I was conferring with Mr. Jackson. He's spent hours conferring with several detectives --

MR. MCGILL: I spent hours conferring -- well, at least, yes, a number of hours with Officer Gwen Thomas. No question about it. She was at my table.

THE DEFENDANT: And the point is --

MR. MCGILL: This was agreed by the Court, Mr. Jamal, that there would be two people at the table during jury selection.

THE DEFENDANT: I have no objection to Mr. Jackson going back into the spectator section. I don't need anyone or Mr. McGill to suggest who I want in the spectator section. I'm saying I want an assistant at this defense table to help me with my defense and that someone is John Africa. And if there's any reason why

1.98

I can't have the assistance and advice of someone that I have faith in and that I have trust in -- now, you keep raising the point about Mr. Jackson being there. Mr. Jackson's told you a number of times that he wishes to withdraw; that he does not wish to function in the role that he's in right now. And, I mean, for me to have a defense attorney that doesn't want to function in that role, well, that's paramount to having no defense attorney at all. And it would be, again, no extra cost to this Court to have a chair right there so that he can sit and assist me in planning my defense.

THE COURT: Excuse me just a minute? I have a phone call I have to take.

MR. MCGILL: Yes.

(A short recess was taken.)

THE COURT: I've talked to the court administrator's office in reference to the, you know, the stenotype. There is no conflict with any union or anything like that. So if they want to take any notes, as far as I'm concerned, you can. There is nothing -- of

1.99

course, it's unofficial, it's not the official record. But there is no conflict with any union regulations or anything of that nature.

MR. MCGILL: Your Honor, for the record, there is no objection from the Commonwealth that that be done. So there is no problem with that at all.

THE DEFENDANT: Judge, she can't hear where she's at so could she come --

THE COURT: She can hear me.

THE DEFENDANT: She can't hear me.

THE COURT: I'm saying there is nothing to stop her --

THE DEFENDANT: I'm saying she can't hear me from where she is right now.

THE COURT: If she couldn't hear what you said you have to speak up louder. That's all. Don't be afraid just speak up louder.

THE DEFENDANT: I'm not afraid at all to speak.

THE COURT: Anything else about this other issue that I left you with?

1.100

MR. MCGILL: Your Honor, I don't know, again, the procedure, if the Court would obviously decide on -- if the defense wishes to have the individual whose name I've forgotten again, Miss Draper, or something, up here --

THE COURT: I don't want anybody up here except the official court

reporter.

THE DEFENDANT: Where those artists are.

THE COURT: Right where she is, she can be behind those artists right there.

MR. MCGILL: If she wishes to be on the side I have no objection to that.

THE COURT: I have no objection if she's on the side. It doesn't bother me one way or the other.

MR. MCGILL: Your Honor, in reference to the other matter, as far as Mr. Jamal's comments as to Mr. Jackson's not wanting to be here, well, Your Honor, in many cases an attorney may well have a client that may feel otherwise in reference to his representation. I will point out to this Court that, again,

1.102

Mr. Jackson has vigorously attempted to represent and has represented the defendant throughout many hearings which have been broadly publicized over the course of many months, going so far as the Supreme Court on the bail issue, going in many cases to presenting motions, filing motions and arguing extensively on various motions on the rights of the defendant. There is question that an attorney placed in a position where his own client wishes that he not be there obviously makes that individual, no matter how competent -- and in this case we happen to have a very competent attorney -- it places them in a position of, naturally, not wanting to be where they're not appreciated. However, there is a big difference from being in a position of not being appreciated and at the same time being in a position of actively and competently representing someone who happens not to appreciate or at least states that.

I may Point out to this Court again during the course of the entire Motion to Suppress as well as jury selection there has

1.103

been active consultation between Mr. Jackson and Mr. Jamal. As a matter of fact, several times during the Motion to Suppress where Mr. Jamal understandably was a little bit unsure of the legal areas to pursue or argue would turn and say, "I think Mr. Jackson has something to say on that issue," and Mr. Jackson promptly came up, and both in an articulate manner, expressed the defense position on that point. This also occurred throughout the jury selection where, obviously, Mr. Jackson put 150

percent effort in and questioned the jurors extensively. There was extensive conversation between Mr. Jackson and Mr. Jamal. At some points, Your Honor, I would go to side bar, point to the clock, and point out to this Court for purposes of the record that there was all of 15 minutes for one consultation after all the questions were done after which he either accepted or rejected that individual. Another time 12 minutes, placing on the record active participation, active conversation and agreement or disagreement, or whatever.

1. 104

So, number one, I would suggest that any kind of comment that there has not been active participation because Mr. Jackson does not wish to be here is an absolute sham. That is false from what we all saw.

Number two, the fact that an individual does not want to be there is quite distinguishable from an individual who competently represents a man because he is under the rule of Court and the law of Court and the Supreme Court of this Commonwealth that says whether or not they want you, you represent them to the best of your ability. A perfect example of this was the MOVE trial where all nine defendants were ejected. They didn't want their defense counsel to do anything. The Supreme Court ordered them, because of their oath as an attorney and as an officer of the Court, to represent them as best they could, and they did.

So, Your Honor, considering that I have to wonder with a great deal of skepticism the motives of Mr. Jamal and suggest once again that it may well be a decision where he wishes

1. 105

the best of both worlds; one, representation by competent counsel, and, two, perhaps the sympathy of a jury because he wants or doesn't have the non-attorney that the law does not permit him.

THE DEFENDANT: In response to Mr. McGill's comment, it's very clear that in the case he cited, the nine MOVE members with the nine backup attorneys, that all nine MOVE members got 3,200 years. I would hardly call that competent legal advice from competent counsel. It's very clear also that just because an attorney has gone to law school he's not to be followed in terms of his role as a backup counsel. He doesn't feel comfortable in that role. But because I am representing myself that's the role that the Court thrusts him into.

My issue before this Court is that I want someone to advise and counsel me. I still want to represent myself. You know, this is not the best of both

worlds, or whatever you said. I want to represent myself. It's my life

1.106

on the line here. This is my trial. I have said to you for several weeks during Motions to Suppress, during jury selection, that I wanted John Africa as advisor and counsel at the defense table. And I don't mean in the spectator section, I don't mean passing notes back and forth. I mean as an advisor and counsel. And, frankly, I don't see any reason why the Commonwealth or this Court should object to that other than fear. You know, it's very clear --

THE COURT: As I told you for the umpteenth time --

THE DEFENDANT: No, you said he was not a member of the ABA.

THE COURT: I don't care if he's not a member of the ABA.

THE DEFENDANT: You did say --

THE COURT: Member of the Bar of the Commonwealth of Pennsylvania, or member of the bar of any state, that's all I said.

THE DEFENDANT: Judge Sabo --

THE COURT: I don't care whether he belongs to the American Bar Association or not.

1.107

That's altogether something different.

THE DEFENDANT: What I'm saying to you is --

THE COURT: What I'm saying is --

THE DEFENDANT: What rule or statute --

THE COURT: The law --

THE DEFENDANT: For what reason?

THE COURT: The law of Pennsylvania says that you can only have backup counsel who is a member of the bar, and that's the way it's going to be.

THE DEFENDANT: What I'm saying to you, Judge, is that --

THE COURT: And I'm saying to you --

THE DEFENDANT: -- there is no rule or statute that you can point to --

THE COURT: If you think --

THE DEFENDANT: -- that says I can't have someone --

THE COURT: If you think that's wrong --

THE DEFENDANT: -- sitting at the

1.108

defense table?

THE COURT: -- all you have to do is go to the Supreme Court.

THE DEFENDANT: I'm before you now. Why should I go to Supreme Court? What I'm saying is, you have not ruled to my satisfaction on that.

THE COURT: Hey, that's not a matter --

THE DEFENDANT: It is a matter.

THE COURT: You may never --

THE DEFENDANT: My life is on trial.

THE COURT: You may never agree as to my rulings on the law as far as the law is concerned. But as I'm saying to you, during the course of the trial this Court will be making numerous rules on law dealing with evidence and other matters. I do not intend to spend all day arguing with you if you disagree with my rulings on law. And that's what I'm doing here. I made a ruling on the law. You must follow it.

THE DEFENDANT: You have made a

1.109

ruling on your procedure. You have not made -- there is no law that states why someone cannot assist me at that defense table, and you know it.

THE COURT: Mr. Jamal, that is a rule on the law.

THE DEFENDANT: That is not a ruling on the law.

THE COURT: If you don't like it, your attorney can tell you what you can do.

THE DEFENDANT: That is not a ruling on the law. It's a ruling on your procedure.

THE COURT: No, it isn't. It is a ruling on the law.

THE DEFENDANT: What law? What law can you state that I cannot have someone assist me at that table?

THE COURT: Mr. Jamal, I am not going to argue consistently throughout this trial. If you continue to act in this way --

THE DEFENDANT: In what way am I acting?

THE COURT: When I make a ruling you

1.110

have an automatic exception to that ruling. It will be reviewed by the Appellate Court. I don't want to stand here and argue with you all day long on every ruling I'm going to make throughout this trial.

THE DEFENDANT: Judge --

THE COURT: I'm telling you now that if you continue that way I will have no alternative but to remove you as counsel, and you can sit in here. Mr. Jackson will proceed. And if you continue to disrupt this court while you're sitting here I will then be forced to consider contempt proceedings against you.

THE DEFENDANT: Again, those warnings of contempt are meaningless to me.

COURT: I know that.

THE DEFENDANT: You are threatening me with death and you think contempt means something to me?

THE COURT: I don't care but I'm required by the law to advise you of this, what will happen. And if you keep acting that way you have to be

removed from the courtroom. The

1.111

Court --

THE DEFENDANT: Again, Judge --

THE COURT: -- the Court will have to proceed in your absence.

THE DEFENDANT: That's absolutely meaningless to me. I am not --

THE COURT: That's unfortunate that it's meaningless to you.

THE DEFENDANT: Let me make a point.

THE COURT: It's unfortunate --

THE DEFENDANT: Let me make a point.

THE COURT: I want it on the record so that you understand that I have advised you that our United States Supreme Court has spoken on this question, the Pennsylvania Supreme Court has spoken on this question, and I've ruled on the law and that's it. And if you don't like it take me up.

THE DEFENDANT: Judge, you have ruled on procedure. You have not ruled on law because there is no law.

THE COURT: I have no choice. As long as Mr. Jackson --

1.112

THE DEFENDANT: Mr. Jackson --

THE COURT: -- can represent you.

THE DEFENDANT: He cannot represent me because I'm representing myself.

THE COURT: All right. As far as counseling and anything else is concerned --

THE DEFENDANT: There is no law that you can point to, Judge.

THE COURT: All I want to know from you is, are you going to abide by the orders of this Court or not, because if you're not I must remove you as

counsel because we must proceed.

THE DEFENDANT: There is no law that you can point to that can say why --

THE COURT: I am not going to have you argue with me as to law --

THE DEFENDANT: I'm making a point.

THE COURT: -- and every decision I make.

THE DEFENDANT: I'm making a point.

THE COURT: I'm telling you that as far as you are concerned when I rule on the law that's it. You have an automatic exception.

1.113

The Appellate Court will review the record. If I am wrong they reverse me; if I'm right they affirm me. It's as simple as that.

THE DEFENDANT: If you wanted to do what's right you can do that right now.

THE COURT: Standing here and arguing with me all day is foolish.

THE DEFENDANT: No, it is not foolish.

THE COURT: I do what I believe is the law.

THE DEFENDANT: I don't care what you believe. What I'm saying, Judge, is, that there is no law that prohibits you from allowing someone to assist me at the defense table. This is done all the time. I cited cases during that Motion to Suppress, a number of cases, that happened right here in this City Hall where there was an assistance from non-lawyers at the defense table, and there's no reason --

MR. MCGILL: Your Honor --

THE DEFENDANT: -- and there's no reason for you or the Commonwealth to deny me access to assistance that I have stated a number

1.114

of times that I need in my defense.

MR. MCGILL: Your Honor, Your Honor has not really ruled as far as my, at least, suggestion was before.

THE COURT: Look, anybody can be in this courtroom.

MR. MCGILL: You have no objection?

THE COURT: He can get anybody he wants to.

MR. MCGILL: You have no objection John Africa be here?

THE COURT: During breaks and all. I have no objection to that.

MR. MCGILL: How about visiting upstairs?

THE COURT: Well, take it up with the sheriff. If he can visit up there and they are able to accommodate, fine, he can visit him in the prison. As far as I'm concerned he can visit anywhere he wants. I'm not holding back on that.

MR. MCGILL: You have no objection if his name was placed on a list for him to

1-115

be able to visit Mr. Jamal at the prison?

THE COURT: Certainly not. What difference does that make?

THE DEFENDANT: The issue here is not prison. The issue is right here at the defense table. This is the trial and for you to suggest I can visit with whomever I wish to visit, that's not the point. That's not the issue. For you to evade it and talk about up stairs --

THE COURT: I think Mr. Jackson ought to take some position --

THE DEFENDANT: There is no law that you can point to about how I couldn't have whom I wish to have --

THE COURT: Mr. Jackson --

THE DEFENDANT: -- whom I have confidence in to assist me at the defense table.

THE COURT: Mr. Jackson, you're doubtful about your position in this case. I would suggest that you read the Africa case or, if you wish, go to the Supreme Court this afternoon --

1.116

MR. MCGILL: Your Honor, I would be in a position --

THE COURT: And --

MR. MCGILL: Excuse me. I don't want to interrupt the Court.

MR. JACKSON: Most respectfully --

MR. MCGILL: Mr. Jackson, I don't mean to interrupt you. I would be in a position, at this time, Your Honor, to alert the Court I'm sure Mr. Jackson is aware of what had occurred in the MOVE case and, therefore, I could, at least, hopefully add some knowledge to these proceedings.

THE COURT: I'm pretty sure Mr. Jackson knows about that case. But if he wants further confirmation I have no objection to his going to the Supreme Court immediately.

MR. MCGILL: That has already been done.

MR. JACKSON: Yes, Your Honor. May it please the Court, I have, of course, asked on numerous occasions to withdraw from this matter, as Your Honor well knows, and Mr. Jamal

1.117

has indicated his desire for other counsel. Consistent with what I believe to be my fundamental allegiance to my client, I cannot, in all due conscience, but certainly with due respect in this court, I cannot proceed in this matter at this time without some further word from the Supreme Court of this State.

THE COURT: That's what I'm suggesting that you probably ought to take this afternoon to affect that and that will let you know exactly where you stand in this position and the Court. Whatever order the Supreme Court makes I certainly will abide by it.

MR. JACKSON: Your Honor, I think --

THE COURT: That's the easiest way to do it.

MR. JACKSON: The issue, of course, sir, so that I am clear, Mr. Jamal, as I understand, still represents himself.

THE COURT: At this point --

MR. JACKSON: I don't think I would have any standing to go --

THE COURT: You can go there asking

1.118

for guidance in the event -- you can say that the Court is on the verge of removing him --

MR. JACKSON: Your Honor --

THE COURT: -- as his own attorney.

MR. JACKSON: I don't wish to quibble with the Court but Your Honor well knows that the Supreme Court does not give advisory opinion in that there is no issue for the Court to resolve saying that he's on the verge of losing his self-representation.

THE COURT: Well, if you're asking me to remove him, I'll remove him. I'll make it easy for you.

MR. JACKSON: I'm not asking for you to remove him. I'm simply saying I cannot get the ruling of the Court because I have no standing. There is no issue for the Court to decide.

THE COURT: I thought you said that you wanted to talk to them to get advisory opinion.

MR. JACKSON: I thought Your Honor was appointing me to do something specifically.

1.119

I'm simply saying at this juncture, as I understand, Mr. Jamal still represents himself and I have no standing to go to the Supreme Court for advisory opinion.

THE COURT: As I said, the only way he's going to go before the Supreme Court is for me to make a decision, and I'm going to have to make a decision shortly.

MR. MCGILL: Well Your Honor, I understand the Court's position and also Mr. Jackson who wants, again, proof that he is aware of what is happening, and that is, I believe, that there may be some basis of concern as backup counsel petitioning the Supreme Court in terms of standing. Therefore, Your Honor, I would make a suggestion to the Court that if temporarily -- because I still feel that Mr. Jamal perhaps will, well, I hope will, listen to the Supreme Court, and he does wish to represent himself -- I would ask the Court to consider temporarily or at least entering an order of removal of Mr. Jamal from the case for the purposes -- and then appointing backup

1.120

counsel as primary counsel. We would understand that that order is done for the purposes that an attorney would be able to go directly to the Supreme Court and make a -- or file the needed papers. And I anticipate, Your Honor, if properly done this would be done in a matter of a short period of time, and at that point Mr. Jackson then as primary counsel would then have the standing. I would ask the Court to consider once the ruling is made, whatever the order is --

THE COURT: Whatever the order is I would follow the Supreme Court's ruling.

MR. MCGILL: Of course. And once that order is made and we are again before this Court in this trial that Your Honor consider moving Mr. Jackson and reappointing or for that matter allowing Mr. Jamal to represent himself again. I believe that maybe that's one way that we could do it. I can't imagine the Supreme Court not allowing a backup counsel who is primary counsel to approach it. Now he has a right to file, not necessarily a right

1.121

for a hearing but at least a right to file, and perhaps within a matter of one day there may be some ruling.

And the issue, as I understand it, is whether or not backup counsel must in fact be an attorney. Of course, if they say that's not needed, it's not necessarily true, well then, he can have whomever he wishes.

THE DEFENDANT: May it please the Court --

MR. MCGILL: I would encourage Your Honor no matter what the order is to continue having Mr. Jackson present so that the law could be or at least someone learned in the law would be able to advise Mr. Jamal throughout

the proceedings whether he wants them or not.

THE COURT: Do you want to say something?

MR. JACKSON: Yes, Your Honor. With all due respect to counsel's argument and Your Honor's position, my thought, at least with respect to the attempt to gain jurisdiction or the attempt to give me standing and go to

1.122

the Supreme Court -- I'm only suggesting and I don't want to be presumptuous as to go into the minds of Your Honor and counsel -- but clearly it's being put on the record that the only reason Mr. Jamal is being removed as counsel is to give me jurisdiction and standing to go to the Supreme Court.

THE COURT: No. No, that's not true.

MR. JACKSON: That's what I think counsel said.

THE COURT: That may be what Mr. McGill said but that's not my position.

MR. JACKSON: Fine.

THE COURT: My position is that Mr. Jamal has been intentionally disrupting the orderly progression of this trial --

THE DEFENDANT: How?

THE COURT: -- and what I said in the very beginning, when I make a ruling that's it, you don't argue with the Court about the ruling --

THE DEFENDANT: Judge, fine.

THE COURT: You have certain rights

1.123

but what I said is this: My position is that you have deliberately disrupted the orderly progression of this trial. Therefore, I am removing you as primary counsel and I am appointing Mr. Jackson to take over as primary counsel. And I am not doing it just to gain admission to the Supreme Court. I am doing it because I think it's the proper thing to do in this case. And Mr. Jackson, forget it, I'm not doing this just to get around a

technicality so you can go to the Supreme Court. I was willing to allow you to go to the Supreme Court before I made a ruling.

MR. JACKSON: I understand.

THE COURT: I'm advising you, or if you felt that you needed it, but I'm not doing this just because I want to go around a technicality. I'm doing it because I believe it's the right thing to do and that's the way we're going to proceed.

Now, you can go to the Supreme Court this afternoon forthwith. I am expecting you to go today immediately.

1. 124

MR. JACKSON: Your Honor, I believe the rules require that I file a written petition and I have to be allowed some time to do that. I'm familiar with the law in the area and I believe that I can have that completed in about an hour and a half or so. I need time to do that. I also need an issue clarified notwithstanding a question with respect to my obligations to Mr. Jamal, do I also hear Your Honor saying that I and also ask the Court the question of whether or not John Africa can sit at counsel table?

THE COURT: I can't tell you what to say --

MR. JACKSON: Fine, sir.

THE COURT: -- to the Superior Court.

MR. JACKSON: Very well, sir.

THE COURT: You say whatever you want to.

MR. JACKSON: Very well.

THE COURT: And whatever the Supreme Court wishes to answer they will answer.

MR. JACKSON: Very well, Your Honor.

1.125

THE COURT: It is not for me to make that decision. My only position now is removing Mr. Jamal as primary counsel and putting you in, Mr. Jackson, as the primary attorney.

MR. JACKSON: I understand, Your Honor.

THE COURT: That's all I'm doing. And what the Supreme Court will hear from you, what you will argue, whatever that ruling is, I will follow it.

MR. JACKSON: Very well.

THE COURT: I'm here to follow the law just like everybody else. All right. Now I see we have to adjourn until tomorrow morning at 9:30.

MR. MCGILL: I would suggest there's another issue to Mr. Jackson in making that petition and that is whether backup counsel is appointed as primary counsel that he has an obligation to represent the defendant even if he doesn't want to himself or the defendant doesn't want him.

THE COURT: I'm assuming that's what

1.126

Mr. Jackson wants to put in his petition. He's the one that keeps saying, "I don't want to represent Mr. Jamal if Mr. Jamal doesn't want me to represent him." So I'm assuming he's going to ask the Court for guidance on that part. I don't have to draw up this petition for Mr. Jackson. He's learned in the law, he knows the proper procedure.

MR. MCGILL: Yes, sir.

THE DEFENDANT: Judge, I don't want Mr. Jackson to do anything on my defense. I don't want him to participate in this trial.

THE COURT: Well, he has been ordered to.

THE DEFENDANT: You have removed me, because that's something you've been wanting to do for several weeks now.

THE COURT: No. I'm doing it because you're disrupting --

THE DEFENDANT: I am not disrupting the court. You've disrupted my right to defend myself.

THE COURT: Fine. We'll let the

1. 127

Supreme Court decide that.

MR. MCGILL: If Mr. Jamal doesn't want to maybe he wants to start the opening now.

THE COURT: Do you want the District Attorney to proceed?

THE DEFENDANT: I don't care if he proceeds or not. Do you want to let me have the choice of counsel as I want?

THE COURT: I'm telling you we can proceed as you want now.

THE DEFENDANT: No. I want choice of counsel.

THE COURT: He's not going to let you proceed.

THE DEFENDANT: You're not letting me proceed.

THE COURT: Let's get this resolved once and for all.

THE DEFENDANT: You are not letting me proceed.

THE COURT: We'll adjourn until tomorrow morning.

1.128

THE DEFENDANT: You are not letting me proceed.

- - - - -

(Court adjourned until Friday,  
June 18, 1982, 9:30 o'clock a.m.)

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1.129

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause

is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 18, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Backup Counsel for the Defendant
- MUMIA ABU-JAMAL  
pro-se

2.02

(A conference was held in chambers off the record.)

(A conference was held in chambers on the record as follows:)

MR. MCGILL: Judge, maybe I can run it down and Mr. Jackson can include or tell me where I'm wrong here. First of all, Judge McDermott heard --

THE COURT: Justice.

MR. MCGILL: I'm sorry. Justice McDermott heard the petition in Room 456 at an open hearing where the press and public were permitted to attend

and did attend. All the petitions were denied. Stated in words, in a few words, the petition to stay this Court in ordering Mr. Jackson to be primary counsel and to represent the defendant was denied; the petition to stay the Court's order preventing John Africa from sitting at counsel table was denied; and also a petition for the appearance at counsel table of John Africa as counsel for him as his choice was denied. The Court did not say anything about the mistrial request, I

2.03

believe, because I don't think that was appropriate. I think that the petitions went merely to overturning this Court's orders. So in effect the Court has said that Mr. Jackson must represent this defendant whether the defendant likes it or not because Mr. Jackson serves as an appointed lawyer from the Court and not appointed from the defendant. Also that Mr. John Africa cannot appear at the table in conjunction with the Court's order in the course exercised of maintaining what the Court believes to be an orderly administration of the proceedings. And although there was considerable argument as to whether or not John Africa could be counsel -- I just said that -- that there was considerable, not considerable, but there was a clear statement by Justice McDermott that no one can represent a defendant who is not an attorney of the law. That's about it, isn't it?

MR. JACKSON: Yes. I just want, just as far as I'm concerned, clarification. Within the petition and as well oral argument

2.04

I never requested that John Africa act as counsel, but to assist Mr. Jamal and that also was specifically denied as well. I just wanted to clarify that I at no time requested that John Africa act as counsel.

THE COURT: No, you didn't but I think --

MR. JACKSON: He did in the beginning, yes. There's no question about that.

MR. MCGILL: All that morning, I think, all the morning --

THE COURT: He said he had no faith in any attorney no matter who I appointed. Even if it was F. Lee Bailey he would have no confidence in him.

MR. JACKSON: No question about that.

THE COURT: The only one he has confidence in is John Africa because

he, the way he thinks and feels, that's the man he wants. That's all.

MR. JACKSON: But, again, I think what he was saying yesterday and certainly from my conversations with him is that he wants to

2.05

represent himself and he simply wanted John Africa to assist him in representing himself. He didn't want to have John Africa substitute as counsel particularly since he is aware of the prohibition of a non-lawyer acting as backup counsel.

MR. MCGILL: Right.

MR. JACKSON: I think other than that Mr. McGill's summary of what transpired before Justice McDermott is correct. I would add, Your Honor, that I specifically requested guidance for my participation in the trial and from my recollection, at least of the brief guidelines that Justice McDermott provided, was that I should represent him to the best of my ability. My ability to represent him will be directly contingent upon the interest that Mr. Jamal wants protected. I did not get an opportunity to fully explore this issue with Justice McDermott, but for Your Honor's consideration I know that Mr. Jamal has indicated on the record yesterday and again has indicated to me today that he doesn't want me to participate.

2.06

Now, there is no question in my mind pursuant to Justice McDermott's order as well as Your Honor's order I will be here. With respect to what I would do I'm still in the dilemma in that I don't believe that the Court would attempt to intrude upon the strategy and theory of the defense, particularly if, indeed, Mr. Jamal is saying, as he has to me, that indeed it is his strategy for me not to participate. For that reason I would want that on the record; that Mr. Jamal is telling me not to participate, to be silent. Because I think, in effect, what he is saying is that it's his strategy, and I don't think that I have the right to change his strategy if that's -- and I don't think the Court has the right to intrude upon his strategy of defense -- if that's a knowing and intelligent waiver that he's making.

MR. MCGILL: In response, Your Honor, something new happens everyday, doesn't it?

THE COURT: What's that?

MR. MCGILL: This

2.07

MR. JACKSON: He said yesterday --

MR. MCGILL: I know.

MR. JACKSON: He said yesterday --

MR. MCGILL: That was the issue of whether or not you had to perform as his representative and counsel. As representing him and as counsel, of course. And he says, "I don't want you to represent me and I also don't want you to participate.", and then we went up to the Supreme Court to make that determination. It is my understanding that Justice McDermott was clear in that Mr. Jackson must as an official who is appointed by the Court represent the defendant to the defendant's best interest; that Mr. Jackson must represent the defendant in the way that Mr. Jackson feels is best for his client.

Mr. Jackson pointed out to Justice McDermott that he, Mr. Jackson, felt that if he does not confide, meaning the defendant, confide in him or tell him things, or point out different witnesses, that he would not be as effective as he otherwise would. And he

2.08

questioned that and stated, "That this is another reason why I feel that my representation would not be complete or completely to the best interest of the defendant because of his unwillingness to tell me things".

Well, Justice McDermott was very clear on that. Justice McDermott said, "If the defendant does not want to tell you anything and does not want to take the benefit of you knowing even more about the case than you already do, then that is the defendant's decision. You must represent the defendant as best as you can and not necessarily in the way that he wishes you or fails to -- or wishes you or in a way that he feels that you should not. If he doesn't want to take your advice, fine, but you are to give advice and you are to represent him." I think that was very clear.

Now, I will point out also, Judge, that with the MOVE case we have some precedent although it's not technically a decision that's printed up. Nonetheless, like this decision the Court in the MOVE trial was very clear in

2.09

stating that, "You are not, as officers of this Court, you are not supposed to

just stand around and not examine and not cross-examine and let the Commonwealth present its case and let this defendant be convicted, or otherwise without making any effort at all." It literally directed -- with a minimum of words because it found it outrageous that even the thought would be that there would be nothing done. Even if it were his strategy to be completely silent it was my understanding of that decision that you are to act, you are just not to sit down there and do nothing and effectively subvert or circumvent the Court's ruling; that you, in fact, do represent the defendant. See what I mean? I don't think Judge McDermott at any time -- now, this was not brought up orally to him and, in a sense, it's somewhat unfair to bring it up now without having specifically brought it up in front of him.

He could say, "If the petitioner wants me to do nothing and that's his strategy what do I do, Judge?" That was not asked. It

2.10

was clear that Justice McDermott said, "You are to represent your client as best you know how with all your competence and all your ability. If he doesn't want to accept the advice, fine. It doesn't mean that you just sit there."

THE COURT: Let me say what I feel.

MR. JACKSON: Sure, Judge.

THE COURT: My position is that if he takes the position, "All right, I've been removed now by the Court and Mr. Jackson's going to represent me and I'm telling Mr. Jackson I don't want him to do anything, I don't want him to ask any questions or anything at all.", what he's doing is in effect disrupting the whole proceedings because he could stop us that way --

MR. JACKSON: Well --

THE COURT: -- and literally this is something that can't happen.

MR. MCGILL: He's also effectively re-representing himself.

2.11

THE COURT: Right. Because we would never then be able to try him.

MR. JACKSON: Well, Judge --

THE COURT: See what I'm talking about?

MR. JACKSON: I understand full well and that's why -- Judge, I'm saying that if, assuming that there could be some colloquy to insure you that he knows what he's doing -- and I don't think there's any question that he doesn't know what he's doing --

THE COURT: I will when I get out there.

MR. JACKSON: I'm saying I don't know that, Judge, if, number one, if he tells me not to do anything, I ask a wrong question, give some bad advice, then that's ineffectiveness, of course. But, number two, what questions do I then ask?

THE COURT: Well, as a lawyer you know what questions to ask.

MR. JACKSON: Judge, I understand --

THE COURT: You know that. You've

2.12

been practicing law. Let me say this --

MR. JACKSON: And I don't have any --

THE COURT: Let me say this: Let's say you didn't have Jamal out there and you had someone else --

MR. JACKSON: Sure --

THE COURT: -- who said, "Jackson, represent me to the best of your ability." You wouldn't go to that person and say, "What questions should I ask?"

MR. JACKSON: Judge --

THE COURT: You would ask the questions; you would know what questions to ask.

MR. JACKSON: No question about it, but Judge, this is the problem that I have: The Justice told me to represent Mr. Jamal's interest to the best that I could. So in his interest, if he believes it's in his interest for me to be silent, Judge, I don't mean, really mean this philosophically --

THE COURT: Let me answer this right here.

MR. JACKSON: Sure.

2.13

THE COURT: Sure it's in his best interest that you don't say anything, because then you can't try him.

MR.JACKSON: You can't?

THE COURT: No.

MR.JACKSON: Why not?

THE COURT: No.

MR.JACKSON: Why not?

THE COURT: Because you must make an honest effort.

MR.McGILL: Talk to him while I check with the law on this. I have no objection.

MR. JACKSON: No, because I talked to Justice McDermott's clerk. I brought up this issue and they felt as well that I'm supposed to do what he says.

MR. McGILL: That's wrong.

THE COURT: That's wrong.

MR. JACKSON: You don't think what --

MR. McGILL: You don't know what he says -- you do what's best for him or else you

2.14

go back to the same thing you did before and that's when he's representing himself and he's not doing anything.

THE COURT: Yes.

MR. JACKSON: But Judge --

THE COURT: Let me answer this. It's just as though he were still the attorney, because then being the attorney he would sit back -- just as he refused to plead in this case -- he would sit back and say nothing.

MR. JACKSON: Right.

THE COURT: And all we would do would be hearing what came from the Commonwealth's witnesses.

MR. JACKSON: Right.

THE COURT: And then that would give him the basis later on of arguing that he did not get a fair trial.

MR. JACKSON: Not if he's already said --

THE COURT: No.

MR. JACKSON: -- if he knowingly -- Judge, I really don't think that he can.

2.15

THE COURT: Here's what's going to happen --

MR. JACKSON: Judge, in Perspective --

THE COURT: I know what's going to happen. I know his strategy. I know what he's going to do. You're going to start asking questions and he'll stand up and rant and rave, and I'll ultimately have to hold him in contempt of court, and I will have to remove him from the courtroom. That's what he wants me to do.

MR. JACKSON: Well --

THE COURT: I know it, because he's going to say, "I told you not to ask any questions, to say nothing". And that's not being fair.

MR. JACKSON: I know it's not fair. The position I'm being placed in, Judge --

THE COURT: I know.

MR. JACKSON: -- I have to go against his wishes.

THE COURT: You have to?

MR. JACKSON: And going against his rights --

2.16

THE COURT: No, not against his rights, but going to your responsibility to this Court, not this Court technically but to the entire administration of justice.

MR. JACKSON: But Justice McDermott said if Mr. Jamal chooses not to use your services and they can be provided, that's on him. I take that to mean that if he chooses to make a knowing and intelligent waiver of me to represent him then he can't obstruct this Court and stop the proceeding because, Judge, if we get into saying, "Well look, he can't tell you not to ask questions, you've got to ask questions and, you know, use your best sense of doing it.", then what I'm doing, then what the Court is doing, in effect is intruding into the area of his strategy, and Your Honor well knows the Court always stays away from the strategy and theory of defense.

THE COURT: Wait a minute. What strategy could that be? What kind of strategy is that?

MR. JACKSON: I don't know. I don't

2.17

know what his strategy --

THE COURT: What kind of strategy is that to sit back there and refuse to answer anything? What kind of strategy is that really?

MR. JACKSON: Judge, I wish I could answer you --

THE COURT: Well, this is what I'm trying to say.

MR. JACKSON: -- but that's what he's telling me, Judge.

THE COURT: I know he's telling you that.

MR. JACKSON: And once he --

THE COURT: I know. Because he's trying to disrupt the entire procedure.

MR. JACKSON: Judge, I'm not going to debate that with you, but if he tells me specifically, "My strategy is for you to remain silent.", clearly,

unequivocally that's his strategy.

THE COURT: Well, what you may have to do, if that's going to be his strategy, and every witness testifies, you may have to confer

2. 18

with him and then you may have to put on the record that you have conferred with Mr. Jamal --

MR. JACKSON: Fine.

THE COURT: -- and he has instructed me not to ask any questions.

MR. JACKSON: Fine.

THE COURT: Maybe that's the way. I don't know.

MR. JACKSON: Judge, I think --

THE COURT: I really don't know. I think it's bad.

MR. JACKSON: I do, too, Judge. But I think the Court is doing all it can do and in that way he can't come back and say, "I had ineffective representation.", when it's clear that's what he wants.

THE COURT: The Court's have already said you can't come back later on after telling somebody to do something and they do it and then say it was bad.

MR. JACKSON: I think the Court is acting proper in the suggestion you've made. I'm really concerned that once I say I have to

2. 19

ask questions, the question is am I asking too many, too little, what questions are right, what questions are wrong. Really --

THE COURT: I don't think you have to worry about that. The Court's have said -- let's assume it wasn't Jamal you were representing but somebody else. He wouldn't tell you how many questions to ask --

MR. JACKSON: Oh, no.

THE COURT: Or, are you asking too many, or too little. That would be

strictly up to you as the attorney.

MR. JACKSON: Sure.

THE COURT: And you could justify the number of questions that you're asking.

MR. JACKSON: Sure.

THE COURT: "I am being a practicing attorney" --

MR. JACKSON: But --

THE COURT: If you're saying that he's got some kind of hidden strategy -  
- and I can't imagine what it is that you're not even to ask one question --

2.20

MR. JACKSON: Well, he says it's in his best interest and that's the interest I'm supposed to serve this Court and serve in the interest of the defendant.

THE COURT: What he's going to say is he's arguing that because we didn't allow John Africa to represent him, therefore, he doesn't ask any questions and, therefore, the whole proceeding is improper and unconstitutional and everything else. This is what worries me.

MR. JACKSON: Judge, I understand your worry.

THE COURT: And this is really frustrating the administration of justice, and I think it's wrong.

MR. JACKSON: Judge, I think, again, after each --

THE COURT: Suppose he does some thing that I have to eject him from the court room, because I'm not going to bind him.

MR. JACKSON: Oh, sure.

THE COURT: I would rather eject him from the courtroom.

2.21

MR. JACKSON: Sure.

THE COURT: I think that's the lesser of two evils. Then you're by yourself

and then you have to make a decision.

MR. JACKSON: Yes, sir.

THE COURT: Are you going to say, "Excuse me while I go up to the cell room and confer with him.", and come back and say, "He told me not to ask any questions?"

MR. JACKSON: Judge, I think, again, it serves the interest of the Court as well as Mr. Jamal if Mr. Jamal were to tell me if -- let's assume for the moment he was removed from the courtroom --

THE COURT: What do you mean assume? He's been removed. You mean from the courtroom?

MR. JACKSON: Yes, from the court room. Mr. Jamal advises me not to ask any questions because it's in his best interest not to do that, and let's assume he's going to be convicted and goes up to the supreme Court, or whatever. The question is, number one, did the Court -- well, did he knowingly waive his

2. 22

right, and I don't think it could be any question about it and, number two, did I have any right to violate what he considered to be his best interests and number three, can the Court on its own -- and I believe it's intruding into the area of the defense.

THE COURT: We'll see, the only answer I could give you to that is Judge Malmed tried the MOVE case --

MR. JACKSON: Yes, sir.

THE COURT: -- in which they had the same problem in which the nine -- I think it was nine defendants --

MR. JACKSON: Yes.

THE COURT: -- did not want the attorneys to ask any questions or do anything. The Court, as I understood it, had directed these attorneys that they must take over and they must ask questions and do the best that they can to the best of their ability. And somewhere during the course of the trial these nine defendants were removed.

MR. JACKSON: Were removed, yes.

2. 23

THE COURT: And these attorneys did do that. They did cross-examine and they did everything to the best of their abilities.

MR. JACKSON: Of course the defendants were removed early several times.

THE COURT: Now, I admit that that case has not been ruled on formally and finally as yet, but I think it's at least a guideline that you should follow, that we should follow, that this is what the Supreme Court has told these nine lawyers.

MR. JACKSON: And Judge, what I tried to do was very clearly ask the Justice for guidelines and --

THE COURT: Excuse me just a moment.

MR. JACKSON: Sure. What I tried to focus on in Justice McDermott's findings today was where he talked about the interest of Mr. Jamal. And I appreciate Your Honor's concern about the orderly process of the case and I'm concerned about that, too, Judge. Believe me, I'm not trying to obstruct anything at all. But my concern is that if he's says,

2. 24

"My interest is for you to be silent," how can the Court unilaterally say that it is not in your best interest to be silent? I don't think the Court can do that, can be that presumptuous to say that. Whatever his best interests are, if he chooses that his best interests are for him to be convicted, can the Court say that is not in your best interest? That's my point, Judge.

THE COURT: You probably didn't hear part of this, but the point that he brought out -- I drew an analogy to that case that Judge Malmed had, you know, the nine defendants where they also didn't want the attorneys to do anything and yet the Supreme Court, as I understood, told them that they were to ask questions and follow through to the best of their abilities regardless of what the defendants had said. Now is that true? Is that what they said?

MR. McGILL: Yes. Well, I'm looking now at the -- I have notes of testimony of a hearing before Judge Malmed after the Supreme

2.25

Court convened to hear a petition. I also have a brief that we wrote with

some citations to it. On Page 21.14 -- that's the Move case that you're referring to before Judge Malmed? I'm looking for the date. It should be important for the record. Well, the nine-defendant MOVE case, anyway, it doesn't have a date on here for some reason. It's 1978 September Bills Number 101 through 1552. There were six Justices that were present. It first states that the writ of prohibition was withdrawn by defense counsel because he indicated the defendants had been properly removed from the room. That's an issue that we don't have here. Then on it says, Mr. Knauer talking, which is the prosecutor speaking to the Judge, he says, "The second issue was the status of backup counsel and whether or not they would participate in spite of the orders of the defendants that they not participate. The Court I would say unanimously indicated that they should participate as lawyers and question; that they are officers of the court and not subject to the

2.26

defendants when the defendants are out of the room; that the lawyers are officers of the court and should act as such and to make sure that there was a fair and full hearing of the issues; that they were to cross-examine and act as attorneys throughout." And Mr. Franzel who was one of the defense counsel of one of the MOVE members said, "I would agree with that, sir." And then he goes on to say, "Except insofar as I don't know if they're going to issue an opinion to that effect, however, orally they all unanimously, I would say, communicated that thought to us. And I think that we went to the Supreme Court for guidance and I would suggest that we have received that guidance and we are prepared to continue with the trial." And they continued with the trial. Let's see.

MR. JACKSON: Well --

MR. MCGILL: Go ahead.

MR. JACKSON: -- I was only going to say that what you read is my understanding of what the Court decided in that case, and it was my further understanding that in the situation

2.27

with MOVE there was not the consultation with MOVE members that I had with Mr. Jamal. Obviously Mr. Jamal and I consulted with each other. In this instance, in this particular instance, Mr. Jamal and I conferred often, and he is saying in effect what his strategy is, what his best interests are. In this situation the Court said without any further guidance from the defendants themselves you go and do that. And I think that's the distinction where the Court was, I believe, acting properly in the absence of

something to the contrary from the defendants themselves. I think the Court was acting properly in that case, but in this instance where the defendant is specifically asking that I not ask questions, where I be silent, again, as Your Honor suggested -- you were not in Mr. McGill -- that one of the possible ways of doing it is after your examination I would then consult with Mr. Jamal and based on his consultation and his advice and direction to me that I have no questions. It is his choice because I think for us to get into violating

2.28

what he chooses, what he asserts as his right and his interests, I think is going to put the Court in a real tenuous position, because you're then saying that the Court can almost develop the strategy for the defense. I think that's the clear indication.

MR. MCGILL: I see --

THE COURT: No --

MR. MCGILL: I see his point.

THE COURT: No question. So do I. I'm not exactly saying that. But I think his strategy is, "Because you have not allowed me to consult with John Africa --".

MR. MCGILL: Right.

THE COURT: -- I do not want to participate. That's not a good enough reason for not participating.

MR. JACKSON: I know.

THE COURT: That's what I'm worried about.

MR. MCGILL: I agree with that, Judge. But the issue I think is really narrow and I think he has phrased, Mr. Jackson has

2.29

phrased, it in a narrow fashion.

THE COURT: I know and I agree.

MR. MCGILL: The specific, if I can understand it --

THE COURT: But --

MR. MCGILL: If I can, Judge? The specific issue is where the defendant intelligently makes the decision --

THE COURT: That's the thing.

MR. MCGILL: -- that it is in his best interest to say nothing --

MR. JACKSON: That's right.

MR. MCGILL: -- that in his strategy to say nothing, and for that reason, perhaps to make a statement by saying nothing and win the sympathy of the jury that it would be in his best interest to get a verdict which he would want, which would be an acquittal.

THE COURT: Well --

MR. MCGILL: Is that what you said?

MR. JACKSON: That's it.

THE COURT: I agree with that a 100 percent but what worries me is that he is

2.30

adopting this so called strategy solely because I have refused to allow John Africa to represent him.

MR. MCGILL: No.

THE COURT: Wait a while. Let me finish.

MR. MCGILL: I'm sorry, sir.

THE COURT: If John Africa had represented him there would be cross-examination and that's what worries me.

MR. JACKSON: But --

THE COURT: If somebody's making a decision intelligently not to ask any questions, that's one thing. But if he's doing it simply out of spite because I've not allowed him to have John Africa, that's a different thing.

MR. MCGILL: Apparently. Could you add --

MR. JACKSON: Yes. I'm going to just give an analogy, Judge. I think what you're saying may be correct in terms of what course of strategy. But Judge, my strategy is going to be different in every case. I don't

2. 31

care what case it is. Depending on the rulings of Court the strategy changes. If you ruled that John Africa can't represent him he's adopted another strategy. My point is I don't think there is any defense. If that's the strategy he adopts --

MR. MCGILL: Yes.

MR. JACKSON: Because he doesn't agree with Your Honor so what. In the beginning in this case or in any other case the strategy would be different depending on the Court's rulings. You adopt the strategy, as all lawyers do, depending on the rulings of the Court. In this one you ruled John Africa can't be here. So he's adopted this strategy. I don't think the reason for adopting the strategy is really relevant to the issue. Again, if he is intelligently and knowingly saying, "It is my strategy and it is in my best interest that Jackson be silent.", I think that that is when the Court must of necessity refrain from requiring anything more.

MR. MCGILL: Are you not saying,

2. 32

Mr. Jackson -- I'm trying to phrase it as narrowly as I can -- that to the extent that the defendant has intelligently advised you that for whatever reason it is his strategy to remain absolutely silent throughout, and he believes he has the best opportunity or chance for good results if he does that, are you not effectively denying him the type of representation he wants under the law? Is that what you're saying?

MR. JACKSON: That's what I'm saying.

MR. MCGILL: It's a lot like the situation where in many cases witnesses are not cross-examined because they can hurt you, they can do this or that. But however, never has there been a case that I know of where no one has been cross-examined. And that is the issue that you're putting in.

MR. JACKSON: Exactly.

MR. MCGILL: Judge, that bothers me, that issue.

THE COURT: It bothers me to a certain extent based on what the Supreme Court

2.33

has said in the other MOVE case.

MR. JACKSON: Because I think the specific issue --

THE COURT: That may have been their strategy, too. Their strategy may have been, "I don't want you to say anything."

MR. JACKSON: It may have been but they never communicated it to counsel. At least it wasn't brought out.

THE COURT: Yes, they did.

MR. JACKSON: It simply said, "Don't participate.", not that it was strategy.

THE COURT: Well --

MR. JACKSON: I think it becomes particularly true if he says I want you to do this and --

THE COURT: Let me say this, Mr. Jackson, even though he's doing this and you say he does it intelligently and knowingly, isn't he in effect not being represented by anyone?

MR. JACKSON: No.

THE COURT: Why?

2. 34

MR. JACKSON: Because I would make the representation to the Court.

THE COURT: You're not really representing him, then. That's what worries me. It's just as though he were sitting there without counsel.

MR. MCGILL: His point is again -- and I see the bind -- you may look at it that way but again the strategy is that the sympathy that can become engendered as a result of this would be so much to his benefit that he would be willing to risk it -- and he has the conscience -- absolutely, as

long as the colloquy --

MR. JACKSON: There is no guarantee that he can't be found guilty of first-degree murder and I participate. "If you had done what I told you I would only be found of second --."

THE COURT: No.

MR. JACKSON: Well, I'm sorry --

MR. MCGILL: I understand your point. I think with his not representing himself, not saying a word, there's a good chance that he will

2.35

gain sympathy.

THE COURT: Why wasn't this issue raised with Justice McDermott?

MR. MCGILL: Why don't you call him up and have another hearing in his chambers?

MR. JACKSON: He didn't specifically tell me until after the Judge made his ruling.

THE COURT: You can call him --

MR. MCGILL: Yes.

THE COURT: -- and ask him if you can see him. But I want to bring up this other problem. Where is my Court Crier?

MR. MCGILL: I have a problem. It's a stupid thing that came up.

THE COURT: I will take one at a time. I'll worry about the juror that took off on us, that's my number one worry.

Off the record.

(A discussion was held off the record.)

THE COURT: The Court Crier, James

2. 36

Petner had called me last night to say that one of the jurors had taken off

without their permission and without their knowledge at the time. I'd like to get this on the record exactly what happened.

THE COURT CRIER: This incident began earlier when we were in court. She was in the back and she told me at approximately five to 3:00 that she has to go home and she's going to take the bus and go home. I said, "Whoa, whoa, you can't do that." I says, "What's your problem?" She said, "I've been trying to tell you all morning and you were listening and talking to somebody else." I said, "You want to talk to me?" She said, "I have a sick cat at home and have to take him to the vet and the vet closes at 7:00 o'clock at night," and she has to leave. I came back and saw Your Honor and told you what she said, and you said, no, she couldn't go. I went back and told her and she says, "Well, I'm going to go, I'm going to go."

2. 37

THE COURT: The reason I said no is because she has a husband at home who could take the cat.

THE COURT CRIER: I don't know who she has.

THE COURT: She has somebody and that's the impression I had, and I didn't see any need for her to go home. What happened after that?

THE COURT CRIER: I had to take that juror on his settlement. Okay. Came back, took the jurors from here to the hotel. We got to the hotel about 5:14, to our floor, and I took the new court officers -- I have a new crew each night except for one of us -- took them down to the recreation room, opened it up. And I told them where each room was, who has got a heart problem, and whose got a diabetic problem; I told them I wanted somebody out there at a certain time in the hallway; I gave them shifts, shifts in and out. Came back, he says, Harris, the Court Crier that was out there with me, that she was in the hallway watching

2. 38

the hallway after I gave everybody instructions. Went down for dinner at approximately seven minutes after 6:00 and she was the only one that wasn't there. We knocked on the door. There was no response. And we kept knocking and knocking, no response.

So I went downstairs and got the pass key. I thought she might got sick, fainted, heart attack, whatever. Got the security man to come up. We opened the door. Two court officers went in. Her clothes were there and everything was there, her articles, but she was missing. So I had the security man close the door and double lock it so she couldn't get back in.

We went down for dinner, came up from dinner at 9:00 o'clock and shortly after 9:00 a couple minutes, she appeared and one of the court officers grabbed her. And I told her that she wasn't to talk to any of the jurors. And she said, "I'm not talking to nobody." And she went right in the room. I told the other jurors not to talk to her.

THE COURT: Did she tell you where

2.39

she went and why she went?

THE COURT CRIER: I didn't question her. But after I said, "You know you're not supposed to do that." she said, "I don't care what Judge Sabo or anybody says, I do what I have to do. Nobody is going to stop me."

MR. MCGILL: She's said that?

THE COURT CRIER: Yes.

MR. MCGILL: Is she an alternate, or what?

THE COURT CRIER: Jeanie Dooley, I believe.

MR. MCGILL: It's a direct violation of the Court's order.

THE COURT: What worries me with her is her attitude, and I was surprised, really, that you gentlemen took her in the first place. Do you think there is a psychiatrist upstairs that we could have come down here while we question her?

MR. MCGILL: Judge, whoever the juror is doesn't matter. Anybody that would directly violate the court order and then say

2. 40

that she doesn't care what Judge Sabo or anybody says, she literally could be held in contempt.

THE COURT: I know that. What worries me is suppose they were out deliberating and she did this after the case was all over -- and let me say this, the rest of the jurors know that she did it.

MR. MCGILL: They do?

THE COURT: Sure they do. They all know it. What precedent would that

be that when they are deliberating they deal the same way she did and take off? To me it's a scary situation.

MR. JACKSON: It is.

THE COURT: I thought you ought to know about it. Believe me, I was not going to keep her in the beginning.

MR. MCGILL: I thought she was good. She hates him, she hates Jamal, can't stand him.

THE COURT: That's not the point that she hates Jamal.

MR. MCGILL: Can't stand him.

THE COURT: That's one point, but

2. 41

doing what she did she worries me.

MR. MCGILL: That's a violation of the law. She says she won't follow the law.

THE COURT: But the thing is when this case is finally over and she's out deliberating and they're taking too long, she's going to get up and walk out, just walk out, you know.

MR. MCGILL: That's true.

MR. JACKSON: Unless she thought -- well, I don't know if it's just a cat.

THE COURT OFFICER: I might add on the record the only way she could have got out -- when I first had the court officers in the rooms giving them instructions for ten minutes, that's the only time she could have left.

THE COURT: I don't care. She knew that she was sequestered. She knew that she wasn't going and she's saying, "I don't care what the Judge says, if I want to go I'm going to go."

THE COURT CRIER: I myself gave all the jurors instructions not to leave that

2. 42

floor. In fact, there's a soda machine on that floor and if you want soda or

ice we'll take it in for them because other people use the soda machine on other floors at times.

THE COURT: Gentlemen, do you want me to bring her in and see what this is all about?

MR. MCGILL: I don't think so, Judge. I don't know what Mr. Jackson wants to do. I think I would accept the representations of Mr. Petner.

THE COURT: No doubt that she left.

MR. JACKSON: Oh, yes.

THE COURT: Mr. Petner wouldn't tell me she left if she didn't leave. I don't have any qualms about that.

MR. MCGILL: I mean rather than put her through anything I think we should just excuse her.

THE COURT: I was surprised that you took her in the beginning. She had a very belligerent attitude.

MR. MCGILL: She was soft to me.

2. 43

She turned around and said, "Don't you ask me about my husband."

MR. JACKSON: I thought it was a matter of whose side she ended up on but she was definitely belligerent.

MR. MCGILL: I think we ought to get rid of her.

MR. JACKSON: I'm concerned and I'm reluctant to say yes without consulting Mr. Jamal. The other thing is that suppose she had gotten a call that somebody at home was dying or something like that and then to say that she did that even though it was in violation of the court order you can kind of understand.

THE COURT: If you want to ask her to come in --

THE COURT OFFICER: She can't get any calls.

THE COURT: I know that. She just took off.

THE COURT OFFICER: The telephones are off.

2. 44

THE COURT: All the individual T.V.'s in the room are off, all the phones are off.

THE COURT OFFICER: I checked them personally.

THE COURT: They have a T.V. in the rec room, they go there. It's monitored by the court officer so that if any news is going to come on he shuts it off immediately. He monitors and that's the way we keep them from getting any news media --

MR. JACKSON: Right.

THE COURT: -- anything from the news media at all. I don't know, she may have gone out, she may have heard something about what happened yesterday in the courtroom.

MR. McGILL: And not tell us about it.

THE COURT: She's liable to end up telling the rest of them about it.

MR. McGILL: Is she separated now?

THE COURT: Yes, we got her separated.

2. 45

MR. McGILL: Good.

THE COURT: I told them to immediately separate her as soon as he told me what happened.

MR. JACKSON: I wouldn't have objections to excuse her. I mean, I don't have any objections at all.

MR. McGILL: You could order it --

MR. JACKSON: I guess I don't have to get --

MR. McGill: --sua sponte. It's clearly a violation of the law. She could be held in contempt.

THE COURT: I don't want to hold her in contempt. I figure she's slightly -

- I don't want to say that she's mentally incompetent, but as far as I'm concerned she's pretty close to it. Somebody that would do something like this, just arrogantly say, "I don't care what anybody says I'm going to take off, I'm going to take off," we can't have somebody do that.

MR. MCGILL: Yes, I think --

THE COURT: I was worried about her

2.46

from the very beginning, to be honest with you. I don't select the jury, you gentlemen do.

MR. MCGILL: I wish you did, judge. I'm finding out more and more as I appear before you.

THE COURT: You can see these people, you know.

MR. MCGILL: Well, I wanted to get as much black representation as I could that I felt was in some way fair minded.

THE COURT: She's a mental case.

MR. MCGILL: I don't think she would be charmed by this guy.

THE COURT: She wouldn't be charmed by him.

MR. MCGILL: That's one of the reasons I took her.

THE COURT: She'll hang him. But the trouble is I'm afraid she might have gotten some information yesterday.

MR. JACKSON: I agree.

MR. MCGILL: Let's excuse her, Judge.

2. 47

THE COURT: We'll get her out of the way then.

THE COURT OFFICER: I have to send Laura to get her bags at the hotel.

THE COURT: Somebody has to take her over there. It's 12:00 o'clock. Why don't we break --

MR. MCGILL: How about this McDermott thing? Wait a minute, there's something else that I have. Judge, you'll laugh at this. This is really stupid. What a bizarre case this is.

Last night I had a witness, one of my witnesses, Robert Chobert. He testified at the Motion to Suppress. I had him -- for purposes of security I had him held up overnight at a hotel so that he would be able to testify and hope he would testify either today or tomorrow.

So when he got out of work he went to the hotel. And I called him up and it was pretty late, so rather than have him walk down

2.48

to my office, I said -- well, it was like 8:00 o'clock or 8:15 and I was hungry, anyway. I said, "Let me go get a sandwich and I'll prep the case over a sandwich and after that we'll go. You got your place, fine, everything's all set."

I went to the hotel -- I won't mention where it is -- I went to the hotel and I was eating a sandwich there with him, and low and behold, I see Handsome Jim walking up to me. And I looked at him and I began to think I was dreaming, because this case really got to me this much. And so I said, "My God, what are you doing here?"

"The jury is here." Fortunately the jury -- I only saw very few of them -- the jury was on the other side of the dining room, all the way at the end of the dining room, not quite a separate room but almost like an area all the way back whereas I and Mr. Chobert were on the opposite end and had been seated, close to the opposite end having been seated by the hostess.

2.49

Well, immediately upon finding this out I said, "Well Mr. Chobert, I'll ask you to go downstairs right away," which he did. I also asked him to -- after I met him downstairs and we had a sandwich somewhere else I asked him to immediately check out of the hotel, which he did.

And I talked to Jim a few minutes more about the situation. I said that Jim should notify the Judge as to what happened and that I would notify the Judge in the morning, and then I left. There was no communication, of course, with the jury. And quite frankly if there was ever a witness, if there was ever a witness, that I would rather not -- strike that from the record. But I'm sure they must be wondering what is going on. But fortunately there was no communication, no contact, no talking and he immediately

left.

It was almost like a situation where you walk in, you mistakenly open the door and begin to walk in the jury room area like back here in 253, and you see where you are, and

2. 50

you turn around and leave. But I felt that I should let the Court know, and it will be a matter of record. But he checked out and he will not be there anymore. He's not around.

MR. JACKSON: Well, I'd like to object but I haven't been instructed to do anything anyhow so --

THE COURT: As long as there was no direct contact with the jury it's something that innocently happened. See, we didn't tell anybody where we were going to keep the jury. It's a closed secret and we would rather leave it that way. It's just by accident that you happened to pick the same hotel to eat in and the same place for him to be in. But you assure me that he's no longer there --

MR. MCGILL: He checked out right after we had the sandwich.

THE COURT: We don't have that problem.

MR. JACKSON: If I could say some thing?

MR. MCGILL: Excuse me, let me get

2. 51

on the record now and say to Jim, have I represented the situation accurately?

THE COURT CRIER: Absolutely.

MR. MCGILL: Okay.

MR. JACKSON: This is off the record.

(A discussion was held off the record.)

THE COURT: Do you want to just put on the record that I am convinced that there was nothing intentionally done here. It was just one of these innocent things that happens once in a lifetime, I guess, or one in a 1,000,

or who knows how much. I'm convinced that there was no direct contact with the jury and I am satisfied. All right.

MR. MCGILL: I might also mention, Judge, that the hotel was in the general area.

THE COURT: I know that. It's in the general area of City Hall.

MR. MCGILL: It wasn't like an out-of-the-way hotel that I saw them.

THE COURT: Normally we would go

2. 52

much further but I'm stuck by what the court administration wants me to utilize because they pay the bills and they tell me where to go. And I don't particularly care as long as I'm sure that, you know, the things that I said like no T.V. or no telephone calls are obeyed so that nobody can get in contact with them. As long as that's done I don't care, really, what hotel it is as long as it's a clean hotel. I don't want them to go someplace they used to go to like the Ben Franklin down there and they had bed bugs eating them up, that kind of thing. That's not being fair. As long as there is a clean hotel nearby I don't particularly care which one. I have no interest one way or the other.

MR. MCGILL: Judge --

THE COURT: I think we ought to, rather than go out and do anything, I think we ought to call Justice McDermott and let him tell him what the problem is --

MR. JACKSON: Sure.

THE COURT: Tell him my only concern

2. 53

is that I'm leery that he's doing it -- he doesn't really have any trial strategy -- doing it, really, because I am not going to let him have John Africa.

MR. MCGILL: Is that the reason?

MR. JACKSON: I don't know for sure.

THE COURT: He doesn't know.

MR. JACKSON: I don't know if that's just it, Judge.

THE COURT: You know the reason I say that? If I allow him to have John Africa I'm sure he would be cross-examining.

MR. McGILL: I wonder.

THE COURT: This is the thing.

MR. McGILL: He's forcing us to change a rule.

THE COURT: This is it. That's what worries me. Rather than start now, why don't you go back and talk to Justice McDermott on that specific issue. That's all I want, that's all I'm concerned about.

MR. JACKSON: Fine.

THE COURT: If he feels it's all right

2.54

that's his strategy, well then, it's all right with me, too. I just would like to know. I don't want to go through a whole trial and then have them bouncing back and say there was no merit to that strategy, he should have used the guidelines that were set down in the Africa case and he should of, at least, asked them questions.

MR. JACKSON: That's true.

THE COURT: All right.

MR. JACKSON: Fine.

MR. McGILL: I have the opinion, by the way, as to the Africa case.

THE COURT: No, you can take it with you when you talk to --

MR. McGILL: No, I have the opinion of the main point in the Supreme Court's discussion of this issue; that in their opinion Mr. Jackson -- though I understand your narrow issue -- they believe that it would be improper even though you're asked by your client to in any way less than you would normally do as an attorney --

THE COURT: Yes, that's what it was.

2.55

MR. MCGILL: -- and literally let the case be rammed in, I think is the words they have used, by the Commonwealth without any attempt at all to resist, and that this is not the way that justice is meant to be.

THE COURT: See, that's what bothers me.

MR. JACKSON: I understand.

THE COURT: That worries me very much.

MR. JACKSON: Judge, I was going to say I wouldn't want to be in your shoes, but I guess I'd rather be in your shoes than mine. But I understand your concern.

MR. MCGILL: How about mine? The big bad guy putting all the witnesses on.

THE COURT: See, that's what I'm worried about and I'm sure that's what the Supreme Court meant.

MR. JACKSON: Sure.

THE COURT: Let's leave it for 2:00 and then let's see.

2.56

(A luncheon recess was taken until 2:00 o'clock p.m.)

2.57

### **AFTERNOON SESSION**

(The following took place in open court out of the presence of the jury:)

MR. MCGILL: Your Honor, good afternoon.

THE COURT: Good afternoon.

MR. MCGILL: The Commonwealth is prepared to proceed as it was yesterday; however, I believe that inasmuch as we've had some discussion in chambers in reference to the scope of representation by Mr. Jackson, Mr. Jackson may well want to address the Court as to what the situation is

in relation to his client in terms of the scope of his representation and, perhaps, might suggest a colloquy or what would be in order. I know the Court was going to do that anyway but I was going to make that suggestion. Mr. Jackson?

THE COURT: Mr. Jackson?

MR. JACKSON: Yes, Your Honor. I just bring to the Court's attention that pursuant to Your Honor's allowance yesterday we did, of course, petition to the Supreme Court. Justice McDermott denied the petition

2. 58

this morning. Subsequent to that I had some questions with regard to what my participation would be in this case in that Mr. Jamal, at least yesterday, indicated that he did not want me to participate in this process; primarily it was his intention to put on an active defense with the active assistance of John Africa at counsel table.

I've just had another discussion with Mr. Jamal and Mr. Jamal says again that he would indeed participate with an active participation if in fact John Africa was permitted to sit at counsel table and to assist him. Other than that Mr. Jamal has not indicated what my participation might be. May I have one moment?

(A discussion was held off the record.)

MR. JACKSON: Your Honor, may it please the Court, Mr. Jamal will address the Court at the conclusion of my remarks. Mr. Jamal would have me remind the Court that he has requested on numerous occasions that John Africa,

2.59

assist him at counsel table. He again would like to renew that request that John Africa assist him in this matter. And to deny him the assistance of John Africa would substantially compromise his defense in this matter.

He further states that without the assistance of John Africa obviously his defense would be adversely affected. My further participation in his defense would also be compromised in that I am now being forced by the Court to participate as his trial counsel against his wishes.

I believe Mr. Jamal would like to --

THE COURT: I don't want to hear anymore about it. As I told you

yesterday, I would abide by what the Supreme Court said. The Supreme Court has spoken in this matter. They have affirmed my decisions and there's nothing to argue any further. I can appreciate the position that you're in, Mr. Jackson. You are in a dilemma and it calls to mind an old adage that I remember that, you can lead a horse to the water

2. 60

but you can't make him drink. And that's true in this case. You're doing all that you can and all that is humanly possible. If he chooses not to actively participate in this case, he does so at his own peril. But you have received your instructions from the Supreme Court and I'm expecting that we will all obey the Supreme Court in this case.

We will proceed immediately. if he chooses not to participate that is his problem.

All right. Call the jury in.

MR. JACKSON: Your Honor, I don't believe there's been a colloquy.

THE COURT: We don't need a colloquy. The Supreme Court says we don't need a colloquy. If he chooses not to participate, that's his problem.

MR. JACKSON: That's what he was going to respond to.

THE COURT: We're not going to argue this over and over and over again, gentlemen. It's been argued. It's been up to the Supreme

2.61

Court. It is now time to move forward. It's quarter to three and we haven't even started.

MR. JACKSON: I understand, Your Honor. I was --

THE COURT: I am not going to go through this all over again. It's just a useless gesture. You know your position.

MR. JACKSON: Yes, sir.

THE COURT: He knows his position. I know mine. He knows his. If Jamal chooses not to assist you in this matter he does so at his peril. You are under instructions from the Supreme Court to defend him to the best of your ability and that you will have to do.

(A discussion was held off the record.)

(The following took place in open court in the presence of the jury:)

THE DEFENDANT: Who is representing me?

THE COURT: Mr. Jackson.

THE DEFENDANT: Why is he representing

2. 62

me?

THE COURT: By order of the Supreme Court.

THE DEFENDANT: Did the Supreme Court order him to represent me against my wishes?

THE COURT: No, it's by the Court's order.

MR. MCGILL: Your Honor, may I --

THE DEFENDANT: Why is he representing me?

MR. MCGILL: Your Honor, may we --

THE DEFENDANT: Why is he representing me if I don't want him to represent me?

MR. MCGILL: Your Honor, may we have a very brief side bar?

THE COURT: Let the jury out again, please.

(The jury was excused.)

(The following took place in open court out of the presence of the jury:)

THE DEFENDANT: Why is he wanting to represent me if I don't want him to represent

2.63

me?

THE COURT: Mr. Jamal, it is obvious to this Court that you have been

intentionally --

THE DEFENDANT: Why is he representing me?

THE COURT: -- disrupting the orderly proceedings in this courtroom.

THE DEFENDANT: I asked you a question.

THE COURT: He is representing you.

THE DEFENDANT: Against my wishes.

THE COURT: By order of the Court against your wishes, yes.

THE DEFENDANT: He's not working for me. He's working for the court, isn't he?

THE COURT: Yes.

MR. MCGILL: Your Honor, as long as we do have this opportunity with Mr. Jamal, before Your Honor makes any further order --

THE COURT: Well, I am directing Mr. Jamal to sit down. If he chooses not to participate in the proceedings, that's fine. But I will not allow him to continue to disrupt.

2. 64

the proceedings here.

THE DEFENDANT: I asked you a question. There's nothing disruptive about the question.

THE COURT: I am going to remove him from the courtroom.

THE DEFENDANT: I asked you a question? There's nothing disruptive about that.

THE COURT: The Supreme Court says there are two alternatives; one is to gag him, the other is to remove him from the court room. I choose to remove him from the court room. He can come back any time he agrees to abide by the proper decorum in this courtroom.

THE DEFENDANT: Do I have to agree to counsel I don't want?

MR. MCGILL: Before that is done may I request the Court, as long as

we're here with Mr. Jamal and Mr. Jackson, that we do, if you would, briefly conduct a colloquy with this defendant as to the situation in terms of representation of Mr. Jackson. It is clear from what Your Honor said and the Court said that

2.65

Mr. Jackson represents this defendant and is to do the best that he can. Now I would like if Your Honor would at least advise at this point in time Mr. Jamal the advantages and disadvantages of active participation of the defendant in his own defense, as well as, the advantages and disadvantages of either for strategic reasons or for other reasons asking his attorney not to participate. I think that that is needed.

THE COURT: I don't know what his feelings are. It may be that it's up to Mr. Jackson to inquire of Mr. Jamal for the record what he wants to do. He doesn't want to answer my questions. He just gives me questions.

THE DEFENDANT: You don't want to answer mine.

THE COURT: And you don't answer my questions. Maybe Mr. Jackson can throw some light on the situation.

MR. MCGILL: I have no problem with that at all. Maybe Your Honor would permit myself to ask Mr. Jamal some questions.

2.66

THE COURT: You want to ask him questions? Go ahead.

MR. MCGILL: Mr. Jamal -- we'll ask Mr. Jackson if there's any objection. I see a negative response.

Your Honor, thank you for the opportunity.

Mr. Jamal, do you recognize that if you do not --

THE DEFENDANT: Before you ask me a question I'd like him to answer my question about why is he representing me against my wishes and against his own wishes. This is not a mock trial.

MR. MCGILL: Do you realize, Mr. Jamal, that if you do not participate in your trial that you may well be at a disadvantage in this court.

THE DEFENDANT: Why are you asking me questions when he hasn't

answered my questions?

MR. MCGILL: Mr. Jamal, do you or do you not want to actively participate with

2.67

Mr. Jackson in this trial?

THE DEFENDANT: I want counsel of my choice which is John Africa.

MR. MCGILL: I assume from that that you did not want to actively participate?

THE DEFENDANT: You can assume what you wish. My answer was that I want counsel of my choice which is John Africa.

MR. MCGILL: Your Honor, perhaps since it's obvious that we're going to get the usual double-talk, I would suggest --

THE DEFENDANT: I think it's you that's double-talking.

MR. MCGILL: -- if Mr. Jackson would come up to the Court and Your Honor could, in a colloquy, ask Mr. Jackson the questions similar to the questions that were asked at side bar in front of Mr. Jamal so that we can get this squared away.

THE COURT: I think Mr. Jackson is in a better position than I am as to what the feelings and the intent of Mr. Jamal are in this case. I don't know. I don't have the slightest,

2.68

idea.

MR. MCGILL: Fine.

THE COURT: So Mr. Jackson, for the record, would you like to tell us and then we can listen?

MR. JACKSON: Your Honor, I believe I am not at all certain what it is that Mr. Jamal wishes to present to the Court. It would be presumptuous on my part to speak for Mr. Jamal. I have indicated to the Court the substance of our conversation and I think for me to make any further representations --

THE COURT: What is the substance of it?

MR. JACKSON: What I said, his request for John Africa and, again, his last instruction and, certainly on the record yesterday, would be that I not participate in this proceeding.

THE COURT: I know that but I have ruled on that question and I said that I would abide by whatever the Supreme Court said.

MR. JACKSON: Yes, sir.

2.69

THE COURT: The Supreme Court has now ruled on that.

MR. JACKSON: That is correct.

THE COURT: What is his position now? Now, this is what I want to know.

MR. JACKSON: Can I have one moment, Your Honor?

(A discussion was held off the record.)

MR. JACKSON: Mr. Jamal advises Your Honor if you wish to ask him he's prepared to respond.

MR. MCGILL: Well, I think Your Honor is asking Mr. Jackson now.

MR. JACKSON: I don't know.

THE COURT: I just wanted to know, you understand what your position is? The Supreme Court has made it clear to you.

MR. JACKSON: Yes, sir.

THE COURT: That you are to be the primary attorney here and you are to defend Mr. Jamal to the best of your ability. So we can't go back again and start worrying about why

2.70

Mr. John Africa can't be here at this proceeding. That's already been ruled upon.

MR. MCGILL: Your Honor, could you instruct Mr. Jackson in the

presence of Mr. Jamal the status, or first of all, to find out whether or not he, Mr. Jackson, will actively represent the defendant?

THE COURT: Well, I've no reason to believe that Mr. Jackson will not actively represent him. I would assume that as a member of the bar, an officer of this court, that he would certainly carry out his duties.

MR. MCGILL: I'm only thinking in terms of what was said this morning, Sir. I think that should be clarified.

THE COURT: Based on his answers now it's an altogether different statement. Now I don't know what Mr. Jackson is going to do. If you want to ask Mr. Jackson what he's going to do, fine.

Will you tell us what your intentions are, Mr. Jackson?

MR. JACKSON: Your Honor, with

2. 71

regard to my last instruction from Mr. Jamal with regard to my participation, is that if I could not in fact absolutely follow his instructions and direction I was not to participate in this proceeding, and that is in fact - - he has a number of strategies, and one of the strategies was what I indicated earlier; that he would actively participate in this if John Africa was here. Previously the instruction I got from Mr. Jamal was that I would not participate in this trial, sir.

MR. MCGILL: I would say, Judge, on the basis of that -- are you through with your statements?

MR. JACKSON: Well --

MR. MCGILL: On the basis of that, Your Honor, it appears that the conversation this morning is really not relevant on the record.

THE COURT: That's right.

MR. MCGILL: Because this morning it was mentioned that the defendant would be purposefully and strategically quiet and that

2.72

there would be no participation from the defendant, and also that he and Mr. Jackson would agree that it would be in his best interests strategically not to act at all, which would mean cross-examine witnesses, or call

witnesses, or whatever. Has that position changed, Mr. Jackson?

MR. JACKSON: No, that is the same. Your Honor, I did not use the specific words but I could certainly do that.

MR. MCGILL: Please.

MR. JACKSON: Fine. It is my understanding that Mr. Jamal's wishes are, number one, that if I cannot act consistent with his, all of his wishes, that at the very least I not participate in this trial because it is indeed against his wishes for me to participate. It is against his interests for me to participate in this trial. And based on that I don't think that I could in any way participate in any manner that would be in derogation of his rights and derogation of his

2.73

interests.

MR. MCGILL: Judge, I have to respond to that. That's a different situation. We're talking about two things: Number one, we're talking about following Mr. Jamal's instructions and not doing anything at all --

MR. JACKSON: Yes.

MR. MCGILL: -- because he cannot represent him in the way that he wants. That's one thing. Another thing is to not do anything at all as his counsel out of a strategy which is that for the benefit of Mr. Jamal a result which he wishes may well occur through the use of this strategy, which is a proper type of strategy although it is fought with danger. However, he has a right to do that.

If we're viewing this from the words of Mr. Jackson, it appears clear that if we're doing it under the first part only, which is that he is quiet and will do nothing solely because he can't represent him the way he wants, that is in violation of the Supreme Court order which says that you are to represent him to the

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best of your ability.

THE COURT: Absolutely.

MR. MCGILL: If it is done strategically for another reason, that's

something else. We've got to clarify that.

THE COURT: That's not what he's saying.

MR. JACKSON: I'll clarify it for the record. It is not solely and simply because I am not counsel of his choice. But in addition to that, it is his decision, as a matter of strategy, that I not participate in his trial because it is against his interests. And that is, at least, part of his trial strategy. And as I suggested to the Court earlier, I don't believe that it would be appropriate for the Court to intrude into the defendant's trial strategy. I think that is consistent with his trial strategy. For me to participate and indeed go against his very wishes would be to compromise his defense. And for that reason I am specifically advising the Court that pursuant to the instructions I believe that I

2.75

have from Mr. Jamal; and that is, it is indeed, his strategy that I not participate in his trial, that I not conduct any examination, that I not object, that I not do any of those things that a lawyer normally does --

MR. MCGILL: And it's because it's in his best interest. What you're saying is it's because it's in his best interest that you do not do that, and that's his belief.

MR. JACKSON: I'm saying his belief for me to participate would be against his best interest. That's what he said to me. I can't put words in his own --

THE COURT: Well then, you better get on the record --

MR. JACKSON: Whether I say it's in his best interest or against it's a matter of semantics.

THE COURT: You better get it from him on the record.

MR. JACKSON: Do you want to speak?

THE COURT: Your his attorney. Put it on the record.

2.76

MR. JACKSON: Your Honor, I'm constantly being asked and demanded to do things by everyone. I can't make Mr. Jamal talk.

THE COURT: Neither can I.

MR. JACKSON: Well --

MR. MCGILL: Judge, Mr. Jackson is quite right but I think Mr. Jackson is aware that we, both the Commonwealth and the Court, are in a position of some difficulty in communication in getting on the record that which is proper in order to guarantee the type of record necessary in a trial. Now I would ask that Mr. Jackson, inasmuch as this is really the only way I think that we can approach this at this point, if we could ask Mr. Jackson if he has told his client, and if he is aware, in the presence of his client, of the various disadvantages of his actions even though it may prove to be a very strategic action indeed. Nonetheless, he should be told, number one, that if you do not cross-examine witnesses their truth may well not be sufficiently tested for a

2.77

jury as a finder of fact; if you do not call your own witnesses and you have a defense it may well be to your disadvantage not to call witnesses; it may be smart not to call witnesses --

THE COURT: He's waiving his right.

MR. MCGILL: That's correct.

THE COURT: Waiving his constitutional right which could be lost forever.

MR. MCGILL: That is also correct.

THE COURT: And another thing I want to bring out, the fact that you direct your attorney not to cross-examine witnesses, in addition to what Mr. McGill has said, that the jury may properly infer that everything you're saying is truthful, if you should be convicted and if the Appellate Court would grant a new trial and if that witness was no longer available those prior notes of testimony could be read at your second trial, and you will have no opportunity to cross-examine those records. So that's a very important right that you're losing.

And I think Mr. Jackson has a

2.78

responsibility to inform you of all of these rights that you will lose by not

actively participating in this trial.

MR. MCGILL: Your Honor, also --

THE COURT: And in addition to that you do so at your own peril.

MR. MCGILL: Also, of course, he has a right to testify, as he well knows.

THE COURT: Certainly he has a right not to testify if he so chooses and the jury cannot infer anything from that. You have an absolute right -- and I'm sure Mr. Jackson has talked to you about this --

MR. MCGILL: Judge, it's particularly important since you mentioned about the notes of testimony, if he were convicted they could be used again, because even though he chooses not to cross-examine --

THE COURT: They are available now.

MR. MCGILL: -- because of strategy, he has had the opportunity to cross-examine.

THE COURT: That's right.

MR. MCGILL: As Your Honor is making

2.79

clear now, it's the opportunity that allows those notes of testimony to be admitted in a subsequent proceeding if the witness is unavailable. Is that what you also said?

THE COURT: That's exactly what I'm saying. So he has a lot to lose as far as his rights.

MR. MCGILL: Also, Your Honor, the openings and summations, if he gives that up -- an opening, of course, is an opportunity to outline your defense. You don't need it but you can do it. A summation is clearly your side of the case, arguing with vigorous intent.

THE COURT: It's a very important function, absolutely.

MR. MCGILL: Also, the instructions of the Court, any kind of instructions of law that counsel may wish the Judge to consider in reading instructions of law to the jury. Those particular instructions, if he chooses not to put those on paper and submit any, it may hurt the defendant inasmuch as he

may have important

2. 80

points that the Court may have overlooked.

Particularly important, Your Honor, is objections. And I'm speaking loud enough so that Mr. Jamal, as well as, Mr. Jackson can hear what I'm saying. Objections being made during the course of trial for evidence that is thought to be introduced by the Commonwealth is a very important function, because objections can prevent evidence from being admissible. These type of rulings can well be very important in the determination of the facts that a jury will eventually consider for the verdict.

All of these, whether it be objections, summations, cross-examination, all of these are very important aspects of work from a defense counsel. And if the defendant chooses not to use any of those tools which are at his disposal in a proceeding, it can hurt him significantly. It can also be the smartest strategy that he would want. But I would suggest, Your Honor, it may not.

THE COURT: And by the same token,

2. 81

he would lose a very important constitutional right that he has, and lose it forever.

MR. MCGILL: Mr. Jackson, have you at least, mentioned this to Mr. Jamal in terms of your many conversations? These things I mentioned.

MR. JACKSON: I have, I believe, substantially advised him of the rights that he has constitutionally with respect to his right to counsel and things of that sort. The specific circumstances, what you're going through now, I have not at all gone through since it has just happened. There is no reason to have done it before.

MR. MCGILL: Would Your Honor permit at this moment an opportunity, a few minutes opportunity, for Mr. Jackson and Mr. Jamal to, at least have that opportunity to discuss what I just said?

THE COURT: Sure.

THE DEFENDANT: It's very curious that the Court seems protective of certain rights and clearly doesn't give a damn about others,

2. 82

the right of self-representation is absolutely an absolute right. Just like the constitutional rights you had about objections, examining, cross-examining witnesses, but the right of self-representation has been stolen by you several times during the voir dire, and it's been stolen before this actual trial began. My right of determining a jury of my peers was seized by you without cause. My right of self representation was stolen by you without cause and without reason.

THE COURT: I'm just saying --

THE DEFENDANT: The rights you're saying are not rights at all if you can take them at --

THE COURT: You have rights --

THE DEFENDANT: If they're not absolute rights they're not rights at all.

THE COURT: You have rights that you can use and you can waive by your conduct. That's not what you're doing. You're losing and you're waiving these rights by your conduct in this courtroom. You choose to do so. As I

2.83

told you before, you do so at your own peril. I warned you time and time again. I've tried to give you good advice but you won't take it.

THE DEFENDANT: Are you my defense counsel now, Judge?

THE COURT: No. to advise you of the rights

THE DEFENDANT: my advice. I would like my John Africa seated there at

THE COURT: I told ruled. But I'm just trying that you might lose. Judge, in terms of advice coming from the defense table.

you that's over

THE DEFENDANT: You're telling me

THE COURT: The Supreme Court said

THE DEFENDANT: And I'm saying to you I'd rather have my advice

come from John Africa rather than Sabo.

THE COURT: Fine.

MR. MCGILL: Can you give an opportunity at this point to Mr. Jackson and Mr. Jamal to discuss the area of the right he is giving up?

THE COURT: And one other right you

2. 84

are giving up, if you continue in these outbursts to interject yourself and interrupt Court, you will be giving up your right to be present during the course of this trial until you agree to abide by the proper course of conduct.

THE DEFENDANT: Your threats --

THE COURT: That's not a threat. That's just telling you what rights you're going to give up.

THE DEFENDANT: Your threats and your warnings are meaningless to me.

THE COURT: I know that. You already told me that.

THE DEFENDANT: Okay.

THE COURT: Your conduct has already exhibited that to me.

THE DEFENDANT: My conduct has been in my own defense.

THE COURT: I have said I've --

THE DEFENDANT: I have not been disruptive in this court, Judge.

THE COURT: I said I will give you

2. 85

a little time to talk to your attorney.

THE DEFENDANT: I'm telling you, you can do what you want to do. I'm telling you that my rights have been disrupted and you're sitting there talking nonsense.

THE COURT: All right.

(A discussion was held off the record.)

(A short recess was taken.)

(A conference was held in chambers off the record.)

THE COURT: Let the record indicate that the Court has allowed Mr. Jamal to speak to Theresa Africa and to his attorney in the hope that some agreement may be reached as to what they're going to do in this case.

MR. MCGILL: It was approximately 40 minutes, Judge.

(A discussion was held off the record.)

THE COURT: While we're waiting, because of the unavailability of Juror Number 1, Juror Number 13 will take the place of Juror

2. 86

Number 1.

(A discussion was held off the record.)

THE COURT: Mr. Jackson?

MR. JACKSON: Sir?

THE COURT: Can Mr. McGill address the jury with his opening remarks without any interruptions from Mr. Jamal?

MR. JACKSON: Your Honor, we have perhaps one minute more and I think I'll be in a position to --

THE COURT: All right.

(A discussion was held off the record.)

THE COURT: All I want to know is can Mr. McGill give his opening remarks to the jury without any interruptions from Mr. Jamal?

THE DEFENDANT: What you say?

THE COURT: May we proceed with Mr. McGill making his opening

statement to the jury without any interpretations, please?

THE DEFENDANT: Can we proceed with John Africa at the defense table?

2.87

THE COURT: That's already been ruled on.

THE DEFENDANT: Ruled on or not I mean, this is my trial.

THE COURT: I know that. The Supreme Court has ruled on it. It's been up to the Supreme Court.

THE DEFENDANT: I understand. You probably had coffee together and talked about it. I understand. The point I'm making --

THE COURT: I told you before if you interrupt me one more time that's the last. You will be removed from the courtroom.

THE DEFENDANT: What I'm saying to you is --

THE COURT: Can we bring in the jury, please?

THE DEFENDANT: -- that threat is meaningless.

THE COURT: I know it's meaningless to you. You've told me that a million times. Bring the jury in. I'm telling you for your own sake, if you interrupt I'm

2. 88

going to remove you.

THE DEFENDANT: What does that mean to me? What I'm saying to you is, I would like to have the defense of my choice. I'm having a problem with this man. We argued for the last half hour. He cannot do what I want him to do. Do you understand that? So I renew my motion for John Africa to assist me on my defense. Did you hear me, Judge?

THE COURT: Just a moment.

(The following took place in open court in the presence of the jury:)

THE DEFENDANT: I know if you said it was approved it would be done. It seems real clear to me and it should be clear to everyone in this court

that you're afraid of having John Africa's presence in this courtroom even though it's in my defense, in defense of my life.

THE COURT: Mr. McGill?

MR. MCGILL: Your Honor, may I proceed?

2. 89

THE DEFENDANT: I'm not finished.

THE COURT: We're finished.

THE DEFENDANT: I'm not finished. We are not finished.

MR. MCGILL: May I proceed with the opening before this jury that's been waiting for two days?

THE COURT: Yes.

THE DEFENDANT: I don't care.

MR. MCGILL: You don't care what?

THE DEFENDANT: I have a right to the defense of my choice.

THE COURT: Let's move the jury out just for a minute.

THE DEFENDANT: This does not mean anything to me. They mean absolutely nothing to me.

(The jury was excused.)

(The following took place in open court out of the presence of the jury:)

THE COURT: Mr. Jamal, you have interrupted these proceedings for the last time. The Court is ordering the sheriff to remove him

2.90

from the courtroom. We'll proceed in your absence.

THE DEFENDANT: That doesn't mean anything to me.

THE COURT: When you wish to abide by the proper decorum in this courtroom you will be readmitted to the courtroom. Until then you are

being removed.

THE DEFENDANT: What does that mean to me? That is not news.

THE COURT: Please, sheriff, take him out.

THE DEFENDANT: What I'm saying is, I want the defense of my choice so this case -- get off of me.

THE COURT: Sit down in this court room or you will be removed.

THE DEFENDANT: They don't want to sit.

THE COURT: You will be removed.

A SPECTATOR: This is a fucking railroad, I say. What are you trying to do here?

2.91

A SPECTATOR: What is this?

(The defendant was removed from the courtroom.)

THE COURT: Bring them back, bring those two men back.

You both are in criminal contempt of this Court for your outbursts in this courtroom. I am summarily fining you to 60 days in the County Prison. That's it.

A SPECTATOR: Take it easy, baby. It's all right. Say nothing. We in the right. Take it easy, baby. We right, we win. God is the Father.

(The two spectators were removed from the courtroom.)

(A short recess was taken.)

THE COURT: I just want to state for the record that when the Court had ordered the sheriff to remove Mr. Jamal from the courtroom because he has been obstructing the Court's orderly procedure in this courtroom, he became very abusive and some of his relatives or friends or followers, whoever they may have been, became

2. 92

very abusive, vile language, screaming in the courtroom. The Court was

forced to order the sheriff to apprehend two of them. I don't know their names but now they're in custody. We'll ascertain what their names are later, I assume. Does anybody know who it is?

MR. MCGILL: Yes. Mr. William Cook, brother who was present at the scene, the one that you will hear testimony concerning, and, I believe, Mr. Wayne Cook, also brother.

THE COURT: Both brothers. The Court had summarily found them in criminal contempt and sent them to 60 days in the County Prison.

Because of the outbursts and the lateness of the hour -- it is now 4:20 -- I think it would be better if we proceed with opening remarks tomorrow morning. All right. Nine thirty tomorrow morning.

(Court adjourned at 4:20 p.m. until Saturday, June 19, 1982, 9:30 o'clock a.m.)

2. 93

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Term, 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Courtroom 253  
City Hall  
Philadelphia, Pa.

June 19, 1982

Before: HONORABLE ALBERT F. SABO, J. and Jury

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Court Appointed Counsel for the Defendant

3.02

I N D E X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
MAUREEN FAULKNER	35	39	40	
Examination by:				

Mr. McGill Mr. Jackson				
PATRICK FAULKNER	41			
Examination by: Mr. McGill				
OFFICER ROY LAND	42	62	80, 96	87
Examination by: Mr. McGill Mr. Jackson				
REGINALD THOMPSON	99	107		
Examination by: Mr. McGill Mr. Jackson				
OFFICER ROBERT SHOEMAKER	112	121	131, 148	133
Examination by: Mr. McGill Mr. Jackson				
OFFICER JAMES FORBES	149	156	175	
Examination by: Mr. McGill Mr. Jackson				
OFFICER DANIEL SOBOLOSKI	176	182	203	
Examination by: Mr. McGill Mr. Jackson				
ROBERT CHOBERT	229	224	274	281
Examination by: Mr. McGill Mr. Jackson				

3.03

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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C-1(a)	Police Hat.....	38
C-1(b)	Frontispiece.....	38

C-2	Sketch.....	44
C-3 thru C-13	Eleven Photographs.....	44
C-14	Necktie.....	51
C-15	Green Beret.....	51
C-16	Photograph.....	58
C-17	Policeman's Patrol Log.....	61
C-18	Bullet.....	81
C-19	Tape Recording.....	104
C-20	Transcript in Memo Form of Tape Recording C-19.....	105
C-21	Photograph.....	131
C-22	Revolver.....	153
C-23	Second Revolver.....	153
D-1 thru D-9	Nine Photographs.....	70

3.04

(Hearing is reconvened at 10:00 o'clock a.m.)

(At this time the Defendant confers with Theresa Africa.)

THE COURT: I am not opening Court yet because I want to first ascertain from Mr. Jamal whether or not he will behave himself in this Courtroom so that he can stay for the proceedings. Otherwise, as I put him out yesterday, I will leave him stay out if he's not going to behave himself.

Mr. Jamal, are you going to behave yourself and not disrupt the orderly proceedings of this Courtroom?

THE DEFENDANT: I sure will, Judge.

THE COURT: Okay, then we'll open Court.

MR. JACKSON: Before you bring in the jury, may it please the Court, I would initially request that the jury panel in this matter be dismissed. As Your Honor well knows, since this jury panel has been empanelled, a number of events have taken place within this Courtroom.

3.05

The jury is, of course, very close to this Courtroom and within, I believe, hearing range of at least some of the activities that have occurred within

this Courtroom, such that the jury may reasonably assume that indeed it has been caused by Mr. Jamal and would therefore prejudice the rights of Mr. Jamal to the extent that I believe they could not be fair and impartial in the adjudication of the facts of this case.

We know, of course, that there has been one jury person who has been dismissed by Your Honor. We don't know all of the facts and circumstances of what that person may or may not have done. It's my understanding from the Court Crier that that person was isolated from the other jurors, and we would assume that to be true; nevertheless, Your Honor, the question is now raised as to whether or not the other members of the jury panel may have been tainted from any other outside sources with respect to the activities and goings on within this Courtroom.

To that extent, and I believe in an abundance of caution, it would be appropriate to dismiss this jury panel and to have a new jury

3.06

panel in place.

MR. MCGILL: Your Honor, in reference to the juror mentioned by Mr. Jackson, that was a joint excuse because of her unavailability. This was discussed at length and is a matter of Record. I don't think anything needs to be done publicly as far as her own reasons. I think the reasons at sidebar are on public record, and since it was a joint excuse, she was excused by Your Honor because of our agreement, the agreement between Mr. Jackson and myself.

And secondly, in reference to any outbursts made yesterday, certainly Your Honor has taken extreme precautions throughout all of these trials and actions of Mr. Jamal, particularly where there does appear to be a problem, the jury is immediately asked to withdraw. All during the course of yesterday's melee, the jury was not present. They were outside in separate rooms away from the Courtroom. It's hard to say whether or not they heard anything, but even if they did hear anything, certainly, Your Honor was not the cause, nor Mr. Jackson, nor myself, the cause of what ensued, so it could hardly be a

3.07

matter of prejudice caused by state action.

I would suggest to this Court that this Court, Judge Sabo, has exercised, besides extreme patience, a great deal of ability to control potentially inflammatory situations, and in doing that you have kept the jury

constantly away from it all. When the jury is empanelled in the normal proceedings, as they must, and something does occur, Your Honor cannot control what Mr. Jamal decides to do on his own. He can do what he wants to do in front of a jury. When it reaches a point where Your Honor feels the orderly presentation of the case is impeded, Your Honor can act appropriately, as you did yesterday. So there is no basis for that motion, I suggest respectfully.

THE COURT: The motion to dismiss the jury is denied.

MR. JACKSON: All right. May it please the Court, I'd also like to bring to the Court's attention that I am at this very moment prepared to defend Mr. Jamal to the best of my ability. I will also bring to the Court's attention that unless and until Mr. Jamal specifically indicates to me that it would be his strategy for me not to

3.08

participate or, in other words, to remain silent with regard to the presentation of witnesses and facts, until or unless that is done and placed on the Record, I will defend Mr. Jamal in the traditional manner of an attorney, and I ask then that the trial begin.

THE COURT: All right, bring the jury in.

(The following transpired in open Court with the jury present:)

THE COURT: District Attorney, are you ready to address the jury?

MR. MCGILL: Yes, Your Honor. If it please the Court, the Commonwealth is prepared to proceed with its opening.

THE COURT: All right.

MR. MCGILL: Shall I proceed, Your Honor?

THE COURT: Yes, please.

MR. MCGILL: Ladies and gentlemen, good morning. At this particular time, as the Judge has stated, this is the opening to all of you. Now the opening is really a bird's eye view of what the evidence will be. It is not evidence in itself, so anything I say to you now will not be evidence. The only kind of real evidence that you

3.09

will have an opportunity to hear and see will be coming from the witness stand.

In this particular case the Commonwealth seeks to prove this Defendant guilty of first degree murder, and we also seek the death penalty. But during the course of this particular trial your concern at this point is guilt or innocence, not penalty, at this point. I would suggest to you that the Court will tell you exactly what the law is as to all of the charges and all the principles of law that you must keep in mind during the course of the trial and during the course of your deliberation.

What the Commonwealth intends to prove is that Mumia Abu-Jamal intended deliberately and with premeditation to shoot Officer Daniel Faulkner to death on December 9, 1981.

Now, we will prove this in various ways, that is, a statement of the law itself as far as first degree murder is concerned, what I just gave you, we will prove this through eyewitnesses, physical evidence, scientific evidence, medical examiner's testimony, photographs, sketches, and also admissions.

### 3.10

During the course of this entire trial, and I will say now barring any unforeseen -- and please don't hold me to this -- but barring any unforeseen delays, I will attempt to complete the case in chief, which is the Commonwealth's case of evidence, within three days because you are all probably wondering about time at this point. I will try to do that, barring any kind of interruptions, and we will start today, today will be number one. Of course, after that the defense then has an opportunity but then no obligation to put on a defense. I cannot give you the total number of days involved in this trial at all, I can only tell you what I anticipate my part of it will be, at least in the beginning.

Now, during the course of the testimony that you will hear, you will hear from various witnesses as well as Police Officers the various facts that I shall relate to you.

Mr. Jamal was observed on the night of December 9, 1981 shooting to death Officer Daniel Faulkner. Officer Faulkner was stopping an automobile, a Volkswagen, and the driver of that automobile was Mr. Jamal's brother William Cook.

### 3.11

William Cook and Officer Daniel Faulkner then walked back from where

the Volkswagen was to the side of 13th and Locust, on the south side of 13th and Locust Streets. This would be on the east side of 13th, south side of Locust by the automobiles.

During the time while officer Faulkner was discussing with William Cook the reason for the stop, William Cook turned around and hit in the face officer Faulkner with his right hand. At that point on the right side of his face he was hit and injured a bit. At that time our witnesses will testify that at that point Mr. Jamal ran over from the parking lot and he had a weapon, and there Mr. Jamal, as he went directly toward the position where Officer Faulkner was attempting to subdue William Cook who had just hit him, Mr. Jamal with a gun drawn and loaded, goes up and within a very short distance from the back of officer Faulkner, for it was his back that was facing Mr. Jamal at this time, shoots officer Faulkner right in the back.

The one or two times that the Defendant Mr. Jamal shot at that time, at least one hit the

3.12

back of officer Faulkner And you will hear the testimony that as he fell down, officer Faulkner was grabbing for something, and then Mr. Jamal, the Defendant, takes a few steps over as Officer Faulkner was down and was shot himself during the course of this.

After he had shot Daniel Faulkner and while Officer Faulkner was reaching and grabbing for something, then Mr. Jamal was shot himself during the course of this by Officer Faulkner. Officer Faulkner now is on the ground, and then you will hear the testimony of various witnesses that this Defendant walks right over to Officer Faulkner, who at this point is on his back, and within twelve inches of his head he points the gun that he had that was loaded and unloads that gun. One makes contact, and that was the fatal shot, right between the eyes, literally blowing his brains out.

He continued, however, to shoot, hitting one portion of the coat jacket. No contact was made because of the garment material, and he continued to unload his gun, at which point, after this shooting took place, the Defendant then

moves over, already himself being injured, and then falls to a curb area crouched over.

At that point officers arrived. He resisted being arrested, he was injured while he resisted being arrested. You will hear where he had been injured at the top of his head by officers arresting him. He was also kicked on the side of his jaw as he was reaching for a weapon, the very weapon that he

used to kill Officer Faulkner.

At that time he was then taken to a wagon, and not only will you hear from witnesses about these particular actions that they observed on that night, but also these witnesses became close enough or came close enough to Mr. Jamal, to the Defendant, as he was taken to the wagon to identify him there, with one witness actually going right up to the wagon afterwards, and the Police saying, Did anybody see it, what happened, and they take him right up to the wagon, open it and say, Is this the man who did it; That's him, never having left his sight, in front of him an individual who saw it straight.

Another individual who happens to have been arrested several times for prosecution --

several times, she has a two, three page record of prostitution arrests -- she also is a witness and also observed everything that I have related to you, and she will testify.

Ladies and gentlemen, the evidence does not end there, for we will find that when the Defendant was arrested, seized from him was a shoulder holster as well as the weapon. The weapon, along with Officer Daniel Faulkner's weapon, was found right there by the scene on the ground near where they were laying, that is, Officer Faulkner as well as the Defendant. The shoulder holster was still being worn by this Defendant, the holster for the gun that he used in killing Officer Faulkner.

The evidence does not end there. At this time the Defendant is then taken to the hospital because of his injury, for he indeed was shot. Also he goes to Jefferson Hospital. At Jefferson Hospital he is taken in and left at a spot until it was determined where he should go for treatment. This man, this Defendant, you will hear and you will see throughout this trial as the evidence goes on, a picture of extreme arrogance, defiance,

3.15

even a strange boastfulness as to what he did in his deliberate killing of this Police Officer.

You will also see strange ironies in this case, such ironies as the very hospital where Officer Faulkner was rushed to while he was dying -- and he did not live long with that wound between the eyes -- the same hospital that he was sent to the Defendant was sent to because that was the closest place to go in order to have the Defendant's life saved, and that was another irony, where the very Police unit where he eliminated one of their members intentionally and viciously, that same unit helped him save his

life, even though at the time he went to the hospital, you will hear, he didn't even want any treatment at that time. Extreme arrogance, but that arrogance continues because we find again, ladies and gentlemen, a situation at the hospital which best symbolizes this entire episode, you may find, and that is this: When he goes into the hospital an individual, which is also ironic, his former partner -- and you may well know, whether it be from television or radio or

3.16

anywhere, the closeness of partners in the Police Department because of the nature of their jobs and the dangers involved in it -- his former partner in there comforting Officer Faulkner as he is dying, ladies and gentlemen, walks out to the Defendant who unloaded his gun in him and literally blew his brains out, and he looked right at him and this man, this Defendant, you will hear, looks up to him at the time when he's just dying and said, "I shot the MF'er and I hope he dies." Arrogance, defiance, you will see it.

Ladies and gentlemen, not satisfied with merely that statement, he repeats that same statement as he is being taken away to an area where he could be treated in order to save his life. At the time he says, "I shot the MF'er and I hope he dies," his partner, who is looking right at him and sees his other partner there dying, looks at him and says, "If he dies, you die."

Then you will see the Police Officers guide this man, the Defendant, away to an area in

3.17

order that he can be treated, and before he goes in that treatment area you will hear testimony that he once again says, "I shot the MF'er and I hope he dies," and he got his wish, he got his wish. Viciousness.

The actions that you will hear during the course of this trial, ladies and gentlemen, through various types of evidence, you will see photographs, you will see the gun that did it, you will see Officer Faulkner's gun also where he was able to get off that one shot only that wounded but not fatally Mr. Jamal, you will see the cartridges as well as the gun that was used in the killing.

Even beyond this admission, there is yet another admission. Even before Dr. Colletta comes and saves his life, taking the bullet out and all, since there was a Court order by Judge Abraham forcing this Defendant to be operated on -- he had to be forced to be operated on again by the state -- and an admission made to a Police officer while he's on the journey, "I'm

glad. If I get out of here I'll kill all you pigs."

You'll hear this testimony, the last one

3.18

from a Police Officer. You will hear the testimony of the admission from a security officer, a security officer from the staff of Jefferson Hospital. You will see, as I mentioned, the real evidence of the guns. You will see his partner testify to those circumstances, his former partner; you will hear from the Crime Lab showing you the area of where the shots had taken place -- excuse me, where the shots had occurred on his garments. They will testify that specifically the shot in the back was within twelve inches. No question what the intent was. You will see through the evidence as that gun was going off, you will see from the testimony of the medical examiner that the shot that killed him was also within twelve inches, and you will see the actual garments where the other shots that missed but hit part of the garments, where they were positioned. You will see photographs of the scene, ladies and gentlemen. You will see a sketch of the scene which I will present to you.

Ladies and gentlemen, all of this is merely, as I mentioned before, an overview of what you will see. There may be some witnesses

3.19

that come out of order. That is because of where they are coming from, problems of scheduling or whatever. There may be some delays which will be quite proper because of legal arguments or objections; please bear with us. Your patience so far is admirable, but please understand that this is what I am saying will be the evidence presented to prove that this Defendant viciously and intentionally took the life of a Police Officer in Philadelphia, Daniel Faulkner. Thank you.

MR. JACKSON: Your Honor, I reserve making opening remarks until a later time, but I would like to see Your Honor at sidebar for a brief moment.

THE COURT: Sure.

MR. MCGILL: Your Honor, could we have a short break now for the jury?

THE COURT: All right.

(A brief recess is taken.)

(The following transpired at sidebar in the presence of the Court, counsel, and the Defendant:)

MR. JACKSON: Your Honor, after my remarks

3.20

to you earlier with respect to my conversations with Mr. Jamal, Mr. Jamal has indicated now at defense table that he wishes me to refrain from making objections and he wished that I reserve the right to cross-examine any and all Commonwealth witnesses. I indicated to him that at this point it was my intention to make appropriate objections and to examine the witnesses when I felt in my experience it was appropriate. He says that it is indeed his strategy to withhold examination, to reserve examination of witnesses and not to object.

I indicated to him that I could not do that unless and until he placed that on the Record, and I'm asking now if that is indeed his desire, that it be placed on the Record. Other than that, I am going to proceed in the traditional manner of an attorney.

MR. MCGILL: I don't understand.

MR. JACKSON: You present your first witness, I would not make any objections if you were leading or asking irrelevant questions or any of the reasons that I might object.

MR. MCGILL: Oh, I see.

3.21

MR. JACKSON: He's asking that I not object to that. At the conclusion of your examination he's asking I not cross-examine them at that point but I reserve the right to cross examine them at a later point.

MR. MCGILL: I see. At a later point, you mean after the witness leaves, call him back?

MR. JACKSON: Call him back.

MR. MCGILL: I would object to that procedure, Judge.

THE COURT: It's rather -- you see, you could ask some questions at that time and if there is some specific question that you would want to ask later

on to maybe one witness, that would be possible, but to do that to every witness, the jury wouldn't get a proper consistent opinion of what's happening. In other words, they hear the witness and no cross-examination at all.

MR. JACKSON: I understand that, Your Honor, and that is why I indicated to Mr. Jamal that it would be my intention to raise appropriate objections to their testimony during direct examination and to examine those witnesses in the

3.22

manner I feel best preserves his interest. Nevertheless, Mr. Jamal has made that request of me, and in effect, I would not be participating in the trial in the examination of those witnesses, and I've indicated to him that, again, that raises the very same issue.

THE COURT: But the thing is you would later on. See, this is what throws the thing out of all context as far as the jury is concerned.

THE DEFENDANT: Judge, I've made that request because that is my strategy, okay, and it's very clear that Mr. Jackson has other ideas that I don't agree with, but what's at issue is not his ideas but my life. That's my strategy that I would like to follow, and we would like to reserve the right to call those witnesses back. It may not be all of the witnesses, but we would like to reserve the right to call them back for cross-examination at a later time.

THE COURT: You can call them back as your own witness as part of your defense if you wish, but I don't think that you can just say to each one I reserve the right to cross-examine you later, and

3.23

call them back at another time. You must make that --

THE DEFENDANT: I'm saying reserve the right because we don't have the -- you know, how could we get contact with them, you see what I'm saying, we don't have the phone numbers and stuff.

THE COURT: That's not the point. What I'm trying to explain to you, you just can't say to every witness, we want to call you back later on, and then wait until the Commonwealth finishes its case and then say, all right, now I'm willing to call back these witnesses one at a time.

THE DEFENDANT: If that's my strategy, what's wrong with that?

THE COURT: It's just not proper procedure.

MR. MCGILL: Judge, what he could do, and it's what Your Honor has already said, and this may be what he really wants --

THE COURT: Call them back as his own witnesses.

MR. MCGILL: Right, he could do that.

THE COURT: There is no doubt about that, that he could do.

MR. JACKSON: Could I talk to you for a

3.24

moment?

(The Defendant and his counsel confer for three minutes.)

MR. JACKSON: Your Honor, I have had an opportunity to speak to Mr. Jamal specifically with regard to the issue of calling the witnesses as his witnesses. I've recommended and advised him that it would not be proper or appropriate or strategically in his best interest to do that in that he would be restricted and limited with respect to impeaching those witnesses, particularly if they were called by him, in addition to which Mr. Jamal wants his wishes known, nevertheless, that he wishes to reserve the right to cross examine them at a later time.

I think at this point I am assuming that he is acceding to my advice with regard to calling them as his witnesses. He's saying if there is no other way of recalling those witnesses, then he would not call them as his own witness. But if, in fact, there is -- if the Court would provide him the opportunity to call them back on cross-examination and not as his own witness, then we would proceed immediately to question or

3.25

reserve questioning on those witnesses at a later date.

MR.MCGILL: The last part I didn't get.

MR. JACKSON: In other words, if there is no other way of calling those witnesses later other than calling them as his own witness, then he won't

do it.

MR. MCGILL: Then he won't do it.

MR. JACKSON: Then he won't do it, but if there is any matter, some extant circumstance, some means that would allow him to call them on cross-examination, he would want to do that.

MR. MCGILL: Well, I would make a suggestion to Mr. Jamal that if he calls them as his own witness and if the purpose is to be able to question them at a later time than when they first testify, he may be getting the same effect. There may be some limitation in terms of leading questions and all, but much like the motion to suppress which he has had personal experience with, he has called witnesses on his own which he's questioned. Now if that's what he wants to do, that's fine. He cannot -- I mean, I'm not sure that he understands that -- I don't know if

3.26

he's really losing the thrust of what strategy he wants by calling them as his own witness.

MR. JACKSON: My recommendation and advice to him is because of the limitation of impeaching them.

THE COURT: No, there is no limitation.

MR. MCGILL: He's right. Calling them as his own witness he cannot cross-examine them.

THE COURT: Not at the very beginning, but if they become a hostile witness, he could certainly cross-examine them.

MR. MCGILL: Well, even then I would object to it, I would object to calling a witness who may or may not be -- witness in criminal matters are not viewed as hostile.

THE COURT: Yes, but I still can't with every witness reserve the right to examine them later on because this jury is going to get confused.

MR. JACKSON: I understand that, Judge.

THE COURT: In other words, you can go as far as you want to with that witness on cross examination. Now if there's a particular area that you feel that you can't do at this time,

3.27

then with that witness, fine, we could make a decision as to that witness.

MR. JACKSON: Sure, and maybe, Your Honor, this might be appropriate, I am going to request -- I don't know whether the Commonwealth intends to present their ballistics today, but if they do --

MR. MCGILL: Not today.

MR. JACKSON: Okay, because I do need some time to talk to the ballistics, but other than that -- that would be a specific instance where I would not be prepared to examine that witness. But I have explained to Mr. Jamal that unless there was some particular reason, as Your Honor indicated, for delaying the questioning of that witness, it would be my view, based on what they say --

THE COURT: See, what I'm saying to you, I think you should cross-examine him on everything that you can, but if there is a specific area and we know beforehand --

MR. JACKSON: Sure, and maybe Mr. Jamal needs to be aware that we always have the right to recall a witness in some area that we were not

3.28

able to fully explore when they were on the witness stand, or if there is some subsequent developments that would lead us to bring the witness in, so it's not like if they testify and we examined them they are gone forever, we can always bring them back.

MR. MCGILL: As your own witness.

MR. JACKSON: Maybe you weren't aware of that.

THE DEFENDANT: Okay. The point I'm making is that I did not wish to have any cross-examination at this time. I wanted to reserve the right to call them back after --

THE COURT: I will not let you do that with every witness.

THE DEFENDANT: Well, Judge

THE COURT: It's out.

THE DEFENDANT: I would like to make the decision. I don't know what

witnesses --

THE COURT: I have to make the decision.

THE DEFENDANT: Judge, wait a second. I don't know what witnesses are going to be called, obviously.

MR. MCGILL: Judge, maybe I can make a

3.29

point, maybe we can cut -- example: If I call three witnesses, all right, and Mr. Jackson decides to accept his advice, which he does not have to, but if he accepts his advice to say, all right, fine, I won't cross-examine them and he wants to call those same three witnesses as defense witnesses, they can do that.

THE COURT: I'm not stopping him from that, but he doesn't want to do that, you see.

MR. MCGILL: That's essentially what --

THE COURT: No, he doesn't want to do that. He just wants to reserve his right to cross-examine all witnesses later on.

MR. MCGILL: I would object to any witnesses at any time. You don't reserve your right and say, I'm not going to ask you any questions now, but I'm going to call you back to examine you.

THE COURT: That's what he wants to do.

MR. MCGILL: But the same effect can be done as in the motion to suppress where you call them back or I let you lead more than usual.

THE COURT: What I'm saying, you must cross-examine them at that time to the fullest

3.30

extent, and if there is a specific area that Mr. Jackson has said that he feels has to wait until a later time and he calls it to my attention, I would certainly allow him to reserve further cross-examination on that point.

THE DEFENDANT: Judge, what if it's part of my strategy --

THE COURT: Even if it's part of your strategy. If you're willing to give up

your right to cross-examine entirely --

THE DEFENDANT: I'm not saying that. Don't put words in my mouth.

THE COURT: If you're not saying it, then you must follow the procedure as I'm setting it down for you. I think Mr. Jackson understands what I'm saying.

THE DEFENDANT: Mr. Jackson isn't on trial.

THE COURT: Well, he's the attorney and that's who I'm addressing so he understands.

MR. JACKSON: He can't cross-examine --

MR. MCGILL: He actually doing that depends on if I let him.

MR. JACKSON: Sure, and we have to depend on

3.31

you letting him cross-examine them.

MR. MCGILL: Which I won't.

THE COURT: Unless there's something new, I'm not going to go over that and hear these witnesses for the next six months. Do you understand that that's what you have to have to have an orderly process here? Do you understand your attorney?

MR. JACKSON: I understand, and I think what he loses is the benefit of cross-examination of those witnesses because he would be depending upon Mr. McGill to allow him to cross-examine his own witness.

THE COURT: Not only that, this jury would have forgotten what they said, and if you're going to cross-examine, it's better that you do it immediately except if there's an area that you feel warrants calling them back later and that's a different story.

MR. JACKSON: I understand that, Judge. And Mr. Jamal would like two minutes with Theresa.

MR. MCGILL: I have no objection. I want you to put on the Record that he already had twenty minutes --

3.32

THE DEFENDANT: Six minutes.

MR. MCGILL: All right, six minutes with Ms. Africa.

THE COURT: All right, call me when you're ready.

(The Defendant confers with Theresa Africa for three minutes.)

(The following transpired at sidebar out of the hearing of the jury:)

MR. MCGILL: This will be brief, I assure you, Judge.

MR. JACKSON: Your Honor, I'm going to renew my motion to have Detective Thomas sequestered.

MR. MCGILL: He is here, Judge, that's why I mentioned before to you that I would need, although he is not only at my table, I just need him to be running out and getting people and getting the next witness and if I can't find a piece of evidence. In other words, he's the assigned detective. He may testify but only to the fact that he took a search warrant out or took a statement. He might read the statement that he

3.33

took, he might be called for that purpose only, so I would ask the Court to allow him to remain in the courtroom.

MR. JACKSON: Your Honor, I would have no objection if we got an absolute guarantee from the Commonwealth that Bill Thomas would only read statements or read a search warrant, and if he gets into any testimony other than what's being read, I would like to know.

THE COURT: Why don't you tell him exactly what he is being called for.

MR. MCGILL: What he just said is accurate. I don't completely know -- Judge, I have no idea what their defense is going to do. It may involve the assigned detective explaining what he has done for six months, who knows.

MR. JACKSON: I would object.

THE COURT: Let me say this --

MR. MCGILL: See, Judge, it often is done that the assigned detective is

allowed in many cases because of this same reason, that he is always there with somebody.

THE COURT: Well, let me ask you: He was

3.34

not at the scene that night, or was he?

MR. MCGILL: I think he was at the scene serving a search warrant on the automobile, on the cab, he did that. He won't testify to seeing stuff except for the cab, that search warrant. He won't testify to eyewitness stuff, he will not testify to any of Jamal's alleged admissions, you know, he would only testify, if at all --

THE COURT: Let me say this: If you run into problems, if he's outside and you run into any problem, ask for a little recess and then you can bring him in and, you know, he can run for whatever you want.

MR. MCGILL: All right.

MR. JACKSON: I'm not trying to give --

THE COURT: That might be the easiest way to do it.

MR. JACKSON: I'm afraid to do otherwise, Your Honor.

THE COURT: Who is your first witness?

MR. MCGILL: Maureen Faulkner.

THE COURT: And then what?

MR. MCGILL: The Crime Lab.

THE COURT: Do you have any objection that

3.35

he stay in for that?

MR. JACKSON: No.

THE COURT: And then after that he can leave, because it would be obvious if we let him out now.

MR. JACKSON: Sure, no problem.

(The following transpired in open Court in the presence of the jury:)

MR. MCGILL: Your Honor, may I proceed?

THE COURT: Yes, you may.

MR. MCGILL: Ladies and gentlemen of the jury, Mrs. Faulkner.

(MAUREEN FAULKNER, is duly sworn.)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. MCGILL:

Q. Mrs. Faulkner, can you hear me?

A. Yes.

Q. Now, Mrs. Faulkner, what was your relationship with the deceased in this case, Daniel Faulkner?

3.36

Direct - Faulkner

A. Daniel was my husband.

Q. And where was he employed?

A. Philadelphia Police Department.

Q. Approximately do you know when he started with the Police Department?

A. It was shortly after he came out of the Service.

Q. How long was he on the Police Department?

A. About six years.

Q. You mentioned the Service. What Service was that?

A. The Army.

Q. Enlisted?

MR. JACKSON: Objection.

THE COURT: Sustained. Try not to lead.

Q. All right. When did you last see your husband?

A. December 8, 1981 at 11:30 p.m.

Q. Where?

A. At our home in Southwest Philadelphia.

Q. At approximately what time?

A. 11:30 p.m.

Q. And was that the last time you saw him alive?

A. Yes.

Q. Mrs. Faulkner, when he left, how was he dressed?

A. In his Police uniform.

Q. And how was that? What kind of uniform was that?

3.37

Direct - Faulkner

A. Philadelphia Police uniform.

Q. Did he also have a tie?

A. Yes.

Q. Was part of the normal --

A. Yes.

Q. What kind of tie was that?

A. Blue tie.

Q. I mean is it like a bow tie?

A. No, it's a clip-on.

MR. JACKSON: Objection, Your Honor.

MR. MCGILL: It will become relevant later on, Your Honor. I don't want to show her that evidence.

THE COURT: All right.

MR. MCGILL: I think it would be better for them if I didn't.

THE COURT: Objection overruled.

MR. MCGILL: I would ask this be marked C-1.

(Police hat is marked C-1 for identification.)

Q. All right, Mrs. Faulkner, showing you what has been marked as C-1, can you identify that?

A. It appears to be my husband's hat. The frontispiece

3.38

Direct - Faulkner

is missing, I have that with me.

Q. I asked you to bring that today?

A. Yes.

Q. Do you have that with you on the stand?

A Yes.

Q. Okay, would you take that out.

(The witness complies with counsel's request.)

MR. MCGILL: Your Honor, I ask this be marked C-1 (a) and (b), the hat

(a) and the piece being (b).

(Police hat is marked C-1 (a) for identification,  
and Frontispiece is marked C-1 (b) for identification.)

Q. Now, was that the hat that he was wearing when you saw him last?

A. Yes, I believe it was the hat that he wore.

Q. Now, Mrs. Faulkner, when was the next time that you saw him?

A. I saw him the night of the wake.

Q. Now, at the time when he left you on December 9, 1981 was he injured  
in any way?

A. No, he was not.

Q. Was he in good health at that time?

3.39

Direct - Faulkner

A. Yes.

Q. And how long had he worked for the Philadelphia Police?

A. About six years.

Q. And one of his brothers at one time worked for the Police, too?

MR. JACKSON: Objection.

THE COURT: Sustained.

MR. MCGILL: Cross-examine.

CROSS-EXAMINATION BY MR. JACKSON:

Q. Mrs. Faulkner, when you last saw your husband did he have a camera  
with him?

A. No.

Q. Do you know him to own a camera?

A. Yes.

Q. Do you know when he purchased the camera?

A. No.

Q. On December the 8th when you last saw him, do you know where the camera was?

A. No.

Q. Did you know your husband to have a flashlight?

A. Yes.

3.40

Cross - Faulkner

Q. Did you see the flashlight on December the 8th?

A. No.

Q. Do you know where the flashlight was on December the 8th?

A. No.

MR. JACKSON: Thank you very much, I have no further questions.

REDIRECT EXAMINATION BY MR. MCGILL:

Q. Mrs. Faulkner, did he normally carry a flashlight with him?

A. Yes --

MR. JACKSON: Objection -- withdrawn.

Q. Your answer was yes?

A. Yes.

Q. And do you know whether he had a flashlight on the night of December the 8th, or don't you know?

A. Well, sometimes he kept things in his locker.

Q. I see. Thank you very much.

MR. MCGILL: Does the Court have any questions?

THE COURT: No.

MR. MCGILL: Mr. Jackson, any more?

3.41

Direct - Faulkner, P.

MR. JACKSON: No.

(The witness is excused.)

MR. MCGILL: Mr. Patrick Faulkner.

(PATRICK FAULKNER, is duly sworn.)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. MC GILL:

Q. All right, Mr. Faulkner, what was your relationship to the deceased Daniel Faulkner?

A Daniel was my brother.

Q. Now, I direct your attention to December the 9th, 1981. Did you have occasion to go to the office of the Medical Examiner?

A. Yes, I did.

Q. And for what purpose did you go there?

A. I went there to identify the body of my brother.

Q. And did you identify the body of your brother there?

A. Yes, sir, I did.

Q. And what was his condition at that time?

3.42

Direct - Faulkner, P.

A. He was dead.

Q. When did you last see him alive?

A. Approximately a week before.

Q. Was he in good health at that time?

A. Yes, sir, he was.

MR. MCGILL: Cross-examine.

MR. JACKSON: No questions.

THE COURT: Thank you, Mr. Faulkner.

MR. MCGILL: Does the Court have any questions? I'm sorry, I didn't ask.

THE COURT: No.

(The witness is excused.)

MR. MCGILL: Officer Roy Land.

(POLICE OFFICER ROY LAND, Badge No. 9894,  
Mobile Crime Detection Unit, is duly sworn.)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Land, what is your current occupation?

3.43

Direct - Land

A. Philadelphia Policeman attached to the Mobile Crime Detection Unit.

Q. December 9th and also on December the 10th, 1981, were you employed?

A. Yes, sir.

Q. And were you employed in the same capacity?

A. Yes, sir, I was.

Q What are the duties of the Mobile Crime Detection personnel?

A. The Mobile Crime Detection Unit is -- in respect it's a mobile unit which is assigned to several vehicles to go out through the City and take photographs, do fingerprinting, take casting work -- casting work being of footprints -- sketches and collect any items or physical evidence that a detective deemed necessary for any case.

Q. All right, officer, in this particular case, the case involving the death of Daniel Faulkner, were you the assigned Mobile Crime Technician?

A. Yes, sir.

Q. Did you have occasion, sir, to take various photographs of the scene?

A. Yes, sir, I did.

3.44

Direct - Land

Q. Did you also have occasion to prepare a sketch of the area?

A. Yes, sir.

MR. MCGILL: If I may, Your Honor, may I have the help of the Court staff to set up?

THE COURT: You may.

MR. MCGILL: Move it over here so the defense can see it. Mark this C-2.

(Sketch is marked C-2 for identification.)

Q. I am going to show you what is marked C-2 and ask you if you can

identify what C-2 is?

A. Yes, sir. It's an enlargement of a sketch, a finished sketch made of that area at 13th and Locust.

Q. And when did you make it?

A. The rough sketch was made that morning of 12-9-81. The finished sketch was made sometime thereafter.

Q. You had also indicated that you had taken photographs?

A. Yes, sir.

MR. MCGILL: All right, I'll ask that these be marked C-3 through C-13.

(Eleven photographs are marked C-3  
through C-13 for identification.)

3.45

Direct - Land

MR. JACKSON: If Your Honor would indulge me a moment.

(Pause.)

MR. JACKSON: Thank you very much.

MR. MCGILL: Would you show the officer C-3 through C-13.

Q. Would you take a look at each of those numbers, first to see if you can identify whether or not they are your photographs?

A. Yes, sir. Yes, sir, these were taken by myself.

Q. Did you also pick up various pieces of evidence?

A. Yes, sir.

MR. MCGILL: Your Honor, at the Court's pleasure, may I ask Officer Land to come down to the sketch? It might be easier.

THE COURT: You may.

MR. MCGILL: Would you come down to the sketch with your

photographs. If Mr. Jackson cannot see, I might suggest that he stay at my seat and I'll be over here and ask questions.

(The witness complies with counsel's request.)

3.46

Direct - Land

Q. Officer Land, if you have need for this, I'll leave this right here. Now, Officer, would you first take a look at the sketch which is marked C-2. Would you tell the jury please, exactly what that sketch represents?

A. C-2 is an enlargement sketch made by myself showing the area of 13th and Locust indicating north in this direction (indicating), the intersection, a large parking lot, continuing down to buildings which were on the south side of Locust Street and buildings and vacant properties along the north side.

THE COURT: All right, so going from west to east, going actually toward the Delaware River, would you indicate that direction on the sketch on Locust Street?

THE WITNESS: In this direction (indicating)

THE COURT: All right, that's going then from 13th to 12th Street; is that correct, sir?

THE WITNESS: Yes.

THE COURT: All right, would you please show what is represented on that sketch?

THE WITNESS: The sketch, in part, is indicating the Police car, which is radio patrol car 610, and the three cars lined up, it would be

3.47

Direct - Land

to the west, the rear. Continuing up is a 1963 Volkswagen, blue in color; continuing up was a Ford Galaxy that just happened to be parked there in front of the Volkswagen, the most furthest east vehicle.

Q. Now, what is the area which is really north of where the patrol car is?

A. The area north is a large parking lot for vehicles. Continuing next to it eastward are just buildings.

Q. What were the lighting conditions there at the time that you arrived?

A. Lighting conditions were -- there was one light which was on the southeast corner, and on the northeast corner inside the parking lot was a -- I wouldn't say a large, but I would say bigger than a street light, illuminating light, kind of a fluorescent type of light.

Q. Where was that located?

A. Inside the parking lot on the northeast corner. And we have another light which was on the northwest corner of 13th and Locust on the Locust side.

Q. Further down on Locust Street, on the north side

3.48

Direct - Land

of Locust Street, is there a light indicated there also?

A. Yes, sir, almost across from the Ford which was in front of the Volkswagen.

Q. Were those lights functioning?

A. Yes, sir, they were.

Q. What time did you arrive?

A. We arrived at that scene at 4:15 a.m.

Q. Did you also see lights in the area of a pizza shop; do you recall?

A. I do not recall, sir.

Q. Okay. Now, you have various photographs, C-3 through C-13. Would you identify each photograph, please, and then show on the sketch where that photograph or the scene depicted on the photograph would be represented?

A. C-3 is a view looking in the northeast direction showing the right side

and the rear of the Volkswagen.

THE COURT: Show us where on the sketch.

THE WITNESS: I was standing right here facing the northeast direction taking the photo.

A. (Continuing) C-4 is a view looking northwest showing the right side and the front of the Volkswagen,

3.49

Direct - Land

standing approximately in this location shooting (indicating). C-5 is a view looking south showing the Volkswagen and radio patrol car 610 in front of 1234 Locust Street.

Q. All right, show us where that was?

A. That view of that photo was taken approximately in this area looking south (indicating). C-6 is a view looking at the rear of radio patrol car 610, standing directly in back of the Volkswagen shooting east. C-7 is a view looking south at the left side of the Volkswagen, standing almost in the middle of Locust Street shooting at the side of the Volkswagen. C-8 is a view looking at the clipboard with a Police Department form 75-158, which is a Patrol Log, and 75-48, which is a Complaint or incident report on same. This was placed on the rear -- on the left rear trunk and a photo was taken of that. That was removed from the inside of the vehicle.

Q. Of what vehicle?

A. Radio patrol car 610. (Continuing) C-9 is a photo looking inside radio patrol car 610 from the driver's side, front

3.50

Direct - Land

seat. C-10 is a view looking at the red stain on the sidewalk just west of 1230 Locust Street. This photo was taken behind this front vehicle, the Ford, in front of the Volkswagen looking south.

THE COURT: That stained area that you indicated, where would that be on the sketch?

THE WITNESS: Right in between the Ford vehicle and the Volkswagen vehicle.

THE COURT: All right, indicating the sidewalk?

THE WITNESS: Yes, Your Honor.

THE COURT: Locust Street sidewalk between the Ford and the Volkswagen you are pointing to?

THE WITNESS: Yes, sir.

A. (Continuing) C-11 is a view looking southeast showing the left side and the rear of the Volkswagen, standing just to the rear and almost in front of radio patrol car 610 shooting in this direction (indicating).

C-12 is a view looking south from the middle of the parking lot on the northeast corner of 13th and Locust. There is a booth in the middle of the parking lot just west of that, shooting in this

3.51

Direct - Land

direction (indicating). This is a view looking east showing the rear of the Volkswagen, showing the tag number, the tag being 11675T, like in Tom. I was standing -- not standing, I was more or less leaning on the rear -- on the front of radio car 610 taking this photo.

Q. Officer Land, you also indicated that you seized certain pieces of evidence?

A. Yes, sir.

Q. Take a look at C-1.

MR. MCGILL: While he's doing that, I'd ask this be marked C-14 and this be marked C-15.

(Necktie is marked C-14 for identification.)

(Green beret is marked C-15 for identification.)

Q. Can you identify C-1?

A. Yes, sir. It appears to be the hat that I collected that night.

Q. And where did you collect that hat?

A. The hat was taken from beside the Volkswagen two feet six inches south of the south curb line and eight feet eight inches east of the property line. Putting it very bluntly, it was almost at the door area

3.52

Direct - Land

of the Volkswagen where the door opens up.

Q. All right, I'm showing you what's been marked C-3. Is that hat represented on C-3? Is that what you're indicating on the sketch?

A. That's correct, sir.

Q. And C-1 is that hat?

A. Yes, sir.

MR. MCGILL: I've already asked this be marked C-14 and C-15, Mr. Jackson.

Q. I am now showing you C-14 and ask whether you can identify C-14?

A. Yes, sir.

Q. What is that?

A. That's the black standard police tie which I retrieved from the street at the intersection on Locust Street and 13th. It was taken six feet east of the east curb. It would be out -- excuse me, 6.9 inches south of the north curb. So in total respect, it would be in that area (indicating).

Q. All right, take a look at C-15 and see if you can identify that?

A. Yes, sir.

Q. What is C-15?

A. C-15 is a green beret taken from against a pole,

3.53

Direct - Land

a metal No Parking or whatever you can park sign that was two foot three inches south of the south curb on the south side of Locust Street.

Q. I'm showing you what has been marked C-11. Is that hat represented on that photograph?

A. Yes, sir. On the pole it's just shown at the very edge of the photo, the very base.

Q. Could you circle that, please?

(Witness complies with counsel's request.)

Q. Also, sir, could you indicate on there where the hat was, on the sketch, by using a "H", where C-15 was, and if you could put a "T" for Tam, as well as where the tie was, you could put "T" for that tie, just approximate. I know this is just approximate, but just to give us a general idea.

A. Yes, sir. Did you want a "H" for hat and "T" for tie?

Q. Yes.

A. That's been so marked.

Q. And for the green -- C-15 --

A. The green beret? Oh, I marked that -- all right.

Q. You can put "T" for that, also.

A. I indicated it by "PH", police hat

.

3.54

Direct - Land

Q. "PH" is the C-1, right?

A. Yes, sir.

Q. And what did you identify the tam as?

A. As an "H" sir.

Q. Fine. Now, did you also take any blood swabs?

A. Yes, sir, I did.

Q. Would you indicate to the jury what you mean by a blood swab and how you take it?

A. A blood swab is taken in a vile, small viles we carry by Q-tips, and they were dumped into a solution of saline, saline being a compound which we get out of the chemical lab which is a salt kind of water which does not allow the blood chemistry to separate. That is soaked and dumped into the small viles, capped, sealed and taped and submitted to the medical lab.

One vile containing two kinds of swabs with red stains was taken from the sidewalk eight feet south of the south curb and nine feet six inches to the east property line, which would mean in the area in between the Volkswagen and the Ford in front of it on the sidewalk.

The next vile containing two kinds of swabs with red stains was taken from the sidewalk seven foot eight

3.55

Direct - Land

inches south of the south curb of Locust Street and two feet eight inches west of the east property line, which is approximately four inches north of where the first one was taken.

Q. Now I'm showing you what's been marked C-10. Is that the general stained area there where you took those swabs?

A. Yes, sir.

Q. Could you again estimate with a circle where the swabs were taken?

(Witness complies with counsel's request.)

A. I've indicated with an arrow with the number one and another arrow with the numeral two beside it.

Q. And would you again with an estimate put one and two on the sketch

where they would be?

A. All right, sir.

Q. Did you take any other blood swabs?

A. There was one vile containing one cotton swab with a red stain and a piece of glass taken from the same location. It is item number two on my property receipt, which is the same as the green beret against the pole.

Q. Did you take any other evidence? Specifically, did you receive any fragments?

A. Yes, sir.

3.56

Direct - Land

And where did you do that?

A. Item number one on property receipt 850629 was one copper jacket that was taken eleven feet four inches south of the south curb of Locust Street and nine feet west of the east property line of 1234 Locust Street, approximately in this area (indicating).

Q. All right, that is a fragment, officer?

A. It's a projectile, sir.

Q. All right, put a "P" there if you would.

(Witness complies with counsel's request.)

A. (Continuing) Item number two, one lead projectile taken from the front door leading into 1234 Locust Street, three and a half inches west of the west door edge and three feet seven inches up from the sidewalk.

MR. JACKSON: May I hear those dimensions again, please?

THE WITNESS: Three and a half inches west of the west door edge, three foot seven inches up from the sidewalk.

Q. Would you tell the jury why you turned the sketch around?

A. Yes, sir. There are two different scales on the sketch. One is strictly for

the doorway of 1234 Locust Street, and I've taken that area and blown that up,

3.57

Direct - Land

indicating three and a half inches from the west door edge and three foot seven inches up, so we're talking in the area of -- do you want me to mark that as --

THE COURT: Yes, if you would.

A. (Continuing) I'll mark that "B" for bullet. Item number three are lead fragments at the front property line of 1234 Locust Street and three feet west of the front door. I can also indicate that on here.

Q. I think you ought to stay right with that same scale, the doorway there. Just estimate it.

A. I've indicated on the sketch "F" for fragments. Item number four, same property receipt are lead fragments taken from inside the vestibule of 1234 Locust Street, six foot eight inches east of the west wall and six feet ten inches south of the front door.

Q. Was there any kind of hole or anything on the windows of that doorway?

A. Yes, sir, there is.

MR. JACKSON: Just a moment.

(Defendant and his counsel confer.)

MR. JACKSON: All right.

A. (Continuing) All right, the hole was in the glass where the glass sits in the molding, where the molding comes together to hold the glass in, the upper

3.58

Direct - Land

region of the door and the glass. The glass was broken, the fragments were found inside, six feet ten inches south of the front door, so that's an

approximate distance from here to the bar.

MR. MCGILL: I ask this be marked as C-16.

(Photograph is marked C-16 for identification.)

MR. MCGILL: Show the Officer C-16.

Q. What is C-16, Officer?

A. C-16 is a head-on view looking directly into 1234 Locust Street, also indicating other doorways that are both on the east and west side of same.

Q. Now, where on the chart was that photo taken and where is it shown on the chart?

A. The photo was taken from the driveway leading into -- I should say just east of the driveway leading into the parking lot on the northeast corner of 13th and Locust looking in a southerly direction.

Q. Now, the pole that you stated and also that's observed in this photo C-16 and also in the other photographs, where is that pole on the south side of Locust Street on that chart?

A. The pole I've indicated with a "P" next to the "H" for the hat, which is two feet south of the

3.59

Direct - Land

south curb and one foot one inch off of the doorway leading into 1234 Locust Street.

Q. Now, what did you do with these items that you recovered; first of all, the hats, C-1 and C-15, as well as C-14? What did you place them on and where were they to be taken, as well as the fragments?

A. The hats, the viles, the tie, other items were submitted on property receipt 850628. They were submitted to the Criminalistics Laboratory at the Police Administration Building, 8th and Race. The fragments, projectiles were on property receipt 850629 and submitted to the Firearms Identification Unit, Police Administration Building, 8th and Race.

Q. Now, Officer, you had stated that one of the exhibits, specifically C-8,

shows a Log?

A. Yes, sir.

Q. What is that log?

A. It's a Policeman's patrol log, which is actually a Policeman's diary of what he does on his shift indicating car stops, pedestrian stops, stop and check stores, certain radio jobs, certain site jobs; anything that he does is recorded on that log.

MR. JACKSON: Objection. Move to strike.

3.60

Direct - Land

THE COURT: See you at sidebar.

(The following transpired at sidebar with the  
Defendant present out of the hearing of the jury:)

MR. JACKSON: Your Honor, the basis of the objection is the witness is stating that the log contains everything that the officer does, and I move that that be stricken, that's all.

MR. MCGILL: Well, that's the usual procedure that they place it down in.

THE COURT: Well, he sees the car stops and checks.

MR. JACKSON: Right, I didn't object to that, just "everything he does".

MR. MCGILL: I don't mind if he strikes "everything he does".

THE COURT: I thought he was referring to everything he does when he makes a stop.

MR. JACKSON: Well, I didn't get that impression and that's the basis of the objection.

THE COURT: Okay.

(The following transpired in open Court in the presence of the jury:)

THE COURT: The Court will strike from

3.61

Direct - Land

the Record the words "everything he does". The rest will remain.

MR. MCGILL: I ask this be marked C-17 and ask that that be shown to Mr. Jackson and then Officer Land.

(Policeman's Patrol Log is marked C-17 for identification.)

Q. I'm showing you, Officer Land, what has been marked C-17. I ask you to take a look at that in conjunction with C-8 and tell me if you can identify what C-17 is?

A. Yes, sir. It appears to be a photostat of the Log that I took that night in the C-8 photograph.

Q. And that was taken from Officer Faulkner's car?

A. Yes, sir.

Q. Thank you, Officer. You may take the witness chair.

(Witness returns to the witness stand.)

Q. Now, Officer, you had taken actually a number of other photographs that we didn't mark to show; is that correct, sir?

A. Correct.

MR. MCGILL: Cross-examine.

3.62

Cross - Land

CROSS-EXAMINATION BY MR. JACKSON:

Q. Officer Land --

MR. MCGILL: Before you start Mr. Jackson, what is Your Honor's pleasure? Finish with the witness?

THE COURT: We'll finish with the witness.

MR. JACKSON: In fact, just one moment, please.

(Pause.)

Q. Officer Land, you also developed or at least took a few latent fingerprints; is that correct, sir?

A. No, sir.

Q. That was not --

(The Defendant and his counsel confer.)

Q. Did you take any latent prints at the scene at all?

A. No, sir.

Q. Did Officer Eberhardt take latent prints at the scene, sir?

A. No, sir.

Q. Do you know who took latent fingerprints at the scene?

3.63

Cross - Land

A. Nobody at the scene, sir.

Q. There were other items that you seized at the scene; is that correct?

A. Yes, sir.

Q. You seized a glass beer bottle, Miller's?

A. Yes, sir.

Q. And who lifted the print?

A. I did, sir.

Q. Where did you lift it?

A. Inside the Police Administration Building.

Q. You lifted -- where was this glass beer bottle obtained, sir?

A. They were in between -- it was in between the seats, the front seat of the Volkswagen.

Q. And there was a one quart juice bottle that you took in as well; is that right?

A. Yes, sir.

Q. And was there a latent print taken from that item?

A. That was dusted.

Q. Pardon me?

A. That was dusted for prints, sir.

Q. And the results?

3.64

#### Cross Land

A. Were negative, sir.

Q. There was a metal -- by the way, where was this juice bottle?

A. The juice bottle was in a brown bag on the passenger's front floor.

Q. Of what vehicle?

A. The Volkswagen, sir.

Q. Metal can, Raid bug spray?

A. That was in the same bag as the juicer.

Q. What items did you take from Officer Faulkner's vehicle, sir?

A. None, sir.

Q. Did you see any items in there?

A. Oh, there were plenty, yes, sir.

Q. And you didn't dust any of them for latent prints?

A. No, sir.

Q. Sir, you, I take it, developed these latent prints; is that correct?

A. Yes, sir.

Q. And did you do a comparison of these prints with any of the parties involved in this incident?

A. No, sir, I did not.

Q. Did you submit them to someone to be compared?

A. Yes, sir, I did.

3.65

Cross - Land

Q. To whom did you submit them?

A. They were submitted to the Identification Unit down at the Police Administration Building to the attention of G. Famiglietti.

Q. Do you know the results of that comparison, sir?

A. Yes, sir.

Q. Would you tell us?

A. The total of five lifts that were sent down to the Identification Unit were not identifiable.

Q. Were there any other items that you submitted or that you confiscated or seized at or about the scene that you dusted or otherwise developed a latent fingerprint?

A. Myself, no, sir.

Q. Do you know if any other officer, person or individual seized or obtained any other items that were submitted to you or anyone else in the Police Department for identification purposes, either fingerprint or otherwise?

A. Yes, sir, I do.

Q. Would you tell me what that is, sir?

A. One .38 caliber Smith and Wesson, four inch barrel, blue steel with black rubber grips, serial number being D-752117. Also, one .38 caliber Chartered

3.66

#### Cross - Land

Arms Undercover, two inch barrel, blue steel with brown wooden grips, serial number 510293. These items were dusted by Police officer William Eberhardt, Badge 1788, attached to the Mobile Crime Detection Unit.

Q. Did you see these weapons?

A. I did not, sir.

Q. So you're reading from a report and of which you have no firsthand knowledge; is that correct?

A. I know what, sir?

Q. You have no firsthand knowledge of the proceedings that you are reading from; is that correct? In other words, you are reading from a report that says Officer William Eberhardt dusted these weapons?

A. He related that to me, yes, sir.

Q. He related that to you, but you didn't see him do that?

A. No, sir, I did not.

Q. Nevertheless, the results of the dusting, does it show any identifiable latent prints, sir?

A. No, sir.

Q. Is there anything that you found at the scene that has a fingerprint of Mr. Jamal or Officer

3.67

Cross - Land

Faulkner?

A. No, Sir.

Q. Anything at the scene that you've submitted or that you found or that you know has a fingerprint of William Cook, Mr. Jamal or, again, Officer Faulkner?

A. No, Sir.

Q. Did you see these weapons when you arrived at the scene, Sir, these two weapons you've just described?

A. No, Sir.

Q. Was Officer Faulkner at the scene when you arrived?

A. No, Sir.

Q. So you don't know the relative positions of the items you seized at or about the time of the shooting, do you? Do you understand my question, Sir?

A. I do not, Sir.

Q. Fine. I believe you indicated that you obtained a tie from Locust Street; is that correct? -- correct me if I am wrong.

A. Yes, Sir.

Q. And you found the hat on the sidewalk; is that correct?

A. Yes, Sir.

3.68

Cross - Land

Q. Now, do you know if the tie was in the street and the hat was on the sidewalk at the time of the shooting? I don't mean to be ridiculous, I'm just trying to make the point that you don't know how those items got there; is that right?

MR. MCGILL: I'll concede that.

MR. JACKSON: I'm not asking for a concession, I want to ask this officer.

A. That's correct, sir.

Q. Do you know who put the tie in the street?

A. I do not, sir.

Q. Did you ask how the tie got there?

A. No, sir.

Q. No one told you how it got there either?

A. I beg to differ, I did ask that someone, I think, give me a --

MR. MCGILL: Objection.

MR. JACKSON: I'd like to know, Your Honor. He's doing a lot of hearsay reporting.

THE COURT: Well, I think that I have to rule now he has.

MR. MCGILL: All right, withdraw the objection.

3.69

#### Cross - Land

A. I believe someone had told me it had gotten there when they carried Daniel Faulkner away. That was it.

Q. Officer Land, you indicated that part of your job requires you to take photographs and sketches and things of that sort; is that right?

A. Yes, Sir.

Q. And of course, you've submitted at least thirteen or more photographs that we've seen. Did you take photographs of the projectiles that were in the doorway?

A. Inside the vestibule; is that what we're talking about?

Q. Yes, Sir.

A. Yes, Sir.

Q. Do you have them with you?

A. I do not have them.

Q. But you did take photographs. I don't need to look at them, I just want to make certain -- and you submitted them to the District Attorney's office?

A. No, Sir. I turned them over to the Homicide Division.

Q. Now, there were also, I believe, bullet fragments in the door of 1234 Locust; is that correct?

A. There was a bullet.

Q. A bullet, and you removed it?

3.70

Cross - Land

A. I did, Sir.

Q. And before removing it you took a photograph of it; is that right?

A. Yes, Sir.

MR. JACKSON: May I have these marked, please make these D-1 through however many items there are.

(Nine photographs are marked D-1 through D-9 for identification.)

MR. JACKSON: Officer Land, could you identify and describe each of the items that have just been marked, please, starting with D-1?

THE WITNESS: D-1 is a view looking at a copper jacket on the sidewalk eleven feet four inches south of the south curb of Locust Street and nine feet west of the east property line of 1234 Locust Street. D-2 is a view looking at a gray mark on the wall three feet seven inches west of the door way of 1234 Locust Street and seven inches up from the sidewalk.

Q. May I stop you for a moment, sir?

A. Yes, Sir.

Q. You said it's a gray mark; is that right?

3.71

Cross - Land

A. Yes, sir.

Q. Did you place that mark there?

A. Excuse me?

Q. What is this gray mark, do you know?

A. The gray mark is a -- a test was done, a lead residue test examination.

Q. And do you know who conducted the test?

A. I do not, sir. I submitted that on property receipt 850635 to the Criminal Ballistics Laboratory.

Q. But I mean, did you do the test on the scene?

A. Yes, I did.

Q. Fine, thank you. Go on, sir.

A. (Continuing) D-3 is a view looking at the hole in the door of 1234 Locust Street in which a lead projectile was taken. That's three and a half inches west of the west door edge and three feet seven inches up from the sidewalk. As you are facing this property there are two doors leading in, which is indicated on the sketch. This would be the door to your left. D-4 is a view looking at the lead fragment that was taken from the vestibule inside 1234 Locust Street, six feet eight inches east of the west wall and six feet ten inches south of the front door.

3.72

Cross - Land

D-5 is a view looking at the lead fragments at the front of the property line of 1234 Locust Street and three feet west of the front door, which they're very hard to see because of the dirt and what have you, but they are in the

area where I am pointing my finger (indicating).

Q. Officer Land, so the jury and I are also certain, I assume that these lead fragments were where they were photographed? In other words, when you arrived they were just as you photographed them; is that right?

A. Yes, sir.

(Continuing) D-6 is a view looking at the front wall of 1234 Locust Street showing a gray mark on the wall three feet seven inches west of the doorway and seven inches up from the sidewalk. D-7 is a view looking at the front door of 1234 Locust Street showing the bullet that I retrieved from the door and also the broken glass in the upper right portion of the right door. D-8 is a view looking in the door of 1234 Locust Street where the lead projectile was removed. D-9 is a view looking at the hole in the glass in the front door of 1234 Locust Street.

3.73

#### Cross - Land

Q. All right, now, Officer Land, is it fair to say that you actually obtained two projectiles, meaning two bullets, at the scene; is that correct?

A Yes, sir.

Q. So that I and the jury, so that we are perfectly clear, perfectly clear, the fragments that you found, they may be fragments from different bullets or from the same bullets; is that correct?

A. Correct, sir.

Q. Now, based on your experience, sir, could you estimate for us how many bullets were found at the scene by you? In other words, can you estimate that there were more than two bullets or would you say that there were only two bullets that you found, if you follow my question?

A. I'm trying to. The question before that leads me to believe that there were more than two.

Q. But you are not certain?

A. Whole bullets, no, sir.

Q. Now, you've indicated a number of holes and marks that were found at

or near the scene; is that right?

A. Yes, sir.

Q. Based on your examination of the holes and the marks and things of that sort, how many did you

3.74

#### Cross - Land

discover, total number?

MR. MCGILL: Objection. Are we talking about holes or marks or projectiles?

Q. Well, specify each, if you would. How many holes, how many marks, how many specimens?

A. I found two holes, one mark, I believe three projectiles and -- two projectiles and two fragment -- two areas of fragments.

Q. Now, the two holes that you found, one was in the door, one was in the glass; is that right?

A. Yes, Sir.

Q. Could they, from your experience, could they have been made by the same projectile?

MR. MCGILL: Objection, Your Honor. We're getting into ballistics.

THE COURT: I'll sustain that objection. I think the evidence will have to speak for itself.

Q. Well, sir, one hole was in the doorway; is that right?

A. Yes, sir.

Q. And one hole was in the glass; is that right?

A. Yes, sir.

Q. Do you have one of those photographs that shows

3.75

Cross - Land

these two different holes, sir?

A. Yes, sir.

Q. Could you show us, please?

A. That would be D-7.

Q. Could I see that, please?

(Exhibit D-7 is handed to Mr. Jackson.)

Q. Could you kindly mark in red pencil or pen, if you have it, the two holes that you just testified to on this exhibit, please?

A Yes, sir.

(The witness complies with counsel's request.)

A. The one on the door that's being marked is not a hole as per se that would go through, being a hole. A projectile was recovered from that. The upper portion was a hole in the glass.

Q. And you found several fragments within that vestibule right on the other side of the hole in the glass; is that right -- well, on the other side of the door?

A. Yes, sir.

Q. And both of these, by the way, the hole in the door where you found one bullet, obviously there was a projectile, but the hole in the glass is a bullet hole

3.76

Cross - Land

as well, isn't it?

A. Yes, Sir.

Q. And the mark that you found on the pavement, that's also a bullet

marking, isn't it, a result of a bullet firing?

MR. MCGILL: I object to that, Your Honor.

MR. JACKSON: If he can't answer, Your Honor, I'll withdraw the question, but I think that it's the Crime Lab Unit.

THE COURT: That doesn't mean that he has the ability to answer it. Sustain the objection.

Q. Sir, did you ever discover any other characteristics or physical markings that would lead you to believe that there was some other evidence of a shooting that took place near that scene?

A. On that same date?

Q. Yes.

A. No, Sir.

Q. Subsequent to that date, did you discover anything else?

A. No, Sir.

Q. By the way, you indicated that the gray marking you tested for lead residue. Do you know the result of that test?

3.77

Cross - Land

A. No, sir, I do not.

Q. Have you ever inquired to determine what the results were?

A. No, sir.

Q. Now Officer Land, who accompanied you there at 4:15 that day?

A. That was Technician Marvin Jenkins.

Q. Were you the only two members from the Mobile Crime Unit present at the time you arrived?

A. Yes, sir.

Q. Whose responsibility, if you know, whose responsibility was it to seize evidence at the scene?

A. Mine.

Q. And I take it that Technician Jenkins was under your control -- well, under your supervision?

A. In a manner of speaking. We work together.

Q. Once you arrive at the scene, at least upon your arrival at the scene, notwithstanding the fact that there may be superior officers at the scene, is it still your responsibility to obtain evidence at the scene, sir?

A. Yes, sir.

Q. Did you see a camera in the radio patrol car 610?

3.78

Cross - Land

A. A what, sir?

Q. Radio patrol car 610, did you see a camera?

A. Camera?

Q. Yes, camera.

A. No, sir. I wasn't looking for one, to be perfectly honest with you.

Q. No, I'm not asking you what you're looking for now, I'm asking you what you found. You didn't find it?

A. No, sir.

Q. Did you find a flashlight or did you see a flashlight at the scene?

A. To the best of my knowledge I did not, sir.

Q. Would it be fair to say, Officer Land, that all of the evidence that you observed when you arrived at the scene you seized and submitted to someone or another?

A. Yes, sir.

Q. At the time that you arrived were you notified or advised by anyone that any evidence had been taken away from the scene?

A. Oh, yes, sir.

Q. And could you tell us by whom and what?

MR. MCGILL: Objection, Your Honor, as to

3.79

Cross - Land

the hearsay. Those witnesses will testify.

THE COURT: I'll sustain that.

Q. Do you know if anyone else from Mobile Crime Lab arrived at the scene before you, sir?

A. Nobody, sir.

Q. You indicated Officer Land, that you found red stains on the sidewalk; is that correct?

A. Yes, sir.

Q. Did you find red stains anywhere else?

A. Yes, sir.

Q. Would you tell us where else you found red stains?

A. On the right front fender of the Volkswagen.

Q. Did you find any red stains inside the Volkswagen?

A. No, sir.

Q. You found none at all?

A. No, sir.

Q. Did you look inside?

A. Yes, sir.

Q. Officer Land, based on your activities within this case, do you know whether or not there were red stains or blood specimens, samples, taken from inside the Volkswagen?

A. There were items taken, yes, sir.

3.80

Cross - Land

Q. Items of blood; is that right?

MR. MCGILL: Objection, Your Honor. He did not do it, he does not know. He has no personal knowledge.

THE COURT: I'll sustain that. We'll get that information through the proper witness.

MR. JACKSON: I have no further questions at this time. Thank you.

REDIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Land, you mentioned the words "fragment" and "projectile". Will you tell the jury what the difference is?

A. Yes, sir, fragment meaning a bullet could have struck something, it's just like a slight trauma to glass and it would just shatter. The fragment is what we collect, a bullet being the whole item.

Q. And the projectile, what part of the bullet is that?

A. The projectile being the upper portion. I don't know if some of the men are familiar with bullets, but the women, it's, like, the silver or copper and

3.81

Redirect - Land

then at the very tip it's what's known as the bullet which goes out of the gun. I don't have a spare bullet on me to show you, but...

MR. MCGILL: I ask that this be marked C-18.

(Bullet is marked C-18 for identification.)

Q. C-18 is a bullet, is it not?

A. Yes, sir.

Q. Would you indicate exactly what you mean by a projectile, what portion of that is a projectile of C-18 and what happens to produce fragments?

A. Okay. As I've indicated, when it goes into a gun this portion is the case which is loaded with powder and blasting cap or whatever they may have I'm not familiar with the terminology -- but the portion of the bullet is from the edge below my finger going up, that portion is removed when fired from a gun. This would be what I would retrieve on the street meaning a bullet, fragment meaning this would be in several pieces.

Q. Now, is it not true, also, that when you fire a weapon the projectile will obviously leave the bullet but the casing may well remain or eject depending on the nature of the weapon?

3.82

Redirect - Land

A. Yes, sir, if it's an automatic.

Q. And in the nature of fragments there's really no way of telling the number of projectiles or whether that's the same projectile of those fragments you see; is that also correct?

A. That's correct, sir.

Q. And I guess in this case or in any case, unless you have a direct match to a weapon, you're really unable to tell how long either those projectiles or fragments were laying in that spot; would that be correct?

A. That's correct, sir.

Q. Officer Land, you indicated in reference to a question by Mr. Jackson as to the tie concerning how the tie got there. Had you heard that Officer Faulkner was, in fact --

MR JACKSON: Objection to leading.

MR. MCGILL: This was brought out by counsel.

MR. JACKSON: He still isn't permitted to lead, Your Honor.

Q. What did you hear about the tie?

A. That the tie was there due to the mere fact that Officer Faulkner was carried from beside the Volkswagen

3.83

Redirect - Land

to the intersection and placed into a wagon.

Q. On his way to the hospital, correct?

A. Yes, sir.

Q. Now, also, counsel brought up the point of fingerprints. Now using the word such as "latent" and the word "unidentifiable, non-identifiable and identifiable", will you tell the jury, those that do not know, what a latent print is, what identifiable means, what is all this language?

A. Latent fingerprint is something used as latent meaning invisible. It's a non-visible print. If I would put ink on someone's hands and put it down, he would see a print. Latent fingerprints are left with secretion. Everything has -- it's like a sweat, another word for secretion. It remains on a smooth surface or even rough surfaces, paper, what have you. A powder is used, the chemical construction I do not know, it's bought outside the city, but it is a red -- some black, some yellow. We have infrared powder, we have what they call burglary powder, which is a powder that's put down and you would not see it on your hands until we hit it with an ultra violet light as such, but this is done by brushing it on with a chemical hair brush, stroking it back and

3.84

Redirect - Land

forth, a positive print being of certain characteristics, many points. It's like putting a puzzle together. There's so many pieces that develop the picture. The same with anybody's print; there are so many characteristics as deltas, bridges, islands. There are so many variations. It's like a big swirl with so

many points in it and this may be an identifiable print, but if we get just a very small portion it's not going to do us any good because there's not enough points in it to compare to any other prints.

Q. Officer, let me stop you there. We're talking about latent prints, number one, we're talking about identifiable prints, number two, and when you do have a result that enables you to say that an individual had that item in his hand, what do you call that?

A. Identifiable print?

Q. No, one that has all the points.

MR.JACKSON: Objection.

THE COURT: I'll let him answer.

MR. JACKSON: Your Honor, I object to him doing that unless we're assuming that Officer Land is a qualified fingerprint expert.

3.85

#### Redirect - Land

THE COURT: Well, you brought it up.

MR. MCGILL: He brought it up, Judge. I was going to object --

THE COURT: Go ahead.

MR. JACKSON: Fine. I'd like to pursue it anyway.

A. It's just a latent print. It's part of whole characteristics that develop into a good print.

Q. Do you use the word "link-up" or a "match-up"?

A. Oh, match-up, sure. I wasn't going to use it because it's not the term we use.

Q. Well, that's the one I use that I understand so let me use that one.

A. Oh, sorry.

Q. Now, when you are able to get a print you are able to get some kind of print, you are either getting nothing or some kind of print, what are the

circumstances that could possibly produce the kind of condition where a print could be obtained?

A. Well, any surface is conducive of that, but if we come up with a good fingerprint, it becomes developed and hooked up with a certain photo number if that's what you are referring to.

Q. Okay, so it would depend, would it not, on the

3.86

#### Redirect - Land

particular type of surface whether or not you could even get a print; is that correct?

A. Correct, sir.

Q. The next point is even though you get a print, you don't know whether or not you could get what would be termed "identifiable print" something that you, could actually see; would that be correct?

A. That is correct, sir.

Q. Now, even after you get an identifiable print you must go to the next level in order to make a, what we call or you would call "match-up". You must have a certain number of prints; is that correct?

A. That's correct, sir.

Q. And if you only have one or two points, that could be the same person as a hundred thousand or a million people; isn't that correct?

A. Oh, very much so.

Q. So in this case, in response to Mr. Jackson's questions about the prints, your answer was that some latent prints were taken; is that correct?

A. Yes, sir.

Q. In fact, one of the ones you said was negative all together; is that right?

A. Yes.

3.87

Redirect - Land

Q. And I think of the four you said some identifiable were taken; is that also correct?

A. Yes, sir.

Q. And you said that there was no match-up at all; is that correct?

A. That's correct, sir.

Q. For anybody, for any person?

A. That's correct, sir.

Q. Whether in the case or otherwise, because there were not enough points; is that correct?

A. Correct, sir.

Q. So what you're saying then is that it's not excluding any individual or group of people, what you're simply saying is you don't have enough number of points to tell; is that correct?

A. That is correct.

Q. So you don't know. All right, thanks.

RE-CROSS-EXAMINATION BY MR. JACKSON:

Q. Officer Land, so I'm certain and I can proceed, are you a trained fingerprint technician, sir?

A. No, sir.

Q. So that everything you said about fingerprints is

3.88

Recross - Land

really just as a lay person; isn't that correct?

A. No, sir.

Q. Well, tell me how many points do you need to make a comparison?

A. A minimum of twelve.

Q. Now, is that from the FBI or the Philadelphia Police Department that says that?

A. In Philadelphia. That's what we have.

Q. If I have a particular rise delta in the fingerprint, now you're saying that if there is only that peculiar delta that you can identify, no other prints, are you saying that you cannot make a positive match?

A. You're saying one point?

Q. I'm saying you see a full delta where there are no points, you just see a portion of a fingerprint which is the delta leading to the whirlwind and all of that, if you see one of them and you compare it to someone's fingerprint, do you need thirteen or twelve other points in which to say that's a positive identification?

A. Oh, yes.

Q. You're saying that that's a fact?

A. Sure.

3.89

Recross - Land

Where did you gain this information from, sir?

MR. MCGILL: I'll object to this point.

MR. JACKSON: He is the one who is testifying, I want to find out the basis of him saying it.

MR. MCGILL: Mr. Jackson brings the point out and then gets upset if I on redirect define it and then tries to go beyond his expertise. I will have the expert in Monday morning for Mr. Jackson to cross-examine all day if he wishes.

MR. JACKSON: I would like to cross examine him, Your Honor, since he's on the stand.

THE COURT: He says he needs more.

BY MR. JACKSON:

Q. Are you saying it's required or is it preferred? I just want to know. Is it required that you have thirteen or you prefer to have thirteen points?

MR. MCGILL: Objection, Your Honor.

MR. JACKSON: There's a difference.

THE COURT: Did you say twelve or thirteen?

MR. JACKSON: Twelve or thirteen.

THE COURT: How many points did you say?

THE WITNESS: Twelve, sir.

THE COURT: Okay, go ahead.

3.90

Recross - Land

BY MR. JACKSON:

Q. And you're saying that's preferred or required?

A. No, preferred.

Q. Now, you indicated that James Famiglietti in the Identification Unit made the examination, right?

A. No, sir.

Q. Oh, he didn't?

A. No, sir.

Q. I'm sorry, what did you say Mr. Famiglietti did?

A. All my lifts were sent down to the attention of G. Famiglietti.

Q. He just stored them?

A. I do not know what Mr. Famiglietti did with them.

Q. So you made a determination that these prints were identifiable, not identifiable and things of that sort; is that right?

A. No, sir.

Q. Well, who did?

A. Police Officer John Cahill.

Q. So that if I understand you correctly, when you're testifying that these prints were unidentifiable, you don't know that for a fact; is that right?

A. Well, I do, but they have to be verified.

Q. Well, I mean, if you do, tell us. I mean, do you

3.91

#### Recross - Land

or don't you?

A. Yes, sir.

Q. So that you lifted the latent prints and you determined that they -- that some were non-identifiable.

A. Yes, sir.

Q. Based on what did you determine that they were non-identifiable?

A. The characteristics were not there. The points were not there.

Q. Now, isn't it a fact that the points that you're talking about are only required to match up another fingerprint, but in fact, you don't need thirteen points to say whether or not a print is identifiable? Do you understand what I'm saying, sir?

A. Yes.

Q. So isn't it a fact that you don't need thirteen prints to determine if a print is identifiable?

A. Thirteen prints?

Q. Thirteen points. My Apologies.

A. I don't know where the terminology thirteen came in, I've been saying twelve.

Q. I'm sorry, that's my thirteen. I'm thinking thirteen. Twelve, my apologies, sir.

A. That's correct. Some experts can do it with less.

3.92

Recross - Land

Q. So you only get into these numbers when you start comparing one print to another; isn't that a fact?

A. Now you're out of my scope.

Q. But you're the one who testified and that's what I'm trying to find out. I don't mean to criticize you, officer, my apologies.

MR. MCGILL: Objection.

THE COURT: Just ask the questions please, no comments.

MR. JACKSON: Sure.

Q. By the way, where are these latent prints, do you know?

A. The fingerprints that were taken?

Q. Yes.

A. Sure.

Q. Where are they, could you tell me?

A. Right here (indicating).

Q. May I see them, please?

A Do you want to see any one particular or --

A. I would like to see them all if you don't mind.

A. Okay. There is one set, there is another set.

THE COURT: May I see counsel for a minute?

3.93

Recross - Land

(The following transpired at sidebar with the  
Defendant present and out of the hearing of the jury:)

THE COURT: Are you going to bring in the expert for these fingerprints?

MR. MCGILL: Yes.

THE COURT: Why don't we wait for the expert?

MR. JACKSON: Your Honor, because I'm a fingerprint expert myself and I know what he's saying is untrue.

THE COURT: What he's saying is a positive identification can't be made, but you will get the expert here that's going to do it. You brought it up and I don't even know why you went into this.

MR. JACKSON: Your Honor, because he made certain allegations and I think I have a right to test whatever he says.

MR. MCGILL: He did not say there were no identifiable prints.

MR. JACKSON: I know.

MR. MCGILL: He did not say that in order to have an identifiable print you need thirteen

3.94

Recross - Land

points. An identifiable print is an identifiable print. What you need is a certain number of points before identifiable prints can be considered a match-up. That's what he said.

MR. JACKSON: He said some experts use less and --

MR. MCGILL: Well, twelve, or whatever.

MR. JACKSON: If I may clarify that, then I'll leave him alone.

THE COURT: He's not an expert.

MR. JACKSON: But he's put it out there, Your Honor. I objected and you said Mr. McGill could get into it.

THE COURT: You put it out on cross.

MR. JACKSON: Fine and then when Mr. McGill went into it I said he is not an expert.

THE COURT: Right.

MR. JACKSON: But you let him answer Mr. McGill's question when he said he's not an expert.

THE COURT: Because you brought it up.

MR. MCGILL: He brought it out as a result of prints.

THE COURT: Next time you're going to have

3.95

#### Recross - Land

to object because you get far afield with the cross-examination and this is what you end up with.

MR. JACKSON: I understand. That's why I objected when Mr. McGill questioned him on it and you said let him answer it with regard to his expertise.

THE COURT: Only as far as he knows. In other words, as far as he knows you need twelve points and he said some other experts could do it with less than twelve. That's all he knows. He's not a --

MR. JACKSON: But that's wrong. It's absolutely wrong.

THE COURT: That's what he knows. Why don't you wait for the expert to come in?

MR. JACKSON: Fine.

(The following transpired in open Court in the presence of the jury:)

BY MR. JACKSON:

Q. Thank you, Officer Land, I'll leave you alone on this one right now.

The other question I'd like to ask you, sir, I hope you still have your bullet -- do you still have

3.96

Recross - Land

it?

MR. MCGILL: C-18 I believe it is.

Q. Okay. You talked about the projectile and you talked about a casing, but in your direct examination you had also talked about a jacket, a bullet jacket. Could you also tell the jury what the bullet jacket is? Is there any difference between the casing and the jacket?

A. I should say that because we have it on there. It's a copper jacket, which is the discolorations you see here, meaning copper, exactly what it is, which I do not know what it does to the bullet.

Q. Do you know if it's normally left in the gun or whether it goes out with the projectile?

A. It goes out with the projectile.

MR. JACKSON: Fine, sir. Thank you very much. I have no further questions, Your Honor.

FURTHER REDIRECT EXAMINATION BY MR. MCGILL:

Q. Do you know who performed the work on determining the number of points observable on those fingerprints?

MR. JACKSON: Objection.

THE COURT: He's asking if he knows who did

3.97

Redirect - Land

it; is that what you said?

MR. MCGILL: That's correct.

MR. JACKSON: We don't know that it's been done, Your Honor.

THE COURT: Well, rephrase it.

MR. JACKSON: I'd object to anything this Officer says with regard to fingerprints since he is not an expert and I've been prevented --

THE COURT: He's just asking who did the work. Please, the objection is overruled. Let's move on. Who did it, if you know?

A. Joe Grimes.

Q. All right, Joe Grimes is the head of the unit?

A. The chief down there, yes, sir.

MR. MCGILL: Thank you. He'll be here Monday.

THE COURT: All right, then we'll recess for lunch until 2:00 o'clock.

(A luncheon recess is taken at 1:00 o'clock P.M.)

3.98

AFTERNOON SESSION

(At this time the Defendant confers with Theresa Africa.)

(The following transpired in open Court in the presence of the jury:)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes, please.

MR. MCGILL: The first Commonwealth witness this afternoon will be Reginald Thompson.

MR. JACKSON: Your Honor, may I have an offer of proof?

(The following transpired at sidebar with the Defendant present out of the hearing of the jury:)

MR. MCGILL: Radio man.

MR. JACKSON: Oh.

MR. MCGILL: It's offered solely for the purposes of what he, Faulkner said nothing further.

(REGINALD M. THOMPSON, is duly sworn.)

3.99

Direct - Thompson

DIRECT EXAMINATION BY MR. MCGILL:

Q. Mr. Thompson, on December the 9th, 1981 where were you employed?

A. Police Radio Room.

Q. What was your position there?

A. Police Dispatcher, twelve to eight shift.

Q. Tell us what a Police Dispatcher is?

A. Well, we assign the jobs to the Police.

Q. And you will have communication, will you not, with Policemen who will call back to you for directions or responses or for information; is that correct?

A. Yes, sir.

Q. Now, you were familiar, were you not, in terms of your occupation, with the assigned cars for various officers on that day, are you not?

A. Yes, I am.

Q. In reference to Officer Daniel Faulkner, were you aware of his assigned car?

A. Yes, sir.

Q. What was it?

A. 610 -- 612.

Q. And what was the actual -- do you recall --

MR. MCGILL: If I may have those

3.100

Direct - Thompson

photographs, Jim.

THE COURT CRIER: Just the "C" photographs?

MR. MCGILL: Yes, the Commonwealth photographs.

Q. Now, showing you C-6, a photograph of his car which shows 610 --

A. Yes.

Q. Now, you had indicated 612. What did you mean by that?

MR. JACKSON: Objection.

THE COURT: I'll let him answer, overruled.

Q. Go ahead.

A. Well, on certain given nights certain vehicles are out mechanically due to different --

MR. JACKSON: Objection.

THE COURT: I don't know the basis of your objection. May I see you at sidebar?

MR. JACKSON: Your Honor, he's testifying as to what may have happened some other time. We're just talking about this day.

Q. Well, at this time. Is there any time, sir, when there are different vehicles than the number that they use?

A. Yes, sir.

3.101

Direct - Thompson

In other words, the vehicle has a different number on it than the number that they refer to on the radio?

A. Yes, sir.

Q. Now why is that?

MR. JACKSON: Objection.

Q. In this case why was that?

MR. JACKSON: If he knows.

A. Because the original 612 car was out mechanical on that given date.

MR. JACKSON: Your Honor, I would object unless this gentleman can say that he knows that for a fact.

THE COURT: The objection is overruled.

MR. JACKSON: Thank you, sir.

Q. Now, Mr. Thompson, in this particular matter in this case then the number of the car on Officer Faulkner's car was what?

A. 612.

Q. All right, the number actually physically on the car?

A. Was 610.

Q. Now the number 612 actually refers to what then?

A. That refers to the car assigned to that certain

3.102

Direct - Thompson

sector, that certain part of the Sixth District.

Q. So are you then saying, sir, that the number of a car, in this case, 612, refers directly to a certain area?

A. Yes, sir.

Q. Geographical area?

A. Yes, sir.

Q. And no matter what substitute vehicle is used for that area, it still must use the number of the assigned, the assigned vehicle number of that area; is that what you're saying?

A. Yes, sir.

Q. Now, sir, in this case -- are you familiar with Officer Faulkner's voice?

A. Yes, sir.

MR.JACKSON: May it please the Court, with respect to his familiarity with respect to Officer Faulkner's voice, I would like him to indicate how, why and under what circumstances.

MR. MCGILL: Your Honor, we've already had an offer of proof, the exact number --

THE COURT: I'll see you at sidebar.

(The following transpired at sidebar with the Defendant present out of the hearing of the jury:)

3.103

Direct - Thompson

MR. MCGILL: The limit of his --

THE COURT: I think what he's talking about --

MR. JACKSON: He just said, are you familiar with his voice.

THE COURT: He wants to know if he heard it on other occasions and things like that.

MR. MCGILL: Is that what you want?

MR. JACKSON: Yes.

MR. MCGILL: Okay.

(The following transpired in open Court in the presence of the jury:)

MR. MCGILL: Sorry, Your Honor. Mr. Jackson is quite right.

BY MR. MCGILL:

Q. Are you familiar with Officer Faulkner's voice, Mr. Thompson?

A. Yes, sir.

Q. Have you heard it on a number of occasions?

A. Yes, sir.

Q. Have you heard it on occasions over the radio, sir?

A. Yes.

3.104

Direct - Thompson

Q. Have you heard it in the course of your duties as Dispatcher for the Police radio, Philadelphia Department of Police?

A. Yes. (Pause.)

Q. This is going to be played for you and the jury. It will be a very short playing so I will ask everyone kindly to pay close attention because it will be short.

(At this time a brief tape recording is played.)

MR. MCGILL: Your Honor, because of the instrument itself and all, would you mind if we played that one more time because of the difficulties in maybe hearing it?

(A this time the tape recording is played again.)

MR. MCGILL: I ask that it be marked C-19.

(Tape recording is marked C-19 for identification.)

Q. Did you recognize the voices on that tape?

A. Yes, I did.

Q. Who were those voices?

3.105

Direct - Thompson

A. That was the voices of Officer Faulkner and my voice.

MR. MCGILL: I'd ask this be marked C-20, please.

(Transcript in memo form of tape recording  
C-19 is marked C-20 for identification.)

MR. MCGILL: Show the witness.

(The witness is shown C-20.)

Q. Mr. Thompson, would you take a look at those -- only the top portion of that transcript. Do you see that, sir?

A. Yes, I do.

Q. Can you identify that?

A. Yes.

Q. What is it?

A. That's the conversation that went on between me and 612 car on that given night.

Q. Mr. Thompson, sir, could you read what it was that was played?

A. Okay. "612 --

Q. All right, I said that the wrong way. First of all, say who said it, then say what was said, and then do that for the next person.

A. Okay. This is radio patrol car coming in,

3.106

Direct - Thompson

"612". Then it's my voice, "12". Then it's patrol car 612 again, "I have a car stopped ah 12, 13th and Locust.

"Radio: Car to back 612, 13th and Locust.

"RPC: On second thought send me a wagon 1234 Locust.

"Radio: 601.

"EPW: Yeah 01 okay, 1234 Locust.

"RPC: 22 I'll take a ride over.

"Radio: Okay."

MR. MCGILL: Okay, that's good enough. Cross-examine -- by the way, when you say patrol car 612 you mean -- that was Officer Faulkner?

THE WITNESS: Yes, sir.

3.107

Cross Thompson

MR. MCGILL: Okay, Mr. Jackson.

CROSS-EXAMINATION BY MR. JACKSON:

Q. Mr. Thompson, how long have you been in the Police Radio Room, sir?

A. Nine and a half years.

Q. And you are assigned to a particular sector or section of the City; is that correct?

A. Yes, sir.

Q. How long have you been assigned to this sector and section of the City?

A. Approximately four years.

Q. And approximately when was it that Officer Faulkner was assigned to this area, if you know, if you can recall?

A. I can't recall that. He might have been there before I came.

Q. Do you recall when it was you first heard Officer Faulkner's voice, approximately when?

A. That would be hard to surmise.

Q. Well, as hard as it may be, could you give us your best estimate, sir?

3.108

Cross - Thompson

A. I'd say approximately two years ago.

Q. Two years ago?

A. Yes.

Q. And should we also assume that Officer Faulkner was continuously assigned to the 612 car?

A. Yes, sir, to my knowledge.

Q. To your knowledge. Do you recall him ever being assigned to another sector?

A. Not to my knowledge.

Q. And when you say not to your knowledge, could you tell us what you mean by not to your knowledge?

A. Because I don't -- see, it's two people working a position. I may not be assigned to that position on certain days.

Q. Oh, okay, fine. Now, you indicate that the sector is assigned to this car 612, so it could have been car number one, but as far as you're concerned that's car number 612; is that what you're saying?

A. Yes, sir.

Q. Now, do you know in fact on December 9, 1981 at or about 3:58 where car 612 was?

A. You mean did I know exactly where he was at?

Q. No, where the actual 612 car, car number 612,

3.109

Cross - Thompson

not -- let me back up. You understand already you've identified this vehicle 610 that's marked 610, you're saying as far as you're concerned that was car number 612?

A. Yes, sir.

Q. My question to you is, the car that's marked 612, do you know where it was that day?

A. It was down in Mechanical.

Q. No, my question is, do you know where it was?

A. No, I don't. I don't know.

Q. Now, do you know of any instance where they may substitute cars where, in other words, 610 would be in operation, cars that are marked 610 and 612, could they possibly be switched?

A. No.

Q. So that what you're saying is if the car that is marked 612, if it was not working in sector 612, then that means the car was down for some reason; is that correct?

A. Yes, sir.

Q. Now, could you tell us generally the sector that your area, you know, that you dispatch for?

A. Well, Center City east of Broad and west of Broad, river to river.

3.110

Cross - Thompson

Q. Now, vehicle 612, could you tell us the boundaries of that sector as best as you can, sir?

A. Not really. I think it covers the area from -- to my knowledge it covers from Broad to 10th, Locust to Chestnut, to my knowledge. I'm not sure about that.

Q. But you're certain where this vehicle was stopped, where the 612 car was stopped, this location at 13th and Locust, that is within the sector?

A. Yes, sir.

Q. And as far as you know that is the sector that Officer Faulkner had been working for approximately two years; is that right?

A. I'm not saying approximately for two years, but as long as I was there that's the sector he worked.

Q. But you're saying, if I understood you correctly, you said as long as you were there, that's four years, you worked that sector? Correct me if I am wrong, sir.

A. Well, what you're saying -- what I'm saying is as far as I know, to my knowledge --

Q. That's all I'm asking.

A. -- is that that was the car that Officer Faulkner worked.

Q. I understand, and what I'm saying then is if he

3.111

Cross - Thompson

worked -- let me back up. You're saying as far as you know that's the car I mean, is there something to suggest that he was working some other car?

A. No.

Q. So then you're saying as long as two years, assuming for a moment that Officer Faulkner always operated that car, the 612 car, for about two years he worked that same sector?

A. Yes.

Q. Do you work a swing shift as well?

A. Yes, sir.

Q. And Officer Faulkner worked the swing shift?

A. Yes.

Q. So then would it be fair to say that the two of you were on the same squad, meaning that you both changed together?

A. Yes.

Q. Now, would you have any knowledge, actual knowledge, meaning do you yourself know, do you know when the car marked 612 was last operated in that sector?

A. I wouldn't have knowledge of that.

MR. JACKSON: All right, thank you very

3.112

Direct - Shoemaker

much, I have no further questions.

MR. MCGILL: Thank you, Mr. Thompson. Does the Court have any questions, Sir?

THE COURT: No.

(The witness is excused.)

MR. MCGILL: The next Commonwealth witness, Sir, would be Officer Shoemaker.

(POLICE OFFICER ROBERT SHOEMAKER,  
Badge No. 4669, Stake-Out Unit, is duly sworn.)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Shoemaker, where are you currently employed?

A. Am I?

Q. No, where are you currently employed?

A. Philadelphia Police Department.

Q. And how long?

A. Eight years.

Q. On December the 9th, 1981 you were so employed?

3.113

Direct - Shoemaker

A. That's correct.

Q. And what was your tour of duty, sir?

A. Twelve to eight, midnight to eight in the morning.

Q. Without telling us the content of the radio call, did you have occasion to respond to a radio call?

A. That is correct.

Q. Approximately when was it that you responded to a radio call?

A. Approximately 3:55 in the a.m.

Q. Oh, by the way, were you alone or with someone else in that car?

A. I was working with my partner Officer James Forbes, Badge No. 9811.

Q. Were you in a car or a wagon?

A. A marked stake-out wagon.

Q. Okay, it's a stake-out. And just tell the jury, please, exactly what you did after you heard the radio call and your response to it?

A. If Your Honor pleases, on the date 12-9-81 at approximately 3:55 in the a.m., patrolling the area of 12th and Chestnut Street we overheard Officer Faulkner go out with a Car Stop in the area of 13th and Locust Streets. I was at 12th and Chestnut at the time. I proceeded to travel south on 12th Street from

3.114

Direct - Shoemaker

Chestnut when I heard officer Faulkner go out over the air again and ask for a wagon, meaning to me that he had a prisoner, so I expedited my arrival. I proceeded the wrong way on Locust Street from 12th, at which time, as soon as we made the turn we were stopped, myself and my partner were stopped by a cab driver who was swerving in front of us putting his lights off and on. We stopped the cab. The cab driver informed us --

MR. JACKSON: Objection.

MR. MCGILL: May I develop a foundation?

THE COURT: Yes, go ahead. Do you want to see me at sidebar?

(The following transpired at sidebar in the presence of the Defendant and out of the hearing of the jury:)

THE COURT: Mr. Jackson, do you want to explain the basis of your objection?

MR. JACKSON: Yes, sir.

THE COURT: Although I realize it's hearsay, it's an exception to hearsay because it's not what he was told, he did something.

MR. JACKSON: Your Honor, because I don't

3.115

Direct - Shoemaker

see --

THE COURT: It's an exception to the hearsay rule.

MR. MCGILL: What I can do, Judge, is develop a foundation because obviously it could also be res gestae, outside utterance. He was also

shocked at the time.

THE COURT: All right, but it's admissible, as I said, not because of its truth but because of what was said to him that caused him to take certain action.

MR. MCGILL: Yes, sir.

(The following transpired in open Court in the presence of the jury:)

BY MR. MCGILL:

Q. All right, Officer, do not tell us what the cab driver said, but as a result of what the driver said, all right, what did you do?

A. We proceeded westbound on Locust Street, like I said, the wrong way, till we came upon -- saw Officer Faulkner's overhead lights from his car. I stopped approximately two car lengths from his car. I exited the wagon and started to walk between two cars with my gun drawn, a Volkswagen which was on my

3.116

Direct - Shoemaker

right, and a Ford, a dark colored Ford, which was on my left.

As I proceeded between the two cars, I observed Mr. Jamal sitting on the very end of the curb with his feet in the street, his right arm was crossing his chest, his left hand was approximately six inches from his leg on the ground.

I ordered the male to freeze. We made eye contact probably about the same time, and the male did not freeze, his arm started to move to the left.

Now at this point I couldn't see what he was reaching for, if he was reaching for anything at all, so I adjusted my stance and I took one side step to the left.

At this point I saw a two inch revolver approximately eight inches from his hand. I again ordered the male to freeze, which he did not, so before he grabbed the gun I kicked the male away from the gun. My heel contacted his throat area and the sole of my shoe hit him on the face.

As the male fell backwards he yelled twice, "I'm shot, I'm shot." Still, with my revolver trained on him, I stepped over on top of the male and I kicked

the revolver with

3.117

Direct - Shoemaker

my right foot away from him to the right.

At this point I yelled to my partner to watch this male.

At this time I walked over to Officer Faulkner who was lying on his back unconscious bleeding very heavily. He was approximately four feet from the Defendant. Myself and two or three other officers lifted Danny up. We tried to put him in one of those small Horizon cars that we have now on the street, but we couldn't fit him in the car so we took him in a waiting Police wagon, and we put him in the wagon and the wagon took him to the hospital.

Q. Now, were you the first Officer on the scene?

A. That is correct.

Q. So when you say that there were other Police officers who helped you carry Officer Faulkner to the wagon, they had arrived after you?

A. That's correct.

MR. MCGILL: With the Court's permission, Your Honor, would Officer Shoemaker be permitted to go to the sketch?

THE COURT: Yes, he may.

(The witness complies with counsel's request.)

3.118

Direct - Shoemaker

Q. Now, would you move to the other side, the right side, so the defense can see it and the jury. Tell us, Officer Shoemaker, where you were when you had some communication with the cab driver?

A. Approximately here (indicating). I was traveling south.

Q. Now I'm going to ask you, Officer Shoemaker, to speak loud and speak

to the jury when you talk.

A. Right. After I made the turn, as I was heading west bound on Locust Street in the wrong direction, right approximately here (indicating), right after I made the turn.

Q. And then go on with where you proceeded?

A. I proceeded west on Locust Street and stopped right here (indicating).

Q. That's parallel to what vehicle?

A. The Ford, right at the Ford.

Q. Now, where in relation to that is the Volkswagon and Officer Faulkner's car?

A. The Volkswagen (indicating), Officer Faulkner's car (indicating).

Q. Go on, please, with where you went and where you saw Mr. Jamal?

A. All right, as I exited my Police vehicle, I

3.119

Direct - Shoemaker

started to walk between the two vehicles, the Volkswagen and the Ford. Mr. Jamal was sitting right on the very end of the curb, his feet were in the street.

Q. All right, would you mark a large "J".

(Witness complies with counsel's request.)

Q. Did you proceed there to the sidewalk before your partner or after?

A. Before my partner.

Q. And in which direction was Mr. Jamal reaching at that time?

A. It would be to his left.

Q. His left?

A. Or my right since I was facing him.

Q. Now, you also stated that you and two other officers or a number of officers carried Officer Faulkner to a wagon?

A. That's correct -- first to a car.

Q. Where was the car?

A. The car was in this area, in this area somewhere (indicating). We walked between the Volkswagen and the Police car.

Q. All right, you're indicating a rough estimate on Locust Street in between the Volkswagen and the Police

3.120

Direct - Shoemaker

car. Now were you able to get him in that car?

A. No, we weren't, it was too difficult.

Q. What did you then do?

A. We traveled along the street, put Officer Faulkner in the wagon, which was down at this end of the street (indicating).

Q. And then the wagon went on to the hospital -- what direction did the wagon go, if you know?

A. I'm not sure.

Q. You don't know, all right. Thank you very much, Officer, go back to the stand.

(Pause.)

Q. I'm also going to ask you to take look at C-3 and put a large "J" on that photograph where Mr. Jamal was.

(The witness complies with counsel's request.)

MR. MCGILL: Would you show the defense.

(Pause.)

Q. All right, you referred to Mr. Jamal when you were testifying concerning this incident. Is he in this Courtroom?

A. That is correct.

3.121

Direct - Shoemaker

Q. Would you point him out?

A. The Defendant (indicating).

MR. MCGILL: Indicating the Defendant for the Record.

Cross-examine.

CROSS-EXAMINATION BY MR. JACKSON:

Q. Officer Shoemaker, you indicated that you overheard this radio broadcast of Officer Faulkner; is that correct?

A. That's correct.

Q. I take it you know Officer Faulkner; is that right?

A. That's correct.

Q. How long had you known him, sir?

A. About a year.

Q. And you worked together?

A. I worked in the same area as he did. I wasn't in the 6th District.

Q. That's right, you're Stake-Out, is that correct?

A. That's right.

Q. Now, you've heard his voice over the radio a

3.122

Cross - Shoemaker

number of times?

A. Yes, sir.

Q. That evening did you hear his voice before at any time prior to this voice? In other words, did you hear his voice early on the shift?

A. He made a car stop at 13th and Locust, I believe it was about an hour earlier, and we also backed him up then.

Q. And where were you when you heard him make that car stop an hour earlier? Do you recall where you were before you went to back him up?

A. On this job?

Q. No. You said one hour earlier he made a car stop at 13th and Locust.

A. Right, well, we were at 13th and Walnut and we saw him pull the car over.

Q. And what did you do then?

A. We just pulled up behind him.

Q. But if you're at 13th -- if he made the car stop at 13th and Locust and you're at 13th and Walnut, how could you pull up behind him?

A. I'm sorry, Juniper and Walnut. He made the car stop at Juniper and Locust because you're not permitted to make a turn from 11:00 p.m. to 6:00 in the morning

3.123

Cross - Shoemaker

at either location.

Q. He made the car stop at Juniper and Locust Street?

A. Yes, sir, Juniper and Locust.

Q. And you were at 13th and Walnut?

A. We were at Juniper and Walnut.

Q. Did you back up any other officers before you backed up Officer Faulkner that night?

A. I really don't remember.

Q. Now Officer, although it's not required that you back up an officer, it's pretty much the manner that officers do, they back up someone when they make a car stop; is that correct?

A. That's correct.

Q. Now at the time that Officer Faulkner -- at the time that you heard this broadcast, car stop at 13th and Locust -- we're talking about this incident now -- did you have any reason to suspect that Officer Faulkner was in danger?

A. No, sir.

Q. Nevertheless, it was your decision to go wrong way up the street; is that correct?

A. That's correct.

Q. Is that what you normally do?

3.124

Cross - Shoemaker

A. Well, sir, I'll give you a little explanation on why I did it.

Q. No, I just would like to know if that's what you normally do.

A. If it is called for.

Q. Sir, that's not -- my question is, is that what you normally do?

MR. MCGILL: Objection. I think he responded. If it's called for it's normal. If it's not called for, it's not normal.

MR. JACKSON: He's testifying, have him sworn, please.

THE COURT: He's answered your question. You may not like the answer,

but go ahead.

MR. JACKSON: Very well, Judge.

BY MR. JACKSON:

Q. Now, you indicated that you were -- by the way, were you in motion when you overheard the radio broadcast? Was your vehicle moving?

A. The original car stop?

Q. Yes.

A. No. I was at the light on Chestnut Street at 12th. I was traveling eastbound at Chestnut, but I was at the light.

3.125

Cross - Shoemaker

Q. And after you heard it you made the right-hand turn onto 12th Street?

A. Yes.

Q. And proceeded towards Locust?

A. Yes, sir.

Q. And did you make the turn at Locust Street before you saw the cab driver?

A. No, I made the turn -- I made the turn first --

Q. Yes.

A. Then I saw the cab driver.

Q. And the cab driver was in a traffic lane; is that correct?

A. Well, he pretty much took up the whole street. He was zigzagging.

Q. So you traveled some distance on Locust Street before you ran into the cab driver; is that what you're saying?

A. About twenty, twenty-five feet.

Q. But you saw him for a period of time before you stopped?

A. The cab driver?

Q. Yes.

A. Well, when he was coming in my direction, Yes, sir.

3.126

Cross - Shoemaker

Q. Okay --

A. (Continuing) Flashing his lights off and on.

Q. Do you know about what distance the cab driver traveled before you stopped? In other words, you're saying -- from your testimony you said that you saw the cab driver zigzagging down the street. At what point did you first see the cab driver, do you know where his cab was?

A. As soon as I made the turn.

Q. Yes, but do you know where the cab was in relation to the street? The end of the street, the middle of the block, closer to you, say?

A. I would say the middle of the block.

Q. And he zigzagged to you when you were twenty feet from the corner of 12th, approximately?

A. Approximately.

Q. And you stopped him momentarily to talk to him; is that right?

A. Yes, sir.

Q. And did you talk to the cab driver or did your partner talk to him?

A. He was on my partner's side, my partner's window was rolled down. The cab driver's window wasn't all the way rolled down and he just yelled from his cab

3.127

Cross - Shoemaker

to our truck, "They shot the cop, a cop's shot." That was it.

Q. Had you seen Officer Faulkner, other than that earlier car stop, had you seen Officer Faulkner earlier?

A. No, sir.

Q. By the way, when you backed up Officer Faulkner an hour or so earlier, did you have a conversation with officer Faulkner?

A. No, sir.

Q. You didn't talk to him at all, just waited until he completed his business with the person?

A. That's correct.

Q. When the cab driver stopped you he said, "They shot a cop," didn't he?

A. "They shot a cop, a cop's been shot". That was my understanding.

Q. Did he say "They" or did he say "He"?

A. "They shot the cop, a cop's been shot."

Q. So the answer is he said "They"?

A. "They."

Q. And anything else he said?

A. No, sir.

Q. Did he point?

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Cross - Shoemaker

A. No, sir.

Q. Did you ask who?

A. No, sir.

Q. Did you ask where?

A. No, sir.

Q. Was there anyone else other than your partner and the cab driver when you stopped?

A. No, sir.

Q. About how long did you stop there, approximately?

A. Five seconds, six seconds.

Q. When you turned the corner, coming from 12th Street onto Locust Street, you looked up the street, obviously you saw the cab driver come zigzagging down the street?

A. Correct.

Q. Did you see people on either side of the street?

A. My attention wasn't drawn to the people in the street, no, sir.

Q. So then you were just concentrating on this cab driver?

A. Certainly.

Q. At what time, if any, was your attention drawn to any of the people who were on the street?

A. After I exited the wagon and came into contact

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with Mr. Jamal.

Q. Finally. So that it's fair to say from about twenty feet from the corner of 12th Street to the location of Officer Faulkner's vehicle you don't know whether or not someone was walking, running or otherwise moving along Locust Street; is that right?

A. That's correct.

Q. Did you ask anyone, sir, if anyone walked away, moved away from the scene, when you arrived did you ask anyone?

MR. MCGILL: Objection.

THE COURT: I'll let him answer the question.

A. Could you repeat the question?

Q. Sure. Did you ask anyone when you arrived at where Officer Faulkner's vehicle was, did you ask anyone if anyone had left the scene?

A. No, sir.

Q. By the way, you were in uniform?

A. Yes, sir.

Q. Do you know if there were plainclothes officers working in that sector that evening?

MR. MCGILL: Objection. Personal

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Cross - Shoemaker

knowledge.

THE COURT: I'll sustain the objection.

MR. JACKSON: Pardon?

THE COURT: See me over here.

(The following transpired at sidebar in the presence of the Defendant out of the hearing of the jury:)

THE COURT: What's the basis of your objection first?

MR. MCGILL: It's on hearsay, whether he knows if they were working.

MR. JACKSON: I asked him if he knows.

MR. MCGILL: It's hearsay, if he knows.

THE COURT: Why don't you ask him if he saw any. That would be more -  
-

MR. JACKSON: Can I ask if he knows first? That's not hearsay.

THE COURT: Well, why don't you ask him if he saw them, okay?

MR. JACKSON: Okay.

(The following transpired in open Court in the presence of the jury:)

BY MR. JACKSON:

Q. Officer Shoemaker, did you see any plainclothes

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officers at the scene when you arrived?

A. No, sir, I did not.

MR. JACKSON: Thank you very much, I have no further Questions.

REDIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Shoemaker, when you arrived and saw the Defendant on the  
curb did you see anyone else there?

MR. JACKSON: Objection, Your Honor beyond the scope.

THE COURT: Overruled.

A. I saw officer Faulkner and William Cook.

Q. And do you recall whether William Cook said anything to you?

A. As I was leaning over Officer Faulkner I looked up to see Mr. Cook,  
and his words to me were, "I had nothing to do with it." That was all.

MR. MCGILL: I ask that that be marked C-21.

(Photograph is marked C-21 for identification.)

Q. I'm showing you C-21. Can you identify that

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Redirect - Shoemaker

photograph?

A. William Cook.

Q. Where was he when you saw him in relation to Mr. Jamal as well as Officer Faulkner?

A. He was up against the building line, flush up against the building line with his hands in his pocket, approximately, I would say, five to six feet away from officer Faulkner.

Q. Now, this car stop that Mr. Jackson brought out in reference -- I think an hour earlier you said?

A. Yes, sir

Q. Was that a Volkswagen?

A. No, sir, it wasn't.

Q. Mr. Jackson asked you whether it was procedure to back up cars --

MR. JACKSON: Objection. That was not the question.

Q. Do they often back up cars or do you often back up cars, as I recall the question.

THE COURT: All right, go ahead.

A. My duty as a stake-out --

Q. That really wasn't a question, that was a lead-in. There was a question to it.

THE COURT: Go ahead.

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Redirect - Shoemaker

My question is this, isn't it a fact that you particularly back up cars in the area of 13th and Locust?

A. Yes, sir.

MR. JACKSON: Objection, leading.

THE COURT: Well, it's been answered. Anything further, gentlemen?

MR. JACKSON: Yes, I do.

MR. MCGILL: I do have one other question.

Q. Why do you do that? Tell the jury why you back them up at 13th and Locust at 3:51 a.m., in the morning?

MR. JACKSON: Objection.

THE COURT: Overruled.

A. Because my job is to back up officers --

MR. JACKSON: Objection and move to strike as to what his job is.

THE COURT: Overruled.

MR. MCGILL: Your Honor, I withdraw the question.

RECROSS-EXAMINATION BY MR. JACKSON:

Q. Now, officer Shoemaker, you indicated again

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Recross - Shoemaker

that when you arrived at the scene the first person that you saw was Mr. Jamal is that correct?

A. No, sir.

Q. Oh.

A. Once I got out of the truck.

Q. Yes.

A. As I was driving, as I was partially stopped getting out of my truck I observed William Cook against the wall. I know William Cook.

Q. You know William Cook?

A. From past experiences.

Q. Objection, and I would just ask you to answer my questions.

A. William Cook was the first man I saw.

Q. Did you see anyone else before you got out of the vehicle?

A. No, sir.

Q. Did you see Officer Faulkner?

A. No, sir.

Q. Now, I understand from your testimony when you got out of the vehicle you saw Mr. Jamal, and the first thing you did was tell him to freeze; is that right?

A. That's correct.

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Recross - Shoemaker

Q. He wasn't moving, was he?

A. He had his hand partially covered, I couldn't see where his hand was.

Q. But he wasn't moving?

A. Still.

Q. Sure. You told him to do what he was already doing.

A. His hand was partially covered.

Q. I understand that, but my question is, you told him to do what he was

already doing?

A. And then his hand started to motion to the left.

Q. After you told him to freeze. So in effect, you told him to freeze, meaning, I suppose, meaning to be still, when he was already still; is that right? Isn't that a fact, Officer?

A. Yes.

Q. And then you said after you told him to -- although he was still when you told him to freeze, after you said freeze, that's when he moved; is that correct?

A. His hand started to motion, yes, sir, to his left.

Q. And when he started to move his hand you changed

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Recross - Shoemaker

your position you say; is that right?

A. Yes, Sir, I did.

Q. How far away from him were you when you moved?

A. Three to four foot.

Q. Were you actually between the two vehicles at that time?

A. Yes, I was.

Q. And you said that you moved one foot to one side or the other?

A. One step to my left.

Q. One step to your left. And that was between the Volkswagen and the Ford, I think you said?

A. I took a step towards the Ford, yes, Sir.

Q. And then you saw a weapon the ground; is that right?

A. That is correct.

Q. When you saw the weapon the ground you were still three feet away from Mr. Jamal?

A. Yes, Sir.

Q. You had your weapon drawn?

A. Yes, Sir.

Q. When you saw his hand move towards that weapon you immediately kicked him?

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Recross - Shoemaker

A. No, sir, I ordered him to freeze again, which he did not do.

Q. And when you had ordered him to freeze did you move closer to him?

A. Yes, sir, I had.

Q. So then how close were you?

A. Maybe two foot then.

Q. By the way, was he leaning or sitting, or what was his position? Tell us so we know.

A. He was sitting in the curb, his feet were in the street, right arm across his chest, left hand was extended, no weight was on his left hand.

Q. How could you tell there was no weight, sir?

A. Because he was moving his hand and his body was staying still. He wasn't --

Q. That was after you told him to freeze?

A. Yes, sir.

Q. Okay, go on. I just wanted to be clear.

A. That's it.

Q. And you were within two feet of him, and this is after you had taken that step towards the Ford, you then saw the gun?

A. Yes, sir, I did.

Q. How far away was the gun from him?

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Recross - Shoemaker

A. From his hand?

Q. Yes, sir.

A. Approximately eight inches at that time.

Q. And how far was his hand extended?

A. About six to eight inches from his leg.

Q. So that the gun was closer to the Volkswagen?

A. Yes, sir.

Q. Where in relationship to the Volkswagen was this gun?

A. The gun was on the curb.

Q. It was on the curb?

A. Yes, sir.

MR. JACKSON: May I see C-3 through 13, please?

MR. MCGILL: Your Honor, at this point I would respectfully object. I believe it is way beyond recross for the limited redirect.

MR. JACKSON: Your Honor, I tried to limit it and he went back into the area, sir.

THE COURT: Okay, proceed.

Q. This is C-3, look at C-3 again, please. Can you see the location where

you saw that weapon?

A. Yes, sir, I can.

Q. Could you mark that perhaps with this and put

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Recross - Shoemaker

perhaps a "G" ?

A. There is a marking on the picture itself that my partner made with a crayon.

Q. That what?

A. That my partner made with a crayon. If I marked over it, it would scratch out his.

Q. Where the gun is?

A. Where he marked it, yes, sir.

Q. Let me see it, I'm sorry.

(Pause.)

Q. Oh, I'm sorry, it's already in the photograph itself, okay. Now, Officer, you indicated that it was on the curb, you were two feet from Mr. Jamal, and Mr. Jamal was sitting with his right hand across, and it was his left hand that he was motioning for the gun, and you kicked him somewhere?

A. My heel contacted here (indicating), the sole of my shoe contacted here (indicating).

Q. Was he sitting straight up when you kicked him?

A. Partially leaning at that point.

Q. Which direction?

A. To the left.

Q. He was leaning to the left. And after you kicked

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Recross - Shoemaker

him what happened to Mr. Jamal?

A. He fell backwards.

Q. All the way back?

A. Flat on his back.

Q. Flat on his back. Then after you knocked him flat -- kicked him flat on his back you kicked the weapon away?

A. Yes, sir.

Q. Where did you kick it?

A. I kicked it to my right with my right foot just out of his reach. I didn't want to kick it so far that we couldn't tell where it had been, so just out of his immediate reach.

Q. If I understand it, after you kicked him and he fell back he was between you and the gun?

A. No, sir. I came between him and the gun.

MR. MCGILL: Judge, objection. My redirect went to William Cook more than this. I have no objection to him restating it, but this is really beyond the scope.

THE COURT: Do you have any more recross?

MR. JACKSON: Yes, I do, sir.

THE COURT: Then go ahead.

MR. JACKSON: Thank you, sir.

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Recross - Shoemaker

Q. So after you kicked Mr. Jamal and he fell down, he was between you

and the gun; is that correct?

A. No, sir, he was not. ...

Q. Why not?

A. I stepped upon him.

Q. You stepped on him after you kicked him?

A. No, I stepped upon him. After I kicked him I got between him and the revolver and I was standing over him with my revolver out. Then I kicked the gun with my foot to my right, which would be to his left, away from him.

Q. I'm having some difficulties understanding, forgive me. If he fell -- I think this is the direction -- if Mr. Jamal was at the curb, he was leaning towards his left to get the gun; is that correct?

A. Yes, sir.

Q. You kicked him and he went all the way back?

A. He fell backwards, yes, sir.

Q. So the gun would have been to his left?

A. Yes, sir.

Q. You stepped upon Mr. Jamal, as you stated, and somehow you got on the other side of Mr. Jamal?

A. Which side are you talking about?

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Recross - Shoemaker

Q. On the side next to the gun.

A. Yes, sir.

Q. I'm trying to figure out how Mr. Jamal got between you and the gun.

A. I kicked him away from the gun, he fell straight back.

Q. But the gun still would have been to his left?

A. It was still to his left.

Q. How did you get on the other side of Mr. Jamal? That's what I want to know.

A. I stepped upon him --

Q. Oh, you stepped over him?

A. No, I didn't say that.

Q. Well tell me.

A. I stepped upon him with my gun still drawn.

Q. I understand that.

A. I had my gun drawn looking down at him. Then I kicked the gun with my foot out of his immediate reach.

Q. Officer, I'm still trying to find out just -- you're telling us when you walked up to him Mr. Jamal was here, the gun was on the other side, and you were on the other side of Mr. Jamal?

A. No, sir, I was not on the other side, I was

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#### Recross - Shoemaker

directly in front of him, but I had to take the side step so I could see what was around the corner from the Volkswagen.

Q. I understand, and you stepped away from where the gun was; is that correct?

A. That's correct.

Q. So then Mr. Jamal would have been between you and the gun?

A. At that time, before I kicked him.

Q. Right, so what I'm still trying to find out is how and when you got on

the other side of Mr. Jamal?

A. After I kicked him my momentum carried me between him and the gun. That was my plan.

Q. So after you kicked him you kept on going and got on the other side of him?

A. That's right.

Q. I mean, I just want to find out. And after you kicked him he fell back and you kept on going?

A. No, sir.

Q. You kicked him and the thrust carried you over him; is that right?

A. Not over him, no, sir.

Q. Pardon me?

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Recross - Shoemaker

A. When I kicked him I stepped over towards him closer, okay?

Q. Toward him?

A. With my gun still trained on him.

Q. I understand that.

A. (Continuing) Because now still he's bringing his hand up and now I can see his hand. That's my main thing, I want to find out what he's doing with his hands. He's not going to shoot me with his foot. We're trained to watch for his hands. Then I kicked the gun away from him.

Q. Okay, you kicked him and then you saw his hands, I understand that.

A. Right.

Q. You got on the other side of him somehow -- I'm going to leave that alone -- you got on the other side of him somehow, then you kicked the gun away from him?

A. Yes, sir.

Q. To your right?

A. To my right, sir.

Q. That would have been towards 13th Street?

A. Yes, sir.

Q. Did you see where the gun went?

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Recross - Shoemaker

A. No, sir, not -- I just gave it a little shove, that's all.

Q. A. little shove, it wasn't a kick?

A. Well, it was a kick with my foot. It traveled maybe six inches, a foot, just out of his immediate reach.

Q. Did you see another gun then?

A. No, sir, I didn't.

Q. And after Mr. Jamal fell back and you kicked the gun out of the way, you then told your partner -- Officer Forbes, is it?

A. Yes, sir.

Q. (Continuing) Officer Forbes, Watch him?

A. That's right.

Q. Where was Officer Forbes at?

A. At that time I don't know. He was behind me.

Q. Okay, but as I understand your testimony, you're saying when you kicked him back he started moving his hands then, Mr. Jamal; is that right?

A. No, sir, when I kicked him, as he fell back his hand came out from underneath his -- around his chest, and as he fell back he said, "I'm shot,

I'm shot."

Q. Okay, fine.

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Recross - Shoemaker

A. That's all he did.

Q. And when you told Officer Forbes to watch him, Mr. Jamal was on his back; is that right?

A. At that time, yes, sir.

Q. And then you went over to Officer Faulkner?

A. Yes, sir.

Q. And Billy Cook, William Cook was still against the wall, you're saying, with his hands in his pocket?

A. Yes, sir.

Q. And you said that Mr. Cook made some remarks to you; is that right?

A. Yes, sir.

Q. How far away was William Cook from Officer Faulkner?

A. Five or six feet.

Q. So then William Cook -- I'm sorry, Officer Faulkner, in effect, was between -- or tell me if I'm wrong, was between Mr. Jamal and Mr. Cook?

A. That is correct.

Q. William Cook was facing Locust Street; is that right?

A. Yes, sir.

Q. With his back against the wall?

A. Against the wall.

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Recross - Shoemaker

Q. Did you say anything to him?

A. I said nothing to him at all.

Q. And you went over to Officer Faulkner and saw his condition. Then what did you do?

A. I looked up, saw Billy Cook, that's when he made the statement.

Q. And what did you do then?

A. Myself and two or three other officers began to pick Officer Faulkner up.

Q. Okay, so that I understand correctly, at some point in time during the time that you were kicking or having some contact with Mr. Jamal some other officers arrived at the scene; is that right? Is that fair?

A. I would say so, yes, sir.

Q. And when you saw Billy Cook did you do anything to him? I mean, did you search him, arrest him or do anything?

A. No, sir, I was involved with Danny.

Q. Was someone involved with Mr. Cook?

A. No, sir, I couldn't say, sir. I didn't see anyone, no Police Officers.

Q. Okay, so he just stood there while you were attending to Officer Faulkner?

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Recross - Shoemaker

A. Yes, sir.

Q. And Mr. Jamal was still laying flat on his back?

A. Partially trying to get up. I had my eyes on both of them.

MR. JACKSON: Excuse me one moment.

(Defendant and his counsel confer.)

Q. When you indicate that Mr. Jamal had his right hand across his chest, you couldn't see his hand?

A. No, sir, I couldn't.

Q. Do you know what was obstructing your view? I mean, was it clothing -

A. Clothing.

Q. Clothing?

A. I couldn't see it.

MR. JACKSON: Thank you, Officer, I have no further questions at this time.

FURTHER REDIRECT EXAMINATION BY MR. MCGILL:

Q. Officer, you were not paying attention to William Cook, were you?

A. No, sir, I wasn't.

Q. You were concerned first about the gun, Mr. Jamal, and primarily about Officer Faulkner?

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Redirect - Shoemaker

A. About the condition of the officer.

MR. MCGILL: Nothing further. Officer Forbes is the next witness, if Your Honor please.

(The witness is excused.)

(OFFICER JAMES FORBES, Badge No. 9811,  
Stake-out Unit, is duly sworn.)

DIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Forbes, you are a member of the Philadelphia Police Department?

A. Yes, I am.

Q. On December 9, 1981 you were also a member of the Philadelphia Police Department?

A. That's correct.

Q. You are partner to Officer Robert Shoemaker; is that correct?

A. That's correct.

Q. And on that date, December the 9th, 1981, you responded to a radio call?

A. That's correct.

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Direct - Forbes

Q. Would you tell us what you did when you responded?

A. It was approximately 3:53 a.m., we were at the intersection of 12th and Chestnut Streets at a red traffic signal. We heard 612 car come over the air with a Car Stop at 13th and Locust, and then he came back on the air and said that he had a prisoner -- or he called for a wagon; I assumed he had a prisoner.

Q. When you say "he", who do you mean "he"?

A. Officer Faulkner.

MR. JACKSON: Object and move to strike what he probably assumed, Your Honor.

THE COURT: Overruled.

Q. Anyway, after hearing this you proceeded to the location?

A. We proceeded southbound on 12th Street toward Locust, and on Locust Street we turned right to west bound on Locust Street bucking traffic.

Q. And did you run across anyone on the way down?

A. As soon as we turned the corner a cab was coming eastbound on Locust Street in the 1300 -- or in the 1200 block, and he was flashing his headlights on and off, and we stopped at the corner of 12th and Locust, he pulled up next to us and he said something out the window.

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Direct - Forbes

Q. What was it?

A. He said, "He shot the cop."

Q. Any response to what he said, "He shot the cop," what did you do then?

A. I wasn't sure I heard what he said, and I said, "What?" And he repeated it again, he said, "He shot the cop." So we proceeded to 13th and Locust where we saw the Police car with the dome lights on. When we stopped I got out of the wagon and I was proceeding around the front of the wagon, I got about halfway in the middle of the grill and I looked over and I saw Danny, Officer Faulkner, laying on the sidewalk in a pool of blood, bleeding heavily from his head. So I ran back inside the wagon and I notified radio that a Policeman had been shot.

Q. When you ran back, where was your partner when that was happening?

A. He had gotten out of the driver's side and he proceeded right over to Officer Faulkner.

Q. When you got out -- who got out of the car first?

A. Actually, we both got out about the same time.

Q. Who went over first between the Volkswagen and

3.152

Direct - Forbes

the Ford?

A. My partner, Robert Shoemaker.

Q. And then you were following and you observed Officer Faulkner --

A. I was following and I got halfway in the middle of the wagon and I saw he was bleeding heavily, and so I ran back and I notified Radio.

Q. So you ran back and got on the radio?

A. Yes.

Q. Did you eventually go to the sidewalk area?

A. Yes, I did. After I notified Radio I proceeded back to the sidewalk where, as I was crossing between the Volkswagen and the parked auto in front of that, I came across the Defendant. He looked up at me and said, "I'm shot, I'm shot." So I stepped past him, because I saw his brother William Cook standing against the wall right near Officer Faulkner's feet, and he had his hands in his pocket. So with my service revolver in my hand I ordered him to take his hands out of his pocket slowly. He did this, he brought his hands out in front of him. I then went back to see what my partner was doing, Robert Shoemaker, and I looked back and I saw

3.153

Direct - Forbes

a revolver laying next to the Defendant.

Q. Now, did you seize any evidence?

A. Yes, I did.

Q. What did you seize? Did you bring it with you by the way?

A. Yes, I did.

Q. Why don't you just give it to me.

(Revolver is handed to ADA McGill.)

Q. Would you clear this.

(The witness complies with counsel's request.)

MR. MCGILL: Your Honor and the jury, both weapons are clear, which means they cannot fire. I'd ask that this be marked C-22, and this weapon

be marked C-23.

(Revolver is marked C-22 for identification.)

(Second revolver is marked C-23 for identification.)

MR. JACKSON: Can I see them for a minute, Jim?

MR. MCGILL: The envelope contains the cartridges.

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Direct - Forbes

(Pause.)

Q. All right, Officer, where did you seize both of those weapons, C-22 and C-23?

MR. JACKSON: May I see C-23, also, Jim?

(Pause.)

A. C-22 is a .38 caliber Charter Arms Revolver. This is the weapon I recovered next to the Defendant. It was lying on the sidewalk.

Q. And what about C-23?

A. C-23 is a .38 caliber Smith and Wesson Revolver. I uncovered this just off the curb in the street approximately five feet away from the Defendant -- or, correction, about three feet away from the Defendant.

Q. And where was the weapon in relation to Officer Faulkner?

A. It was approximately five feet away from Officer Faulkner.

Q. I'm showing you what has been marked C-4. Could you put an "R-1" and "R-21" where the weapons were? R-1 where you found the two-inch revolver and R-2 where you found Officer Faulkner's weapon.

(Witness complies with counsel's request.)

Q. I'm showing you C-4. R-1 and R-2 have been noted

3.155

Direct - Forbes

on that by you; is that correct?

A. That's correct.

Q. And you eventually took those weapons to ballistics?

A. That's correct.

Q. Did you stay with William Cook then?

A. Yes, I did. After I picked up the revolvers I walked back and I held onto him until other arriving Police could frisk him.

Q. And he had no weapons, did he?

A. No, he didn't, none that I found.

Q. Now, Officer Forbes, did Mr. Cook say anything to you?

A. As I was approaching him he was looking in the direction of my partner Robert Shoemaker, and he said, "I ain't got nothing to do with this." And as I got closer to him he looked up at me and repeated the same thing, "I ain't got nothing to do with this."

Q. Officer, when did the Defendant say that he was shot? When did he say, "I am shot, I am shot"?

A. After I notified Radio I was walking back over to the sidewalk and I had to pass almost over him.

Q. Well, at the time that you got out of the wagon and saw Officer Faulkner was in bad shape and then you

3.156

Direct - Forbes

went back to the wagon, you were unaware of what Officer Shoemaker was doing?

A. That's correct.

Q. He did not go back to the wagon with you?

A. No, he didn't.

MR. MCGILL: Okay, cross-examine.

CROSS-EXAMINATION BY MR. JACKSON:

Q. Officer Forbes, how long have you been a Police Officer?

A. Ten and a half years.

Q. You knew Officer Daniel Faulkner?

A. Pardon me?

Q. You knew Officer Faulkner?

A. Just in a passing relationship.

Q. Now, Officer, could you correct something for me? You just marked a photograph with R-1 and R-2; is that right?

A. That's correct.

Q. And they are the locations that you confiscated the weapons?

A. That's correct.

Q. On your testimony, though, you indicated that C-23,

3.157

Cross - Forbes

which is the larger weapon, the Smith and Wesson, was just off the curb in the street?

A. That's correct.

Q. On the photograph you have it marked on the sidewalk.

A. No, that would be R-1. That would be the Charter Arms, the snub-nosed revolver.

Q. But your testimony was -- what would be the Charter, tell me?

A. The Charter Arms would be R-1, which is just on the sidewalk.

Q. Yes, I understand that, and R-2 --

A. Is this Officer Faulkner's gun, which is laying just off the curb in the street.

Q. May I see that photograph again, please? (Pause.)

MR. JACKSON: Your Honor, may I approach the witness?

THE COURT: Go ahead.

MR. JACKSON: Thank you.

Q. Officer Forbes, this is R-2; is that correct?

A. That's correct.

Q. And that is, as you've indicated, the weapon of Officer Faulkner?

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Cross - Forbes

A. That's correct.

Q. And that's based on what someone told you, you didn't know that for a fact, though; is that right, that that was Officer Faulkner's weapon?

A. Would you repeat the question?

Q. Yes. Do you know that R-2, the Smith and Wesson, do you know that to be Officer Faulkner's weapon?

A. I do now, yes.

Q. But you didn't know it then?

A. Not at that time.

Q. And you only know it now based on what someone told you?

A. Yes.

Q. I just want to have that clear. And that is the weapon that is in the street

off the curb line, as you indicated?

A. That's correct.

Q. This chalk mark that is here, could you tell me who put that there?

A. I did.

Q. And you put that chalk mark to indicate that that was officer Faulkner's weapon, right?

A. That's correct.

3.159

Cross - Forbes

Q. And you're sure the Charter wasn't there; is that right?

A. Am I sure the Charter Arms was not there?

Q. Right.

A. No, it was not there.

Q. Okay, good. May I see C-3, please?

(Pause.)

Officer Forbes, when you came upon Mr. Jamal, you indicated that the two-inch gun, the Charter, was right next to Mr. Jamal?

A. That's correct. It was about a foot from his left side.

Q. A foot from his left side. And that's indicated by the mark that you put on the sidewalk; is that right?

A. That's correct.

Q. Now, did you happen to observe when your officer kicked the weapon to where it ended up, did you see your partner kick the weapon?

A. No, I didn't.

Q. All right. Now, you indicated as well, I believe, on direct examination that when your partner got out of the vehicle he went directly to Officer

Faulkner; is that right?

3.160

Cross - Forbes

A. That's correct. He was heading in that direction.

Q. He was heading in that direction, oh. So he didn't go directly to Officer Faulkner --

MR. MCGILL: Objection. He didn't say that.

MR. JACKSON: I'm asking him. Did he go directly to Officer Faulkner?

MR. MCGILL: He said he was heading in that direction, and then he said -  
-

MR. JACKSON: Your Honor, can I ask this witness to tell me?

MR. MCGILL: I'm asking him to follow what the words are.

THE COURT: Go ahead, ask him.

Q. You tell us, Officer Forbes, what did Officer Shoemaker do?

A. As he headed out of the wagon he was headed toward Officer Faulkner. That's the last time I saw him. Then I headed back to the radio.

Q. Oh, you just know the direction he was going?

A. That's correct.

Q. Officer Faulkner wasn't the only person in that direction, obviously?

3.161

Cross - Forbes

A. No.

Q. And did you hear your brother Officer say, "Watch him"?

A. No, I did not.

Q. So you didn't see -- correct me if I am wrong -- you did not see Officer

Shoemaker say or do anything with respect to Mr. Jamal?

A. No, I didn't.

Q. Now, after you came from the wagon and you made the radio broadcast, where was your partner then? I mean the first instant you saw him when you got out of the wagon, where was he?

A. He was kneeling by Officer Faulkner's side.

Q. Now, you indicate further that you saw William Cook against the wall and he made some remarks as well; is that right?

A. That's correct.

Q. And his hands were in his pockets?

A. That's correct.

Q. And you told him, "Take your hands out of your pocket"?

A. That's correct.

Q. Did you frisk him?

A. No.

3.162

Cross - Forbes

Q. Well, in response to Mr. McGill's question you said he didn't have any weapons. How do you know that?

A. None that I knew of.

Q. But you didn't frisk him?

A. I found no weapons. No, I didn't frisk him.

Q. You found none because you didn't look for any?

A. Correct.

Q. And did you have your service revolver drawn?

A. Yes, I did.

Q. And it was in what hand?

A. My right hand.

Q. Did you come to touch William Cook in any way whatsoever?

A. Yes, I did.

Q. At the moment that he took his hands out of his pockets?

A. No.

Q. Was it much later on?

A. No.

Q. Well, tell us, what did you do?

A. After he took his hands out of his pockets and I looked back to see what my partner was doing, I observed the Charter Arms next to the Defendant.  
I

3.163

Cross - Forbes

went over to pick that up, and as I picked that up I saw right off to the left of that was Officer Faulkner's gun, so I picked that up also and I placed them both in my left hand, and then I walked back over and I held on to William Cook with my right hand to his left arm.

Q. So you had two guns in your left hand, one gun in the right hand?

A. No, I'm sorry, I holstered it by that time.

Q. You had what, holstered --

A. I had my own service revolver holstered by that time.

Q. When did you holster it?

A. Before I picked up the guns, because I picked both guns up with my right hand by the wooden grips and placed them in my left hand so as not

to ruin any possible fingerprints.

Q. Tell us -- because I was going to get to that, but we might as well get to that now -- at least show us how you held the two weapons that you picked up?

A. (Indicating)

Q. Could you stand up so the jury could see as well?

(The witness complies with counsel's

3.164

Cross - Forbes

request.)

Q. Okay, holding both weapons by their grips; is that correct?

A. That's correct.

Q. And not touching either portion of the metal; is that correct?

A. That's correct.

Q. And holding them in your left hand. Okay, be seated, please. Now, when you picked up the short barrel, the two-inch, the Charter, did you still have your revolver out?

A. No, I did not.

Q. So that I'm clear about this, at this point Billy Cook had his hands in his pockets, you told him, "Take your hands out of your pockets", he stood against the wall and you said, all right, you wait there, and you put your gun away without knowing whether he had a gun?

A. After he had taken his hands out of his pockets.

Q. Right.

A. There was nothing in his hands.

Q. There was nothing in his hands, but you don't know what was in his pocket?

3.165

Cross - Forbes

A. That's correct.

Q. You don't know what was in his belt?

A. That's correct.

Q. But you just put your gun away anyway?

A. That's correct.

Q. Is that because you believed him when he said he nothing to do with it?

A. No.

Q. You didn't believe him?

A. I had no knowledge.

Q. You had no knowledge of what?

MR. MCGILL: Objection, Your Honor.

THE COURT: I'll sustain it.

Q. You saw some officers eventually come and frisk William Cook; is that right?

A. Yes, that's correct.

Q. About how long after you told him to take his hands out of his pockets?

A. Approximately two to three minutes later.

Q. Did you ever lose sight of William Cook?

A. When I bent down to pick up the revolvers, yes.

Q. You didn't see what he was doing?

A. For a split second, because I had to look down.

Q. How far away was the charter from where William

3.166

Cross - Forbes

Cook was?

A. It would be about six feet approximately.

Q. So that me and the jury can get this all together, Officer Shoemaker was kneeling beside Officer Faulkner, you were there with no gun drawn telling William Cook what to do, Mr. Jamal was also on the ground, it was just you and Officer Shoemaker there then; is that right, just the two of you, right?

A. That's correct.

Q. So you in effect were responsible for both Mr. Jamal and Mr. Cook?

A. That's correct.

Q. And you took your eye off Mr. Cook. What about Mr. Jamal?

A. Well, that's why I retrieved the weapons, so that he couldn't use the revolver that was laying next to him or -- once I saw Officer Faulkner's gun nearby I picked that up also so he wouldn't be able to use that one either.

Q. Sure, but that's after you had gone up to Billy Cook and told him to take his hands out of his pockets. Meanwhile the gun was still next to Mr. Jamal; is that right?

3.167

Cross - Forbes

A. That's correct.

Q. And you weren't watching?

A. I hadn't seen it until I turned around and saw what my partner was doing.

Q. Okay I just want to be clear about it. Now, you held on to Billy Cook,

William Cook; is that right?

A. That's correct.

Q. And so you got a chance to look at him, right?

A. That's correct.

Q. Did he have blood on him anywhere?

A. He had a drop of blood on his left cheek.

Q. Did you see where the blood came from, whether there was an injury?

A. No, I didn't.

Q. Did you look at his hands?

A. Just from a distance.

Q. Did you see blood on his hands?

A. No, I didn't.

Q. Did you have any idea where the blood on his cheek came from?

A. Not at that time.

MR. MCGILL: Objection. An idea is not

3.168

Cross - Forbes

what he observed.

Q. Did you strike William Cook?

A. No, I didn't.

Q. Did you see anyone strike him?

A. No, I didn't.

Q. Now, eventually, your brother officers came and they searched William

Cook; is that right?

A. That's right.

Q. And William Cook was handcuffed, I assume?

A. Yes.

Q. And those two weapons you kept in your left hand the entire time; is that not true?

A. That's correct.

Q. And you submitted them to whom?

A. To the Ballistics Technician.

Q. By the way, based on your ten years of experience, the manner in which you retrieved as well as held onto the weapons, is that consistent with your training and experience?

A. As best I remember, yes.

Q. As best you remember. When you retrieved weapons from the ground you picked them up by the grips as well?

A. Repeat.

3.169

Cross - Forbes

Q. You picked the guns up by the grips from the ground?

A. That's correct.

Q. And you never touched any of the metal portion of the guns, did you?

A. No, I did not.

Q. And who in particular did you submit the weapons to?

A. I don't remember his name.

Q. You mean to tell me you gave two guns to somebody and you don't

know who?

A. It was the male in charge.

Q. In charge of what?

A. At the Ballistics Room.

Q. Let me back up, I'm not attacking you, I just want -- you say you went to the Roundhouse and there was someone in charge and you gave them to him?

A. Up in the Ballistics Lab, yes. He's the desk man.

Q. Did you get a receipt for them?

A. A property receipt.

Q. You got a property receipt?

A. I had to go downstairs to get a property receipt. It was typed out.

Q. So you just left the guns with him and then you

3.170

Cross - Forbes

went somewhere else; is that what you did?

A. That's correct.

Q. When you gave him the guns what did he do with them?

A. He took them back to the Chemical Lab where they were dusted for fingerprints.

Q. So that I'm clear, too, you watched all that, this that you're telling me now?

A. Yes.

Q. Now first of all, how did you give it to him when -- I want the full scenario.

A. I handed them to him and he handled them by the grip one at a time and

laid them on the table.

Q. So you had both of them in your left hand; is that right?

A. That's correct.

Q. And you handed both of them at the same time?

A. One at a time.

Q. So you used your other hand, your right hand to take one gun and gave it to him?

A. That's correct.

Q. And he put one in each hand?

A. He took one from me at a time and he sat them on the table.

3.171

Cross - Forbes

Q. And then what happened?

A. Then they were dusted for prints by another Technician.

Q. In Ballistics they were dusted?

A. No, we went over to the Chemical Lab.

Q. I thought you said you took the weapons to Ballistics?

A. We went to Ballistics first and then we went around back to the Chemical Lab.

Q. Let's back up. When you went up to Ballistics what did you do with the guns and then where did you go? I want to know exactly, I want to know the chain of custody, sir.

A. I handed them to the Technician one at a time, he sat them on the table, then I told him I picked them up by the grips, you know, in case there were any fingerprints. So then we took them back to the Chemical Lab where another Technician dusted them for fingerprints.

Q. Both guns never left your eyesight, did they?

A. No, they didn't.

Q. When they were dusted for prints for the first time, from the time you picked them up at the scene until the time they were dusted, they never left your

3.172

Cross - Forbes

eyesight?

A. That's correct.

Q. Do you know who the Technician is that dusted them?

A. No, I don't.

Q. Do you know if it's a Technician from Crime Lab, from Ballistics or from Identification?

A. I believe they're from the Crime Lab.

Q. You'd know him if you saw him again?

A. No, I wouldn't.

Q. Have you had training at all in lifting latent prints?

A. No.

Q. Have you seen it done before?

A. Vaguely. Some crime scenes I've seen it.

Q. As best as you can recall, when the weapons were dusted for fingerprints, what did you see the Technician do?

MR. MCGILL: Objection, Your Honor. It's beyond the scope of his expertise.

MR. JACKSON: I'm just asking him to describe what he saw done.

THE COURT: Let him answer.

3.173

Cross - Forbes

Q. As best as you can recall, what did you see him do?

A. He dusted them with a red powder.

Q. When you say dust, for all of us, how do they do it?

A. It's a small brush with gray or red powder and you dust it all over the gun.

Q. Now, did he pour the powder out of the jar onto the gun?

A. No, you put the brush in the bottle.

Q. And after that did he take out some tape?

A. Yes.

Q. And he put the tape onto the gun?

A. Yes.

Q. And then withdrew the tape from the gun?

A. Yes.

Q. And then did you see what he did with the tape?

A. I believe they were placed on, like, an index card.

Q. You believe so?

A. The best of my recollection, yes.

Q. After you saw him put the tape on the index card, what happened to the index card.

MR. MC GILL: Your Honor, objection.

3.174

Cross - Forbes

Q. If you know.

MR. MCGILL: Your Honor --

THE COURT: You're going a little bit too far afield.

MR. JACKSON: Your Honor, I have a reason for asking.

THE COURT: Go ahead.

A. No.

Q. You don't know what happened. After they were dusted, the guns were dusted, then you took the guns again?

A. Yes.

Q. And by the way, this Technician did it for both weapons; is that right?

A. Yes.

Q. And when he put the tape on the card you never examined the card, did you?

A. No.

Q. You never looked on it, initialed it or anything like that?

A. No.

Q. So that if anyone were to bring the card in now, you wouldn't know whether or not it was the same card or not, would you?

3.175

Cross - Forbes

A. No.

MR. JACKSON: Thank you, I have no further questions.

REDIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Forbes, isn't it true that it's extremely rare that you're able to get

a match-up fingerprint on a weapon?

MR. JACKSON: Objection.

THE COURT: Sustained. He's not an expert, you're going to have the expert come in. Let's not get into that.

MR. MCGILL: Yes sir.

Q. Officer Forbes, when you took the weapons down to Ballistics or the Chem Lab, etcetera, were you present when they were looked at by the Ballistician?

A. Yes, I was.

Q. And did you see the condition of the weapons? --by that I mean the contents of them.

A. Yes, I did.

Q. And what were they?

A. The Charter Arms had five spent casings. I believe there were four Winchesters plus .39 caliber

3.176

Redirect - Forbes

Plus P's and one Smith and Wesson.

Q. And what I'm showing you now, C-22, the snub-nosed had five spent; is that what you said?

A. That's correct.

Q. And what does "spent" mean?

A. It means the bullet has been ejected.

Q. And what about R-2 or C-23?

A. That had five live rounds and one spent casing.

MR. MCGILL: Thank you. Nothing further, Your Honor.

MR. JACKSON: Nothing further.

(The witness is excused.)

MR. MCGILL: Officer Soboloski.

(OFFICER DANIEL SOBOLOSKI,  
Badge No. 5596, is duly sworn.)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Soboloski, on December the 9th, 1981 you

3.177

Direct - Soboloski

were a member of the Philadelphia Police Department?

A. That's correct.

Q. And you had occasion to respond to a radio call and go to 13th and Locust Streets?

A. Yes, I did.

Q. When you arrived what did you do?

A. Upon arrival at the scene that morning I observed a wounded officer laying on the sidewalk and the Defendant, which is in the Courtroom, sitting on the sidewalk.

Q. Would you point out the man who was sitting on the curb, the sidewalk?

A. With the tan shirt on (indicating).

MR. MCGILL: Indicating for the Record the Defendant in this case.

Q. What if anything did you do?

A. All right, then at that time we attempted to put the officer into a vehicle

which was too small. The officer was then placed in a wagon and transported to the hospital. I then handcuffed Jamal and he was then placed in a wagon.

Q. Is that the man you pointed out in the Courtroom before?

A. Yes.

Q. The one you handcuffed. Would you tell us

3.178

Direct - Soboloski

the circumstances of that handcuff?

A. After the officer was placed in the wagon I walked back in front of the Volkswagen and I observed Jamal sitting on the sidewalk with his feet either on the curb or in the street. He was facing in a north direction. At this time I pushed Jamal down to the sidewalk with my right hand onto the sidewalk so he could be handcuffed. At this time a struggle ensued in which I had problems handcuffing him. It was at this time other officers came to my assistance and helped me in handcuffing Jamal.

Q. And during the course of the struggle was -- did any part of the Defendant's body hit any areas of the ground or car or anything?

A. Because of the struggle that ensued, Jamal hit the sidewalk with his head or the top part of his body so that I had to handcuff him behind his back. At this time the struggle started, I could not get the handcuffs on him because of the outward motion he had his arms. He was kicking his feet, pulling his arms apart, and I was having trouble getting both arms together so he could be handcuffed properly.

Q. Now, you had assistance from a couple of officers,

3.179

Direct - Soboloski

didn't you?

A. Yes, I did.

Q. Officer Carolyn Chin and Officer John McGurk. Were these officers

also present in assisting you?

A. Yes, they were.

(At this time Police officers Carolyn Chin and John McGurk enter the Courtroom and then leave the Courtroom.)

Q. And what did you do? You finally handcuffed him, I assume?

A. After Jamal was handcuffed he was then picked up. During the course of picking him up he was still struggling, making it very hard for us to lift him up properly and take him to the wagon.

Q. All right, during the course of taking him to the wagon we accidentally ran into a pole because the pole --

THE COURT: Quiet, please. Go on, please, officer.

A. (Continuing) Because the pole was in course with the back of the wagon.

Q. His head made contact with that pole; is that correct?

A. Yes. As a result of that he came down and hit

3.180

Direct - Soboloski

his face on the ground, that's correct.

Q. Then did you take him in the wagon?

A. Yes, I did.

Q. And those officers were with you that you just pointed out?

A. That's correct, they assisted.

MR. MCGILL: Your Honor, if it please the Court, may I ask the officer to come down to the sketch?

THE COURT: Yes.

(The witness complies with counsel's request.)

Q. Officer, I'm going to ask you to approximate or as close as you can, indicate where the Defendant was when you first saw him and where he was at the time -- well, where he was at the time you were attempting to handcuff him?

A. Jamal was approximately at the right front fender of the Volkswagen sitting -- my vision was obstructed when I first was at the scene, I looked between the front of the Volkswagen and the Ford and I could not see Jamal at that time, so I walked between the vehicles and I observed him sitting on the sidewalk with his feet either on the edge of the curb or in the

3.181

Direct - Soboloski

street. When I pushed him down on the sidewalk I pushed him in the direction which would point west, in a southwest direction, so I could handcuff him behind his back.

Q. All right, now you eventually took him to the wagon; is that correct?

A. That's correct.

Q. Tell us where that wagon was? Could you tell us where the wagon was?

A. I believe the wagon was in the approximate vicinity of the -- right next to the RPC 610.

Q. And that was what, facing in the east direction?

A. The wagon?

Q. Yes.

A. Yes, facing in an east direction.

Q. And he was then put in that wagon?

A. Yes, he was.

Q. All right, thank you, you can go back to the stand, if you would please, officer.

(Pause.)

Q. At the time that you were there had officer Faulkner been taken away,

at the time that you arrived, or did you --

3.182

Direct - Soboloski

A. When I arrived on the scene officer Faulkner was still lying on the ground.

Q. And did you see William Cook there at that time?

A. No, I do not remember seeing William Cook.

Q. So the people that you were cautious of were Officer Faulkner and the Defendant? In other words, the Defendant was taken into the wagon, correct?

A. That's correct.

Q. And you didn't put anybody else in that wagon, did you?

A. No, I did not.

MR. MCGILL: Cross-examine.

CROSS-EXAMINATION BY MR. JACKSON:

Q. Officer Soboloski, do you know what time you arrived at the scene?

A. Approximately 3:46.

Q. When you say approximately 3:46, you know why is it 3:46 and maybe not 3:45? I mean, is there some reason that you weren't saying 3:45?

A. Give or take two minutes.

Q. I mean, is there something, some event that took place perhaps prior to that that you recall

3.183

Cross - Soboloski

making a record of the time or something like that?

A. At approximately 3:30 I had what is known as a club check. It was at

3:00 o'clock and at 3:30.

Q. Fine, now do you recall -- were you the driver or the recorder that evening, on December 9th?

A. I was solo, I was by myself.

Q. Oh, I'm sorry. Do you recall whether in fact you recorded the time that you were going to the scene or you went to the scene?

A. I entered it but probably not until everything was over.

Q. Okay, now when you arrived on the scene you were in a solo car, you were in a marked vehicle?

A. Yes, I was.

Q. In uniform?

A. Yes.

Q. By the way, approximately how tall are you, sir?

A. Approximately six foot.

Q. And approximately how much do you weigh?

A. Approximately 230 pounds.

Q. Now when you arrived at the scene you indicated that you had to look between the cars before you saw Mr. Jamal; is that right?

A. I had to walk between the cars. It would be just

3.184

Cross - Soboloski

about between the cars before I could see him.

Q. When you arrived at the scene did someone else tell you that Mr. Jamal was there?

A. No one told me specifically, no one said that was Jamal, no.

Q. Well, not his name, but did they say, Lock him up, or something?

A. No, no one told me that.

Q. Why did you lock him up? Why did you put handcuffs on him?

A. Because of the scene. We evidently had an injured officer, we evidently had a crime scene, we did not know if it was a homicide yet.

Q. I understand that, but he was just a man on the curb; why did you go to handcuff him if no one --

A. He was --

Q. Let me finish the question, sir. (Continuing) If no one told you to handcuff him? You weren't there when it happened, he was sitting on the curb. Why did you go to handcuff him?

A. Because at that time he was a suspect.

Q. How do you know if no one told you?

A. It's not my job to find out whether he did it or not. If he's a suspect, he gets questioned later.

3.185

Cross - Soboloski

Q. There was a number of other people there at the time, wasn't there?

MR. MCGILL: Objection.

THE COURT: Please don't argue.

MR. JACKSON: I'm not, sir, I'm not.

Q. There were a number of people there at the scene, were there not?

A. What's a number of people?

Q. More than two?

MR. MCGILL: Objection. What is he talking about, officers, civilians?

THE COURT: Be more specific.

Q. Other than Police officers, were there any other civilians on that pavement or in that street in the immediate vicinity?

A. At which time, when I pulled up?

Q. Yes, sir.

A. The only people I remember seeing were just two people, one Police officer and one civilian -- excuse me, I saw two Police officers and one civilian.

Q. Who was the civilian that you saw?

A. Jamal.

Q. You didn't see Cynthia White?

A. I don't know Cynthia White.

3.186

Cross - Soboloski

Q. Did you see a woman?

A. No, I didn't.

Q. Does it mean she wasn't there or you just --

MR. MCGILL: Objection.

Q. I'm trying to find out is it because you didn't focus your attention on her --

MR. MCGILL: Objection.

THE COURT: Well, he's answered the question.

Q. Okay, so that's all you saw. What caused you to walk between the cars?

A. That's where my vehicle pulled up, between the cars, and before even getting out of the vehicle I looked through the passenger side door and I saw Officer Faulkner lying on the sidewalk.

Q. And you saw officer Faulkner, but you couldn't see Mr. Jamal at that time?

A. My eyes were focused on Officer Faulkner at the time.

Q. And you got out of your vehicle and you had to walk around your vehicle to go to get across the street; is that right?

A. I was parked in the middle of the street.

Q. Facing east?

3.187

Cross - Soboloski

A. That's correct.

Q. So you walked between the two cars and then you saw Mr. Jamal?

A. When I -- before I got between the cars we attempted to put Officer Faulkner in my vehicle. I only walked around to the passenger side rear door on my side where I opened the door, and because of the size of the vehicle we did not put Officer Faulkner in the car. We then carried him and put him in a wagon.

Q. Okay, then you returned back to the scene and you saw Mr. Jamal there?

A. That's correct.

Q. Now, at this point, up to this point, if I understand you correctly, no one said that Jamal was a suspect or anything else, he was just there. No one even mentioned to you that he was there; is that right?

A. No one -- I asked the general question as to who the male was on the sidewalk.

Q. Oh, you did ask that?

A. Yes. Nobody told me, I asked a general question.

Q. When did you ask that general question?

3.188

Cross - Soboloski

A. When I returned back to the scene.

Q. Before handcuffing him?

A. That's correct.

Q. When I asked you before how you knew he was a suspect -- fine, all right. Now you're saying that you asked a question and you got the response that he was a suspect, and then you went over to handcuff him; is that right?

A. That's correct.

Q. Did anyone tell you to handcuff him?

A. No.

Q. Just following procedure. And if I understand you correctly, when you first saw him he was sitting; is that right?

A. Yes.

Q. And you indicated, I believe, on direct examination that you pushed him in a southwesterly direction in order to handcuff him?

A. That's correct. It was towards the corner of 13th Street, 13th and Locust.

Q. Okay, in a southwesterly direction, so that you could handcuff him behind his back?

A. That's correct.

Q. And you customarily handcuff all prisoners

3.189

Cross - Soboloski

behind their back; is that right?

A. That is procedure.

Q. And you indicated that you pushed him, right?

A. That's correct.

Q. Was he struggling with you before you touched him?

A. How could he be struggling with me if I didn't touch him?

Q. Just answer the question yes or no, sir.

A. No.

Q. So it's when you touched him he began to struggle with you?

A. That's correct.

Q. So you pushed him before he even did anything to you?

A. That's correct.

Q. Why did you push him, sir?

A. Because he was a suspect.

Q. So it's all right to push suspects?

MR. MCGILL: Objection, Your Honor. It's obvious where he's going. Objection, argumentative. It's a series of argumentative questions he's been permitted to ask, sir. I'm objecting.

3.190

Cross - Soboloski

THE COURT: Objection sustained. You've made your point.

Q. Do you push all suspects?

MR. MCGILL: Objection.

THE COURT: I will sustain that.

Q. Did you know Mr. Jamal was injured?

A. No, I didn't.

Q. Did you ask him to get up?

A. No, I didn't.

Q. Did you attempt to stand him up so you could handcuff him?

A. No, I didn't.

Q. You found it more convenient to push him than to handcuff him?

MR. MCGILL: Objection, Your Honor, argumentative.

THE COURT: Sustained.

Q. Officer, there were other officers at the scene there with you; is that right?

A. That's correct.

Q. I note there were two other officers who came in here. Were there other officers at the scene?

A. After what time are you speaking of?

Q. At the time that you attempted to handcuff

3.191

Cross - Soboloski

Mr. Jamal.

A. There was one other officer that I had -- besides officer Faulkner there was one other officer that was there within my vision.

Q. With regard to those persons who were helping you handcuff Mr. Jamal, it was just those two other officers and yourself?

A. I believe so.

Q. You believe so?

A. I don't know for a fact. I don't know how many Policemen were there.

Q. Did you attempt to handcuff Mr. Jamal by yourself at first?

A. Yes, I did.

Q. And you were unsuccessful and then -- did you call for help or was help just there?

A. Help was already on the way.

Q. And how long would you say that you struggled with Mr. Jamal before that assistance came to you?

A. A good couple of minutes.

Q. A couple of minutes. This whole couple of minutes Mr. Jamal was on the ground; is that right?

A. That's correct.

Q. And you struck him a few times, didn't you?

3.192

Cross - Soboloski

A. No, I didn't.

Q. Other than the one time that you pushed him -- and we'll leave out the pole for a moment, his head hitting the pole accidentally --

MR. MCGILL: Objection, argumentative, Your Honor. It's continuously argumentative and I object.

THE COURT: Just make your point.

MR. JACKSON: Yes, sir.

Q. I want to know if you touched him after you pushed him?

A. Yes. I carried him to the wagon.

Q. Other than carrying him to the wagon did you push him?

A. No.

Q. Did you strike him in any way?

A. No.

Q. Did you see him struck by anyone?

A. No.

Q. Did you see his face hit the ground?

A. I wasn't underneath his face. I could not see his face hit the ground.

Q. You could not see his face hit the ground?

A. No.

3.193

Cross - Soboloski

Q. But my question is, did his face hit the ground?

A. In most likeness, yes.

Q. Most likely it did. All right. Who or what caused his face to hit the ground?

A. After he hit the pole?

Q. No, I'm talking about before that, sir.

A. After he was pushed to the ground --

Q. Let me back up because I'm confused. You first came upon the scene, you pushed him, we got that established.

MR. MCGILL: Objection. Repetitious.

MR. JACKSON: Your Honor, I'm trying --

MR. MCGILL: You're trying to lead him four times.

MR. JACKSON: I'm not.

Q. I'm trying to know if you saw him struck between the time you pushed him the first time and the time he was carried to the wagon. Did you see his face hit the ground?

MR. MCGILL: What are you asking him, whether he was struck or whether he hit the ground?

Q. My question is, did you see his face hit the ground?

A. No, I did not see his face hit the ground.

3.194

Cross - Soboloski

Q. Did you see anyone strike him?

A. No, I didn't.

Q. While you were trying to handcuff Mr. Jamal you were just holding his arm?

A. I was attempting to handcuff him.

Q. When you say "attempting", tell us what you mean by attempting?

A. It's the procedure to handcuff all prisoners behind their back in this fashion. I did have one handcuff, I believe, on his left arm, and while attempting to bend his other arm back to handcuff him he started his arms in an outward motion so whereas I could not handcuff him. You cannot handcuff someone unless their arms are approximately three inches apart, no more, because the handcuffs are only that big.

Q. Okay, now when you pulled his left arm, okay, you said you believe you had a cuff on the left arm; is that right?

A. Yes.

Q. And you pulled his hand behind his back --

A. That's correct.

Q. That's the direction you had pushed him to the ground; is that right? He was on his left arm,

3.195

Cross - Soboloski

because you pushed him in a southwesterly direction you told us earlier; is

that right?

A. That's correct.

Q. So he was on his left arm anyway?

A. No, he was laying on his upper torso.

Q. How was he laying on his upper torso, Officer, when you say when you arrived at the scene his feet were in the street and his face was towards the wall?

A. No, he was facing north.

Q. All right, I understand that, he was facing Locust Street, right?

A. That's correct.

Q. And you pushed him away from Locust Street in a southwesterly direction?

A. That's correct.

Q. So he would have been on his left arm, wouldn't he?

A. No. He turned onto his chest.

Q. He turned all the way over when you pushed him?

A. When he got pushed, yes.

Q. Oh, I'm sorry. Did he groan or anything when you pushed him?

A. I don't remember.

3.196

Cross - Soboloski

Q. Then when you pulled his arm he started pulling it back?

A. That's correct.

Q. Would that be a natural reaction for someone who was shot?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

Q. Now, he was on his chest and you still had some difficulty handcuffing him; is that right?

A. That's correct.

Q. And the other two officers came and assisted you, Officer McGurk and, I believe, Officer Chin?

A. That's correct.

Q. Were they kneeling on him, do you know?

A. No.

Q. Was anyone kneeling on him?

A. No.

Q. So all three of you were standing up trying to handcuff him?

A. Squatting down.

Q. Squatting, Okay. So then you eventually picked him up, all three of you?

A. That's correct.

3.197

Cross - Soboloski

Q. And carried him?

A. That's correct.

Q. Now, you indicated when you picked him up, Mr. Jamal was right here between the Ford and the Volkswagen; is that correct?

A. He was facing the right front fender of the Volkswagen.

Q. That's right here (indicating); is that right?

A. That would be approximately right next to where the front tire -- the right front tire of the Volkswagen is.

Q. Now, where in this area was the wagon that you took him to?

A. On the diagram I believe it was right next to where the diagram of RPC 610 is.

Q. So the wagon is here (indicating)?

A. In that proximity, yes.

Q. Now, you saw Mr. Jamal when you came in between the Volkswagon and the Ford. After handcuffing him he was pretty much right near this wheel, you say. The pole was there that you accidentally ran his head into?

A. I believe the pole was at the end of the Volkswagen, the right rear corner of the Volkswagen.

3.198

Cross - Soboloski

Q. You're saying right here (indicating)?

A. Approximately, yes.

Q. Now, you said it was an accident?

A. That's correct.

Q. How were you carrying him?

A. Under his armpits.

Q. You had one armpit and someone else had the other armpit?

A. That's correct.

Q. And was he standing?

A. No, he wasn't standing because he was still struggling. He would not get on his feet so we had to help him to his feet.

Q. He would not or could not?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

Q. Well, could he get up?

MR. MCGILL: Objection.

Q. All right, and you carried him towards the pole. Had anyone struck him by that time with anything?

A. I did not see anyone strike him.

Q. You remember testifying in this matter at another hearing on, I believe, June 3rd?

3.199

Cross - Soboloski

A. I remember testifying, I'm not sure if that was the date.

Q. Okay. You recall testifying; do you remember saying that a couple of times his face was pushed to the ground?

MR. MCGILL: Objection, Your Honor.

THE COURT: I will sustain the objection.

Q. Do you recall if his face was pushed to the ground a couple of times?

A. No, I don't recall that.

Q. Okay. After he hit the pole what happened, sir?

A. After he hit the pole, because of the way we were walking to the wagon, he then fell to the sidewalk.

Q. Did any of the other officers hit the pole?

A. I don't believe so.

Q. And after he hit the pole his face hit the ground?

A. That's correct.

Q. So you, in effect, kept dragging him?

A. Partially.

Q. And from the time that you first handcuffed him until the time that you got him in the wagon, how much period of time went by, approximately?

A. Approximately three minutes, four minutes, somewhere

3.200

Cross - Sobolosky

in that area.

Q. So you struggled with him by yourself at least the same amount of time that the other two officers struggled with him as well because I think you estimated it was two minutes when you struggled with him before aid came?

A. I was there before the other officers.

Q. Yes, I understand, so you did about two minutes and then they came for about a minute or two minutes?

A. Somewhere in that area.

Q. Fine. Now, during this period of time did Mr. Jamal say anything at all?

A. He may have said something, nothing direct to me.

Q. You don't remember hearing what he said?

A. No.

Q. Now, you took him to the wagon?

A. Yes, I did.

Q. And you didn't actually put him in though, right?

A. I did help place him in the wagon.

Q. When you say to help "place him" I mean, did you go into the wagon with him to see if he was in there?

A No, I did not.

Q. Did you notice at the time if he had any injuries on him?

3.201

Cross - Sobolosky

A. No, I did not.

Q. So then would it be fair to say as far as you knew, when you put him in the wagon he had no injuries on him at all?

A. I did not know he was injured, right.

Q. Fine.

(Pause.)

Q. By the way, do you know Officer Forbes?

A. Yes, I do.

Q. Did you see him holding some weapons?

A. Yes.

Q. Do you remember how many?

A. I believe it was two weapons.

Q. By the way, after Mr. Jamal was in the wagon did you see anyone entering the wagon?

A. No, I did not.

Q. But you didn't continue to watch the wagon, did you?

A. No.

MR. JACKSON: Excuse me one moment.

(Pause.)

Q. Officer Sobolosky, the resistance that you indicate Mr. Jamal was

putting forth, is it fair to characterize it was minor resistance?

3.202

Cross - Sobolosky

A. In my estimation it would be minor.

Q. Fine.

A. I've had harder people to handcuff.

Q. Fine, sir.

MR. MCGILL: Is that it, Mr. Jackson?

MR. JACKSON: Your Honor, I thought I would let you know when I have enough.

THE COURT: Go ahead.

MR. JACKSON: Thank you. I'm not done with this officer yet, sir.

Q. When you saw Officer Forbes with the weapons where was it?

A. Somewhere in the vicinity between -- on the sidewalk, I believe it was, standing somewhere between the rear bumper of the Volkswagen or the front of the radio patrol car and the south wall.

Q. Someplace around this area (indicating)?

A. Somewhere, I don't remember exactly where he was. I know he was standing on the sidewalk.

Q. And the wagon was around in here?

A. In that proximity, yes.

Q. Do you know Inspector Giordano?

A. Personally, no.

Q. Do you know who he is?

3.203

Cross - Sobolosky

A. He's an inspector.

Q. Do you know him when you see him?

A. Yes.

Q. Did you see him that night?

A. No, I didn't.

MR. JACKSON: No further questions at this time.

REDIRECT EXAMINATION BY MR. MCGILL:

Q. Officer Sobolosky, you gave a statement to the Police, did you?

A. Yes, I did.

Q. 12-9-81, December the 9th, '81 --

MR. JACKSON: Objection.

Q. Would you read those three lines to yourself?

MR. JACKSON: Objection. Number one, Your Honor, the document has not been marked, he has not asked if he could approach the witness, and he's doing it anyway. I thought this was your Courtroom, Your Honor

THE COURT: It is. Just make the objection.

MR. JACKSON: Yes, Sir.

THE COURT: Objection is overruled.

3.204

Redirect - Sobolosky

Let's move it along.

MR. MCGILL: Yes, sir.

Q. Would you read those three sentences to yourself?

MR. JACKSON: May I have an opportunity to see the document, sir?

THE COURT: Do you have another copy?

MR. JACKSON: I don't know what it is, it hasn't been identified.

THE COURT: It's a statement that he made to the Police.

MR. MCGILL: On 12-9-81. They have received everything we've had for four or five months.

THE COURT: Do you have that statement?

MR. JACKSON: Your Honor, I didn't know what it was since it wasn't marked.

THE COURT: His statement he made. Do you have it in your possession?

MR. JACKSON: No, I do not, sir, and, Mr. McGill, I brought that to your attention earlier today, sir.

MR. MCGILL: But as far as we know, they have had this for four months.

THE COURT: Let me see that.

3.205

Redirect - Sobolosky

(Pause.)

Did you read that to yourself?

THE WITNESS: Yes, sir, I did.

BY MR. MCGILL:

Q. Did you give that on December the 9th, 1981?

A. Yes, I did.

Q. Is it accurate to say that you said that you had asked a general question directed at anyone at the scene as to who the Negro male was and was he part of the job, that you told the Police --

MR. JACKSON: Objection, Your Honor.

THE COURT: Do you want to see me at sidebar?

MR. JACKSON: Yes, sir, if you don't mind.

(The following transpired at sidebar with the  
Defendant present and out of the hearing of the jury:)

THE COURT: What's the basis of your objection?

MR. JACKSON: Your Honor, he just -- first of all, he just gives him a document that he asks him to read and it's beyond the scope.

THE COURT: No, it's not, it's going into --

MR. MCGILL: It's a prior consistent

3.206

Redirect - Sobolosky

statement.

THE COURT: It's a prior consistent statement to what he's saying now. He's trying to rebut that. You dug into that area and he's now trying to show that on that night he made this statement which conforms to what he's now saying.

MR. MCGILL: It's a prior consistent statement.

THE COURT: Sure, go ahead.

(The following transpired in open Court in the presence of the jury:)

BY MR. MCGILL:

Q. The Officer stated that he asked a general question and you directed it to anyone at the scene as to who the Negro male was and was he part of the job. He stated that someone replied, yes, and then they added that they thought he was; is that correct?

A. I did, yes.

Q. Did you hear over the radio any call or direction that an officer was

shot?

A. Yes, I did.

Q. And when you arrived at the scene did you see Officer Faulkner?

3.207

Redirect - Sobolosky

A. Yes, I did.

Q. Did you see him in a pool of blood at that time?

A. Yes, I did.

Q. Did you see his wound at the time?

A. I could not make out exactly where it was, but it was coming from the head vicinity. How close was Mr. Jamal to Officer Faulkner?

MR. JACKSON: Objection, Your Honor.

THE COURT: I didn't hear the question.

MR. MCGILL: I said, how close was the Defendant to Officer Faulkner at the time he saw him.

MR. JACKSON: Objection.

THE COURT: Rephrase that question first.

Q. Where was the Defendant in relation to Officer Faulkner when you first saw him after you saw the wounded officer?

A. They were approximately four, five or six feet apart.

Q. And you recall now asking that general question that I just read?

A. Yes.

Q. At that time, sir, after that radio call, seeing Officer Faulkner in that position and this

3.208

Redirect - Sobolosky

Defendant there, is it not a requirement and police procedure to arrest and neutralize the situation?

A. Yes, it is.

Q. Did you know whether or not he had a weapon on him at that time?

A. No, I did not.

Q. Did you know whether or not you were going to be shot in a couple of moments?

A. No, I did not.

MR. JACKSON: Objection.

MR. MCGILL: I have nothing further, Your Honor.

MR. JACKSON: I have nothing further either, Your Honor.

MR. MCGILL: Thank you, Your Honor. Mr. Robert Chobert is next.

(The witness is excused.)

MR. JACKSON: Your Honor, may we see you at sidebar for a moment?  
We don't need this on the Record.

(A discussion is held at sidebar off the Record.)

3.209

Direct - Chobert

(ROBERT CHOBERT, is duly sworn.)

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION BY MR. MCGILL:

Q. Mr. Chobert, would you please speak up, sir, so that we can hear you, the jury and all, when you answer these questions. All right?

A. Yes.

Q. Do you hear me all right, sir?

A. Yes, I do.

Q. Now, Mr. Chobert, on December 9, 1981 were you employed at that time?

A. Yes, I was.

Q. In what capacity were you employed?

A. As a cab driver.

Q. For what company at that time?

A. The name is Crescent.

Q. Did you have occasion a little bit before 4:00 a.m. on December 9, 1981 to be at 13th and Locust Streets?

A. Yes, I was.

3.210

Direct - Chobert

Q. And did you have occasion specifically to be at the southeastern corner of 13th and Locust Streets?

A. Yes.

Q. What were you doing there?

A. I let my fare off.

Q. What did you observe, what happened?

A. Well, I let my fare out and I'm marking down on my pad how much it was, and then I heard a shot. I looked up, I saw the cop fall to the ground, and then I saw Jamal standing over him and firing some more shots into him.

Q. Now, you used the word and name Jamal. I'll ask you this: How many times did you see that individual shooting the Police Officer when he was

on the ground after he had fallen down?

A. What was that again, please?

Q. You said you heard a shot; is that right?

A. Yes.

Q. You looked up, and what did you see the officer do?

A. I saw the officer fall.

Q. And then what did you see happen? Just say what you saw happen then.

A. I saw him shoot him again several more times.

3.211

Direct - Chobert

Q. Several more times?

A. Yes.

Q. Now, what then did you see that you referred to as the shooter do?

A. Then I saw him walking back about ten feet and he just fell by the curb.

Q. All right, and then what happened?

A. Then I got -- I started getting out of my cab, I started walking to the cop to see if I could help him and then all of a sudden Police officers came and told me to get back into my cab.

Q. All right, and what did you see? Did you see the man at the curb any more, or what did they do to the man at the curb?

A. They just stuck him in a wagon.

Q. And where did you say you went?

A. I went back and got in my cab.

Q. And what then happened?

A. And a couple -- about -- a couple minutes later a Police officer came

over and asked me if I seen this thing.

Q. What did you say?

A. I said yes, I did. He said, Did you see the guy that shot the cop; and I said, yes.

3.212

Direct - Chobert

Q. You have to speak up loud. You may be a little nervous, speak up loud so I can hear you. The officer came to you and asked what?

A. If I saw what happened, and I told him yes.

Q. And then what?

A. Then he asked me if I ever see the guy again, would I know him. I said yes, I would. They took me over to the wagon and asked me, is that the guy. I said yes, it is.

Q. How much time really transpired from the time that you first saw the shooter shooting the officer and the time that you saw the shooter down at the curb until the time that you went and identified him in the wagon?

A. Just a couple of minutes.

Q. At the time when you saw the shooter shooting the officer on the ground was there anyone else around, around the officer and the shooter?

A. Yes, another black male.

Q. And where was he in relation to the officer as well as the shooter?

A. Where?

Q. Yes.

A. Standing against the wall.

3.213

Direct - Chobert

Q. Other than those two males and the police officer, was there anyone

there?

A. No.

Q. Now, this individual, sir, that you saw shooting the officer, would you look around the Courtroom and tell me if you see if he is in the Courtroom?

A. Yes, he is.

Q. Will you point him out?

A. He's right there (indicating).

Q. Would you describe what he has on?

A. What he got on now?

Q. Yes.

A. He has a long shirt, a tee shirt, and a beard and long natty hair.

Q. Is there any doubt in your mind at all that that man is the man who shot the officer?

A. That's the man all right. I got no doubt.

MR. MCGILL: Permission of the Court, may I ask him to go to the sketch?

THE COURT: That sketch?

MR. MCGILL: Yes.

THE COURT: All right.

Q. Now I want you to move, if you can, a little bit back here, over here so the jury can see.

3.214

Direct - Chobert

Q. Would you show us approximately where you were? This is 13th Street, this direction, this is Locust Street on there, right?

A. Yes, sir.

Q. Indicate to the Court exactly where you were?

A. Right here (indicating).

Q. Now when you went and identified the Defendant in the wagon, can you indicate where the wagon was?

A. Right here.

Q. All right, indicating for the Record beside the RPC 610 vehicle, on the left side of it. And approximately, if you can recall, when you saw the Defendant shooting the officer where was the Defendant, if you can remember?

A. Right around here somewhere (indicating).

Q. And where was the officer?

A. (Indicating).

Q. And where was the other male?

A. By the wall (indicating).

Q. Now, when you got out of your cab and started to walk toward -- to help the officer out, how far did you get?

A. I got about right here (indicating).

3.215

Direct - Chobert

Q. All right, indicating the right side of the RPC 610. And then, as I understand it, you went back to your cab; is that correct?

A. Yes.

Q. You were told to go back?

A. Yes, I was.

Q. Did you stop walking forward at the time when the Police arrived; is

that correct?

A. Yes.

Q. From the time that you saw the Defendant shooting the Police officer until the time that the Defendant was placed in the wagon, did you ever lose sight of the Defendant?

A. No, I didn't.

Q. Come up here, if you would, Mr. Chobert. I will ask you to stand -- you don't have to come down, but I would ask you to stand, with the Court's permission.

(Witness complies with counsel's request.)

Q. Now, when the Defendant was standing over the officer, could you show me exactly what motion he was making or what you saw?

A. I saw him point down and fire some more shots into

3.216

Direct - Chobert

him.

Q. Now you're indicating, for the Record, a movement of his right arm with his finger pointed toward the direction of the ground and moving his wrist and hand up and down approximately three, four times; is that right?

A. Yes.

Q. You may sit down.

MR. MCGILL: Cross-examine. May we see you at sidebar, Your Honor?

THE COURT: Yes.

(The following transpired at sidebar out of the hearing of the jury:)

MR. MCGILL: Your Honor, he has a copy of his record -- I will give him another copy of this record -- he is on probation for arson, five years probation. There is no criminal conviction of crimen falsi. Do you --

MR. JACKSON: I would like to see it for sure, too, and I'm not so sure

that arson isn't crimen falsi.

MR. MCGILL: Arson is definitely not crimen falsi.

3.217

MR. JACKSON: If it's done for personal gain, if it's done for hire, it's crimen falsi. You can't say just because he is convicted of setting a fire --

THE COURT: I don't think arson is crimen falsi. Burglary would be, robbery would be.

MR. JACKSON: Anything that shows dishonesty generally.

THE COURT: Arson doesn't necessarily show --

MR. JACKSON: That's what I'm saying. If it's done for personal gain or for profit, then it would be.

THE COURT: Well, we'll have to do that out of the hearing of the jury.

MR. JACKSON: I would like to find that out, Judge.

THE COURT: Take a five-minute recess with the jury please.

(The jury is excused for a five-minute recess,  
and the following transpired at sidebar:)

THE COURT: What he wants to do is out of the hearing of the jury go into that arson

3.218

to see if it was done for monetary gain.

MR. MCGILL: Wait a minute, Judge.

THE COURT: I don't know that --

MR. MCGILL: Wait a minute, Judge. This is not -- the answer is no. There is no way this is crimen falsi.

THE COURT: Do you have any law to support what you're saying?

MR. MCGILL: All right, Arson for personal gain, but it's not theft. It's not

theft.

MR. JACKSON: It would be if he did it for hire, if he did it for insurance. It would be the same thing, what's the difference? It's fraud. That's what it is. It constitutes fraud and to say that he just lit a match and burned something -- what I'm saying is if he did it for money, for personal gain of some sort, it's crimen falsi. You have to look beyond the conviction. You just can't go to arson. Do you have anything in your records? What does it show, just arson? What happened in the case?

MR. MCGILL: The case -- it's not the

3.219

case, Judge, it's the charge that's relevant. It's not the case, it's the charge.

MR. JACKSON: I would disagree.

MR. MCGILL: There's just no way that arson is crimen falsi. Here it is, here's his record.

(Pause.)

THE COURT: See, we don't know whether he was convicted of the arson or criminal mischief or what. You don't have the complete record?

MR. MCGILL: We can -- you mean the computer? I don't have the computer sheet, but he tells me arson.

Judge, if you want to bring him over here out of the hearing of the jury, if you want to bring him over and ask him; I just don't feel that it's fair to him in public with this press around him, Judge. That's what would bother me very much.

THE DEFENDANT: Judge, I got to go to the bathroom.

THE COURT: Go ahead. Take him to the bathroom.

THE COURT: Come over here, Mr. Chobert.

3.220

(The witness complies with the court's request and comes to sidebar.)

MR. MCGILL: Mr. Chobert, we're trying to determine in terms of background your criminal history. You are presently under probation for,

what is the conviction?

THE WITNESS: Arsonist.

MR. MCGILL: Arson?

THE WITNESS: Yes.

MR. MCGILL: And were you also convicted of burglary, or was it just arson?

THE WITNESS: It was just arsonist.

MR. MCGILL: All right. There are other charges on there. What is there?

THE COURT: Causing a catastrophe and criminal mischief. What happened on those, do you know?

MR. MCGILL: Criminal mischief, that's not crimen falsi.

THE COURT: I know that but you're asking me. It's cause or risk of a catastrophe. Was that what it was that you were convicted of?

MR. MCGILL: What were you found guilty of?

3.221

The Judge wants to know what you were found guilty of.

THE WITNESS: I threw a bomb into a school.

THE COURT: You threw a bomb into a school?

THE WITNESS: Yes.

THE COURT: What kind of a bomb?

THE WITNESS: A Molotov.

THE COURT: A Molotov cocktail?

THE WITNESS: Yes.

THE COURT: You just threw it into a school building?

THE WITNESS: Yes.

THE COURT: Where was this, what school building?

THE WITNESS: John Bartram.

THE COURT: And how old were you when you did that?

THE WITNESS: Eighteen.

THE COURT: You were eighteen?

THE WITNESS: Yes.

THE COURT: Did you go to that school?

THE WITNESS: Yes.

3.222

THE COURT: And that's why you threw it in there?

THE WITNESS: No, that ain't why. I got paid for doing it.

MR. JACKSON: I'm sorry, I didn't hear that.

THE WITNESS: I said I got paid for doing it.

MR. MCGILL: What do you mean --

MR. JACKSON: That's the reason, that's crimen falsi.

THE COURT: That's not crimen falsi.

MR. JACKSON: If you've got --

MR. MCGILL: That is not crimen falsi. He got paid for doing it --

MR. JACKSON: He got paid for doing it, that is crimen falsi.

MR. MCGILL: Even first degree murder is not crimen falsi if you get paid on a contract basis. That's not crimen falsi, and that's not theft by deception. That's definitely wrong. A murder is not crimen falsi when you have a contract.

THE WITNESS: Your Honor, can I say something?

3.223

THE COURT: Yes.

THE WITNESS: How come you bring this up, my background?

THE COURT: Well, he is raising the issue and that's why I want to hear this while the jury is not here.

THE WITNESS: It doesn't matter about nobody else, it's my background.

THE COURT: I know that, but the only time it would be is if it was in the nature of crimen falsi. I guess I have to make a decision, and I don't think that arson is crimen falsi.

MR. MCGILL: It is not?

THE COURT: I will make that decision.

MR. JACKSON: If that's your ruling, sir.

THE COURT: Okay.

(The following transpired in open Court  
in the presence of the jury:)

CROSS-EXAMINATION BY MR. JACKSON:

Q. Good afternoon, Mr. Chobert. Mr. Chobert, I don't want to know where exactly, but do you live in

3.224

Cross - Chobert

Philadelphia?

A. Yes, I do.

Q. Fine. Do you know Officer Faulkner, or did you know Officer Faulkner?

A. Personally? No, I didn't.

Q. Do you know other Police in the 6th District?

A. No.

Q. None?

A. No.

Q. You never met any of them?

A. I met them but not friends.

Q. They're not friends, but you met them?

A. Yes.

Q. How long before this incident?

MR. MCGILL: Objection. Irrelevant.

THE COURT: I'm going to sustain the objection unless you can tell me where you're going. Come over here.

(The following transpired at sidebar with the Defendant present out of the hearing of the jury:)

THE COURT: Where are you going in this line of questioning?

MR. JACKSON: I just want to find out if

3.225

Cross - Chobert

he has some bias for the officers.

THE COURT: You know he doesn't. The only contact he had with the Police was --why don't you come out and ask him?

MR. MCGILL: What? Ask him what?

THE COURT: I don't know, he says he thinks there is some bias.

MR. MCGILL: I thought you meant ask him about his record.

MR. JACKSON: Oh, no. No, I was just leading him to find out about -- I

was going to ask him one or two questions to find out how long -- he says he met them, I think he said they weren't friends, and I just want to know how soon before this incident, because he says these officers of the Sixth District, not just Police Officers but Sixth District Police Officers.

THE COURT: But then you're going to get into the fact that they were the ones that arrested him for intoxicated driving.

MR. JACKSON: I'm not going to ask him that.

THE COURT: But he's going to think that that's where you are going. Sure, he knows these officers, because he's been arrested twice for

3.226

Cross - Chobert

intoxicated driving.

MR. JACKSON: Both in the Sixth?

THE COURT: I don't know. He says he has no friends that are Police Officers. These fellows are not friends. The only thing I can assume from that is that they are the ones that locked him up.

MR. MCGILL: It's an indirect way of doing it. The only contact he has had with Police Officers has been that.

THE COURT: If you ask him, it's a different story.

MR. JACKSON: Okay, I'll ask him that.

(The following transpired in open Court  
in the presence of the jury:)

BY MR. JACKSON:

Q. Mr. Chobert, now you've indicated that you've met Police officers from the Sixth District but they're not friends of yours; is that right?

A. Yes.

Q. Do you have any friends in the Police Department?

A. Yes, I do.

Q. Are any of these friends -- have any of these friends formerly worked in the Sixth Police District?

3.227

Cross - Chobert

A. No.

Q. You're certain of that?

A. I'm sure.

Q. I'll leave that alone for the moment. Mr. Chobert, you indicated that at the time of this incident you were letting out a fare at 13th and Locust Street, a woman; is that right?

A. Yes, I did.

Q. And you pulled up to the curb and that would have been the southeast corner of 13th and Locust; is that right? Is that right, right here, just past the corner?

A. Yes.

Q. Right there (indicating)?

A. Yes.

Q. And what side of the car did your passenger get out, do you remember?

A. On the right-hand side.

Q. So that would have been on the sidewalk, right?

A. Yes.

Q. When she got out did you see if anyone else was on the corner?

A. No, I didn't.

Q. Did you see anyone on the pavement on that side of

3.228

Cross - Chobert

the street?

A. No.

Q. Now, you started to write something on your waybill, right, your log?

A. Yes.

Q. You know, how much it was and where you came from and all of that, right?

A. Yes.

Q. And while you were doing that you heard a shot?

A. A shot, that's what I said.

Q. One shot?

A. Yes.

Q. When you heard that shot you were still writing and you raised your head, right?

A. Yes.

Q. And you were obviously seated in the driver's side of your cab; is that correct?

A. Yes.

Q. And there was a Police car 610 in front of you, right?

A. Yes.

Q. How much distance was between you and the Police car, between your vehicle and the Police vehicle?

A. About a car length.

3.229

Cross - Chobert

Q. Pardon me?

A. One car length.

Q. One car length?

A. Yes.

Q. And you then indicated that you saw who you're certain is Mr. Jamal, right?

A. Yes.

Q. So you saw Mr. Jamal shoot the Police Officer; is that right?

A. Yes.

Q. What hand did he have the gun in?

A. I didn't take notice of that.

Q. Wait a minute.

A. I didn't take notice what hand.

Q. Did you see the gun?

A. No, I didn't see the gun.

Q. Did you see a gun?

A. No.

Q. Did you see the flash of the weapon?

A. No, but I heard shots.

Q. You heard shots?

A. And I saw him pointing.

Q. Pardon me?

A. I saw him pointing his hand, too.

3.230

Cross - Chobert

Q. So you assume the shot must have come from the man who had his hand out?

A. Because there were only two guys there.

Q. I understand that, but you are saying you heard shots and you saw a man with his hand out so he must be the one doing the shooting; is that right?

A. That's right.

Q. That's what you're saying, so you really didn't see him shoot; is that right? Is that a fact?

A. No.

Q. Okay, if that is not a fact, tell us. You saw him shoot. When did you see him shoot?

A. Yes.

Q. When?

A. Yes.

Q. When?

A. I saw the cop fall.

Q. I understand that. I want to know when you saw this man shoot?

A. When?

Q. Yes. When did he shoot? when did he shoot a gun?

A. On the night the cop got shot, December.

Q. Did you see him shoot?

3.231

Cross - Chobert

A. Yes, I saw him shoot, yes.

Q. Oh, you did see him shoot?

A. Yes.

Q. Now you said before you didn't see him.

A. I told you I saw him put his hand out and I heard shots, so he had to be shooting then.

Q. He had to be shooting. The question is did you see him shoot; yes or no?

A. Yes.

Q. Okay, and you saw the flash from the gun?

A. No, I didn't.

Q. You saw what hand -- what hand did he have extended?

A. What hand?

Q. What hand, his right hand or left hand?

A. I can't tell you, I don't remember.

Q. And you didn't see the gun either?

A. No, I didn't.

Q. You didn't see the gun, didn't see what hand, but you know he shot him?

A. Yes.

Q. Great, okay.

MR. MCGILL: Objection to the comments, Judge.

Cross - Chobert

MR. JACKSON: My apologies. I mean no disrespect, sir, my apologies to you.

Q. How many shots did you hear, because we know you didn't see it. How many shots did you hear?

MR. MCGILL: Objection, Your Honor.

THE COURT: Rephrase the question.

MR. JACKSON: Fine.

Q. How many shots did you hear?

A. Three or four more shots.

Q. Which direction were the shots fired?

A. Down.

Q. You're sure of that?

A. Yes, I'm sure.

Q. How are you sure, sir? Did you see them?

A. I can't see bullets come flying, no.

Q. Pardon me, I didn't hear you.

A. No, I didn't see the bullets. No.

Q. How do you know the bullets went down, sir?

A. Because his hand was pointing down.

Q. But you never saw the gun; is that right?

A. That's right.

Q. So how do you know the bullets were firing down, I'm trying to find out?

A. I don't know.

3.233

Cross - Chobert

Q. That's what I'm trying -- I thought not, okay. Did you see any bullets fired into a doorway?

A. No.

Q. At all? Did you hear any glass break?

A. No.

Q. Do you think you were in a position to hear glass break right there where the Police officer was?

MR. MCGILL: Objection.

THE COURT: Sustained.

Q. Fine, now you gave a statement to the Police that you saw the man who did the shooting; is that right?

A. Yes.

Q. And when you gave the statement to the Police you were certain that you saw what happened; is that right?

A. Yes.

Q. And when you heard the gunshots you got out of your cab and you went on the sidewalk; is that right?

A. Yes.

Q. And you started walking towards the Police Officer to help him; is that right?

A. Yes.

Q. Now, the only people who were on that sidewalk

3.234

Cross - Chobert

was the Police officer and Mr. Jamal; is that right?

A. No.

Q. Who else?

A. His brother, William Cook.

Q. William Cook. Anyone else?

A. No.

Q. You're certain of that?

A. Yes, I'm certain.

Q. You didn't see any woman on the sidewalk?

A. No.

Q. Because if she was there, you would have seen her, you're certain of that?

MR. MCGILL: Objection.

THE COURT: Sustained.

Q. Fine, I just wanted to make sure. Now, you then said to the Police, correct me if I am wrong, you told the Police that the man was six feet, 200, 225 pounds, didn't you?

A. Yes, I did.

MR. JACKSON: Stand up, Mr. Jamal, please.

(The Defendant complies with counsel's request.)

Q. Does he look like he's 225 pounds?

3.235

Cross - Chobert

MR. MCGILL: Objection, Your Honor. We're not testing his sight today.

Objection.

THE COURT: I'll let him answer that question.

Q. Does he look like he's 225 pounds?

A. No, he don't.

Q. Thank you.

MR. JACKSON: Mr. Jamal, have a seat, please.

Q. Now, you told the Police this on December 12th, didn't you, around the time of its occurrence, right?

A. Yes.

Q. And you told the Police that he was about your size, right?

A. Yes.

Q. How much do you weigh?

A. 185.

Q. And you also said that he was heavy, right?

A. Yes.

Q. Is Mr. Jamal heavy?

A. Well, not really, no.

Q. But the man who shot Officer Faulkner was 225 pounds and heavy; is that right?

3.236

Cross - Chobert

Is that what you told the Police?

A. Yes, but I'm not good at weight. Do you think I'm going to stand there for a couple of minutes and ask him how much he weighs?

Q. You're the one who told the Police.

A. I know what I told the Police.

Q. Are you saying, sir -- and I don't want to argue with you -- are you saying what you told the Police is incorrect?

MR. MCGILL: Objection. In reference to what, weight?

THE COURT: That is a question for the jury to decide. You also said that after the man shot the Police officer he ran a half a block away -- I'm sorry, thirty feet away; is that right?

A. Yes.

Q. And today you are saying that it was Mr. Jamal who shot the Police Officer and he moved ten feet away; is that what you're saying today?

A. Yes.

Q. So you were mistaken when you told the Police that the man ran thirty feet?

MR. MCGILL: Objection. Which statement

3.237

Cross - Chobert

is he talking about?

MR. JACKSON: The statement on 12-12-81.

MR. MCGILL: Well, he gave two. He said "talking to the Police".

MR. JACKSON: My apologies. Were you incorrect when you told the Police that the man ran thirty feet?

A. Yes.

Q. And you further indicated to the Police that the man was wearing a light tan shirt, I believe no, I'm sorry -- wait a minute, yes -- what did you tell the Police that the man was wearing, do you remember?

A. No, I don't.

Q. One other thing: You indicated that there was another man at the scene as well; is that right?

A. Yes, I did.

Q. And you said that this other man who was at the scene, somehow the Police got him too, right?

A. Yes.

Q. This other man who was at the scene, he ran some distance away; is that right?

A. He moved down.

Q. He moved down. How did he move?

3.238

Cross - Chobert

A. How?

Q. How did he move? Did he run, crawl, walk, how?

A. No, he walked.

Q. How far?

A. I don't remember. I wasn't paying too much attention to him.

Q. Could it have been a half a block?

MR. MCGILL: Objection. He says he doesn't remember.

MR. JACKSON: Your Honor, may I let the witness see his statements? Maybe we could do it a lot easier this way if he looks at both statements he gave to the Police, this one and this one. I don't want to take advantage of him.

(Pause.)

BY MR. JACKSON:

Q. Mr. Chobert, are you done reading your statement, sir?

A. I am.

MR. MCGILL: Did he read both of them?

THE WITNESS: No, just one of them.

Q. I'm sorry, there's another one right underneath of it, I believe. It's 3 and 3(a), I think.

(Pause.)

3.239

Cross - Chobert

Q. Mr. Chobert, you have read the statements now; is that right?

A. Yes.

Q. And you signed each page of each statement; is that correct?

A. Yes, I did.

Q. And you were asked by the Detective to read the statements over; is that right?

A. Yes.

Q. Did you read them over?

A. Yes, I did.

Q. And then you signed them, right?

A. Yes.

Q. And you were asked to read it over and if it were true to sign it; is that correct?

A. Yes.

Q. So that when you gave the statement it was true; is that right?

A. Yes.

Q. Okay, now, we're now about six months down the road, six months

away from the incident. Would it be fair to say that your memory of what happened on December 9th, your memory was better on December 9th than it is today of what happened on December 9th?

3.240

Cross - Chobert

Do you understand my question? In other words, what happened on December 9th, would it be fair to say you remembered that better on December 9th than you do today?

A. No.

Q. Oh, you remember it better today than you did then?

A. Oh, it's the other way around.

Q. You remembered it better on December 9th?

A. Yes.

Q. And on December 9th you said the man that did the shooting was in his mid-thirties. Does Mr. Jamal look like he's in his mid-thirties?

A. To me --

MR. MCGILL: Your Honor, I want to --

THE COURT: He's answered the question. Please

MR. MCGILL: Your Honor, I want to make --

THE COURT: See me over here.

(The following transpired at sidebar out of the hearing of the jury:)

THE COURT: He was going to answer and you interrupted him.

MR. MCGILL: He did, Your Honor, but I'm

3.241

Cross - Chobert

saying --

THE COURT: He was going to say no. Let him answer.

(The following transpired in open Court in the presence of the jury:)

MR. MCGILL: Your Honor, could I have the answer read back?

THE COURT: Read the question back.

MR. JACKSON: Your Honor, if there was an objection, it seems to me, and Your Honor went to sidebar --

THE COURT: Do you want the question read back?

(The last question and answer are read by the Court Reporter.)

BY MR. JACKSON:

Q. Was that your complete answer to me? I mean, you were going to say something else, right?

A. I was, yes.

Q. Before Mr. McGill interrupted, all right, we'll get back to that. So that I'm certain, you gave the description that you gave to the Police on December the 9th, and you said the man who shot Officer Faulkner was in his mid-

3.242

Cross - Chobert

thirties, 220, 225 pounds, six feet tall, wearing a gray colored dress shirt and had a red and green picture on the back of his shirt; is that right?

A. I guess so. That's what I said, yes.

Q. You guess so? Can you be more certain than guessing?

A. I don't remember too much about the clothing, but I remember I saw red and green, yes.

Q. You saw red and green?

A. Yes.

Q. And I understand you may not remember today but at the time you gave the description to the Police you remembered, didn't you?

A. Yes.

Q. You gave them an accurate description of what it is that you saw; is that true?

A. I guess I did, yes. If it's in there.

Q. You wouldn't have lied to them on that day, would you?

A. Why should I?

Q. That's what I'm saying. So you told them what you believed to be the truth that day?

A. That's right.

Q. Fine. You also told the Police that you saw

3.243

Cross - Chobert

another man run from the scene after you heard the shot, you looked up and you saw another man run away from the scene; is that right?

MR. MCGILL: Objection, Your Honor. Could he read the full question and answer? If he's just taking parts as in the description where he only gave part.

THE COURT: Go ahead, rephrase it.

Q. Let me ask you this: Did you see another man run from the scene?

A. He didn't run, but he moved down.

Q. He moved -- oh, that's the man that you said moved down.

Q. Did you ever see that man again?

A. Yes, I did.

Q. How far did he move down?

A. He moved down about ten feet.

Q. The same distance you said Mr. Jamal moved, right?

A. No, he moved --

Q. Who?

A. He moved a --

Q. Who?

A. Yes, I guess so. Yes.

3.244

Cross - Chobert

Q. Sir, you're saying that this other man moved ten feet down and Mr. Jamal moved ten feet down?

A. Yes.

Q. In the same direction?

A. Yes.

Q. Were they arrested in the same location?

A. Well, on the same block, yes.

Q. On the same block, but I mean, when I say the same location -- how much away from each other were they when they were arrested?

A. I don't remember that.

Q. You don't remember them being arrested?

A. I remember them being arrested, yes, but I wasn't paying too much attention to the other guy, I was paying attention to the shooter.

Q. But didn't you tell the Police you saw the other guy arrested?

A. I told them -- I told them he got stopped by the Police, but I didn't tell

them he got arrested. I told them the cops grabbed him.

Q. So the cops grabbed him?

A. Yes.

Q. What did they do with him?

A. What did they do with him, I don't know.

Q. Do you remember what the other guy looked like?

3.245

Cross - Chobert

A. I sure do.

Q. Tell us what he looked like?

A. He was about five foot six.

Q. How was he built?

A. How was he built?

Q. Yes, his weight.

A. I ain't too sure about his weight.

Q. Pardon me?

A. I ain't too sure. I wasn't paying that much attention.

Q. Do you know if he had a hat on? Did you see his hair?

A. I said I wasn't paying too much attention to him.

Q. Well, I understand that, but you've given us -- well, you've just refreshed your recollection with regard to the statements you've given to the Police. Let me read this to you and see if this refreshes your recollection.

MR. MCGILL: Tell me where you are reading, the question and answer, please.

MR. JACKSON : Sure. I'm going to find it in the second -- page two of 12-9-81 statement.

MR. MCGILL: Thank you.

MR. JACKSON: The second-to-last question.

3.246

Cross - Chobert

Q. "QUESTION: Did you see anyone else do anything to the cop?

"ANSWER: I saw another guy running, but the cop grabbed him, too. I'm not sure he was involved.

"QUESTION: Did you see this male do anything to the cop?

"No.

Q. "Describe the male that you saw running and then being grabbed by the cops?

A. "He was about five feet six inches, he was wearing a red and green hat, a beanie, a long, dark colored coat, and he had a full beard.

Q. "Did this male run along with the male that did the shooting?

A. "No. He started running as soon as the shots were fired, and then he got about a half block away, then all the cops came and he just stopped."

Q. Does that refresh your recollection, sir?

A. Yes.

Q. Okay, so that when you said this man ran ten feet with Mr. Jamal, you were wrong then?

A. That's right.

Q. Pardon me?

A. Yes.

3.247

Cross - Chobert

Q. Yes, you were wrong; is that what you're saying?

A. Say that again.

Q. Were you wrong when you said that Mr. Jamal and this other man moved ten feet together?

A. I didn't tell you it was together.

Q. I apologize if I put words in your mouth. Tell me again about how far this other man moved because you once said Mr. Jamal moved ten feet, you once said that the other man moved ten feet. Now if I've misstated you, please correct me.

A. They moved ten feet but not together.

Q. I thought you said they moved in the same direction. Did they?

A. Yes, I did.

Q. They did move in the same direction?

A. Yes.

Q. Ten feet?

A. Yes.

Q. And you said the man was running; is that right?

A. Yes.

Q. And today you're saying he wasn't running?

A. I said he moved down.

Q. Yes. When I asked you what you meant by moved --

3.248

Cross - Chobert

today, tell us today from what you recall, how did he move?

A. He moved -- well, he didn't run, he walked.

Q. He walked?

A. He started walking. Slow walk. Not just walked, he slow walked?

A. No, not slow walk, a medium walk.

Q. A medium walk?

A. Yes.

Q. But you told the Police on December 9th that he ran. Why did you tell them that he ran?

A. I made a mistake.

Q. Then or today?

A. Then.

Q. Because your recollection is better today than it was then? Is it?

A. No, not really. No.

Q. Before going on you read these two statements. Are there any other mistakes here that you remember so we can bring them to the jury's attention?

A. No.

Q. So everything else in this statement is true?

A. Yes.

Q. And you've just read that so you know everything

3.249

Cross - Chobert

else in this statement is true?

A. Yes.

MR. JACKSON: Could I have one moment, Your Honor, please.

(Pause.)

Q. By the way, this other man that you saw who was running or walking, when he was grabbed by the Police where was he grabbed? You know, like in relation to the car. In fact, would you mind coming down and showing us on the diagram?

A. I can't show you, I don't remember.

Q. You don't remember where he was grabbed?

A. Buddy, I told you before, I wasn't paying too much attention to that guy.

Q. On the 9th you gave a pretty good description to the Police of what happened to him. You're saying specifically where he went, how far he went; now today you don't want to tell us where the cops got him?

MR. MCGILL: Objection. It's a speech now and it's argumentative.

THE COURT: Sustained.

Q. You're saying you have no idea at all now where the Police got him, this other man; is that what you're

3.250

Cross - Chobert

saying?

A. Yes. I wasn't paying too much attention.

Q. I understand, but you have no idea? In other words, was he close to 12th Street, was he close to 13th Street, was he on this side of the street, was he on that side of the street? He only went ten feet you said, but you have no idea --

MR. MCGILL: Objection. Again, argumentative. Is this a summation?

MR. JACKSON: It's not a summation.

MR. MCGILL: Then ask a question.

MR. JACKSON: I said, where was the man arrested?

MR. MCGILL: Your Honor, I apologize.

THE COURT: One more time and that's it. Come on.

Q. Where was the man arrested, and I would like for you to show us, show the jury, where was the man arrested?

A Do you want me to show you?

Q. Yes, sir.

A. He was right here somewhere (indicating).

Q. Okay, so that would be -- you remember this is the Police vehicle; is that right --- I'm sorry,

3.251

Cross - Chobert

this is the Volkswagen. That is the Volkswagen; is that right?

A. Yes.

Q. Here is the Ford. Do you remember seeing the vehicles that night?

A. Not the Ford.

Q. You don't remember seeing the Ford there?

A. No, I don't.

Q. Are you saying it wasn't there or you don't remember?

MR. MCGILL: Objection.

THE COURT: Objection sustained.

Q. Nevertheless, the man was arrested at least a car length or two away from the Volkswagen, because you're saying it's in this area; is that right?

MR. MCGILL: Objection. He's not pointing --

Q. Point, too. Mr. McGill didn't see your finger before, so let him see

where you pointed.

MR. MCGILL: I have an objection to Mr. Jackson's gratuitous comments.

THE COURT: Sir, would you point, please?

THE WITNESS: I said right in this area (indicating).

Q. Thank you. By the way, before you go back, you

3.252

Cross - Chobert

indicated that you saw Mr. Jamal move ten feet; is that right?

A. Yes.

Q. Ten feet. Where did he start and where did he end up?

A. He was somewhere between these cars.

Q. Sir, could you be a little bit more precise? You can't do two cars like that. Could you be a little more precise where you saw him?

A. I can't be precise, no.

Q. You can't be precise at all?

A. No.

Q. You don't know where you first saw him?

A. In between the two cars.

Q. In between what two cars?

A. This one and that one (indicating). Okay?

Q. It was between the Police car and the Volkswagen?

A. Yes.

Q. And then you saw him extend his arm?

A. Yes.

Q. You didn't see the gun, you already said that.

MR. MCGILL: Objection, Your Honor, to the argumentative statement.

THE COURT: Just ask him a question.

3.253

Cross - Chobert

MR. JACKSON: Yes, sir.

Q. Then you saw the man move ten feet; is that right?

A. Yes.

Q. That would have put him back up here, too?

MR. MCGILL: Objection.

A. Ten feet, no.

Q. Ten feet where then? Approximately where would the ten feet be, sir?

A. I am doing this again --

MR. MCGILL: I have to object, sir, because it's difficult for the jury to hear Mr. Chobert.

THE COURT: Why don't you move the chart over and let Mr. Chobert sit on the witness stand.

MR. JACKSON: I'll do that if you want, but I don't have too much more on the diagram.

THE COURT: Lift it off of here, bring it over here. Sit back on the witness stand. Because he's not loud enough for the jury to hear.

BY MR. JACKSON:

Q. Now, Mr. Chobert, let me move that out of your

3.254

Cross - Chobert

way --

THE COURT: You can sit down.

Q. Sit down, please. Okay, now, in a way so that the jury can see, you've indicated that Mr. Jamal was standing when he fired at the Police Officer between the Police car and the Volkswagen; is that right?

A. Yes.

Q. And you then indicated that he moved ten feet after the shooting; is that right?

A. Yes.

Q. And could you demonstrate or could you point approximately where that was, ten feet from where you first saw him and where he ended up? Do you understand my question?

A. Yes. Now I do, yes.

Q. Could you just point for us, please?

A. Right here, he ended up right here somewhere (indicating), between the two cars, like I said before.

Q. That was after the shooting?

A. Yes.

Q. And so that when the Police came and arrested Mr. Jamal he had moved ten feet from where he had shot?

3.255

Cross - Chobert

A. Yes.

Q. Did you ever lose sight of the man?

A. No, I didn't.

Q. Never?

A. No.

Q. Okay. When you were walking towards where the officer was shot and the Police officer said, get back in your car, how did you go back to your car?

A. How?

Q. Yes.

A. I walked back.

Q. Did you turn around or did you walk backwards?

A. No, I turned around and walked forward.

Q. Oh, but you have eyes in the back of your head? How did you see him? You said you never lost sight of him. What happened when you turned around to walk back to your car?

A. What happened?

Q. Yes. Could you see him?

A. Not for five seconds, no.

Q. So you lost sight of him?

A. Yes, five seconds. He laid on the ground when I started walking back. What did he do, fly away on me?

3.256

Cross - Chobert

Q. I don't know. I don't know, sir. Is there anything about your testimony you'd like to change at this point, correct?

A. No.

Q. You're certain of that?

A. Yes.

Q. You are as certain about your testimony as you are about the man who shot Officer Faulkner; is that right?

A. I know who shot the cop, yes. I'm pretty sure about my statement, too.

Q. You're pretty sure about the statement?

A. Yes. I know who shot the cop and I ain't going to forget it.

Q. It wasn't a man who was 225 pounds?

MR. MCGILL: Objection.

THE COURT: Sustained.

Q. By the way, did you see the Officer fall to the ground? That was -- I'm sorry, that's the first thing you saw; is that right?

A. Yes.

Q. After you heard the shot?

A. Yes.

Q. And the man that you assume shot the Police

3.257

Cross - Chobert

Officer was between you and the other, though, wasn't he?

MR. MCGILL: Objection, Your Honor. Assume? He's very definite.

THE COURT: Rephrase your question.

MR. JACKSON: Fine, sure.

Q. The man who shot the officer was between you and the officer; is that correct? In other words, the man's back was towards you, the shooter, his back was towards you, right?

A. No.

Q. Was he facing you?

A. Not facing me, no, but I saw him, I saw the side of his face.

Q. You saw the side of his face?

A. Yes.

Q. When did you see his full face?

A. Full face?

Q. Yes, sir.

A. When I started walking up to see if I could help the cop.

Q. He turned around and faced you?

A. No.

Q. How did you see his full face, that's all I'm

3.258

Cross - Chobert

trying to find out, sir.

A. Because I looked at him when I started walking on the pavement.

Q. Yes, but he was still ahead of you and I'm trying to find out how you saw his full face?

A. When he was lying down by the pole, that's how I saw his face.

Q. So the man had already gone the ten feet and fell, then you looked at his full face; is that what you're saying?

A. No, I didn't say that. I said I saw the side of his face first when he was shooting the cop.

Q. Right.

A. And then when he went back and fell against -- when he took his steps back, when he fell, when I got out of my car when I started walking towards the cop I saw him, and that's how I saw him.

Q. His full face? That's what I'm asking. I'm just concerned about seeing

his full face now, not the profile that you said you saw first. I want to know the very first time you saw his whole face, that's all.

A. Well, I saw it twice, as a matter of fact.

Q. When is the first time?

3.259

Cross - Chobert

A. On the pavement.

Q. When he had already fallen?

A. Yes.

Q. Had gone ten feet away?

A. Yes.

Q. So that means, if I understand you correctly, you passed the officer; is that right? When he was on the ground -- let me go back. You tell me where you were, where he was when you -- I know he's on the ground. Where were you?

A. About, I'd say, about ten feet from the officer -- I mean back.

Q. Okay, and how far away was the man from you and the officer? You were ten feet from the officer?

A. Yes.

Q. I'm trying to find out how far away you were from the man whose face you saw. That's really what I want to find out. Do you understand what I'm saying?

A. About two car lengths, maybe a car and a half.

Q. And he was on the ground?

A. Yes.

Q. So you looked two car lengths. So would it be fair to say from where I am to that chair against the

Cross - Chobert

wall at almost 4:00 o'clock in the morning you could see that man's full face while he was on the ground; is that right?

A. That's right.

Q. Okay, I mean, if that's what you say. And you said you saw it a second time?

A. Yes.

Q. You're certain of that, too, right?

A. Pretty damn right I am.

Q. Pardon me?

A. Yes.

Q. By the way, after you saw the officer fall, did he move? Did the officer move?

A. I wasn't paying too much attention to the officer.

Q. Who were you paying attention to?

A. The shooter.

Q. Okay, I'm going to find out.

So you weren't paying attention to the officer, just the shooter?

A. Yes.

Q. Tell me this, Mr. Chobert, maybe you can explain it to me, you indicated that the officer was shot between the radio patrol car and the Volkswagen.

Cross - Chobert

we've got several other witnesses who indicated that the officer was found

between the Volkswagen and the Ford. Can you tell us why?

A. Tell you why?

Q. Yes.

A. No.

Q. Because you're certain where that officer was and where Mr. Jamal was, right?

A. From my spot, yes.

Q. From your spot, you know that for certain, right?

A. Yes.

Q. And if everyone else says something different, then they're wrong?

MR. MCGILL: objection.

THE COURT: Sustained.

Q. By the way, did you see any guns at all?

A. No.

Q. Never did?

A. No.

Q. Now, at some point in time you said that the Police arrived and said, go back to your car, right?

A. Yes.

Q. Did you get back into your car?

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Cross - Chobert

A. Yes.

Q. And of course, you said you lost sight of Mr. Jamal for about five

seconds?

A. Yes.

Q. And you saw him seated between, or you saw him seated on the curb; is that right?

A. Yes.

Q. And you could see him from where you were, from your car, inside your car, you could see him sitting on the curb; is that right?

A. Not clearly, but I saw him, yes.

Q. Not clearly but you saw him?

A. Yes.

Q. Was he seated in front of a car on the curb?

A. In between the cars.

Q. In between the cars?

A. Yes.

Q. So it was your cab, the Police car, and the Volkswagen?

A. Yes.

Q. And he was seated between the Volkswagen and the Police car?

A. Yes.

Q. Did you see the Police when they came and

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Cross - Chobert

arrested him?

A. Yes, I did.

Q. Did you see the Police put handcuffs on him?

A. Yes.

Q. Did you see whether or not the Police struggled with him?

A. Yes.

Q. Did you see whether or not the Police struck him?

A. No.

Q. You didn't see him being struck at all?

A. I saw a hand moving, but I didn't see no contact.

Q. Whose hand?

A. The Police.

Q. What were their hands doing? Could you demonstrate for us?

A. Demonstrate?

Q. Yes, show us what their hands were doing.

A. Just moving around.

Q. I mean, how moving around? Like this, like this (indicating)? I mean, were they jabs, punches, what? We have no idea. You're the only one that can tell us what you saw.

A. They were bending over and I saw them moving their hands like this (indicating).

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Cross - Chobert

Q. Did you see anybody with anything in their hands?

A. No.

Q. Did you see Mr. Jamal strike at an officer or push an officer or do anything to -- did you see him strike any officer in any way?

A. No, just struggling, that was all.

Q. And you could see him while the Police were around him; is that right?

A. Yes.

Q. And then you saw the Police pick him up?

A. Yes.

Q. What did they then do?

A. They dragged him to a wagon.

Q. Did you see them drop him?

A. No.

Q. Did you see them walk him into a pole?

A. No.

Q. They just picked him right up and carried him right into the wagon and placed him right into the wagon; is that right?

A. That's the way I saw it, yes.

Q. And you were just a short distance away, so you're certain of that?

A. Yes.

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Cross - Chobert

Q. Right?

A. Yes.

Q. You don't know -- you never saw him in a wagon?

Q. Now, this other man that was arrested at the scene, did you see what they did with him?

A. No.

A. No.

Q. Did you see them put handcuffs on him?

A. No.

Q. Do you know if the Police let him go?

A. They let him go because I saw him again that night.

Q. You saw him again that night?

A. Yes.

Q. By the time that the Police arrived and told you to move back to your car, was there any other civilians on the sidewalk other than the man you said who ran ten feet and Mr. Jamal who you said ran ten feet? Where there any other civilians, I mean non-police people, on that sidewalk?

A. I didn't see none.

Q. And you had a good view of the sidewalk, right?

A. Yes.

Q. When Mr. Jamal was taken to the wagon were there

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Cross - Chobert

any other non-police there on the sidewalk?

A. I don't think so, no.

Q. Pardon me?

A. No.

MR. JACKSON: Your Honor, could I have just one moment, please?

(Counsel and his client confer.)

Q. Mr. Chobert, did you ever see an officer kick Mr. Jamal?

A. Kick?

Q. Yes, kick.

A. Yes.

Q. When I asked you before if you had seen an officer strike Mr. Jamal you didn't know that I meant kick, too?

MR. MCGILL: Objection. Argumentative.

THE COURT: Just ask questions.

Q. You said you saw no guns?

A. Right.

Q. Did you see any in any of the officer's hands"

A. Yes.

Q. Do you know who the officer is?

A. No.

Q. How many guns did he have in his hand?

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Cross - Chobert

A. one, his own.

Q. Only one officer you saw with a gun in his hand?

A. That's all I saw was one, yes.

Q. And you never saw any guns on the street or in the sidewalk?

A. No, I didn't.

Q. That officer you saw with a gun in his hand, where was he when you saw him with a gun in his hand?

A. He was running from the parking lot.

Q. He was running from the parking lot?

A. Yes.

Q. Were there other officers already at the scene when you saw him?

A. A couple of them, I think.

Q. Pardon me?

A. A couple.

Q. A couple?

A. Yes.

Q. By the way, did you see Mr. Jamal shot?

A. No, I didn't.

Q. Did you see the officer who was shot, Officer Faulkner, did you see him shoot?

A. No.

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Cross - Chobert

Q. in fact, he didn't shoot, did he?

A. I don't know.

Q. Did you get close enough to see his gun in his 40 holster?

MR. MCGILL: Objection.

THE COURT: Will you rephrase that question.

MR. JACKSON: Yes.

Q. You got within ten feet of Officer Faulkner didn't you?

A. Yes.

Q. Did you notice if his gun was in or out of his holster?

A. No.

Q. Mr. Chobert, after you heard your first shot you don't know if anyone was shot, do you, the first time, the first shot that you heard, do you?

A. Yes, because I saw the cop falling.

Q. And you assumed the cop was shot; is that right?

MR. MCGILL: Objection, Your Honor.

Q. And you're saying that the only other shots that you heard were those shots when this man was standing over the Police officer; is that right?

A. Do you want to say that again, please?

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Cross - Chobert

Q. The only other shots that you heard other than that first shot, the only other shots you heard were those that were sounded when the man was standing over the Police Officer; is that correct?

A. Yes.

Q. Can you account for how Mr. Jamal was shot?

A. No, I can't.

Q. Do you know whether he was shot at that scene, at that location?

A. I assume he was when he fell and he didn't get back up again.

Q. You assume he was?

A. Yes.

Q. Now, just like you assume that the officer was shot, can you tell us who shot him?

A. Who?

Q. Yes, who?

A. Jamal, who do you think it was?

Q. Who?

A. Jamal, that guy sitting right there.

Q. No, who shot him?

A. I don't know.

MR. JACKSON: No further questions at this time.

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Redirect Chobert

REDIRECT EXAMINATION

BY MR. MCGILL: Mr. Chobert, you indicated that you saw the other man later at the Police Station; is that correct?

A. Yes.

MR. MCGILL: Could I have those photographs, please. I show you what has been marked C-21. Can you identify that?

A. Yes, I can.

Q. Who is that?

A. That's William Cook.

Q. Is he the one you saw at the station?

A. Yes.

Q. Is he the other man that you saw with the Defendant?

A. Yes, it is.

Q. You were asked to look at your -- did you see anybody else at the scene in that area that you have shown us besides that man you identified, besides the Defendant and Officer Faulkner?

A. No.

Q. Mr. Jackson asked you several questions about

Redirect - Chobert

your statement. Do you recall telling the Police the type of hair that the shooter had?

A. Yes.

Q. What did you tell them?

A. He had long matted hair like a MOVE member.

Q. Do you recall telling them about his complexion?

A. Yes.

Q. What did you say?

A. Dark.

Q. On the statement of 12-12-81 do you recall telling the Police, when asked the question, "After you heard the shot and saw the cop fall to the ground and the man you just described stood over him to shoot the cop a couple more times, then started to go towards 12th Street, how far did this man run?" ANSWER: About a car length away." Do you recall that answer?

A. Yes.

Q. Do you recall the next question: "Did you see what the nan that shot the cop did after he fell?" ANSWER: He just laid there by the curb about ten feet from the cop." Is that correct? Do you remember saying that?

A. Yes.

Redirect - Chobert

Q. Did you at any time after seeing that man who shot the Police Officer and moved over a car length and fall on the curb leave before the Police came?

A. No.

Q. Was that the same man that the Police were struggling with?

A. Yes, it is.

Q. Was that the same man that the Police took to the wagon?

A. Yes, it is.

Q. And within two minutes after you saw the Defendant shoot the Police Officer, saw the Defendant then go over to the curb and stay, saw the Police take the Defendant to the wagon --

MR. JACKSON: Your Honor, I'm going to object. He's pointing to some place where this witness has not pointed to, so he's testifying.

MR. MCGILL: I won't point to the chart.

MR. JACKSON: Thank you.

THE COURT: Rephrase your question.

Q. The same man that you saw within two minutes after you saw him shoot the Police Officer several times go to the curb and fall, struggle with the Police when they arrived, and get taken to the wagon, that same

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#### Redirect - Chobert

man, within two minutes did you see him in that wagon that they took him to?

A. Yes, I did.

Q. And how close did you get to him, Mr. Chobert, when you went to that wagon?

T-- 1. couple steps away.

Q. And did you see his face then?

A. Yes, I did.

Q. Is that man, sir, that you saw over that period of time in the Courtroom?

A. Yes, he is.

Q. Will you point him out again?

A. He's right there (indicating).

Q. Is there any doubt in your mind that that's the man?

A. No, there ain't.

Q. Do you recall telling the Police in your statement on page two when asked the question: "Where was the second black male when you first saw him?" "ANSWER: He's standing on the side of the Volkswagen on the sidewalk against the wall, his back was against the wall. He was just standing there."

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Redirect - Chobert

Do you recall saying that to the Police?

A. Yes, I do.

Q. And is that the man that you identified in that photograph?

A. Yes, it is.

Q. Are you able to say whether the officer shot the Defendant?

A. No, I can't say.

Q. Why could you not?

A. Because I wasn't paying any more attention to the officer.

Q. Did you see the officer's arms when he was on the ground?

A. No.

Q. Do you recall in your statement on page two saying to the Police in answer to the question, "Did you see what happened to the black male that you saw shoot the cop?" "ANSWER: They got him, the cops got him and stuck him in the back of a wagon. "QUESTION: Would you be able to identify the man that shot the cop if you saw him again?" "ANSWER: Yes."

Do you recall those questions and answers?

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Redirect - Chobert

A. Yes, I do.

Q. Do you recall this question and answer: "Did you see the gun the man used to shoot the cop?" ANSWER: No, I didn't. I was too far away. I just saw him standing over the cop and pointing and I heard the shots." Do you recall saying that?

A. Yes.

Q. Do you recall also saying on the end of page three, "Did you see the male that did the shooting of the Police officer again?" When the Police first arrived they told me to get back in my cab. I got back in the cab, and then an officer came over to me and asked me if I saw the man that did the shooting again, would I be able to recognize him. I told him yes. Then he took me over to the wagon, opened the door, and I saw the male in the back of the wagon and I told the officer that it was him that I saw do the shooting."

A. I remember that.

Q. Did you tell him that?

A. Yes.

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Redirect - Chobert

And that happened within two minutes after you saw him do it?

A. Yes.

Q. And he never really left your sight from the time that he shot him?

A. No.

Q. Mr. Chobert, I'm going to ask you to stand up again, with the Court's permission.

(The witness complies with counsel's request.)

Q. Mr. Jackson was asking you questions about where you were at the time of the shooting. Would you come down here, please, to the stand here, face the jury. Would you indicate to the jury what the motion of his hand and arm was when you heard the shots as you were looking straight at him?

A. He was pointing down and I heard the shots, (indicating).

Q. Are you indicating by your arm a movement with the wrist and hand? Are you indicating that? have to say that for the Record.

A. Yes.

Q. The times that you heard the shots, how did those sounds of the shots relate to the times that he was moving his hand in a downward position?

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Redirect - Chobert

Do you understand the question?

A. No, I don't.

Q. When he was moving his hand down in a pointed direction, as you did, toward the ground, is that when you heard the shots?

A. Oh. Yes.

Q. Did you see anybody else with a gun around there?

A. No, I didn't.

Q. Did you see William Cook that you identified with a gun around, or anybody?

A. No.

MR. MCGILL: Thank you, Mr. Chobert. Nothing further.

MR. JACKSON: Just a couple more, sir.

RE-CROSS-EXAMINATION BY MR. JACKSON:

Q. You said one car length away from the statement q. Mr. McGill just read to you, you were about one car length away, and you said that's the reason you couldn't see the gun; is that right?

Let me read the statement to you again -- let me show you the statement.  
(Pause.)

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Recross - Chobert

Do you recall Mr McGill just reading that to You?

A. Yes.

Q. And you're saying you couldn't see the gun because you were ten feet away, you were too far away?

A. That's right.

Q. So you couldn't see a gun ten feet away, but you could see somebody's face two car lengths away; is that right?

A. A gun is a lot smaller. It depends on the gun.

MR. MCGILL: objection. He's arguing with the witness.

THE COURT: Sustained.

Q. By the way, this Police officer that you saw running across the parking lot, could you tell us how he had his gun pointed, up or down or what?

MR. MCGILL: Objection. Beyond the scope of redirect.

MR. JACKSON: Okay, I'll withdraw it.

Q. I just want to be absolutely certain. You're certain that this shooting took place between the Volkswagen and the Police car, aren't you?

A. Yes.

Q. No question about it?

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Recross - Chobert

A. No.

MR. JACKSON: Thank you, sir.

MR. MCGILL: Thank you, Mr. Chobert. Does the Court have any questions?

THE COURT: No.

MR. MCGILL: I have no other witnesses. I'm sorry to keep everybody this late.

THE COURT: You may go.

(The witness is excused.)

THE COURT: We'll adjourn Court until Monday morning at 9:30 in this Courtroom.

(Hearing is adjourned at 6:15 p.m.)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 21, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Backup Counsel for the Defendant
- MUMIA ABU-JAMAL

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(Court convened at 10:20 a.m.)

(The following took place in chambers on the record as follows:)

THE COURT: Mr. Jackson, I thought you said you had some Motion you wanted to present?

MR. JACKSON: Yes, Your Honor. Your Honor, may it please the Court, as Your Honor well knows, I have been ordered by both you and the Supreme Court to continue to defend Mr. Jamal. My consultation with Mr. Jamal causes me -- it results in my representing to the Court that, indeed notwithstanding the Supreme Court order, notwithstanding Your Honor's order, Mr. Jamal will continue to act according to the strategy of John

Africa, and that is consistent with his consultations with Theresa Africa, as well as my participation in his defense.

What I'm saying essentially, Your Honor, is that, of course, Mr. Jamal is being represented by me under protest. It is still against his wishes that I represent him. Nevertheless, as Your Honor well knows, it is at least my present

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intention to defend Mr. Jamal to the best of my ability with all the vigor that I can put forth. In addition, Your Honor, Your Honor has previously removed Mr. Jamal from representing himself for reasons that Your Honor has previously presented to us. Notwithstanding that Mr. Jamal feels, in deed, that his right to justice has been seriously compromised by Your Honor's ruling. The issue of self-representation was not presented specifically to the Supreme Court so that this matter remains with Your Honor with regard to whether in fact Mr. Jamal could continue to represent himself. If indeed Your Honor has some concern with regard to the activities, the behavior, or the conduct of Mr. Jamal, just as Mr. Jamal assured this Court on Saturday that his behavior would be consistent with the decorum and respect of the Court, I see no reason why Mr. Jamal should not or could not be permitted to represent himself from this point on.

If, in fact, the situation were to arise where Your Honor would consider removing him, well, I believe that that's a matter that Your Honor could take up at that time.

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In addition, Mr. Jamal specifically requests the permission to make closing arguments to the jury. He would also ask that he be permitted to question three of the prosecution witnesses of his choice. I appreciate the fact that this might be a hybrid that the District Attorney has vigorously opposed in the past, but I think, under the circumstances where Mr. Jamal is defending himself, indeed for his life, that in the name of justice I believe that this should be allowed. It would cause no burden to the Commonwealth, it would not cause any disruption or interference with the Court's business. I think that to deny Mr. Jamal that opportunity to directly and actively and aggressively participate in the defense of his life would be inappropriate in this matter.

I respectfully ask that Your Honor reconsider your order with regard to Mr. Jamal representing himself, and I request that Mr. Jamal be permitted

to proceed from this very point in representing himself.

THE COURT: Mr. District Attorney?

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MR. MCGILL: I have no response, Your Honor. Whatever Your Honor decides.

THE COURT: No. I said that once I had made a decision to remove Mr. Jamal as the attorney that that would stay; that you are the attorney now. If you want to appeal that, you say that that issue hasn't been resolved at the appellate level, whatever you want to do, you do. But as far as I'm concerned it's already decided. We will proceed with you as counsel.

MR. MCGILL: Your Honor, the Commonwealth is prepared to proceed.

THE COURT: All right. We'll have to bring the jury in first.

MR. MCGILL: Yes, sir.

THE COURT: And open court.

MR. JACKSON: Your Honor, may I have one moment? I may have a response.

THE COURT: Yes. Did you say response?

MR. JACKSON: Well, there may be an additional comment from Mr. Jamal that I would like to --

THE COURT: I have nothing further here.

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Heftner - Direct

I've made my decision. You do what you have to do.

(The following took place in open court in the presence of the jury.)

MR. MCGILL: Good morning, Your Honor, Ladies and Gentlemen of the jury.

THE COURT: Good morning.

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

MR. MCGILL: Officer John Heftner.

COMMONWEALTH'S EVIDENCE CONTINUED

OFFICER JOHN HEFTNER, (Badge Number 3950, Sixth Police District),  
having been duly sworn, was examined and testified as follows:

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. MCGILL:

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Heftner - Direct

Q. Officer Heftner, on December the 9th, 1981, where were you employed?

A. Yes, I was.

Q. Where were you employed?

A. Philadelphia Police Department.

Q. And in what capacity?

A. Police Officer.

Q. What was your tour of duty on that particular evening?

A. Eleven thirty to 7:30.

Q. Now, did you have occasion to seize certain clothing from anyone involved in this case?

A. Yes, I did.

Q. And who was that?

A. Officer Daniel Faulkner.

Q. Where did you do that?

A. Inside where -- the rear of 901 wagon.

Q. And at what point did you do that?

A. After we placed him in the wagon en route to the hospital.

Q. And where did you place him in the wagon? Do you remember where the wagon was?

A. At the corner of 13th and Locust.

Page 8.

Heftner - Direct

Do you recall what you had seized from him? One patrol jacket and one police blue sweater. And what did you do with it?

A. I took it to Homicide Division.

Q. I'd ask that this be marked C-24, this to be marked C-25, the name of it would be jacket C-24, and sweater C-25. Would you take a look at C-25, 24 and 25, please. First look at C-24. Can you identify C-24?

A. Yes, I can.

Q. What is C-24?

A. C-24 is the jacket that officer Faulkner had on that night.

Q. While the Court Officer is working with the exhibit I'll ask that also this be marked as C-26, this document. Perhaps you could look at that, C-25. Can you identify C-25, Officer?

A. Yes, I can.

Q. What is it?

A. It's the same sweater that Officer Faulkner wore that night.

Page 9.

Heftner - Direct

Q. Would you put that aside, please, and take a look at C-26, the document? Defense counsel has not seen it. Okay. What is C-26?

A. It's a property receipt.

Q. And who made that property receipt out?

A. I did.

Q. What is the purpose of a property receipt?

A. You put evidence on it.

Q. Sort of maintains the chain of custody of the evidence?

A. Chain of custody, who turns it over.

Q. And where did you submit that?

A. Homicide Division.

Q. And was it to go to the purposes of going to the Chemical Lab?

A. That's correct.

Q. When you saw Officer Faulkner in the wagon did you notice any other of his clothing?

A. His police shirt, pants.

Q. What kind of a police shirt was it?

A. Blue.

MR. MCGILL: All right. I'd ask that

Page 10.

Heftner - Direct

this be marked C-27.

THE COURT OFFICER: Officer, do you want to see this?

MR. JACKSON: No.

BY MR. MCGILL:

Q. Would you take a look at C-27?

A. Yes.

Q. Can you identify it?

A. It's Officer Faulkner's shirt.

Q. Would you put that aside, please. Now, when you arrived at the scene or, excuse me, before I get into that, did you notice anything missing at all when you were in the wagon as he was -- as far as clothing was concerned?

A. Yes. His tie was missing.

Q. Did you see his weapon, his actual gun? Did you see that in the wagon?

A. No, I didn't.

Q. But his holster was there, was it not?

A. His holster was.

Q. Okay. When you arrived at the scene what did you do?

A. I got out of my car and I ran between two cars

Page 11.

Heftner - Direct

directly to Officer Faulkner.

Q. And what was your purpose at that time?

A. My main purpose was to get him to a hospital.

Q. And what did you then do in order to effectuate that objective?

A. At that time I ran up, started to pick up Officer Faulkner with the help of other policemen. We took him up to the corner of 13th and Locust and

placed him in the wagon.

Q. Now, was there first an attempt to get him in a smaller vehicle?

A. That's correct. When I first started to pick Officer Faulkner up Police Officer Soboloski pulled up in a Plymouth Horizon, which is a small car, and at that time we could not get him in the back of the car because it was too small.

Q. Okay. Let me ask you this: Do you know whether or not -- strike that. I'll ask you if you would, Officer Heftner, would you come down, with the Court's permission, come down to the chart and note on the chart approximately where the location of the body of Officer Faulkner was?

Page 12.

Heftner - Direct

A. Right here.

Q. All right. Speak up loudly.

A. Approximately right here.

Q. Okay. Now of course, you're just estimating, I guess, the size of Officer Faulkner. He was I guess, what, five nine or five ten, and the Volkswagen was a small vehicle? But you're saying generally it was about there?

A. Yeah, in that area.

Q. All right. And where was his head and where were his feet, what direction?

A. His head was facing eastbound, his feet were in like a southeast direction -- and his feet westbound -- northwest on an angle.

Q. I think you've got your directions wrong. Which direction was the head?

A. Eastbound.

Q. Eastbound. And which direction were the feet?

A. Westbound.

Q. And you say southwest, or north, or what?

A. Southwest -- southeast was the head.

Q. Right.

A. And then northwest were the feet.

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Heftner - Direct

Q. Right. Okay. And was he on his back at that time?

A. Yes, he was laying on his back.

MR. MCGILL: All right. Thank you. You may sit back.

Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Officer Heftner, when you arrived at the scene were there other officers attending to officer Faulkner?

A. There was one other Officer that I took notice of.

A. Do you know who that officer is?

A. It was Officer Shoemaker.

Q. Now, when you said you took notice of him, what did you take notice of him doing?

A. He was standing over top of Officer Faulkner.

Q. Was he doing anything to Officer Faulkner?

A. To Officer Faulkner?

Q. Yes, sir.

A. No.

Q. Did you see anyone doing anything to Officer Faulkner?

A. No, I didn't.

Page 14.

Heftner - Cross

Q. When you saw Officer Faulkner on the ground can we safely assume that you were the first one that actively, as far as you know, came to his assistance, came to provide any aid to him, pick him up?

A. As far as I know, yeah.

Q. What was the very first thing that you did to officer Faulkner?

A. I picked him up underneath his shoulder.

Q. By his shoulder?

A. Underneath his arm.

Q. So would it be fair to say that you stood at his head with your hands under his respective armpits?

A. That's correct.

Q. And what was Officer Shoemaker doing at the time?

A. I really don't -- I really couldn't tell you.

Q. How many officers were at the scene? Do you recall?

A. The only ones I can really testify to would be Officer Shoemaker the initial time that I got there.

Q. Okay. You said for sure because you could identify him. But did you see other officers in that immediate area?

A. As I was picking Officer Faulkner up.

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Heftner - Cross

Q. Okay. So that you were picking him up by yourself?

A. That's correct.

Q. Were you operating a wagon?

A. Patrol car.

Q. Patrol car. Were you operating the Horizon?

A. No, I wasn't.

Q. Now, did you actually pick Officer Faulkner up?

A. Yes, I did.

Q. And did you carry him?

A. Yes, I did.

Q. Alone?

A. No. With the help of other officers.

Q. Did you remove any of his clothing?

A. Yes, I did.

Q. Outside of the van?

A. No, I didn't.

Q. Did anybody remove any of his clothing outside of the van?

A. Not that I know of.

Q. Now, you say not that you know of. Were you in constant contact with him from the moment you picked him up until the time he was placed in the van?

Page 16

Heftner - Cross

A. That's correct.

Q. So it would be fair to say that if anyone removed any article of clothing you would have seen it; isn't that correct?

A. That's correct.

Q. He had the jacket on and sweater on; is that correct?

A. That's correct.

Q. He had a shirt on?

A. That's correct.

Q. Had a tie on?

A. I really didn't take notice whether he had a tie on.

MR. MCGILL: I have to object. At what time are we talking about? In the wagon or --

MR. JACKSON: I'm sorry. When he picked him up from the street.

THE WITNESS: I really didn't notice if he had a tie on.

BY MR. JACKSON:

Q. Did you provide, on the street before putting him in the wagon, did you provide or attempt to provide any first-aid of any sort?

Page 17.

#### Heftner Cross

A. No, I did not.

Q. Did you see anyone attempt to place any pressure, to provide any first-aid?

A. On the street?

Q. Yes, sir.

A. No.

Q. Was there a reason why you refused or refrained from attempting any

sort of first-aid?

A. From the condition of Officer Faulkner I thought it best to get him to the hospital as quick as possible.

Q. Did you specifically look at his holster when you picked him up?

A. When I picked him up?

Q. Yes, sir.

A. No.

Q. At some point you had looked to see his holster; is that correct?

A. That's correct.

Q. When was that?

A. Inside the wagon.

Q. And by the way, Officer Faulkner was unconscious; is that correct?

Page 18.

Heftner - Cross

A. That's correct.

Q. While carrying him either to the Horizon or to the van, did you take notice of any weapon at all?

A. No, I did not.

Q. Did you see either Mr. Jamal or any other suspect of the defendant at the scene?

A. I saw Mr. Jamal at the scene.

Q. Was that before, during or after you placed Officer Faulkner in the van?

A. It was -- I ran past the defendant going to Officer Faulkner.

Q. And do you know who was with the defendant at that time?

A. Just Officer Faulkner and Officer Shoemaker.

Q. Did you see William Cook?

A. I didn't take notice.

Q. And at the time that you saw Mr. Jamal did you see what if anything Officer Shoemaker was doing in relationship to him?

A. Officer Shoemaker was standing on the other side of Officer Faulkner.

Q. Now, when you say other side -- so that we understand the relative positions, could you return to the

Page 19.

#### Heftner Cross

diagram, please? Now previously a witness has marked a "J" there for Mr. Jamal and you've just placed an "F" there for officer Faulkner. Is that the relative position of the two individuals when you arrived at the scene?

A. That's correct.

Q. When you stated that Officer Shoemaker was on the other side of Officer Faulkner, could you tell us where you mean? If you could just point it out.

A. He was along this side towards the wall.

MR. MCGILL: Indicating the south side.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. So then you passed Mr. Jamal, saw Officer Faulkner, and Officer Shoemaker was still further away from you; is that correct?

A. Officer Shoemaker was standing right on top of Officer Faulkner.

Q. Okay. And there was no one with Mr. Jamal at that point? Is that what you're saying?

A. I didn't see anybody.

Q. Was Mr. Jamal was between the Volkswagen and the Ford?

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Heftner - Cross

A. That's correct.

Q. And how much space was between the two vehicles, approximately?

A. I really don't know.

Q. Would it be fair to say that if someone else was there you would have passed him?

A. Yes.

Q. You can return to your seat, please.

Q. Officer Heftner, did you hear Mr. Jamal say anything?

A. No, I did not.

Q. Did you hear anyone say anything at the time, you know, during the time that you were picking Officer Faulkner up? Did you hear anyone say anything in relationship to Mr. Jamal?

A. No, I did not.

Q. After placing Officer Faulkner in the van along with your brother officers what did you then do?

A. I stayed in the wagon, went to the hospital.

Q. You stayed in the rear of the wagon?

A. That's correct.

Q. Did anyone else stay in the rear with you?

A. Yes, they did.

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Heftner - Cross

Q. Who was that?

A. Officer Schuck.

Q. Would you spell his name, please? If you know.

A. I think he spells it S-C-H-U-C-K.

Q. While you were in the van with Officer Faulkner I understand that you removed the coat, the jacket and the sweater?

A. That's correct.

Q. Did you do anything else to officer Faulkner?

A. We placed a handkerchief over the wound on his face.

Q. Did you do anything else?

A. No.

Q. Did you in any way attempt to apply any pressure to any of his wounds?

A. Just what I just said, the handkerchief to the face.

Q. Now, when you said you placed a hankerchief to his face, did you apply it with pressure?

A. That's correct.

Q. Did you notice any other wounds?

A. Not at that time.

Q. Did you remove his belt?

Page 22

Heftner - Cross

A. No, I did not.

Q. Is there a reason why you didn't remove his belt? Did you loosen his belt? Strike that. Did you loosen his belt?

A. No, I did not.

Q. Did you loosen his shirt collar?

A. I'm almost sure that his shirt collar was open.

Q. In the van?

A. In the van.

Q. But you don't know who did it?

A. No.

Q. And I assume -- and correct me if I'm wrong - Officer Faulkner said nothing, said nothing at all?

A. Nothing at all.

Q. Now Officer, as best as you can possibly remember, when you arrived at the scene you saw Officer Faulkner. Can you tell us the location, the relative location, of his hands to the rest of his body?

A. His hands were at his side.

Q. Okay. Now as best as you can, could you stand up and give us or approximate the position that his right hand or his left hand was? If you could do that by standing so that the jury can see.

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Heftner - Cross

A. Approximately here.

Q. So that I can describe it for the record, it appears that both hands are approximately an inch to two inches away from his legs; is that about right?

A. That's about right.

Q. Were the hands in any way, were the arms in any way, folded or bent?

A. Not that I can remember now.

Q. Okay. Please return to your seat. Did you happen to take notice of his

hands, see whether or not they were open or closed?

A. No, I did not.

Q. Did you happen to see if anything was in his hands?

A. No, I did not.

Q. You Would certainly noticed something in his hands if he had had something in his hands; is that right?

A. That's correct.

Q. May I see C-3, please, and C-4 too. I'm sorry. When you passed Mr. Jamal was he seated, was he laying on the ground? Or what was his body position? Do you recall?

A. He was seated.

Q. At any time before you left the scene did you see

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#### Heftner Cross

Mr. Jamal on his back?

A. No, I did not.

Q. When you indicate that Officer Faulkner's feet were pointed, I believe you said in a northwesterly direction, could you estimate how far his feet were from the curb line?

A. (No response.)

Q. If you can recall.

A. No, I can't recall.

MR. JACKSON: Thank you, officer. I have no further questions at this time.

MR. MCGILL: May I see C-3?

REDIRECT EXAMINATION BY MR. MCGILL:

Q. You were not the first Officer at the scene; is that correct?

A. No, I wasn't.

Q. What was your primary purpose when you arrived and observed what had happened?

MR. JACKSON: Objection. Asked and answered.

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#### Heftner Redirect

THE COURT: Overruled. I'll let him answer it.

MR. MCGILL: The question was, what was your primary purpose when you arrived after you had seen the particular circumstances which you observed.

THE WITNESS: To get Officer Faulkner to the hospital.

BY MR. MCGILL:

Q. Was your primary purpose to stop and look for evidence?

MR. JACKSON: Objection.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. MCGILL:

Q. Was your purpose to look for witnesses or people who were standing around?

A. No, it wasn't.

Q. As a matter of fact, the only thing you were concerned with was trying to save his life, wasn't it?

A. That's correct.

Q. Now, I'm going to show you C-3. May I approach the witness?

Page 26.

Heftner - Redirect

Q. Where was Officer Faulkner's head in relation to that blood or that stain in the photograph?

A. Right at the top.

MR. JACKSON: Excuse me a moment, please? I'm sorry. Could you repeat it again, sir?

THE WITNESS: Right up here.

MR. JACKSON: So it would be on a place that's not on the photograph?

THE WITNESS: That's correct.

MR. JACKSON: Fine.

MR. McGILL: Just put an "F" where that is.

MR. JACKSON: I would object. The spot he's pointing to is not on the photograph.

THE COURT: You object what?

MR. JACKSON: He wants him to mark an "X" on a blank spot.

THE COURT: What?

MR. JACKSON: He wants him to mark a photograph at a point where he says his head would have been, but it's not in the photograph.

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Heftner Redirect

THE COURT: Do you have another photograph?

MR. McGILL: Let me see the other photograph, please?

BY MR. McGILL:

Q. I'm showing you C-10. Would you show in the photograph, if you can, with an appropriate big "F" where his head was, Officer Faulkner's. Now

in reference to C-3, again, you have stated that his legs were in a northwesterly direction; is that right?

A. That's right.

Q. And you placed it on the sketch. So that we're clear it is fair to say, is it not, that his feet are not at the bottom at this "F" as indicated by the sketch but further down because that was merely a letter that you had put; that it wasn't the full extent of his body in relation to the Volkswagen, was it?

A. That's correct.

Q. Do you know how tall he was?

A. He was approximately five feet -- five eleven, five eleven and a half.

Q. And you don't know how long a Volkswagen is,

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#### Heftner - Redirect

right?

A. No.

MR. MCGILL: Thank you very much, Officer Heftner.

MR. JACKSON: One moment, please.

RE-CROSS-EXAMINATION BY MR. JACKSON:

Q. Officer Heftner, did you note where in fact Officer Faulkner had his flap jack.

A. Black jack.

Q. Black jack. Did he have that on his person?

A. I didn't notice.

Q. Did you, when he was in the wagon, touch him to see what weapons, you know, what he had on?

A. No, I didn't.

Q. Other than the face, where else, if any place, did you see him bleeding?

A. At that time I didn't see anything.

Q. Did you notice anything on his hand? Again, I know that you said there was nothing in his hands but did you see anything on his hands, any blood, any dirt, anything at all on his hands?

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Heftner - Recross

A. I don't recall right now.

MR. JACKSON: Thank you very much.

BY MR. MCGILL:

Q. Officer, you did say when he was in the wagon you noticed that his gun was not there.

A. That's correct?

Q. It was just an empty holster; is that right?

A. That's correct.

MR. MCGILL: Thank you, Officer.

(Witness Excused.)

MR. MCGILL: Your Honor, at this point I would like to move for the introduction of the photograph so the jury can have an opportunity to see what we were talking about.

THE COURT: Which ones are you talking about.

MR. MCGILL: It would be all the photographs, I believe, Your Honor, from C-3 on.

THE COURT: C-3 --

MR. MCGILL: They are all limited to

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the scene.

THE COURT: C-3 through C-13. How about C-16?

MR. MCGILL: Just the scene, I won't show the photographs of Mr. Cook.

THE COURT: Well, C-16 is a photo of 1234 Locust Street; is that right?

MR. MCGILL: Yes, that would be fine, too. Whatever depicts the scene which would be all those photographs except for C-21. I would move the introduction of those and ask that they be distributed among the jury.

THE COURT: Do you want to see me at side bar?

MR. JACKSON: Not really, Your Honor. I also ask that D-2 be admitted, D-3, D-4, D-5, D-6, D-7.

MR. MCGILL: All of them?

MR. JACKSON: Okay?

MR. MCGILL: No objection.

THE COURT: You want D-1, also?

MR. MCGILL: That's fine. Everything.

THE COURT: You have D-1.

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MR. JACKSON: I don't need D-1, no, because that doesn't relate to the scene.

THE COURT: D-2 to D-9.

MR. JACKSON: That's correct, fine.

THE COURT: And yours is C-3 through 16 except 13, 14 and 15, and not the photos; is that right?

MR. MCGILL: That's it.

THE COURT: As I indicated, C-3 to C-13, and C-16 is admitted into evidence; D-2 is admitted into evidence through D-9 and can be shown to

the jury.

MR. JACKSON: Your Honor, may we see you at side bar. We don't need the stenographer.

(A side bar conference was held off the record.)

THE COURT: Gentlemen?

MR. MCGILL: Yes. The next witness will be Mr. Joseph Kohn.

(A discussion was held off the record.)

JOSEPH KOHN, having been duly sworn, was examined and testified as follows:

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Kohn - Direct

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Kohn, where are you currently employed?

A. Pearson's Sporting Goods.

Q. What is your position there?

A. I manage the Gun Department.

Q. All right. Sir, referring you to the date of June the 27th, 1979, where were you employed on that date?

A. Pearson's Sporting Goods as manager.

Q. I see you have something in your hand. Did you bring, pursuant to subpoena, some of your records from that --

A. Yes, I did.

Q. -- from that particular store? And are you familiar with how the records are kept?

A. Yes, I am.

Q. And are those your official business records?

A. Yes.

Q. I'll ask you to take a look at C-22 and also make reference to your records, if you would. Would you keep that by, please. Are you able to identify that weapon?

Page 33.

Kohn - Direct

A. Yes, sir, I am.

Q. First of all, what kind of a weapon is it?

A. It's a Charter Arms Undercover .38 Special, two inch barrel, five shot.

Q. Were you able to see the manufacturer's number on that particular weapon?

A. Yes, sir, I was.

Q. And what was it?

A. Serial Number is as stated on the federal file 150293.

Q. Do you also have the records there for the -- with the manufacturer's number?

A. Yes, sir. I have the federal form and the city form.

Q. May I approach the witness, please? May I take a look at that form?

A. Yes, sir, you may. These are the city forms and the big large yellow one is the federal form.

Q. This is what you read as the serial number?

A. That's correct.

Q. Would you read that again?

A. Serial number of the Charter Arms purchased on 6/27/79 is as follows:

510293.

Page 34.

Kohn - Direct

Q. Okay. You had transposed them before, I think.

A. Yes, I did.

Q. This is the correct one, 510293?

A. That's correct.

MR. JACKSON: Excuse me?

MR. MCGILL: I'm showing you what is --

MR. JACKSON: So that I'm clear, when he said one five, that was incorrect?

MR. MCGILL: No. It's 510293.

MR. JACKSON: Thank you.

BY MR. MCGILL:

Q. Is this a copy of that particular form?

A. That is a copy.

MR. MCGILL: I ask that that be marked, please, C-28. Also, would you mark this C-29, as long as you're marking them?

THE COURT: That's C-28 and that's C-29.

MR. MCGILL: Yes. Would you show the witness those two documents?

BY MR. MCGILL: Are those two documents reproductions of the record?

A. Yes, they are.

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Kohn - Direct

Q. Now so that we are clear, would you take, again, a look at the actual revolver there, C-22, and read the number, the manufacturer's number, on that revolver?

A. The manufacturer's number on the revolver is 510293.

Q. That is the same as that indicated on your records; is that correct?

A. That is correct.

Q. Is there a name indicated on the record as the purchaser?

A. Yes, there is.

Q. And what is his name?

A. Mumia Abu-Jamal.

Q. Would that be Mumia Abu-Jamal?

A. That is correct.

Q. Is that the individual in the courtroom today?

A. Yes, sir, it is.

Q. Would you point him out?

A. Right there, sir.

Q. What does he have on now.

A. (No response.)

Q. What is he wearing now?

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Kohn - Direct

A. A blue and white striped shirt.

Q. Indicating the defendant for the record, Your Honor.

Q. And on that day, June 27, 1979, did the man that you pointed out just

then buy that revolver?

A. Yes, sir.

Q. Now, you mentioned that's a two inch --

A. That's correct.

Q. You also sell bullets?

A. Yes, sir, we do.

Q. Would you take a look at the envelope that is connected with that revolver and open that up? Can you tell what kind of bullets they are?

A. Yes, sir, I think.

Q. What are they?

A. They're .38 Special marked with a Plus P made by Federal --

Q. You were just looking at one of them, weren't you?

A. Yes. The other one, Smith and Wesson, .38 Special Federal Plus P, .38 Special Federal Plus P, .38 Special Federal, .38 Special Plus P.

Q. You have been selling bullets as well as weapons for a long time, sir?

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Kohn - Direct

A. Yes, sir, I have.

Q. How long?

A. 12 years.

Q. What is the effect, what is the significance of Plus P bullets in that particular revolver?

MR. JACKSON: Objection.

THE WITNESS: Plus P --

THE COURT: May I see you over here?

MR. JACKSON: Certainly.

(A side bar conference was held on the record as follows:)

MR. JACKSON: The basis of my objection is I don't know whether he's getting into some expertise or talking about some sales jargon. That's my objection.

MR. MCGILL: What the individual will say will be that the Plus P's are a very powerful bullet and are used for purposes of deep penetration.

MR. JACKSON: No, sir, not unless he's qualified. He's got to be qualified.

THE COURT: Are you qualifying him as some sort of expert on that? He's already

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Kohn Direct

indicated -- you have an expert you can bring in?

MR. MCGILL: I have.

THE COURT: Why don't you let the expert testify to that?

MR. MCGILL: Sure.

THE COURT: And he's read it and he's indicated what they are.

MR. MCGILL: If I would qualify him would Your Honor accept him?

THE COURT: If you can qualify him as an expert, yes. I don't know whether he's -- all I know at this time he's been selling guns and bullets for 12 years.

MR. MCGILL: Okay, sir.

THE COURT: I don't know from that.

(Side bar conference ended.)

BY MR. MCGILL:

Q. Do you also fire weapons?

A. Yes, sir, I do.

Q. How long have you been firing weapons?

MR. JACKSON: I'm sorry, I can't hear you.

MR. MCGILL: I'm sorry, Your Honor.

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Kohn - Direct

BY MR. MCGILL:

Q. How long have you been --

A. Fifteen years.

MR. MCGILL: Some times I lower my voice. If any of the jurors can't hear at any time, please raise your hands. Sorry, Mr. Jackson.

MR. JACKSON: Sure.

BY MR. MCGILL:

Q. Have you fired those types of weapons, .38 --

A. Yes, I have.

Q. Have you loaded those weapons with Plus P type of cartridges, as well as, other types of cartridges?

A. Yes, many types.

Q. Have you fired weapons that are of that size barrel,- as well as, longer barrels with those types of cartridges, that is, Plus P, as well as, other types?

A. Yes, I have.

Q. Have you had any training in firing?

A. Yes, I have.

Q. What kind of training?

A. I've fired at the Philadelphia Indoor Pistol

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Kohn - Direct

Range --

MR. JACKSON: Objection. It's not responsive. That's just saying he's fired the weapon, not saying he's been trained.

BY MR. MCGILL:

Q. Have you had any training at all, sir?

A. No, sir, other than firing frequently.

Q. How many years have you fired weapons?

A. Approximately 15 years.

Q. Over what period of time in one year or how often would you fire a weapon?

A. I would say at least ten times a year and as much as two or 300 --

Q. Two or 300 what?

A. I fire weapons constantly in the store to test firearms.

MR. MCGILL: All right. Cross-examine on qualifications to the one question as to the effects of a Plus P bullet, on it being fired from that weapon.

MR. JACKSON: I don't know that any questions are necessary since I don't think he's qualified as an expert to give testimony.

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THE COURT: Well, I have to make a decision.

MR. JACKSON: Fine, sir.

BY MR. JACKSON:

Q. You've indicated you've received absolutely no training at all; is that right?

A. That is correct.

Q. And whatever it is you know about weapons is from your experience of firing a weapon for 15 years; is that right?

A. That's right.

Q. How often did you fire .38 Special Federal Plus P's?

A. Out of how long a time, sir?

Q. Over 15 years, sir.

A. Over 15 years I really couldn't tell you. Out of a year approximately -- I'm guessing now -- 30 or 40 times.

Q. And were they direct for the manufacturer?

A. Pardon me?

Q. Were these .38 Special Plus P's, were they direct, or do you self-load them?

A. No, sir, we do not self-load. They are direct

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from the manufacturer.

Q. You measure the grains of powder in the bullets?

A. Do we, sir?

Q. Did you?

A. No.

Q. Have you ever?

A. No, sir.

Q. Do you know how many grains of powder in a Federal .38 Special Plus P?

A. 156, sir.

Q. How do you know that, sir, if you never weighed them?

A. It is written on the box of each size we sell.

Q. And you assume?

A. We assume that is correct?

Q. But you have no way of knowing?

A. No, sir.

Q. And you never made any independent determination as to whether, in fact, each and every .38 Special Federal Plus P bullet has 156 grains?

A. No, sir. We go by the manufacturer.

Q. So that any testimony that you would give with respect to a .38 Special Federal Plus P would be based

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on something that you've read on a box; is that correct?

A. Or my experience of firing, yes, sir.

Q. But your experience of firing is without the benefit of weighing the grains; is that right, sir?

A. Yes, sir, that is correct.

Q. So it would be an assumption on your part; is that correct?

A. That's correct.

Q. Isn't the distance and velocity of the bullet depending on the grains of powder in the bullets?

A. Yes, sir, it is and also the barrel length.

Q. Fine. But assume we have the same length of a gun barrel, the bullet may travel faster or longer depending on the grains of powder in the bullet; is that correct?

A. That is correct.

Q. So any testimony that you would give with respect to the distance or velocity of this .38 Special Federal Plus P, you would be assuming that what the manufacturer placed on the box is what's in the bullet?

A. That's correct, sir.

MR. JACKSON: Fine. I have no further;

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questions, Your Honor.

BY MR. MCGILL:

Q. Sir, have you purchased the -- what were the types of bullets that you just indicated? One Smith and Wesson I have.

A. One Smith and Wesson and four Federal.

Q. Have you fired those types?

A. Yes, I have.

Q. Have you purchased those types of cartridges?

A. Yes, sir.

MR. MCGILL: Your Honor, my questions will only go to his experience in firing those particular type of cartridges which were marked with such a name and number of grains from the manufacturers.

THE COURT: Would you see me?

MR. JACKSON: Yes, sir.

(A side bar conference was held on the record as follows:)

THE COURT: Let me see if I understand you correctly, Mr. McGill. You're saying that you're going to offer him as an expert to show

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what? The effect of that type of bullet?

MR. MCGILL: Of just that type of bullet which he has fired in his experience, that type of bullet and that type of weapon. And also the effect of small barrel to his ability --

THE COURT. In other words, you're comparing the two bullets, the regular type of bullet and this sort of Federal?

MR. MCGILL: Plus P.

THE COURT: Plus P, whatever that means.

MR. MCGILL: Which is basically, to tell the Court, Plus P is one that --

THE COURT: Has a little bit more.

MR. MCGILL: Deeper penetration.

MR. JACKSON: But --

THE COURT: I just want to get this --

MR. MCGILL: He will be testifying -- wait a minute -- he will be testifying solely and it will be limited to his expertise in the amount of time that he has fired, which he's indicated, and he will say what his experience has been with those types of bullets from the same

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manufacturer as which is in evidence. Therefore, his testimony would be limited to that and the weight would be limited to that.

THE COURT: Okay. Go ahead.

MR. JACKSON: Your Honor, I'm going to object in that the only thing this man has said is that he's fired a weapon, he has the experience of firing a weapon. He has absolutely no training.

THE COURT: He's got on the-job-training.

MR. JACKSON: No, he doesn't.

THE COURT: Firing on the job.

MR. JACKSON: Your Honor --

THE COURT: And you're telling me that somebody has to go to formal school?

MR. JACKSON: No. Wait a minute. For the expertise that he's going to give it's no more than I fired a weapon.

THE COURT: If you did a lot of firing with guns and you could say when I fired a regular bullet it penetrated a certain target I had, say it went in two inches, and then when I fired with this P Plus it went in four inches.

MR. JACKSON: Fine.

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THE COURT: -- he certainly could testify to that.

MR. JACKSON: If we know that the grains of powder in the bullet were constant. He doesn't know that.

THE COURT: Nobody knows.

MR. JACKSON: Oh, yes.

THE COURT: Nobody knows. He has to go by what the manufacturer says and he can't take a bullet apart, weigh it, put the stuff back again, put it in. He doesn't have to do that because we don't even know if the bullets that were used in this case were really that. We don't know.

MR. JACKSON: Fine. My point is if he's going to testify against a certain kind of bullet without knowing the grains of powder that was in the bullets

when we have an expert who can't testify --

THE COURT: Even his expert isn't going to say that.

MR. JACKSON: You don't know if it's the same bullet.

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MR. MCGILL: Same type.

THE COURT: All we know is that type does a certain thing and that's perfectly legitimate, and he can do that. I told you it goes only --

MR. MCGILL: The amount of grains doesn't go to the powder, it goes to the weight of the bullet.

THE COURT: The weight.

MR. MCGILL: Not the grains.

THE COURT: What does this 158 --

MR. MCGILL: That's the weight of the bullet.

MR. JACKSON: Sure.

MR. MCGILL: Not the grains.

MR. JACKSON: Sure.

(Side bar conference ended.)

MR. JACKSON: Your Honor, may I have a few additional questions with regard to qualifications? Just a few more.

THE COURT: Sure.

MR. MCGILL: I have one other question, if I can, and I have no objection to further

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cross.

THE COURT: Sure.

BY MR. MCGILL:

Q. First of all, when you talk about 158 grains, that's really the weight of the bullet?

A. That is correct.

Q. Not the powder?

A. Not the powder. The weight of the bullet.

MR. MCGILL: Okay. Go ahead, then, Mr. Jackson, if you have further questions.

BY MR. JACKSON:

Q. Do you know how many grains of powder in each of the bullets, sir?

A. No, sir, I don't.

Q. Does it vary? In your experience of 15 years does the grains of powder in the box of bullets --

A. From the manufacturer?

Q. Yes.

A. It varies very small.

Q. How do you know, sir?

A. How do I know it's a very small amount?

Q. Yes, sir.

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A. Because there's federal regulations governing the amount of powder loaded in bullets.

Q. So you're assuming the manufacturers are obeying federal law?

A. Hopefully they are, yes, sir.

Q. But my question independent of that --

A. No.

Q. No? No way of knowing. So, again, you just assume?

A. Yes.

Q. Also, sir, you indicated you've fired the .38 Special Federal Plus P bullet before?

A. That is right.

Q. That's correct. And you've fired it as well in a Charter Arms Undercover; is that correct?

A. I have on occasions.

Q. How many times have you fired Federal Plus P in Charter Arms Undercover?

A. At the most maybe twice.

Q. Twice?

A. Yes.

Q. Okay. Now based on your experience of shooting twice, how many rounds would you have fired on each

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respective occasion?

A. Approximately six rounds.

Q. On each occasion, or total?

A. On each occasion.

Q. And again those six rounds on each occasion you have no idea with respect to the difference in powder load; is that correct?

A. That's correct.

Q. Over the 15 years of experience that you've had how many weapons have you fired, sir?

A. Really that would be impossible for me to tell you.

Q. Could you?

A. Quite a number.

Q. When you say quite a number is it over 100?

A. Oh, definitely.

Q. Over 500?

A. Definitely.

Q. And how many revolvers would you have fired, sir?

A. I would say theoretically speaking about 80 percent were revolvers.

Q. Now, when you indicated to Mr. McGill that you fired the weapons in order to test them, what do you

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mean by test them? To see if they work?

A. That's correct.

Q. That's all?

A. Just to see if they fire correctly.

Q. When you say fire correctly you mean pull the trigger to see if the bullet comes out?

A. And whether it hits the target and how far off it is up, down, right or to

the left.

MR. JACKSON: Fine. I have no further questions at this point, Your Honor, with regard to his qualifications.

BY MR. MCGILL:

Q. How often have you fired Plus P cartridges in .38 weapons?

A. Quite often.

Q. And when you say quite often, would you give me an idea?

A. I would say about at least 70 percent of the time I'm firing Plus P's.

MR. JACKSON: Nothing further as to that, Your Honor.

THE COURT: These Plus P's that you I fired, were they in two-inch revolvers, or larger

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or --

THE WITNESS: The majority of them are in four-inch revolvers because two-inch revolvers aren't really supposed to be firing Plus P's.

THE COURT: I see.

MR. JACKSON: Again, I renew my objection, Your Honor, as to his qualifications.

THE COURT: The Court will accept him as an expert for the limited purpose for which the District Attorney has indicated to me he's going to use him.

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Tell the jury why Plus P's aren't supposed to be used for those kinds of weapons.

MR. JACKSON: Objection. Now he's talking with regard to why they're

not supposed to and that is not the area of his expertise. He's testified with regard to what he did when he fired a weapon.

MR. MCGILL: I would like them to hear why.

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Kohn - Direct

MR. JACKSON: I would object, sir. It's not his expertise.

MR. MCGILL: In response to a question --

THE COURT: Let's go over here, please.

(Aside bar conference was held on the record as follows:)

MR. JACKSON: It's going beyond, sir.

MR. MCGILL: It's just that that last question -- because you 're not supposed to do --

THE COURT: Well --

MR. MCGILL: That kind of leaves it hanging to the jury. You're not supposed to do that. The question would be why not.

THE COURT: Why are you not? Let me know.

MR. MCGILL: Because they're high velocity, bullets in a small weapon, and they penetrate and cause a great deal of damage in a little weapon like that.

THE COURT: What do you mean? It causes damage to the weapons?

MR. MCGILL: No. To the target.

THE COURT: Why would that be so?

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Kohn - Direct

Do you know?

MR. MCGILL: Why? Because of the Plus P. Because if it's a higher

velocity than the gun should hold --

THE COURT: I'm not expert in guns.

MR. MCGILL: You're right about that because I'm not explaining it very well.

THE COURT: You say you've got a four inch gun.

MR. MCGILL: I'll withdraw that question.

THE COURT: Maybe if you put that question to your expert.

MR. MCGILL: Yes, sir.

(Side bar conference ended.)

MR. MCGILL: I'll withdraw that question, Your Honor. I understand the Court's ruling is that I am permitted in the limited area?

THE COURT: Yes, limited area.

MR. MCGILL: Okay.

BY MR. MCGILL:

Q. You have that and you've looked at that Charter Arms as well as those cartridges; is that correct, sir?

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Kohn - Direct

A. That's correct.

Q. Let's talk about Plus P cartridges. What effect does a Plus P cartridge have in that type of weapon?

A. It puts undue stress on the steel of the weapon, high pressure, Plus P stands for high pressure.

Q. What effects in terms of the target area?

A. In the gun trade it's called a devastating bullet.

Q. What do you mean by that, "in the gun trade?"

A. When it hits the target it just almost explodes.

Q. Is it fair to say for deeper penetration?

A. That's correct, higher velocity.

Q. And you counted five, didn't you, in that particular revolver?

A. I did not hear the question.

Q. You counted five in that envelope?

A. That's correct.

Q. Now, you noted a two-inch barrel -- is that correct? -- on that particular  
--

A. That's correct.

Q. In terms of your experience using that, a two inch barrel on a weapon,  
what significance is that in your experience in terms of accuracy?

A. It's a very close bodied weapon to be used for

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Kohn - Direct

close range only.

Q. Would it then be fair to say that in order to be sure that you hit the  
target you have to be close?

MR. JACKSON: Objection.

THE COURT: Will you rephrase that question?

BY MR. MCGILL:

Q. In order to be sure, certain, of a hit with that kind of a weapon with  
those kinds of bullets and with that kind of barrel length, what kind of  
distance must you have --

MR. JACKSON: Objection.

BY MR. MCGILL: -- to the target?

MR. JACKSON: Objection unless he's going to qualify to the accuracy of the weapon. He's going beyond this man's area of expertise.

MR. MCGILL: He's fired the weapon, Judge. He fired a number of weapons with long and short barrels with Plus P's.

MR. JACKSON: If you must qualify him as to that then I'm going to go through it again.

THE COURT: Qualify him on that.

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Kohn - Direct

MR. MCGILL: Yes, sir. Long and short, Plus P's and .38's?

THE COURT: Qualify him on that.

MR. MCGILL: Then we'll go through it again.

THE COURT: Yes.

BY MR. MCGILL:

Q. Have you fired various weapons with long and short barrels?

A. I have.

Q. How often have you fired weapons with long and short barrels? And give me an estimate of the time on those.

A. I've fired long and short weapons quite often. I would say short weapons more than long. Over the 12, 13 years of my trade.

Q. All right. And while you've fired them have you noted the particular accuracy of the weapons?

A. Definitely.

Q. And in comparison to the accuracy of long and short barrels have you

also noted that --

A. Yes, sir.

Q. --in reference to all of the firing of the weapons

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Kohn - Direct

that you --

A. I have.

Q. Does that also include the Charter Arms?

A. That's correct, it does.

MR. MCGILL: Nothing further.

BY MR. JACKSON:

Q. Mr. Kohn, the accuracy of the weapon is somewhat dependent upon the person firing it as well, isn't it?

A. That's correct, also.

Q. So when you start to talk about the accuracy of the weapon it's somewhat dependent on your accuracy; isn't that correct?

A. That is correct.

Q. And would it also be fair to say that your accuracy, as anyone else's accuracy might vary from day to day?

A. It might.

Q. And from time to time?

A. Yes.

Q. Depending upon the weather, as well?

A. I don't think as much as the weather but maybe the stress of the particular person.

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Kohn - Direct

Q. Now, you said you don't think it's the weather. Do you know it's not caused --

A. No, sir, I don't.

Q. You're just assuming the weather has no impact?

A. Right.

Q. You're saying whether it's raining, snowing, humid, dry, sun, those things are no factor with respect to accuracy?

A. No, sir.

Q. Okay. Fine. That's what you say.

A. No, sir.

Q. And you're further saying -- if I understand you correctly -- what about the powder in the bullet itself? Does that have an impact on the accuracy of the bullet?

A. Yes, it would.

Q. What about the weight of the bullet itself? Does that have some impact on the accuracy?

A. Yes, it would also.

Q. So when you also said that the barrel -- are you able to say with any degree of certitude that a two inch weapon is accurate from a -- within a certain distance?

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Kohn - Direct

A. I would say yes.

Q. You would say yes?

A. Yes.

Q. Within what distance, sir?

A. An accurate distance?

Q. Yes, sir.

A. Twenty-five feet.

Q. So it's accurate within 25 feet?

A. Within 25 feet.

Q. And so that when you said it's a close range weapon, you're saying that anything within 25 feet is close range?

A. Yes.

Q. And with all of the factors that you just described to us effecting the accuracy -- strike that. Would it be fair to say, Mr. Kohn, any weapon whether it's a long arm, short arm, cannon bazooka or what, the closer you are the greater the possibility that you'll hit the target?

A. Definitely.

Q. So within 25 feet it isn't so much because this weapon is just a two-inch barrel, if you had a long arm within 25 feet the accuracy would not necessarily

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Kohn - Direct

be any better than a two-inch; is that correct?

A. Oh, no. It would be much more accurate.

Q. Well, if you're aiming at a point and you hit the point with a two-inch weapon, the target, the point that you're aiming for, how could it be any better if you're on target?

A. Oh, I didn't understand. Then it would be the same. Yes, sir.

Q. So then the accuracy would be the same?

A. That is correct.

MR. JACKSON: I have no further questions as to his qualifications.

BY MR. MCGILL:

Q. Yes, in keeping with Mr. Jackson's question, Mr. Kohn, if this is accurate, with these penetrating bullets at 25 feet, what would 12 inches -- would it be accurate then?

A. Most definitely.

Q. And as a matter of fact, these deep penetrating bullets, the Plus P bullets, policemen aren't even allowed to use them, are they?

A. No sir.

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Kohn - Direct

MR. JACKSON: Objection.

THE COURT: I'll sustain the objection. Do you have anymore questions?

MR. MCGILL: Just a moment, Your Honor, please. I have nothing further. Thank you.

MR. JACKSON: I have a few questions, if you don't mind.

THE COURT: What was that?

MR. JACKSON: I'm sorry?

MR. JACKSON: I didn't hear you.

THE COURT: I have a few questions.

CROSS-EXAMINATION

BY MR. JACKSON:

Q. You've indicated that you've been at Pearson's for 12 years; is that correct?

A. That's correct.

Q. And over that period of time you've pretty much been in charge of the gun department?

A. No, sir, I haven't.

Q. How long have you been in charge of the gun department?

A. Six years.

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Kohn - Cross

Q. During that six-year period of time how many guns have you sold, sir?

A. I would only be guessing. We average about close to a thousand guns a year in short guns.

Q. How many Charter Arms, two-inch.

A. Charter Arms is a very popular weapon. I would say approximately 20 to 30 a year.

Q. So over a six-year period of time that you've been in there it would be fair to say -- six times 30, as you said?

A. That's correct, probably.

Q. Yes

A. Probably more.

Q. Probably more. And do you have any information as manager of the store as to how many -- strike that. How many stores within the Philadelphia area sell the Charter Arms?

A. Quite a few, I'm sure. It 's a popular weapon.

Q. Do you know based on your experience as a ballistics expert and as a manager of Pearson's, do you know how many Charter Arms are sold in the area?

A. No, sir, I have no idea.

Q. And you say it's a very popular weapon; is that

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Kohn - Cross

right?

A. That's correct.

Q. Would it be fair to say it's one of the most popular weapons?

A. No, I wouldn't say it's the most popular. It is popular because of price.

Q. Now you're familiar with the rifling characteristics of a Charter Arms, aren't you, sir?

A. Yes, sir.

Q. How many other weapons do you sell that have similar rifling characteristics?

A. Quite a few.

Q. How many? Approximately.

A. I would say 40 percent.

Q. 40 percent of the weapons that you sell have similar rifling characteristics as a Charter Arms?

A. That's right.

Q. Now, you indicated that you sold this weapon to Mr. Jamal; is that correct?

A. That's correct.

Q. Now, you have information that indicates that you; were the sales person?

A. That's correct.

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Kohn - Cross

Q. That's reflected on your records?

A. Yes, sir.

Q. And is there a photograph of Mr. Jamal there?

A. No, sir, there is not.

Q. How is it -- do you know Mr. Jamal?

A. Personally?

Q. Yes, sir.

A. No, sir.

Q. How long was he in your presence when you sold him the weapon?

A. Approximately ten minutes the first time and approximately five minutes the second time when he picked the weapon up.

Q. And how is it that you remember Mr. Jamal, sir?

A. Because he was very well spoken and well dressed.

Q. Did you notice any facial characteristics so that in fact you know that this is the man that you sold the weapon to?

A. No, sir.

Q. So in fact you don't know, in fact, this is the man you sold the weapon to, do you?

A. Only by his signature.

Q. Have you seen his signature today, sir?

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Kohn - Cross

A. Yes, sir. I have it right here.

Q. Oh, no. Did you see --

A. No, sir.

Q. You're just assuming that the man who signed that is this man?

A. Yes, sir.

Q. So you don't know that he's the man, do you?

A. I know that he is the man I sold the weapon to.

Q. You know he is?

A. Yes, sir.

Q. How do you know he is the man?

A. Just like if you would come into my store and buy a weapon, came in two weeks, three weeks or a year later I would remember you.

Q. So you're saying you took particular notice how he appeared at that time?

A. Yes, sir. His mannerism, he was very well spoken and very well dressed.

Q. Did he have --

A. And we did comment on his occupation.

Q. And did he have a beard at that time?

A. No, sir, he did not.

Q. Did he have a mustache at that time?

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Kohn - Cross

A. Yes, sir, he did.

Q. Did he wear his hair the same way?

A. No, sir.

Q. You're sure of that?

A. Yes, sir.

Q. So you're saying even though his hair was different and he now has a beard you're sure he's the same person?

A. Yes, sir.

Q. Did he purchase bullets as well?

A. As I can remember no, sir.

Q. So that I'm correct, too, with regard to this manufacturer serial number, did you read a serial number from some document or from some instrument that started off with 150293?

A. No, sir. I read it wrong. It's 510293.

Q. And that's consistent with all of the records that you have there, sir?

A. Yes, sir.

MR. JACKSON: Okay. Thank you very much.

BY MR. MCGILL:

Q. I And that was the same one that was on that

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Kohn - Redirect

revolver, wasn't it?

A. Right there, sir.

Q. As much as Mr. Jackson asked you several questions, I want you to look at this gentleman here, right at him, please.

A. Right.

Q. Is there any doubt in your mind that that is the man that you sold that

revolver to?

A. No, sir, it's not.

Q. Is he the type of person facially that you would forget?

MR. JACKSON: Objection as to the type of person that someone would forget.

MR. MCGILL: That he would forget.

MR. JACKSON: Or anyone else.

THE COURT: Repeat it.

BY MR. MCGILL:

Q. Is he the kind of person that it would appear that you would forget?

A. As he appears now, sir?

Q. As he appeared then and now.

A. As he appeared then, no, sir, I wouldn't forget him. And as he appears now, I wouldn't, no.

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Kohn - Redirect

Q. Is he the same man?

A. Yes, sir.

MR. MCGILL: Nothing further, Judge.

MR. JACKSON: Nothing further.

(Witness excused)

THE COURT: Does the jury need a recess?

MR. MCGILL: The next witness will probably be quite lengthy. If you wish to make an early recess for lunch --

THE COURT: Recess for lunch and be back here at 1:30.

(A luncheon recess was taken until 1:30 o'clock p.m.)

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#### AFTERNOON SESSION

(A side bar conference was held on the record as follows:)

MR. MCGILL: Do you have a copy?

MR. JACKSON: Yes.

THE COURT: Right there.

MR. MCGILL: Let me have yours so I don't have to hold this. First of all, Judge Sabo, again allowed Miss Africa to speak with the defendant. She has been speaking with the defendant I would estimate for approximately ten minutes, 15 minutes. The Judge also allowed this conference between the two people, same two people, before the Court started this morning. I believe that may have been as much as ten minutes, that conference.

Your Honor, this question that I wish to ask the Court, really, rather than stopping in the middle of her testimony -- Cynthia white is my next witness. I haven't been as generous as I should have been. Apparently, she has, well basically, three pages plus two, three and a half I guess you'd call it, pages of prostitution

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arrests. I want to alert the Court and Mr. Jackson that our knowledge is that she has only three open prostitution charges --

THE COURT: Here in the City of Philadelphia?

MR. MCGILL: Here in the City of Philadelphia -- and they will be prosecuted. She is currently incarcerated in Massachusetts for a prostitution offense which she was found guilty of and then she appealed and she is awaiting a trial. Like Municipal Court and Common Pleas here, they have something similar in Massachusetts. She's awaiting a trial for that.

We brought here down on an Interstate Agreement Witness Act. We have her here for the sole purpose of being a witness. Under the law we are unable to prosecute her while she's here for those three prostitution cases.

Under the law you can only use her for a witness. You can not use her for any other purpose than a witness. That's specifically stated in the Act, but we do intend to prosecute her when she returns, and if she finishes her other trial to bring her down

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for purposes of prosecution for those three offenses.

There have been no dealings. She has had -- received hotel accommodations for one night for two hearings and a third hearing, too. The third hearing was a trial, William Cook's trial, Municipal Court trial. It's my duty to alert everybody of these agreements.

And there has been no agreement in reference to her charges. As a matter of fact, she's already been tried on one of her charges that she had not been tried before the hearing. She has four open charges for the hearing that she testified and now she only has three. She was tried before Judge Bednarek, before April, latter part of April. She was due to be tried in the end of May for her second prostitution case but at that time she was currently incarcerated in Massachusetts. I know of no deals at all directly related to her in connection with this case.

There was one thing the court should be made aware of to the extent that this could be or would be a question, I think. A friend of hers

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by the name of Smith who's not a relation but a is very close friend was or has been present with her at several hearings. He at one time was arrested last month, I believe. She was down at that time -- let me think. No, she was not down. She was in Massachusetts at that time. But he was arrested down here and there was some concern over his safety in the prison because of his connection with her. At least I say friend for some time and for that reason we allowed him -- this was a theft charge -- we allowed him to sign his own bail for that theft charge with the assurance that he would appear in Court.

She was not made aware of that until a couple days ago; actually, when I told her about it. I'm trying to think if there's anything else. There was no other deal that I know of at this time for Miss White.

I believe I've done this in order to satisfy my obligation of alerting the court and defense counsel to no deals. At the same time, Your Honor, I point out that the limitation of cross-examination, as I see it, because it's a

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non-crimin falsi offense, would be to the open charges and deals to the open charges and cross examination, which I'm sure he will go into at some length on cross-examination. And I wanted to state at this time rather than objecting --

THE COURT: Yes.

MR. JACKSON: Judge, with regard to the past convictions of prostitution I have no argument to respond to counsel. In fact, I appreciate and understand that those are not crimin and falsi charges. However, to the extent that she does have open charges and whatever the magnitude or non-magnitude of the deal or the existence or non-existence of the deal, I think that I should have an opportunity to explore it with her.

MR. MCGILL: Absolutely.

MR. JACKSON: Of course, it's not because I'm doubting counsel. Simply because I think I have a right to do that. In addition to which even though I would not explore the crimin and falsi cases to the extent that she, Cynthia White, has given false information to the police

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before, if in fact that false information was given on a prior arrest, even if it didn't result in convictions, I think I should have the opportunity to explore that. I do have information that she's given false information to the police and to that extent I'd like to explore it.

THE COURT: Just a minute. Fencil is on the phone.

MR. MCGILL: Off the record.

(A discussion was held off the record.)

THE COURT: Did you work it out?

MR. MCGILL: There's no problem. Mr. Jackson --

THE COURT: So I will know what he's going to do.

MR. MCGILL: All right.

MR. JACKSON: Your Honor, although I won't ask her if she was arrested on such and such a date, I would ask her if she gave the Police false

information or non-false information on a certain date on which she was arrested. But I won't mentioned the addresses, because she's given different names and different arrests and

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addresses.

THE COURT: You mean when she's arrested she gives different names and addresses?

MR. JACKSON: Yes. The point is has she given false information before. I think Mr. McGill --

MR. MCGILL: Well --

MR. JACKSON: Go ahead.

MR. MCGILL: Go ahead.

MR. JACKSON: I thought he said he wasn't going to object.

MR. MCGILL: I will not object to that part of it, but I think the question will be phrased so that you're speaking about names and addresses, because she has no right to give a statement.

THE COURT: That's right.

MR. MCGILL: She could decline. She could say that she was somewhere else. It could be a lie. But that can't be used against her.

MR. JACKSON: I'm just saying it was false information.

THE COURT: Yes.

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MR. JACKSON: False information is false information.

THE COURT: You can go into that on redirect if you want. "What was the false information that you gave? You gave a phony name and phony address."

MR. MCGILL: I'd like that to be involved in the question. He can say false information such as --

MR. JACKSON: I will get into that.

MR. MCGILL: All right.

THE COURT: False information just really can mean anything. All right.

(Side bar ended.)

(The following took place in open Court in the presence of the jury:)

THE COURT: Good afternoon, gentlemen.

MR. MCGILL: Good afternoon, Your Honor. May I proceed, sir?

THE COURT: Yes, please.

MR. MCGILL: The Commonwealth's next witness is Miss Cynthia White.

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#### COMMONWEALTH'S EVIDENCE CONTINUED

CYNTHIA WHITE, having been duly sworn, was examined and testified as follows:

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

#### DIRECT EXAMINATION

BY MR. MCGILL:

Q. Now Miss White, I'm going to ask you to speak very loudly. All right?

A. Yes.

Q. Please. And into the microphone just so I can watch. Can you hear me all right now?

A. Yes.

Q. If there is any time you cannot hear me or understand my questions,

stop me and say to repeat it, please. All right?

A. Yes.

Q. All right. Now first of all, Miss White, you have been -- you're presently in jail; are you not?

A. Yes.

Q. And you presently have been brought down by the District Attorney's office from Massachusetts in which

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you were and are incarcerated?

A. Yes.

Q. And you are incarcerated in connection with a prostitution arrest and conviction which you are appealing in Massachusetts to the Common Pleas Court; is that correct?

A. Yes.

Q. You are also, is it not true -- strike that. You also have been arrested many times over the past number of years for prostitution; is that correct?

A. Yes.

Q. And would it be fair to say although I don't come up with the exact number but it could be over 30, 35, perhaps even 38 times, something like that?

A. Yes.

Q. And during the course of the time where you have been arrested in those particular cases you at times would use different aliases; would that be correct?

A. Yes.

Q. And you would also at times use different addresses; would that be correct?

A. Yes.

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Q. Now Miss White, apparently you have three open cases which means cases that have not yet been tried but will be tried in the Commonwealth of Pennsylvania; is that correct?

A. Yes.

Q. Now Miss White, has there been any kind of arrangement or deal by the District Attorney's office in connection with those particular cases that are outstanding?

A. No.

Q. You have testified in prior hearings, have you not?

A. Yes.

Q. Since the time that you have testified in prior hearings have you also been tried for prostitution in one of the cases that was open before the hearing?

A. Yes.

Q. And that was in April -- was it not? -- before Judge Bednarek; is that correct?

A. Yes.

Q. Was there any deal or any arrangement with our office in connection with that case?

A. No.

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Q. Presently you were scheduled to be tried in May, latter part of May, for one of your three open prostitution cases; is that not right?

A. Yes.

Q. And why were you not tried on that case --

MR. JACKSON: Objection.

BY MR. MCGILL: Q. -- at that date?

MR. JACKSON: Objection.

BY MR. MCGILL: Do you know why?

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. Do you have personal knowledge of why?

MR. JACKSON: Objection.

BY MR. MCGILL: Where were you when that case was tried?

MR. JACKSON: Objection.

THE COURT: Wait a minute. Rephrase your question.

BY MR. MCGILL: Where were you when that case was scheduled to be tried?

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A. I was incarcerated in Boston jail.

Q. Has the District Attorney's office at any time made any arrangements whatsoever with the Massachusetts authorities in reference -- that is even if we could in reference to that case in Massachusetts?

MR. JACKSON: Objection. She'd have no knowledge as to any arrangement with the Massachusetts authorities. It's not a question within her scope, Your Honor.

THE COURT: Overruled.

BY MR. MCGILL:

Q. Are you aware of any kind of arrangement at all that we made with the Massachusetts Court System and District Attorney's office?

A. No.

Q. Are you aware now, are you presently aware, that we made no arrangement with Massachusetts at all?

MR. JACKSON: Objection.

MR. MCGILL: Quite --

MR. JACKSON: Objection.

MR. MCGILL: Quite relevant, Your Honor.

MR. JACKSON: Objection as to how she's going to know that something does not exist.

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BY MR. MCGILL: How did you know?

MR. JACKSON: Objection.

THE COURT: I'll overrule the objection and let her answer.

BY MR. MCGILL:

Q. How do you know?

A. Give me the question.

Q. The question was how do you know that we have no arrangements or deals with the Massachusetts authorities in reference to your present case?

MR. JACKSON: Objection, Your Honor. Again, she can't answer for the Massachusetts authorities.

MR. MCGILL: She can answer for the Philadelphia authorities, though.

THE COURT: Objection is overruled. Go ahead, please.

THE WITNESS: Because I was trialed and convicted on the case.

BY MR. MCGILL:

Q. As a matter of fact what were you sentenced to?

A. Sentenced to 18 months.

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Q. For prostitution?

A. Yes.

Q. Now, you, however, to make it clear, have appealed this particular conviction; is that true?

A. Yes.

Q. So you get a new trial in there?

A. Yes.

Q. But as far as you know, and it's because we've told you, we have made no arrangement or deal with Massachusetts in reference to that case; is that not true?

MR. JACKSON: Objection.

THE WITNESS: That's true.

THE COURT: Overruled.

BY MR. MCGILL:

Q. What kind of arrangement have we made at all with you? What have we done for you or given to you at all that you can remember?

MR. JACKSON: Objection. He's impeaching his own witness. She said there is no arrangement or deal, Your Honor.

BY MR. MCGILL:

Q. In connection with the case what have we done for

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you? If anything.

MR. JACKSON: Objection, Your Honor.

THE COURT: Overruled.

MR. MCGILL: It's relevant.

THE COURT: Go ahead.

THE WITNESS: On three occasions, on two hearings for Jamal and one trial for William Cook, I was lodged in the hotel for security reasons.

BY MR. MCGILL: And that was for one day; was it not?

MR. JACKSON: Objection. Move to strike, Your Honor.

THE WITNESS: Yes.

THE COURT: See me over here.

(A side bar conference was held on the record as follows:)

MR. JACKSON: Your Honor, I object and move for a mistrial. She's indicated that she was housed in a hotel for security reasons. There is no indication that there was any risk of security to her.

THE COURT: Well, let me -- Mr. District

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Attorney?

MR. MCGILL: That was the reason for her --

MR. JACKSON: That's what he told her and I'm sure that's what he

prepped her to say.

MR. MCGILL: All right. Your Honor, it is pretty plain the reasons why she would be held up at a hotel. If she's out in the area walking around 13th and Locust Streets, it's obvious. It's also obvious from the amount of support that this defendant has whether or not it is this defendant himself who has endorsed it, that she would naturally and we would naturally be concerned over her welfare.

MR. JACKSON: Judge, I don't care about the concern. There's been no threat made by Mr. Jamal or anyone else for her to come and say --

THE COURT: On cross-examination you can bring that out, that there's no threat.

MR. JACKSON: Judge, I think you should caution the jury that that's not for security reasons. There's no reason. It's for convenience.

THE COURT: I can caution --

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MR. MCGILL: That is the reason for it. That is the reason. What I will say in this question, that as far as you know there's no direct involvement of any threat to you of this defendant and she would say no.

MR. JACKSON: No.

MR. MCGILL: And then that would be --

MR. JACKSON: Judge, that implies that someone else made it.

THE COURT: Has she been threatened?

MR. JACKSON: No.

MR. MCGILL: There have been threats, Judge.

MR. JACKSON: Well, Judge, to say that on each of those occasions she was in a hotel for security reasons, I mean, that inflames the jury as if to say that someone, either Mr. Jamal or someone acting on his behalf, has threatened her life. That's prejudicial. That's prosecutory misconduct because I'm sure he prepped her to say that.

MR. MCGILL: You know, I would ask Mr. Jackson if he wants to play games like that --

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and I can speak very loud, too, and start pointing my finger.

THE COURT: Cut it out.

MR. MCGILL: Very easily I can do that.

MR. JACKSON: Judge, my apologies. It's just so --

MR. MCGILL: It happens to be a relevant point and that's the reason for it.

MR. JACKSON: It's not relevant and it's prejudicial and inflammatory.

THE COURT: In other words, she has not --

MR. MCGILL: She has received threats.

THE COURT: Is she presently housed in a prison?

MR. MCGILL: Yes. But that is in a separate security wing.

THE COURT: She's now housed in a separate security wing?

MR. MCGILL: Right.

MR. JACKSON: Judge, you have to understand as well as far as I know Mr. Jamal has never known where this woman was. I certainly never

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knew where she was, Judge, and to assume -- and maybe there were threats. We don't know whether it's on this case. We're accepting representations of counsel, and I assume he's saying that there were threats made to her about this case. We don't know who it came from.

THE COURT: Do you want me to say strike from the record for security reasons?

MR. JACKSON: Yes.

MR. McGILL: All right.

THE COURT: That's what I'll do.

(Side bar ended.)

THE COURT: I'm striking from the record only that portion of the evidence that says, "for security reasons."

MR. JACKSON: Would you instruct the jury to disregard that remark, as well?

THE COURT: Well, they understand that when I strike something from the record they disregard it. I told them initially that fact.

BY MR. McGILL: Also, Miss White, for a particular reason a friend of yours was arrested last month while you were not

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here; is that correct?

A. Yes.

Q. And the District Attorney's office made arrangements to have him sign his own bail with assurances that he would appear at his theft preliminary hearing; is that accurate?

A. Yes.

Q. And you know that --

MR. JACKSON: I'm going to object unless she knows that for a fact, Your Honor.

BY MR. McGILL:

Q. How do you know that?

A. I was told.

MR. JACKSON: I object. Then it's hearsay.

MR. MCGILL: Obviously it's hearsay. She's not the person that signed her own bail.

THE COURT: Overruled. Go ahead.

BY MR. MCGILL: You were told by whom?

A. By the District Attorney's office.

Q. I told you.

A. Yeah.

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Q. Now other than that has there been anything at all done for you for the purposes of getting you to testify in this case; that is, other than the hotel and what was done for your friend?

A. No.

Q. Now Miss White, I'm directing your attention to December 9, 1981. Do you recall that night?

A. Yes.

Q. On that night at some time shortly before 4:00 a.m. where were you?

A. On the corner of 13th and Locust.

Q. Okay. Now sometimes you have a tendency to go along and then drop your voice. Keep the volume up, please.

A. On the corner of 13th and Locust.

Q. Do you know what corner that was?

A. Southeast.

Q. And would you tell the jury exactly what you saw occur?

A. I was standing on the corner and I noticed the lights on top of the police

car and the spotlight in the Volkswagen was in front of the police car, and they were pulling over to the side of Locust Street.

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The policeman got out of the car and walked -- started walking over towards the Volkswagen. The driver of the Volkswagen got out of the car. A few words passed. They both walked between the police car and the Volkswagen up to the sidewalk. A few more words passed again between them. The driver of the Volkswagen then struck the police officer with a closed fist to his cheek, and the police turned the driver of the Volkswagen around in a position to handcuff him.

MR. JACKSON: Objection. Move to strike.

THE COURT: Overruled.

MR. JACKSON: There is no indication what he was doing, Your Honor.

THE COURT: Overruled. Go ahead.

THE WITNESS: I looked across the street in the parking lot and I noticed he was running out of the parking lot and he was practically on the curb when he shot two times at the police officer. It was the back. The police officer turned around and staggered and seemed like he was grabbing for something. Then he fell. Then

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he came over and he came on top of the police officer and shot some more times. After that he went over and he slouched down and he sat on the curb.

BY MR. MCGILL:

Q. Now at the time that you saw that where were you, or had you moved from where you were before?

A. No.

Q. What drew your attention to the incident at all?

A. I just looked across the street.

Q. Did you see the Volkswagen or the police car first?

A. Well, I noticed the police car because of the lights that was on.

Q. Now, when you looked over and saw the police car stopped -- in your testimony you said, when you were referring to the police, you said they. Now how many policemen were in the car?

A. One.

Q. So it was he?

A. Yes.

Q. And what side of the car did he get out of? The police car.

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A. Left. I don't know what you mean.

Q. Well, the driver's side, or the passenger side?

A. Oh, the driver's side.

Q. If you don't know left and right, just say some thing else. And when he got out of the driver's side of the car where did the police officer go?

A. He then begun to walk over to the Volkswagen, over to the driver's side of the Volkswagen, but the driver of the Volkswagen got out of the car before he got over to the car door.

Q. Okay. Then what did the police officer and the driver of the Volkswagen do?

A. They were talking. And after they talked they went between the Volkswagen and the police car and walked up to the sidewalk and a few more words passed.

Q. And at this time had you moved from where you were?

A. No.

Q. And then at that point in time what happened? As you said, a few words passed?

A. He then turned around and he hit the police on the right side of his cheek and --

Q. Could you show us where on your face, where the

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driver hit the police officer?

A. He hit him on the cheek.

Q. Now you're using your left side. Do you mean that side or your right side?

A. I mean the right.

Q. Which side is it? Just show me which side if you can recall.

A. No, I don't recall.

Q. Okay. If you don't recall something just say that. But you recall it was part of his face, either the right or left, but it was part of his face is that right?

A. Yes.

Q. And you recall whether the driver of the Volkswagen used his open hand or his closed hand?

A. His closed.

Q. And it was at that point that you said the police officer did what?

A. He turned the driver of the Volkswagen around in a position to handcuff him.

MR. JACKSON: Objection again and move to strike what the officer was intending to do. She just doesn't know.

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BY MR. MCGILL: Show us what he did, would you please? You can use me, if you would. With the Court's permission?

THE COURT: Go ahead.

BY MR. MCGILL: Why don't you come down for the jury? All right. Now, assume that the driver just hit the police officer in the face. What did the police officer do?

A. He turned around and had him like this, in a position to handcuff him. He didn't put the handcuffs on him; just had him in the position to handcuff him.

THE COURT: Would you repeat that for me?

(The following was read back by the reporter as follows:)

Q. "He turned around and had him like this, in a position to handcuff him. He didn't put the handcuffs on him; just had him in the position to handcuff him."

MR. MCGILL: Indicating in her demonstration that she had my left and my right wrists together with my right hand in my excuse me, my right wrist in the cup of my left

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palm area, and both of the witness's hands are on my wrist.

Q. Thank you.

THE COURT: Where are your hands in reference to your body?

MR. MCGILL: Behind. Sorry, Your Honor. Behind my back.

BY MR. MCGILL:

Q. Now Miss White, when you first see the man running across the street? At what point?

A. At the center of the parking lot where the booth is where you pay to

park.

Q. What was he doing then when you first saw him?

A. When I seen him he was running.

Q. And at one time did you look over there in reference to these events?

A. When the police had William Cook in a position to handcuff him.

Q. And did you then -- when was the next time that you looked over to the police officer and William Cook?

A. When he was up shooting at him.

Q. How many times did you see he shot at the police officer?

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A. Two.

Q. And then at that time where was the Police Officer's back in relation to the man who was running across the street?

A. His back was facing him.

Q. Indicating for the record pointing to the defendant, Mr. Jamal. And how close did he get to the defendant -- how close did the defendant get to the police officer when you heard those shots or saw those shots?

A. I'm not good at feet but it wasn't too far away. It was very close.

Q. Okay. I'm going to ask you again, if you would, with the Court's permission, come down and demonstrate something else in front of this jury, Miss White. Now assume that you are the man who shot the police officer. All right. And assume that I am the police officer with my back to you. All right?

A. Yes.

Q. Would you show the jury where the defendant was when those shots, first and second shots, were fired? You have to speak up loudly.

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A. He came between the cars --

Q. Speak up loudly.

A. -- and he shot like this.

Q. All right. Indicating approximately two, three feet. What about the second shot?

A. I don't remember exactly where it went but --

MR. JACKSON: Sorry. Couldn't hear.

THE WITNESS: I don't remember exactly where the shot went at but like this.

BY MR. MCGILL: Okay. How close was he at the second shot?

A. He was still the same distance.

Q. Go ahead. Finish.

A. He didn't move until the police officer fell.

Q. Okay. Now, I want you to turn around, please, if you don't mind my touching you, turn around and move back, a little back. Will you demonstrate to the jury when you said the police officer fell -- and I believe you said he grabbed something.

MR. JACKSON: Objection, Your Honor, and move to strike.

MR. MCGILL: Judge, that's exactly what

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she said.

MR. JACKSON: She has not said that.

MR. MCGILL: Read that back, please. Would Mr. Jackson want to hear it

read back?

MR. JACKSON: Yes, I would.

THE COURT: How many questions?

MR. MCGILL: This was when she was going through the statements of exactly what she observed when she saw the defendant running across the street.

(The following was read back by the reporter as follows:)

A. "I looked across the street in the parking lot and I noticed he was running out of the parking lot and he was practically on the curb when he shot two times at the police officer. It was the back. The police officer turned around and staggered and seemed like he was grabbing for something. Then he fell. Then he came over and he came on top of the police officer and shot some more times. After that he went over and he slouched down and he sat on the curb."

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MR. JACKSON: Your Honor, again, the basis of the objection is that this witness indicates that something appeared to be and, of course, this witness can only testify as to what she saw or heard.

MR. MCGILL: Your Honor, I thought the objection was that she didn't say it at all.

THE COURT: Go ahead. Let's get to it. Come on.

BY MR. MCGILL:

Q. Miss White, can you stand here, indicate here facing the jury, exactly how the police officer fell after the two shots? You don't have to fall away. Just, you know, give us a general idea how it happened.

A. He turned around, staggered, grabbed himself and fell.

Q. You're indicating your left side, using your left arm. Do you know whether it was his left, or was it his right?

A. No, I don't know.

Q. When the defendant then went over what did the defendant then do after the first two shots and the police officer staggered, appeared to be grabbing for

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something, and fell down so you demonstrate?

A. He came over and he stood on top of him and shot some more times.

Q. Now, would you demonstrate, without coming down here, please stand up and demonstrate with your hand and arm exactly what the defendant was doing?

A. Came over and was doing like this here with the gun.

Q. All right. Indicating for the record this time using her right arm she was pointing and going up and down with her right arm three times towards the floor; the elbow was bent at the time that she was moving her arms up and down and her finger was pointed at that time. You may sit. Now Miss White, did you see anything in the shooter's hand?

A. Yes.

Q. What did you see in his hand?

MR. JACKSON: Objection. Point in time.

THE COURT: Rephrase it.

BY MR. MCGILL:

Q. When did you see something in his hand?

A. When he was in the middle of Locust street.

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Q. And what was it that you saw in his hand?

A. I seen something -- the gun, front part.

Q. Again, do you know whether it was the right, or left hand?

A. No, I don't.

Q. Were you able to see the police officer fire anything at the man who shot him?

MR. JACKSON: Objection. There's no indication that the police officer shot, Your Honor.

THE COURT: Can you rephrase the question?

BY MR. MCGILL:

Q. Were you able to see the Police officer do any thing to the defendant?

A. No.

Q. Did you see the police officer once he was reaching and apparently grabbing something and falling down? Were you able to see the Police officer's arm?

A. No.

Why not?

A. Because Jamal was standing over him. Jamal's back was like towards me. He was blocking my view from

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the police officer.

Q. Now Miss White, after the defendant shot the Police Officer when he was on the ground what did he then do?

A. He went over and slumped down on the curb.

Q. And what did the police officer do? If anything.

A. Nothing.

Q. What did you do?

A. I stood on the corner 'till the rest of the police came. Then I walked up to where he was sitting at.

Q. To where who was sitting at?

A. Jamal.

Q. Okay. Now, you mentioned the name and also you pointed a few times. I'll ask you, the man who shot the police officer, Miss White, the man who shot the Officer both in the back and also when he was standing over him, is he in this courtroom?

A. Yes.

Q. Would you point him out? Would you tell me what he's wearing?

A. Striped shirt.

Q. Is there any doubt in your mind at all that this

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is the man who shot the police officer?

A. No, it's not.

Q. Now, you mentioned that there was another person there, the driver of the Volkswagen.

A. Yes.

Q. Who is he?

A. William Cook.

Q. Had you seen Mr. Cook any time before that night?

A. Yes.

Q. Could I have those photographs? How often had you seen Mr. Cook before that night?

A. Several times.

Q. I show you C-21. Can you identify that photograph?

A. Yes. It's William Cook.

Q. When the defendant came over and shot the police officer where was Mr. Cook at this time?

A. He was towards the wall.

Q. Was there anyone else there besides the defendant, the police officer who was on the ground and William Cook?

A. No.

Q. When you waited for the police as the police

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arrived what did you then do?

A. I walked up to where he was sitting at.

Q. Indicating the defendant.

A. Yes.

Q. How close did you get to him then when you walked up? Now, if you can't estimate in feet, just tell me should I go forward, or back? Look at where I am now and tell me if I should walk forward, or back.

A. Well, where are you saying that Jamal is?

Q. Good question. Assume that I am Jamal, I am the defendant. Do you want me to move -- and you are where you were when you saw him when you walked up to him. Tell me should I walk up, or walk back?

A. Walk up a little. Okay.

Q. Now, did you get any closer than this to him when you saw him after the police arrived?

A. They were there and I walked up some more.

Q. How close did you get to him when you walked up some more?

A. I got very close.

Q. Show me how close. Tell me to walk forward to the point.

A. Yes.

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Q. All right. Indicating for the record approximately from where Miss White's feet are, I would estimate the most, two and a half feet from the prior position when she walked up and told me to stop. I would say Your Honor, maybe ten feet, 12 feet.

Q. Now, did you have occasion to see the police arrest this defendant?

A. No.

Q. Well, what did you see the Police do to this defendant?

A. Nothing.

Q. Now, when I say the police, what did you think I meant?

MR. JACKSON: Objection.

THE COURT: Rephrase your question.

MR. MCGILL: All right.

BY MR. MCGILL:

Q. When the police arrived what did they do? What did you think I meant before?

MR. JACKSON: Objection.

MR. MCGILL: Judge, can she explain what she meant?

THE COURT: I have no objection.

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MR. MCGILL: Thank you.

MR. JACKSON: I have an objection, Your Honor.

THE WITNESS: Officer Faulkner.

THE COURT: Oh.

BY MR. MCGILL: When I said the Police before and you said nothing, you meant officer Faulkner did nothing to this defendant?

A. Yes.

Q. Okay. When the police arrived, the other police, when the other police arrived. Okay. With me?

A. Yes.

Q. Did you see them take this defendant anywhere?

A. Yes.

Q. What did they do to the defendant?

A. They took him to the wagon. When they approached him and they went over to him he was swinging his arms and kicking, and they was trying to get him under control to handcuff him.

Q. And there was a number of policemen there doing that?

A. Yes.

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Q. And did they eventually get him, the defendant, to a wagon?

A. Yes.

Q. Now, this Mr. William Cook whose photograph you identified, did you have occasion to see him later on that particular morning?

A. Yes.

Q. Where?

A. Down at the Roundhouse.

Q. That's at 8th and Race?

A. Yes.

MR. MCGILL: I think this may be the last time for me, Your Honor. May I ask the witness to come to the sketch, please?

THE COURT: Certainly.

BY MR. MCGILL:

Q. Now I'm going to give you, Miss White, if you would, this marker. Now this sketch, you've seen this sketch before, right?

A. Yes.

Q. Now you're going to have to turn over here, if you would. Turn around like that. Please speak loudly so these people can hear what you're saying. All right?

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A. Yes.

Q. This, as you know, is 13 feet. This road is Locust Street. You have to say yes, or no.

A. Yes.

Q. This is represented as the police car; this is represented as a Volkswagen; this is represented as a car in front of the Volkswagen. Okay?

A. Yes.

Q. All right now. First of all, would you show the jury where you were when you observed all this?

A. I was on the corner right here.

Q. Okay. Put just a big "X" where you were. Now, would you show where the police officer and Mr. William Cook were standing after officer Faulkner got out of the police car and approached the Volkswagen and then they walked to the sidewalk? Show them where --

A. Are you talking about where they were on the sidewalk?

Q. On the sidewalk, right.

A. Okay. About --

Q. Now, where did you observe the defendant running from?

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A. The parking lot.

Q. And where's the parking lot there?

A. This is the parking lot here.

Q. Indicating for the record the large square area on the northeast portion of 13th and Locust. Now, when the defendant came over what direction did he come over from the parking lot?

A. I don't understand what you're saying.

Q. You don't understand. Okay. Again, speak louder, please. When the defendant came over how did he come over? Where did he go?

A. He ran up, ran across the street, came up between the Volkswagen --

Q. All right. Look at me now, please, and speak loud. He ran between where?

A. The Volkswagen and police car.

Q. Point that out where you mean.

A. Came up right between the police car and the Volkswagen.

Q. Speak up loud, again, please. He came from the parking lot to that area.

Show us approximately where. Assume, for purposes of this sketch, that the parking lot is from here to there and the booth is somewhere

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around here, because that's not indicated there. Show us where he ran from?

A. The booth was --

Q. Just indicate that, if you would, where he ran from and where he went just by a line. Okay. Now, where was he on that sketch when he shot the police officer in the back?

A. He was on the side -- I mean, on the street.

Q. Put "J" there, if you would, just a "J". Now, when the officer was shot in the back and you said he fell down, where do you recall his falling down? If you can estimate.

A. It was in this area.

Q. Okay. Just put a big "F" there, if you would. And where did the defendant then go after he shot the police officer as he was on his back?

A. He went over and sat down on the curb, right here, I suppose.

Q. You have to speak loud. Now just show it on there, show it on the sketch.

A. Right here.

Q. Indicate or just put a "J" there, if you would. Now, when you walked up from where you

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were to see what had occurred how far did you get?

A. I don't understand what you mean.

Q. Okay. Let me ask you this. Where approximately do you remember was

the wagon where they took the defendant?

A. In was in the street next to the police car.

Q. All right. Just put a little square there. And put a "W" in there, if you would. Thank you very much. You may go back, if you would, to the stand. Now, do you recall approximately how many times the defendant shot down when the police officer was on the ground?

MR. JACKSON: Objection, Your Honor. The only thing she indicated is that she saw his hand move.

THE COURT: Do you want to rephrase your question?

BY MR. MCGILL:

Q. You stated that you saw a gun in the defendant's hand in the middle of Locust Street before he shot him in the back; is that correct?

A. Yes.

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Q. Did you see anything in his hand, or were you able to see anything in his hand when he was over the policeman?

A. I could tell something was in his hand, yes.

Q. Do you recall how many sounds you heard?

MR. JACKSON: Objection. Not responsive. The question was could she see anything.

THE COURT: That's her answer. I'll let you on cross-examination --

MR. JACKSON: My apologies, sir.

BY MR. MCGILL:

Q. All right. Do you recall, if you can recall, how many sounds of shots you heard as you saw the defendant's arm moving in the downwardly direction as you've shown the jury?

A. Around three or four times.

Q. Now Miss White, you did have occasion -- did you not? -- to give statements to the police?

A. Yes.

MR. MCGILL: Thank you. Cross-examine.

CROSS-EXAMINATION BY MR. JACKSON:

Q. Good afternoon, Miss White. Miss White, have you

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given false information to the police before at any time?

A. Can you repeat the question, please?

Q. Sure will. Have you given false information to the police at any time before?

MR. MCGILL: I would object unless he's referring to specific things.

MR. JACKSON: Well, we can find out how many times. I may not know all the times.

MR. MCGILL: Judge --

THE COURT: Go ahead.

BY MR. JACKSON:

Q. The question, again. Have you given false information to the police before?

A. No.

Q. Never?

A. No.

Q. Absolutely certain of that.

A. Yes.

MR. MCGILL: Could he explain what he means, Your Honor?

THE COURT: Go ahead.

BY MR. JACKSON:

Q. Have you ever resided on Cecil Street?

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MR. MCGILL: Your Honor, I would object to the specific mention of addresses. If he wants to handle the area he could ask --

MR. JACKSON: Your Honor, how can I get at the exact point --

MR. MCGILL: You can ask her.

THE COURT: Go ahead.

BY MR. JACKSON:

Q. Have you ever resided on Cecil Street?

MR. MCGILL: I would object, Your Honor.

THE COURT: That's all right. Go ahead.

BY MR. JACKSON:

Q. I'll ask you again. Have you ever resided on Cecil Street?

A. No.

Q. Did you tell the police you resided on Cecil Street?

A. Yes.

Q. That's false information, wasn't it?

A. Yes.

Q. Before I go on do you want to tell us now if you have ever given any

other false information to the

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police.

A. The names.

Q. On what dates did you give the false information?

A. I don't remember.

Q. On July 8, 1980 did you give the police false information?

A. On July what?

Q. July 8, 1980.

A. I don't remember giving them a statement July 8.

Q. Where were you living on July 8, 1980.

MR. MCGILL: Your Honor, I would object. If he's referring to did she give false names --

MR. JACKSON: Your Honor, I would object to counsel's argument.

MR. MCGILL: -- then ask for that.

THE COURT: Can you rephrase your question? Be more specific.

MR. MCGILL: Please.

BY MR. JACKSON:

Q. Did you live at 110 South 10th Street on July 8, 1980?

A. Yes.

Q. Are you certain of that?

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A. Yes.

Q. And on 9/10/1980 you lived at 111 South 10th Street?

A. I don't remember.

Q. You don't remember?

A. No.

Q. It's only two days later. Did you move within a two day period?

A. I might have. I don't remember.

Q. So your memory is good as to July 8 and not as to July 10. You just want to be certain.

MR. MCGILL: Objection. Argumentative.

THE COURT: Yes. I will sustain that.

BY MR. JACKSON:

Q. On 10/9 -- I'm sorry. On October the 9th, 1980 did you give the police false information?

MR. MCGILL: Objection again. If he means addresses and aliases, that's one thing.

THE COURT: Be more specific.

MR. JACKSON: Your Honor, the only problem is that there may be additional false information.

MR. MCGILL: Your Honor, may we see Your Honor at side bar? It's clear that he

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violated your order.

MR. JACKSON: Your Honor --

THE COURT: All right.

(A side bar conference was held on the record as follows;)

MR. MCGILL: I guess this is the last time I agree to anything he's supposed to be doing. He cannot go into any statements or information --

MR. JACKSON: She is going to say yes.

MR. MCGILL: Nice and loud so the jury can hear.

THE COURT: Just specific questioning about the name that you have there and the addresses, if she gave those names and addresses to the Police.

MR. JACKSON: Fine. Judge, if she's given additional false information don't I have the right to know? I haven't gone into that. And then did she give anything beyond that.

MR. MCGILL: What?

THE COURT: He says he doesn't know whether she gave anything else false beyond the name and address.

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MR. JACKSON: That's right.

MR. MCGILL: If she had given statements to say that she was somewhere else instead of where she was it would be, obviously, not false information, Your Honor, because at least that evidence --

THE COURT: Wait a minute. You're saying that she used a different name and a different address when she was arrested other than her own? That I'll allow you to go into.

MR. JACKSON: But if she's given other false information --

THE COURT: How can we do that?

MR. JACKSON: If she says no, then no.

THE COURT: She's already said no and you're showing that she did give a false address?

MR. MCGILL: In other words, can you imagine if I could go into a defendant's aliases and addresses and statements that he gave?

MR. JACKSON: She is not a defendant.

THE COURT: What I'm saying is, go in first specifically --

MR. JACKSON: And then ask.

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THE COURT: -- and then ask the other questions. Okay?

(Side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, on October the 9th, 1980 did you live at 1702 Pine Street?

A. I don't remember.

Q. Did you ever live at 1702 Pine Street?

A. Yes.

Q. But you don't know whether it was on 10/9/80?

A. No.

Q. By the way, Cynthia White is your real name?

A. Yes.

Q. On October, I'm sorry, November the 6th, 1980, did you tell the police your name was Debbie Kingston?

A. I don't remember when I told them that.

Q. Well, how many times have you told them that?

A. I don't remember.

Q. More than once?

A. I don't remember.

Q. More than twice?

A. I don't remember.

Q. More than ten times?

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A. I don't remember.

Q. More than 38 times?

MR. MCGILL: Your Honor, objection.

THE COURT: I'll have to sustain the objection, counsel.

BY MR. JACKSON:

Q. Is Debbie Kingston your name?

A. No.

Q. So that was not the truth?

A. No.

Q. That was false information?

A. Yes.

Q. Were you living at 1702 Pine Street on that day?

A. On what day?

Q. November 6, 1980?

A. I don't remember.

Q. On August the 8th, 1980 were you living at 2105 Cecil Street?

A. At 21 what?

Q. 2105 Cecil Street.

A. I never gave that address.

Q. You didn't give the police that address?

A. 2105? No.

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Q. 2105 Cecil Street.

A. No.

Q. Did you give them any Cecil Street address on August 8, 1980?

A. I don't remember the date but I gave a Cecil Street address, yes.

Q. So why are you saying on August the 8th you didn't give them that information if you don't remember?

MR. MCGILL: Objection. She answered the question. She says she doesn't remember.

THE COURT: She says she doesn't know.

BY MR. JACKSON:

Q. I'm sorry. I thought you said --

THE COURT: No.

BY MR. JACKSON:

Q. On January the 4th, 1981 did you tell the police your name was Sydney White?

A. I don't remember.

Q. Did you tell the police you lived at 1215 Rodman Street?

A. I don't remember. It was a while away.

Q. On August the 6th in 1981 did you tell the police your name was Cynthia Martin?

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A. I might have. I don't remember.

Q. Did you tell the police on that same day that you lived at 1504 Catherine Street?

A. I don't remember.

Q. Did you live at 1504 Catherine Street?

A. Yes.

Q. Do you remember if you lived there on August the 6th, 1981?

A. No, I don't.

Q. On August the 21st, 1981 did you tell the police you lived at 2105 Cecil Street?

A. 2105?

Q. Yes, ma'am.

A. I never used that address.

Q. You never used 2105 Cecil Street?

A. No.

Q. You're certain of that?

A. Positive.

Q. So if the court records -- strike that. I'm sorry. On October the 8th, 1980 did you tell the Police that you lived at 2105 Cecil Street?

A. I never used the address.

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Q. Yes, or no, ma'am. Did you tell the police that?

A. No.

Q. On December the 18th, 1980 did you tell the police that you lived at 2105 Cecil Street?

A. No.

Q. On June 17th, 1981 did you tell the police that you lived at 2105 Cecil Street?

A. No.

Q. Now, you've indicated that you never gave the police the address 2105 Cecil Street; is that right?

A. That's correct.

Q. Did you give them any address on Cecil Street?

A. Yes.

Q. What address?

MR. MCGILL: Objection.

THE COURT: That's right. Go ahead. You can answer.

BY MR. JACKSON:

Q. What address?

A. It's 2120 South Cecil.

Q. From what period of time did you live at 2120 South Cecil?

MR. MCGILL: Objection.

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THE COURT: I'll let her answer it. You can answer.

THE WITNESS: I never lived at 2120 South Cecil Street.

BY MR. JACKSON:

Q. Oh, but you give them that address any way? Is that what you're saying?

A. Yes.

Q. That was false information?

MR. MCGILL: Objection. Repetition.

MR. JACKSON: I'm just asking this for the first time.

MR. MCGILL: Obviously it's false if it's not true.

MR JACKSON: Thank you, Mr. McGill. Fine.

BY MR. JACKSON: On October the 9th, 1981 did you tell the police that you lived at 1311 Fitzwater Street?

A. On what date?

Q. October the 9th, 1981?

A. I don't remember.

Q. Do you remember if you were living at 1311

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Fitzwater Street on October the 9th, 1981?

A. I don't remember.

Q. You don't remember where you were living? Is that what you're saying?

A. You asked me on that specific date. I don't remember.

Q. You lived at 2105 South 6th Street; did you not?

A. South 6th Street?

Q. Yes, 6th.

A. No.

Q. Have you ever lived on 6th Street, South 6th Street?

A. No.

Q. Did you ever tell the police you lived on South 6th Street?

A. No.

MR. JACKSON: May I have this marked Defense Exhibit --

MR. MCGILL: May I see it, please?

MR. JACKSON: Sure. I'm sorry. D-10.

MR. MCGILL: Objection, Judge.

THE COURT: Let me see you over here.

MR. JACKSON: Pardon me?

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THE COURT: Let me see you over here.

(A side bar conference was held on the record as follows:)

THE COURT: He has an objection.

MR. JACKSON: What I want to see is if it refreshes her recollection.

MR. MCGILL: Of course that's not an official record at all, Judge.

THE COURT: I know that.

MR. MCGILL: She never authorized it so to be --

MR. JACKSON: Well --

MR. MCGILL: Excuse me? Is that Judge Wilson over there?

MR. JACKSON: It may refresh her recollection.

MR. MCGILL: If the Court pleases, the two black jurors may know him.

MR. JACKSON: Just because they're black --

MR. MCGILL: Or anybody.

THE COURT: Let me say this; What is the purpose of this mug shot?

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MR. JACKSON: I'm not going to show it to the jury. It's just to see if it refreshes her recollection.

MR. MCGILL: You can't use them unless you authorize them.

THE COURT: What are we going to do with this? She said that she didn't give them that address or she doesn't live at that address.

MR. JACKSON: I'm sorry, I said 2122.

THE COURT: What difference does it make?

MR. JACKSON: That's just to show that she gave somebody the information, Judge.

MR. MCGILL: He knows that's improper, Judge. He's trying to get --

THE COURT: She's already admitted that she's given false statements and false addresses and picked up for prostitution, picked up for prostitution a million times. So what? Okay?

MR. JACKSON: Okay.

THE COURT: She admitted it.

(Side bar conference ended.)

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BY MR. JACKSON:

Q. Miss White, on 12/17/81 where were you living?

A. I don't remember.

Q. You don't know?

A. I don't remember.

Q. You don't remember. Now, on any of those dates that I mentioned did you provide the police with any other false information other than that which I've gone over with you?

MR. MCGILL: Objection, Your Honor.

THE COURT: No. Go ahead.

THE WITNESS: Names and addresses.

BY MR. JACKSON:

Q. That's the only false information you gave?

A. Yes.

Q. You're certain of that, too?

A. Yeah.

Q. As certain as you were when you said you never gave any false information?

MR. MCGILL: Your Honor, I would object. When you're arrested --

THE COURT: Sustained. Let's go.

BY MR. JACKSON:

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Q. Now Miss White, you gave the police several statements -- is that right?  
-- about this incident?

A. Yes.

Q. How many?

A. Four.

Q. Four written statements?

A. Yes.

Q. How many oral statements?

A. Excuse me?

Q. How many oral statements? By word of mouth how many statements  
did you give?

A. Four.

Q. Were there any statements that were not written?

A. Yes.

Q. How many?

A. One.

Q. Other than the four written statements and this one that you said wasn't  
written -- I supposed that was taped; is that correct?

A. Yes.

Q. Did you talk to the police at any other time about this incident?

A. No.

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Q. At no other times?

A. Where they took the statements, no.

Q. Pardon me?

A. No.

Q. So you're saying every time that you talked to the police about this incident a statement resulted either orally on that tape or they wrote a statement?

A. Yes.

Q. You saw it each time?

A. Excuse me?

Q. You saw the statement each time that you gave it to the police?

A. Yes. I signed it.

Q. So it would be fair to say that the only time you discussed this case with the police was five times; is that right?

A. Yes.

Q. How about the District Attorney? How many times have you discussed this case with the District Attorney?

A. I don't know.

Q. Would you approximate for us?

A. I don't know.

Q. Okay. We'll do it this way: Was it more than ten

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times?

A. I don't know.

Q. You just have no idea at all. Could it have been 100 times?

A. No, it wasn't that many times.

Q. How about 50?

A. I don't remember.

Q. Could be 50, then?

A. No.

Q. Between 25 and 50 times?

A. I don't remember.

Q. Since returning from Massachusetts have you talked to the District Attorney?

A. Yes.

Q. Talked to the police?

A. Yes.

Q. Was there a statement from that conversation you had with the police?

A. Yes.

Q. You've seen it?

A. Yes.

Q. When was that you talked to them?

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A. I don't remember the date.

Q. How many days ago?

A. I don't remember.

Q. Now that would have been a sixth statement, though would it -- because we have a statement from you on 12/9, on 12/12, 12/17 and 12/24 and, I believe, there's a tape recording on 12/24? You say those constituted the five times you talked to the police so this time you talked to them within the last week or so would have been the sixth time; is that right?

A. Yes.

Q. At least. So you were mistaken when you said there were only five times. So that I'm clear and the jury is clear, would you think again. Have you talked to the police any other times about this case?

A. No.

Q. Are you certain of that, too?

A. Yes.

Q. Now, when you spoke to Mr. McGill -- since you've been back from Massachusetts how many times did you talk to him.

A. I don't remember.

Q. How long have you been back from Massachusetts?

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A. Since May 28th.

Q. Since May 20th?

A. Since May 28th.

Q. And you've been in the institution since May 28th. Is that correct?

A. Yes.

Q. And you can't even approximate for us how many times you talked to him from May 28th until today?

A. No.

Q. When was the last time you talked to him before today?

A. Saturday.

Q. This past Saturday; is that right? This past Saturday?

A. Excuse me?

Q. This past Saturday, two days ago?

A. Yes.

Q. And do you know when before then you talked to him? Before you do that, how long did you talk to him?

A. Not long.

Q. How long was "not long?"

A. I don't know. It wasn't that long.

Q. Two days? Two hours? I mean it's all relative.

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Q. When you say "not long" let us know what not long is. An hour, two hours?

A. I don't know. About a half hour to an hour. I don't remember.

Q. Okay. And before then you saw him a couple of days before then as well; is that right?

A. Yes.

Q. And during that conversation and the previous conversations, as well, Mr. McGill went over your testimony; did he not?

A. I don't remember.

Q. Well, what did you talk about?

A. When you say go over my testimony, you mean my statement or just

talking? I don't understand what you say.

Q. Let me do it this way: Tell us what you talked about.

MR. MCGILL: Objection. At what point? Saturday? Other days?

MR. JACKSON: The day before Saturday. The visit before Saturday's visit. Tell us what you talked about.

THE WITNESS: (No response.)

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MR. JACKSON: We know you've got such a good memory since you remember everything that happened on December 9th.

MR. MCGILL: Objection. Argumentative.

THE COURT: Please, no comments.

MR. JACKSON: Tell us what you discussed, please.

THE WITNESS: The case, just the case.

BY MR. JACKSON:

Q. Did Mr. McGill make suggestion to you with regard to the testimony?

A. No.

Q. He didn't tell you anything at all with regard to your testimony?

MR. MCGILL: Objection, Your Honor. See how the words changed?

THE COURT: Yes.

BY MR. JACKSON:

Q. Didn't he tell you at all about your testimony, what your testimony should be?

A. No.

Q. Did he tell you how the testimony should be presented?

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A. No.

Q. You're certain of that?

A. Positive.

Q. He didn't ask you to go through any demonstrations that he would ask you to perform in Court?

A. No.

Q. Now, when you made these statements to the police was it the truth when you gave it to them?

A. Yes.

Q. Absolute truth?

A. Yes.

Q. About what happened on that date?

A. Yes.

Q. The full truth?

A. Yes.

Q. Just asking. Now, you gave a statement to the police on December the 9th as well; is that correct?

A. Yes.

Q. About 4:15 in the morning; is that right?

A. I don't know what time it was.

Q. Pretty soon after the incident; is that right?

A. Yes.

Q. Now before we get into what you actually said in

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the statement, can you tell us had you been drinking that day?

A. No, I hadn't.

Q. None at all?

A. None at all.

Q. Prior to this incident how long had you been there on that corner?

A. Before it happened?

Q. Yes, ma'am.

A. About 30, 35 minutes.

Q. Pretty much in the same spot?

A. Yes.

Q. Were you with anyone?

A. Yes.

Q. Who?

A. A man.

Q. Who?

A. I don't know his name.

Q. Known him from before?

A. No.

Q. Was he with you the full 30 or 35 minutes?

A. No.

Q. How long was he there with you?

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I don't know. Maybe about five, ten minutes, something like that.

Q. And when he left how long afterwards was it that this incident happened that you said you observed?

A. Repeat the question, please.

Q. Sure. You indicated that you were with this man five or ten minutes; is that right?

A. Yeah.

Q. And what I'm trying to find out is, after the man left how long afterwards was it that you observed this incident. Or was he there when you observed this incident?

A. Yes.

Q. So as soon as this incident happened that's when he left; is that right?

A. No.

Q. When did he leave?

A. I don't know.

Q. So you were both watching this incident at the same time?

A. Yes.

Q. You just lost sight of him?

A. No.

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Q. Well, tell us.

A. I lost sight of him when the police put me in the car and took me to 8th and Race to take my statement down. That's when I didn't see him no more.

Q. So that if I understand you correctly, you're saying that until you left the scene this man was with you?

A. (No response.)

Q. Is that correct?

A. Yeah. He was talking to the police.

Q. He was talking to the police, too?

A. He was talking to the Highway person.

Q. Pardon me?

A. He was talking to a Highway Police.

Q. Pardon?

A. He was talking to a Highway Police.

Q. Highway Police. And what was he saying to them?

A. I don't know.

Q. You don't know this man's name?

A. No.

Q. Could you describe him for us?

A. Black, he was heavysset. That's all I can remember.

Q. Approximate age?

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A. About 27, 28.

Q. Height?

A. I don't remember.

Q. What kind of hair? Did you see his hair?

A. Yeah.

Q. What kind of hair?

A. Just short Afro.

Q. Short Afro?

A. Yeah.

Q. How was he dressed?

A. I don't remember.

Q. If you saw him again, would you recognize him?

A. Yes.

Q. Have you seen him since that night?

A. No.

Q. Have you ever asked where he was or who he was?

A. No.

Q. The man was looking in the same direction that you were when this incident happened?

MR. MCGILL: I would have to object. She can only speak for what she can see herself, Your Honor. Objection.

MR. JACKSON: Fine.

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MR. MCGILL: Objection.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Would it be fair to say that he was looking in the same direction that you were looking when you looked --

MR. MCGILL: Objection. If she knows.

MR. JACKSON: I'm only asking you to answer what you know, of course.

MR. MCGILL: How would she know unless she was looking through his eyes?

THE COURT: Rephrase your question, counselor.

BY MR. JACKSON:

Q. Did you see what this man was doing when you observed this incident?

A. He was standing there.

Q. And in which direction was his face pointed? Same?

A. (No response.)

Q. Same direction as yours?

A. No.

Q. He was looking a different way?

A. Yeah.

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Q. So he wasn't watching, looking, at the incident, you're saying?

MR. MCGILL: Objection.

MR. JACKSON: I'm asking the question, that's all.

MR. MCGILL: That's the first question that the objection was made to.

THE COURT: She already said that he was looking in a different direction.

MR. JACKSON: I don't know if that means he couldn't see what was happening with regard to the incident.

MR. MCGILL: Objection. She can't say what he saw.

THE COURT: Please. She can only testify to what she saw.

BY MR. JACKSON:

Q. I know that you can't tell us what the man saw or what he was looking at, but I want to know whether or not his face was in a position to observe the police officer being shot?

A. I really don't know. I wasn't really paying attention, you know, what he was looking at. I wasn't

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looking right into the man's eyes. I was watching him.

MR. JACKSON: Okay.

MR. MCGILL: Indicating the defendant with her finger.

BY MR. JACKSON:

Q. So that how close to this man were you during this time?

A. I don't know. I don't know.

Q. You don't know how close he was to you?

A. He wasn't far away.

Q. Because you were talking weren't you?

A. Yes.

Q. Weren't you talking during the time of this incident?

A. No.

Q. Never said anything?

A. No.

Q. When this incident happened you never talked to that man again?

A. No.

Q. And you said you weren't doing any drinking at all that evening?

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A. No, I wasn't.

Q. Did you have a conversation with anyone else in that corner an hour before this incident?

A. No.

Q. And just prior to arriving at the corner where were you.

A. Repeat that again, please.

Q. Yes. Just before you got to the corner where were you coming from?

A. From Spruce Street.

Q. 63rd and Spruce, Front and Spruce, where?

A. 13th and Spruce.

Q. From a hotel?

A. No.

Q. On the corner of 13th and Spruce?

A. Yes.

Q. You know the police officers of the Sixth District pretty well?

A. Repeat that again, please.

Q. Do you know the police officers of the Sixth District pretty well?

A. No.

Q. Come in contact with them pretty often?

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A. No, not unless when they arrest me, that's when.

Q. Are there some that you don't get along with?

A. No.

Q. Didn't you tell the District Attorney that there was one that you didn't get along with?

A. From the Sixth District?

Q. Yes.

A. No.

Q. Oh, I'm sorry. Which District is he from, the man that you don't get along with?

MR. MCGILL: Objection, Your Honor, as being irrelevant.

THE COURT: I sustain the objection.

MR. JACKSON: Pardon me?

THE COURT: I'm sustaining the objection.

BY MR. JACKSON:

Q. Who is that police officer?

MR. MCGILL: Objection.

THE COURT: Sustained. No comments from the people in the audience.  
You can go out, leave.

BY MR. JACKSON:

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Q. Before we get back to the specifics of your statement, did you see Mr. Jamal beaten that night?

A. What I see was Jamal sitting on the curb swinging his arms with closed fists and kicking, and the police swinging back and trying to get him under control to handcuff him.

Q. So I'll ask my question again. Did you see Mr. Jamal beaten that night?

MR. MCGILL: I object. Repetition. She answered the question.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Did you see Mr. Jamal struck with a club or night stick or any other instrument by the police?

A. I seen him swinging out. I don't know if he made any contact.

Q. What were they swinging?

A. I don't know what you call them.

Q. The little blackjacks?

A. The ones you put in your pocket.

Q. Yes. How many police officers had those blackjacks out?

A. I don't remember.

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Q. How many police officers were around him?

A. It was a few. I don't remember.

Q. When you say a few would it have been four, or five or six?

A. I don't remember.

Q. More than one of those police officers had a blackjack in his hand; is that correct?

A. Yes.

Q. Did you see any police officers with their guns out?

A. No.

Q. You never saw any Police officers with their guns out?

A. Not that I saw.

Q. Pardon me?

A. No.

Q. At no time during this entire incident until you were taken away did you see any police officer with a gun out; is that what you're saying?

MR. MCGILL: Objection. Repetition.

THE COURT: She's already answered that, counsel.

BY MR. JACKSON:

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Q. How long did they beat Mr. Jamal?

MR. MCGILL: Objection.

THE COURT: Rephrase your question, please.

BY MR. JACKSON:

Q. How long did you see them striking Mr. Jamal?

MR. MCGILL: I would object to that, your Honor.

THE COURT: Would you rephrase that question? What are you talking about?

MR. JACKSON: Your Honor, she's --

THE COURT: Come here. Let me see you.

(A side bar conference was held on the record as follows:)

THE COURT: Jackson, if she says that she saw them struggling to put the handcuffs on him, if that's what you're talking about --

MR. JACKSON: No, sir. She said she saw them swinging the nightsticks, the blackjacks. That's what she said.

THE COURT: She said they were struggling over him trying to put handcuffs on him.

MR. MCGILL: Judge, she said they were

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using --

THE COURT: You're going to say that now? Why don't you go back to the struggling and let her describe what happened instead of you telling her what happened?

MR. JACKSON: Judge, she's already said. She said, "What do you call those things?"

THE COURT: She said she saw them in their hands. We don't know what happened. Why don't you let her tell the story?

MR. JACKSON: I will.

THE COURT: Okay.

(Side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, can you tell us what you saw those officers doing with those things in their hands? Describe to us as best as you possibly can.

A. Swinging but I didn't see them make any contact.

Q. Can you stand up and demonstrate what you saw them doing? Assume that you have the blackjack in your hand. Demonstrate to the jury what you saw them doing?

A. They was swinging.

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Q. And how many times did you see them do that?

A. I don't remember.

Q. How long a period of time did you see them do that?

A. I don't know. I'm not good at time.

Q. And you said you didn't see them make contact with him; is that right?

A. Right.

Q. Why is that?

A. I couldn't tell.

Q. You couldn't tell what?

A. They was making contact.

Q. Why? You couldn't see Mr. Jamal?

A. No. I seen him. I couldn't tell they was making contact.

Q. Okay. Let's get to the statement you made on December 9, 1981. You remember that statement?

A. December 9?

Q. Yes. Do you remember the statement?

A. Yes.

Q. And you signed the statement; is that right?

A. Yes.

Q. And you signed the statement because Detective Culbreth asked you to sign it if it was true; is that

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correct?

A. Yes.

Q. And when you signed it it was because what you read was, in fact, the truth; is that right?

A. Yes.

Q. And it was not -- okay, strike that. Now you indicated that you saw the police officer shot -- is that right? -- in this statement?

MR. MCGILL: Your Honor, I would only object at this point if she could have the statement. I have a copy for her.

MR. JACKSON: Fine.

MR. MCGILL: You can keep yours.

MR. JACKSON: Fine.

MR. MCGILL: So that she may have an opportunity to refer to it.

MR. JACKSON: Your Honor, I'm going to go over each and every one of the statements. If he wants her to go over them now I have no objection.

MR. MCGILL: If I could make a suggestion? If I could show her where the statements

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are and if Mr. Jackson could refer to different portions with a question and answer, and if she recalls saying that and if they were accurate. May I show the witness, Your Honor?.

THE COURT: That's the statement that he's talking about?

MR. McGILL: December 9. Here's December 12. Here's December 17, 2a, 2b, 3. I told the witness the three statements and what order they were, Your Honor.

MR. JACKSON: I would like the witness to read the statement that was given on December 9.

THE COURT: To herself?

MR. JACKSON: Yes, to herself to refresh her recollection.

(The jury was excused.)

(A short recess was taken.)

(The following took place in open Court in the presence of the jury.)

MR. JACKSON: May I proceed, Your Honor?

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THE COURT: Yes.

BY MR. JACKSON:

Q. Miss white, you've had an opportunity to review the statement that you gave the police on December the 9th?

A. Yes.

Q. Does that statement represent the truth?

A. Yes.

Q. Are you certain of that?

A. Yes.

Q. Okay. Just as an example let me refer you to page three of the statement. Last question and answer can you read it aloud, please?

A. "Did you see any struggle between the officer and any of the two men."

Q. Your answer was?

A. "No, there was no struggle."

Q. Is that the truth?

A. I didn't see any struggle.

Q. You didn't see any struggle?

A. No, because after he turned him around in the position to handcuff him I looked across the street. I didn't see any struggle.

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Q. What about you indicating that William Cook struck the Police Officer?

A. That's when I did notice. Struck or struggled, same thing.

Q. Okay. Struck and struggled are different. That's the reason why you didn't tell him?

A. Yes.

Q. So that I'm sure, what do you consider a struggle?

A. When both men are -- they is struggling.

Q. So when the police officer was turning William Cook around there was no struggle?

A. No.

Q. In fact, you're saying that when William Cook struck the officer, the officer didn't budge any at all, did he?

A. What you mean?

Q. When you said William Cook closed his fist and struck the officer, the officer didn't flinch; he didn't move at all, did he?

A. I said he did.

Q. You said he did?

A. Yes.

Q. When did you say he did?

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A. I didn't say it today but I have said it.

Q. You have?

A. Yes.

Q. To whom?

A. I don't know. Whoever asked me. Whoever asked me I don't remember.

Q. Okay. Whoever asked you?

A. Yes.

Q. Your Honor, may I have a moment, please? Miss White, I don't want to return to that but you're absolutely certain that when the officer was struck that he moved -- is that right? The officer moved?

A. Yes, he moved a little.

Q. Did you see the officer's handcuffs?

A. No.

Q. Never saw his handcuffs?

A. No.

Q. Never saw his handcuffs, did you?

A. At what time are you talking about?

Q. During the time that William Cook and the Officer were confronting each other.

A. No, I didn't see any.

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Q. So you're just presuming and assuming that the officer was going to handcuff William Cook; is that right?

A. In the position that it happened, yes.

Q. Yes, you're assuming?

A. Yes.

MR. MCGILL: Objection. She responded, Your Honor.

THE COURT: Yes, please.

BY MR. JACKSON:

Q. Now, you indicated in your first statement to the Police on December the 9th at 4:15 a.m. that the defendant was -- and I'm going to refer you to the first page of the statement within the second answer you indicated, "he had a hand gun in his hand. He fired the gun at the police officer about four or five times. The police officer fell to the ground, starting screaming." Is that right?

A. Yes.

Q. So you told the police that the man shot the officer four or five times and then the officer fell to the ground; is that right?

A. That's what --

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Q. That's what it says here?

A. Yeah.

Q. Is that the truth?

A. He shot him without --

Q. No. My question is: Is this the truth, what you told the police?

A. It is the truth, in some ways.

Q. In some ways?

A. Yes.

Q. In other words, in other ways it's not the truth?

A. It is the truth, it always was just in different words. That's what I'm saying.

Q. Different words? Now, you notice in the statement you said "shot four or five times," period. "The officer fell to the ground." Is that the sequence?

A. I told you what happened.

Q. No. We're referring to what you told the police, not what you told me. What you told the Police on December 9. Did you tell them how things happened?

A. Yes. I told them this here.

Q. And you told them the man shot four or five times and then the Officer fell?

A. That's what I told them here. It's right here.

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Q. And that was the truth?

A. I just answered the question.

Q. Okay. You're saying that's the truth. So then when you told us today that the man shot --

MR. MCGILL: Objection, Your Honor. She did not say that. She said that it was the truth but in different words, ways.

THE COURT: Wait a minute.

MR. MCGILL: I don't want the record to reflect that she said that was the truth period.

THE COURT: Rephrase your question.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Just be certain. Is this the truth, what you told the police on December the 9th?

A. I said, yes, in different words.

Q. In different words it's the truth. How can we tell what's truthful in here if we can't go by these words?

A. Because it is the truth but it's in different words, that's all.

Q. You didn't tell the police this?

A. I said it is the truth; it's just in different

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words.

Q. What do you mean by "in different words?"

A. Would you like me to tell you what happened again?

Q. No. I want you to tell me what you mean by "in different words?"

A. That's what I mean.

Q. What?

A. I'm asking you if you want me to tell you what happened again.

Q. You're saying -- and correct me if I am wrong -- that it's the truth but in different words. Now, is the different words that you would use, would they change the meaning of this?

A. Not really.

Q. It wouldn't change the meaning of this?

A. I said not really.

Q. Well, what do you mean by "not really?"

A. It would change it in some way but it's the same thing.

Q. The same thing. So that if you used different words it would still come out that the man shot the officer four or five times, then the Officer fell down to the ground. Is that what you're saying no matter

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how you say it that it would still come out that way?

A. I said in different words.

Q. I understand you said in different words. My question is: If you used different words would it still come out to mean that the man shot the officer four or five times, and the officer fell to the ground?

A. No.

Q. So then what's the truth? This, what you said was the truth, or something else?

A. All of it is the truth.

Q. Pardon me?

A. All of it is the truth but in a different way.

Q. Well, you told the police this on December the 9th -- let me back up.

Would it be fair to say that your memory of what happened on December the 9th was better on December the 9th than it is today?

A. I don't understand what you are saying.

Q. Okay. Would it be fair to say that you can remember what's happening today if I ask you about an hour from now what happened now, you would remember that better today than you would six months from now, would not you?

A. No.

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Q. No? Is that what you're saying?

A. Yeah. No.

Q. So you're saying that your memory would be better six months later than it is at the same day?

A. I don't understand what you're saying to me.

Q. Okay. I'll go over it again. I want you to understand. You gave this statement on December the 9th at 4:15 a.m. This incident allegedly happened on December the 9th at approximately 3:58 a.m., or something like that. So that within 20 minutes of this incident you gave a statement to the police. Okay. That was the 9th. Today is June 21st, okay, more than six months later. So my question is: Do you remember things better today than you did on December 9th?

A. I still don't follow you.

Q. Once again, you saw what happened on December 9th?

A. Right.

Q. And after seeing it you went in and you talked to the police?

A. Right.

Q. Within 20 minutes after it happened, right?

A. Yeah.

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Q. So I'm saying to you now, you're telling us something different today. So I want to know which incident should we accept, what you told them on the 9th or what you told them today?

A. It's the same thing but in different words, that's what I'm saying to you.

Q. So you're saying what you said today means that the officer was shot four or five times and then he fell. That's what you meant when you testified earlier? You can't shake your head, you have to say yes or no.

A. No.

Q. No?

A. No.

Q. Then what's the difference?

A. It's different. He got shot that many times, but it wasn't all at one time.

Q. You have to speak up.

A. He got shot that many times but it wasn't all at once and he didn't fall to the ground.

Q. Did you tell the police that on December 9th?

A. No.

Q. Did you tell them that on December 12th when you gave another statement?

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A. Excuse me?

Q. Did you tell them that on December 12th when you gave them another

statement?

A. I don't remember.

Q. Did you tell them that on December 17th?

A. I don't remember.

Q. Did you tell them on December 24th?

A. December 24th?

Q. December 24th, the day before Christmas. You gave a written statement and oral statement on December 24th, 1981?

A. I don't remember.

MR. MCGILL: The 17th.

MR. JACKSON: Pardon me?

MR. MCGILL: The 17th. The 12th and 17th, 9th, 12th and 17th.

MR. JACKSON: And the 24th.

MR. MCGILL: No.

MR. JACKSON: I'm sorry. You're right. My apologies. Not on the 24th.

BY MR. JACKSON: Do you recall the date that you gave the tape recording statement?

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A. No.

Q. How about December 23rd, two days before Christmas? Do you remember that had been the day you gave the tape recording statement?

A. I don't remember.

Q. But, in any event, did you tell the Police or the District Attorney at that time that the officer was shot twice and then he fell?

A. I don't remember.

Q. You remember the first time --

MR. MCGILL: Your Honor, I would object. If -- this may be lengthy but if she were able to answer the question she would have to read the 12th and 17th statement --

MR. JACKSON: I'm simply asking her what she remembers, Your Honor.

MR. MCGILL: -- so she would know.

MR. JACKSON: I'm not referring her directly to the statement at this point.

THE COURT: Has she read the other statements?

MR. MCGILL: I'm not sure, Your Honor.

THE WITNESS: No.

THE COURT: Let her read the other

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statements. Read the other statements.

MR. JACKSON: Fine. I indicated earlier I was going to ask her on all of them. Fine. Take time to read all the statements.

MR. MCGILL: That's right. Your Honor, apparently she misunderstood.

THE COURT: She's finished.

BY MR. JACKSON:

Q. I'm sorry. Are you done?

A. Yes.

Q. All right. One moment, Your Honor. Miss White, you've had an opportunity to review the statement?

A. Yes.

Q. Okay. Now, when was the first time that you told the District Attorney or the police what you told us earlier today with regard to how the shooting occurred?

A. On the 17th.

Q. That was the first time; is that right?

A. Yeah.

Q. So you had given them a statement on the 9th,

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given them a statement on the 12th right? -- didn't tell them the way you're telling them today; is that right?

A. Right.

Q. And on the 12th what reason did you have to give the police this statement? Were you arrested on that day?

A. The 12th, no.

Q. You were arrested

A. I mean, yes.

Q. You were arrested on the 12th and you gave them some more information because of your arrest; is that right?

A. No.

Q. You just happened to give them more? It was just coincidental that you were arrested and gave them the statement on the same date?

A. No.

Q. It wasn't coincidental was it?

A. No.

Q. Okay. I didn't think so. And on the 12th that's when you told the police for the very first time that William Cook allegedly struck the officer; isn't that

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true?

A. Yes.

Q. And even in that statement you never changed the fact that the officer was shot four or five times and he fell. You didn't change that on the 12th, did you?

A. No.

MR. MCGILL: I would object to that. If he wants to read a question and answer, that's one thing.

MR. JACKSON: I'm asking her, Your Honor, if her own testimony --

THE COURT: Go ahead.

BY MR. JACKSON:

Q. Now, on the 17th you gave another statement; is that right?

A. Yes.

Q. You were coincidentally arrested again on the 17th?

A. I was arrested, yes.

Q. And you gave a statement on the 17th?

A. Yes.

Q. Was it a coincidence that you gave the statement on the 17th?

A. What do you mean coincidence?

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Q. I mean, did you plan to give them a statement on the 17th?

A. No.

Q. Well, tell us how did it happen that you had the occasion to give them another statement on the 17th?

A. I was arrested and they had my picture down the Sixth District in a contact with Homicide. So when I was downstairs at 8th and Race I called Homicide and told them I was downstairs and it was -- they didn't ask me all the questions. Some of the questions they needed to ask me and about the address.

Q. And you were down in the Round house after being arrested and you called them and said, "Hey, I got some more information for you," Right?

A. No.

Q. They called you?

A. No. I called them and told them.

Q. Why?

A. -- "I'm downstairs," because they wanted to talk to me.

Q. How did you know they wanted to talk to you?

A. Because I seen in the Sixth District they had my picture and "contact Homicide."

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Q. Did they have any problems contacting you on the 12th?

A. I don't understand what you mean.

Q. You're saying that you saw a picture at the sixth District. Where was it? On the bulletin board?

A. Yes, the board they have.

Q. And it said what?

A. It said, "contact Homicide." I don't remember the exact words but I remember it said, "contact Homicide." Numbers were up there.

Q. Did it say, "Cynthia White, contact Homicide," that you were to contact Homicide?

A. I don't remember the exact words.

Q. Let me put it this way: Did you assume that whatever it was meant for you to contact Homicide?

A. Yes.

Q. How often do you go to the Sixth District, Sixth Police District?

A. Whenever I get arrested.

Q. Do you go in there that often that they would post a notice for you in the Sixth District?

THE COURT: Quiet in the courtroom, please. Cut it out.

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BY MR. JACKSON:

Q. Do you understand my question?

A. No.

Q. You're saying there's a notice posted in the Sixth District for you or someone to contact Homicide. And I'm wondering why do they put a poster in the Sixth District for you to contact Homicide rather than just call you or come to your house?

A. I just told you it was because of the address. I had gave them the address and they tried to contact me at the address, and they found out I wasn't living there.

Q. What address did you give them at that time?

A. I don't remember.

MR. MCGILL: Objection, Your Honor, to the addresses.

BY MR. JACKSON: You don't remember the addresses?

THE COURT: She said she didn't remember.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Let me backup. On the 12th when you were arrested. How did you have occasion to give them a statement on

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that day?

MR. MCGILL: Repetitious, Your Honor. Objection.

MR. JACKSON: No, it isn't. I never asked the circumstances, Your Honor.

THE COURT: Go ahead.

BY MR. JACKSON:

Q. Could you tell the circumstances of how it was you came to give us another statement?

A. It was the same thing.

Q. You saw another notice in the Sixth District?

A. Yes.

Q. Was it the same one or different?

A. I don't remember.

Q. But you called the number that you saw up there, right?

A. Yes.

Q. And you were downstairs when you called, right?

A. No.

Q. You weren't? I'm sorry. Where were you? Strike that. How did you get in contact with Homicide on the 12th?

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A. I was at the Sixth District when I called. When I seen it I called.

Q. And what happened after that?

A. They said, "Okay."

Q. They said okay about what?

A. When I had called and I was telling them that I was calling them.

Q. And what did you tell them when you called?

A. They asked me where I was at and I told them I was arrested.

Q. Right. And then what?

A. They said that they think somebody want to talk to me. I wasn't talking to the person that want to talk to me. They said, "it's probably about the statement or something." They don't know, but they'll get in contact with me.

Q. And when did they get in contact with you?

A. When I was downstairs at the Round house.

Q. At the Round house. You didn't tell them you had anything else to tell them?

A. No, not until I went upstairs.

Q. And that's when you told them for the first time that Billy Cook or William Cook struck the officer; is

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that right?

A. Yes.

Q. Now back to the 17th when you said that was the first time when you told the police or anyone else that the shooting happened the way you described it today; is that right?

A. Repeat that again, please?

Q. Sure. I believe -- and you correct me if I'm wrong -- I believe you said a little earlier that it was on December 17th that you told the police for the first time that the incident occurred substantially the way you described to us today; is that right?

A. Yes.

Q. Why didn't you tell them differently before?

A. Because it happened -- they was asking me questions and that's the way I did it.

Q. But they asked you to go on in your own words and describe what happened, didn't they?

A. Yes.

Q. So why didn't you tell them how it happened if you saw it?

A. I did.

Okay. You went on in your own words and described how

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it happened on December the 9th. You went on in your own words and you described how it happened, not in response to any specific question, but you said that on your own; is that right?

A. Yes.

Q. But what changed on the 17th?

A. Nothing. They were asking me questions and they asked me in a different way to explain it.

Q. They asked you in a different way?

A. I mean in a different question, you know. He asked me in a different question to explain it.

Q. They asked you to explain it on the 9th, they asked explain it on the 12th. So why was your explanation different on the 17th?

A. I just told you.

Q. Forgive my ignorance. Could you explain to me again why it was different on the 17th?

A. Because they had asked me in a different way to explain it more specifically.

Q. Okay. How was it different that they asked you?

A. I don't remember exactly what he asked me.

Q. Well, how do you know it was different?

A. I remember that it was different.

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Q. But you don't remember why?

A. I don't remember what he said that made it different.

Q. Okay. You gave a statement on the 9th, gave a statement on the 12th. You were asked on the 12th differently than you were asked on the 9th, weren't you?

A. I don't remember.

Q. Okay. You don't remember how you were asked on the 12th but you remember how you were asked on the 17th?

A. Yes.

Q. How about on the 24th? I'm sorry. Strike that. On the 23rd.

A. On the 23rd that was a written statement.

Q. No. I think that was a tape recorded statement.

A. Now what are you asking me about that?

Q. Wasn't that the very first time that you told the police or the District Attorney that the defendant or the man who you described as the shooter shot the police officer twice before he fell?

A. Yes.

Q. And correct me if I'm wrong, your statement on the 9th, you said he shot four or five times, then he

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#### White Cross

fell. You left that statement the same way on the 12th of December, four or five times and he fell; isn't that right?

Q. And on the 17th what did you tell him?

MR. MCGILL: I will object to that. Your Honor, if he wants to read the question and answer from page two --

MR. JACKSON: Your Honor, I'm going from her testimony.

MR. MCGILL: It's not a memory game, Your Honor. I think she should be shown and asked.

THE COURT: Come here.

(A side bar conference was held on the record as follows:)

MR. MCGILL: My objection --

THE COURT: I know that but the easiest way to do this would be to read the statement, because I'm sure the jury is just as confused now as anybody.

MR. MCGILL: I have no objection to that.

MR. JACKSON: I was going to use the

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Detective to read the statement, Your Honor. I didn't want her to use it.

MR. MCGILL: I have no objection if she uses it.

THE COURT: Can she read it?

MR. MCGILL: Yes. She's already done that.

MR. JACKSON: Do I have to do that?

THE COURT: She can do it.

MR. JACKSON: I don't want to do it now.

MR. MCGILL: I don't want to suggest the way to cross-examine, but rather than just simply saying do you remember --

THE COURT: If you're going to use prior written statements to impeach you first have to see if they remember making the statements and then read the question and answer and see if that's what they said. You're just going generally.

MR. JACKSON: Because I'm going --

MR. MCGILL: May I make a suggestion?

THE COURT: Yes.

MR. MCGILL: It's too much on memory,

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"did you do this, did you leave that the same way, on the 10th you said something" --

THE COURT: This question and this answer --

MR. MCGILL: --"what did you see happen, I saw happen, do you remember saying that and now why is that different," it's not fair. It's a general memory test.

THE COURT: All right.

(side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, when was the very first time that you told the police or the District Attorney that Officer Faulkner was shot twice by the shooter before he fell?

A. The 17th.

Q. The 17th?

A. Yeah.

Q. You have the statement. Could you read it to me please? Could you find it?

A. Excuse me?

Q. Would you read it to me where you told the police on the 17th that he was shot twice?

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White Cross

MR. MCGILL: Your Honor, may I show the witness?

THE COURT: He asked her.

MR. JACKSON: Your Honor. I want her to testify.

MR. MCGILL: Page one and two.

THE WITNESS: "Miss White, would you go on in your own words and tell me when you first saw the police car and what followed after that?"

BY MR. JACKSON:

Q. Excuse me? Could you tell me where you're reading from?

A. The 17th.

Q. What page, ma'am?

A. One.

Q. Okay. Go on.

A. "I saw the police car in the middle of Locust Street at 13th Street going towards 12th Street. The top lights and a bright light were on a Volkswagen in front of it. The police car then pulled the Volkswagen over to the curb in front of the pizza place. The police officer got out of the car, started walking towards the Volkswagen and the driver of the Volkswagen

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#### White - Cross

got out. I couldn't hear what they were saying. They then walked between the police car and the Volkswagen to the sidewalk.

The police officer said something else to the driver of the Volkswagen. And that's when the driver of the Volkswagen struck the officer. The officer grabbed him and turned him around. The man's hands was behind his back. The driver of the Volkswagen's back was to the officer. That's when the other guy that I saw running from the parking lot ran up and was practically on the curb. That's when the officer fell down, when the guy was shooting at the officer. Then the guy went over to the officer and was standing over him, shot three more times. The guy went back over to the curb and sat down".

Q. Let me know when you get to the point where officer was shot twice and fell. That was my question.

MR. MCGILL: At the bottom of page two, Miss White.

MR. JACKSON: Your Honor, I would like to interrupt and say this was the reason why I didn't want Mr. McGill -- he's having her read things that are not responsive.

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THE COURT: Come here. Come here.

MR. MCGILL: Read the bottom of page two.

(A side bar conference was held on the record as follows:)

THE COURT: I had made a suggestion how we should do it. You don't want to do it that way. He had offered the help and you said you don't care, and then when he says something you're complaining. All I'm saying to you, why don't you just ask.

MR. JACKSON: But --

THE COURT: If you want to show inconsistencies go to the statement and just ask the question and get your answers.

MR. JACKSON: It wasn't necessarily to point out an inconsistency. I wanted to know the very first time --

THE COURT: She told you the 17th and that's what she's reading now.

MR. JACKSON: But what she read didn't say --

THE COURT: The whole statement.

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White - Cross

MR. JACKSON: But it's not in there.

THE COURT: He says it's down at the bottom. I don't know. I don't have the statement in front of me.

MR. JACKSON: That's what I mean. He pointed out the first portion. I read it and it wasn't there.

THE COURT: That's your interpretation of it. Let me see this.

MR. JACKSON: So now on another sheet --

THE COURT: Well, it's the same date. That's what I'm talking about.

MR. JACKSON: I told her --

THE COURT: You're trying to see that she got a good memory. We all know she's small and not exactly bright and she's a prostitute. So let's read what's in here.

MR. McGILL: She probably knows better than I do.

THE COURT: "Describe as best you can what happened as the man running was almost on the sidewalk. Answer: He pointed the gun at the Police officer and shot him about one or two times. Then the

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Officer fell, and he went over and stood above him and shot three more times." Well, that's it. She was reading up here. She probably didn't get down --

MR. JACKSON: Okay.

MR. McGILL: She actually read this.

THE COURT: All right.

MR. McGILL: It says that and that says that, so they're both together.

THE COURT: All right.

MR. McGILL: By that and that I'm talking about page one and page two.

THE COURT: All right.

(Side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, let me direct your attention to page two of the last full question and answer. Would you read that for us, please?

A. "He pointed the gun at the Police officer and shot about one or two times. Then the Police Officer fell, and he went over and stood above him and shot three more times."

Q. That was the truth?

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A. Yes.

Q. Do you remember testifying here in this matter on January 8, 1982?

A. (No response.)

Q. Do you?

A. Yes.

Q. Do you recall this question on page 15 by Mr. McGill, "Now, when this man got almost to the curb what then happened?"

"That's when he fired a shot, the first shot."

"Question: Now, when this man fired the shot is that the same man that ran across the street from the parking lot?"

"Answer: Yes."

Q. Now, you indicated it was one shot on that date; is that right?

A. Yes.

Q. Do you remember testifying on January 11, 1982?

A. Yes.

Q. Remember this question and answer on page 83: "Question: --" in the middle of the page, Mr. McGill.

MR. MCGILL: Thank you.

BY MR. JACKSON:

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Q. "Question: What did he do?"

"Answer: He fired the " --well, it says show, and I'm sure it's a typo -- "He fired the first shot."

"Question: And where did he fire the first shot? In what direction?"

"The back."

You indicated at that time on January 11th, there was one shot before the Officer fell, didn't you?

A. Yes.

Q. So why are these different? I mean, can you reconcile it for us because it's important? You said on December 9th -- and I'm not going to go through it, you know what you said. Then you testified in Court under oath twice on two occasions and you said he fired once and then he fell; is that right?

A. Yes.

Q. And this is after you had given the statement to the Police; isn't that true?

A. Yes.

Q. So why did you change it?

A. What you mean change?

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#### White - Cross

Q. Why did you change your testimony? Why did you change the description of how the shooting occurred?

A. Change it in what way?

Q. Well, on the 11th and on the 8th you said the man, the shooter, shot one time and the officer fell. On the 17th you said the man shot once or twice and he fell. On the 9th you said he shot three or four times and then he fell. On the 23rd I believe you said something else and I'm not certain. I mean, each date you changed the sequence of events.

MR. MCGILL: Objection to the statement of the last part.

BY MR. JACKSON:

Q. I'm not going to argue. Fine. The description of how the shooting took place changes so I want to know why?

A. It doesn't change. I explain why on the first two statements.

Q. Why under oath did you swear to God to tell the truth and say that the man was shot once and then he fell?

A. I said it was one or two times.

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White - Cross

Q. You didn't say that.

A. That's what I said.

Q. You didn't say that, ma'am, on both occasions. You said one time -- you were very clear, you were very clear. So you're saying that even though you testified, swore to God, that that was a mistake?

A. It was one or two times. Whether it was one or whether it was two I don't know.

Q. Well, it's very important.

MR. MCGILL: Objection. Your Honor, she has made her statement; one or two times.

BY MR. JACKSON: You're saying -- so that I understand you, then -- that the truth, regardless of what you may have said at any other time, you're saying that he shot one or two times? Is that your answer?

A. Then he fell.

Q. After how many -- okay. How many shots did the man fire when he came over -- how many times did he fire at the officer before he fell?

A. I just said one or two.

MR. JACKSON: Okay. Mr. McGill, I'd asked you to point out the

statement that she gave to the Police on March 24th of this year, if there

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is a copy, from Internal Affairs.

MR. MCGILL: Yes, right here.

MR. JACKSON: Oh, thank you. I'd have the witness review this, please. In fact, why don't you just read the entire statement for us and that way the jury will have the full opportunity to determine what it is we're talking about.

MR. MCGILL: I would object, Your Honor. It's improper. Ask questions.

THE COURT: Why don't you ask specific questions?

BY MR. JACKSON:

Q. Go on. Fine. Read the statement, then.

Finished reading it, ma'am?

A. Yes.

Q. Again, let me ask you -- well, we'll get back to this. Let me ask you was that statement true when you gave it to the Police?

A. Yes.

Q. And that was given on what date?

A. March 24th, 1982.

Q. 1982?

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A. Yes.

Q. I ask you, again, did you see the Police strike Mr. Jamal?

A. I told you what I saw.

Q. The question is: Did you see the Police strike Mr. Jamal?

A. I seen them swinging at him trying to get him under control.

Q. All right. We'll do it this way, then, ma'am.

"Question," on page one, see if this refreshes your recollection. "After the shooting and the Police arrived exactly what did you see?"

"Answer: Jamal was sitting on the curb and the police wagon -- that was the stakeout wagon -- came up. One of them got out; one stayed in. I guess he was calling on the radio. Another wagon came the other way and they seen a Policeman laying there, and they started hitting on the guy."

Q. Remember making that statement?

A. Yes.

Q. "Question: How many Police hit him?"

Q. "Answer: Must have been about four or five."

Q. Do you remember giving that answer?

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White - Cross

A. What page are you reading?

Q. I'm sorry. Page two now. My apology to you. First question on the page. I'll read it again. "How many Police hit him? Answer: It must have been four to five." Remember that?

A. Yes.

"Question: How many Police were there?"

"Answer: A lot."

"Question: I mean when he was being hit."

"Answer: Maybe three or four."

"Question: How did four to five hit him when only three to four were there?"

"Three to four cars and wagons were there. There were more Policemen."

"Question: Can you describe the officers that hit him?"

"Answer: No, but I know them when I see them."

MR. MCGILL: I would object to that as far as being some sort of impeachment.

THE COURT: Can I see you side bar?

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MR. JACKSON: Pardon me?

THE COURT: Can I see you at side bar?

MR. JACKSON: Sure.

(A side bar conference was held on the record as follows:)

MR. MCGILL: I don't believe that those three or four, five questions go to what he asked her originally.

MR. JACKSON: I agree.

MR. MCGILL: The point is did she see him struggle or hit him. The point is was there contact. It's improper. That's why I'm objecting. Clearly what he's trying to do is get some sort of brutality issue in.

MR. JACKSON: No.

MR. MCGILL: I object to that because it's not permitted to the point that doesn't impeach.

MR. JACKSON: "How many times did they hit him? A couple of times. One or two each hit him." And because she's already said earlier that she didn't see any contact, and then I'm talking about kicking, and there was just a question

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of --

MR. MCGILL: Don't go into names because that's most improper at this point.

THE COURT: I don't know if there are any names.

MR. JACKSON: I don't think there are any.

THE COURT: What question are you going to ask so that I am --

MR. JACKSON: How many times did they hit him? One or two each --

THE COURT: Yes.

MR. JACKSON: And, "Yes, they kicked him."

THE COURT: Did they kick him?

MR. JACKSON: Yes, that's what she says. And she talked about a Police Officer that she didn't like, and that's when I asked her specifically --

THE COURT: What Police officer didn't she like?

MR. MCGILL: Wait a minute. I would object to that.

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MR. JACKSON: Who it was? That's going to demonstrate the bias that we have with the Officer --

THE COURT: You mean the officer that kicked him is the one she didn't like?

MR. JACKSON: I'm sorry.

THE COURT: What are you talking about?

MR. JACKSON: I'm sorry. What I'm saying is that that's who it was that kicked him.

THE COURT: Not too loud.

MR. JACKSON: I'm sorry. That's who it was that kicked him.

THE COURT: Well, he already admitted --

MR. JACKSON: I don't know if that's the same one.

THE COURT: The first guy.

MR. JACKSON: Was the first officer --

THE COURT: Yes. Didn't that happen?

MR. MCGILL: Judge, without going into this, this is not a civil action.

THE COURT: Yes, I know that.

MR. MCGILL: And I would ask that this be limited. If he's going into three or four

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questions as to hits, or kicks, that's one thing. But going into reading the whole statement --

THE COURT: And I don't care if she's mad at him.

MR. JACKSON: Fine.

THE COURT: That's not relevant here.

MR. MCGILL: I think that should be limited.

THE COURT: All right.

MR. JACKSON: Fine.

(Side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, let me go on.

Second page, "Question: How many times did they hit him?"

Answer: A couple. About one or two each one hit him."

Q. Do you remember that question and answer?

A. Yes.

Q. Another question -- does that refresh your recollection any with regard to Mr. Jamal being beaten that night?

A. I told you, I said what had happened.

Q. Yes, today you're saying that you saw them swing

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#### White - Cross

but you didn't see them make contact, but back when you gave the statement you actually saw him struck. So I'm just wondering if that refreshes your recollection and now you do remember Mr. Jamal being struck.

A. That might have been the word I used, I don't remember.

Q. Pardon me?

A. It's the word I used.

Q. What's the word you used?

A. Beat. I was using it for him.

Q. No. I don't think you used the word beat in here. When did you use the word beat?

A. In the statement.

Q. Let me repeat this. It was a question. "How many times did they hit him? Answer: A couple. About one or two each one hit him." Not beat him, hit him.

A. Same thing.

Q. I know but you're saying the word you used. The word is hit.

A. Same thing.

Q. I'm not arguing. Okay. So my question is does that refresh your recollection with regard to Mr. Jamal being beaten?

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A. I told you what it was.

Q. What?

A. (No response.)

Q. Did the Police strike --

MR. MCGILL: Objection. Let her finish.

MR. JACKSON: My apologies. Go on, ma'am. I'm trying to clarify it.

THE WITNESS: I told you he was kicking and swinging and kicking back.

BY MR. JACKSON:

Q. Okay. Today -- and correct me if I'm wrong -- you said that you didn't see him come in contact with --

A. I believe I said about the contact was the black thing, if I'm not mistaken.

Q. You have to keep your voice up.

A. I think it was the black thing that we were talking about about contact.

Q. And so you're saying what about the black thing?

A. I said I seen them swinging but I don't know if they made contact, I don't remember.

Q. The next question: "What did they hit him with?"

"The black thing, the thing they put

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in the pocket." So you did see them hitting him with the black thing? In Your statement --

A. They was swinging.

Q. Is: Did you see them hitting or not?

MR. MCGILL: objection. Repetitious. I think she's explained several times what she means.

MR. JACKSON: I don't think so, Your Honor.

THE WITNESS: I did.

THE COURT: She's the witness. Go ahead.

BY MR. JACKSON:

Q. The question is very simply: "Did you see them hitting him or not?"

A. I told you what I said.

Q. What? Should we believe what's in the statement, or what you testified to earlier? You tell us. I mean, take your pick which is the truth.

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Take your pick as to what really happened. What you said earlier --

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MR. MCGILL: Objection.

BY MR. JACKSON:

-- or what you said in the statement.

MR. MCGILL: Objection as phrased. She can be asked to explain and she can explain. Argumentative.

THE COURT: Would you rephrase your question?

MR. JACKSON: Yes.

BY MR. JACKSON:

Q. Is what is in this statement true?

A. Yes.

Q. And the next question, "Did anyone kick him? Answer: Yes, one of them did."

Q. Remember that?

A. Yes.

Q. So that everything in this statement is true, then?

A. I just answered your question.

Q. I have another one. I'm sorry I have so many. So that everything in this statement is true?

A. I explained to you what, you know -- how it was said and the meaning of the words, why I used the words and stuff like that. Okay.

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White - Cross

Q. You have to understand, Miss White, the only way that we know what happened is to listen to your words so when they're written or spoken --

A. I told you my words. I told you several times.

MR. JACKSON: Okay, Your Honor, I have further inquiry of this witness but I think because of the hour I request that we recess until tomorrow. I have not examined her with respect to the circumstances of the shooting

itself.

THE COURT: How long do you think you'll be?

MR. JACKSON: About an hour and a half, two hours.

THE COURT: Let's see you over here.

(Side bar conference was held as follows on the record:)

THE COURT: It's 5:00 o'clock now. If he's going to be one or two hours --

MR. MCGILL: I think the jury is probably sick and tired of hearing this.

THE COURT: All right. 9:30 tomorrow morning.

MR. MCGILL: Can we make it 10:00?

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#### White - Cross

Sometimes it's difficult getting her down.

THE COURT: I say 9:30 for us.

MR. MCGILL: Okay. Can we have a bring down? Can she make a bring down but not let it go upstairs but give it to me?

THE COURT: Okay.

(Side bar conference ended.)

THE COURT: we're going to adjourn Court until 9:30 tomorrow morning.

(Court adjourned at 5:00 o'clock until Tuesday, June 22, 1982, 9:30 a.m.)

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#### I N D E X

<u>Witness</u>	<u>DR</u>	<u>CR</u>	<u>RED</u>	<u>RECR</u>
Officer John Heftner	6	13	24	28
Joseph Kohn	31	63	68	

Cynthia White 79 115

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 22, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Backup Counsel for the Defendant
- MUMIA ABU-JAMAL

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(Court convened at 11:10 o'clock a.m.)

(The following took place in open court in the presence of the jury:)

MR. MCGILL: Good morning, Your Honor.

MR. JACKSON: Your Honor, may we see you at side bar, please?

THE COURT: Yes.

(A side bar conference was held on the  
record with the defendant present as follows:)

THE COURT: What's your problem, Mr. Jackson?

MR. JACKSON: Mr. Jamal wanted to --

THE DEFENDANT: I wanted to address you before the jury came in.

THE COURT: I'm sorry. You're not addressing me now.

THE DEFENDANT: I can't talk to you, Judge?

THE COURT: No, not now.

MR. JACKSON: Judge, I attempted to

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stop the jury from coming in.

THE COURT: Not now. If he has something to say he can say it to you later, you. I'm sorry. We have a witness on the stand. You're going to proceed.

THE DEFENDANT: There's no one on the stand now.

THE COURT: It's ten after 11:00. This courtroom was supposed to start --

MR. JACKSON: As Your Honor knows, I just got the notes of testimony. Until five minutes ago I was reviewing the notes.

THE COURT: What is his problem?

MR. JACKSON: Judge, he wants to speak about it.

THE COURT: What is his problem?

MR. JACKSON: It's with respect to his right of self-representation.

THE COURT: I've already ruled on that.

MR. JACKSON: I understand that, Judge.

THE COURT: I've already ruled. I am

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not going to rule anymore --

THE DEFENDANT: Judge --

THE COURT: -- on things I have already ruled on.

THE DEFENDANT: -- I cannot address you?

THE COURT: No. If it's on what I already ruled on I'm not going to go over the same thing over and over again.

THE DEFENDANT: Judge, I want to talk to you.

THE COURT: Come on.

(Side bar conference ended.)

THE COURT: Mr. Jamal, I told you I will not talk to you. I want you to sit down.

THE DEFENDANT: Can I address you, Judge?

THE COURT: No, you may not.

THE DEFENDANT: Why can't I, Judge?

THE COURT: Take the jury out.

(The following took place in open court out of the presence of the jury:)

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THE COURT: Mr. Jamal, I told you once before I am not going to rule on questions on which I've already ruled. We are now in the process of trying this case here in this court room. I don't want those motions again. I've ruled on them once. You have exceptions to them and that's it.

THE DEFENDANT: Judge, the point I wanted to make was that I wanted to address you before the jury came in.

THE COURT: I don't want to hear anything from you. Your attorney is addressing you and he's the only one I'm going to speak to.

THE DEFENDANT: He's not representing me.

THE COURT: I'm telling you unless you sit down and behave yourself --

THE DEFENDANT: Judge, I am not being disruptive.

THE COURT: You are. You are preventing me from proceeding, with this

--

THE DEFENDANT: Judge, I am not. I instructed your court clerk --

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THE COURT: Don't instruct my court clerk.

THE DEFENDANT: -- Mr. Jackson --

THE COURT: We're supposed to start at 9:30 --

THE DEFENDANT: I have been waiting for him to speak to me.

THE COURT: If you want to bring it up later on in the trial, some other time, but not now.

THE DEFENDANT: Can I speak to you, Judge?

THE COURT: No, you cannot.

THE DEFENDANT: The jury is not here. I am not disrupting --

THE COURT: I am not going to waste time any further.

THE DEFENDANT: I'm not wasting time, either.

THE COURT: Yes, you are.

THE DEFENDANT: Judge, I am not wasting your time.

THE COURT: You're wasting the time

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of the jury, this Court, everybody.

THE DEFENDANT: Judge, I've been waiting for you to come out here. I've been waiting to talk to Mr. Jackson.

THE COURT: I've been waiting patiently in there for you to get ready. I

am not going to wait any longer.

THE DEFENDANT: Judge --

THE COURT: I am not going to rule on any questions I told you I've already ruled on.

THE DEFENDANT: Again, I have not even addressed any question.

THE COURT: You told me, your attorney tells me you're talking about your representation.

THE DEFENDANT: That's right, Judge.

THE COURT: I've already ruled.

THE DEFENDANT: Judge --

THE COURT: I am not going to hear anymore about it. If you do not permit me to proceed with this trial right now I'm going to have you removed from this courtroom.

THE DEFENDANT: You can do what you

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wish to do.

THE COURT: That's exactly what I'm going to do.

THE DEFENDANT: Excuse me --

MR. MCGILL: Would Your Honor consider, at least at this point, even though Your Honor has ruled very clearly on the subject, to have at least Mr. Jamal say what he has to say?

THE COURT: I've already ruled.

MR. MCGILL: I know.

THE COURT: I don't want to hear the questions again.

MR. MCGILL: Perhaps that would avoid --

THE COURT: How could it avoid anything? We can do this forever.

MR. MCGILL: Perhaps if you make it clear at this point, Your Honor --

THE COURT: I can't make it any clearer. He knows what it is. He knows what I said.

MR. MCGILL: I'm very much aware of

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that.

THE COURT: I've ruled and he's deliberately trying to bring that up time and time again just to delay this trial.

THE DEFENDANT: I'm glad you know what I'm thinking, Judge, before I say --

THE COURT: I know. I know. I've been around long enough.

THE DEFENDANT: I've already said --

MR. MCGILL: It is true. You're making your judgment as to what he said on what was represented to you. Is that correct?

MR. JACKSON: I will point out to the Court I have not represented to the Court the specifics --

THE COURT: Let me say this: You are representing -- I don't want to hear from him.

MR. JACKSON: Your Honor --

THE COURT: Okay. Just a minute. You want to make a motion up here? You come up here and make the motion.

MR. JACKSON: Fine, Judge. Your

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Honor, my motion would be that Mr. Jamal have an opportunity to address the Court on an issue that I believe Mr. Jamal will articulate.

THE COURT: I will not allow him to address the Court. If you have a motion you want to make on his behalf, make it. You've got a motion, make it.

MR. JACKSON: Your Honor, I think under the circumstances, again, the jury is not present --

THE COURT: I don't care if the jury is present or not. You're his attorney, I ruled on that. You make the motion. He has a motion he told you, you make it.

(A discussion was held off the record.)

MR. JACKSON: May it please the Court, Your Honor, on behalf of Mr. Jamal I would again bring to the Court's attention Mr. Jamal's request that, if not demand, that he be permitted to represent himself. The occasion of Your Honor removing Mr. Jamal from representing himself was a result of what

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Your Honor considered to be obstruction. I suggest to the Court that indeed Mr. Jamal'S excitement, Mr. Jamal's zealousness and aggressiveness in representing himself is a result of his life being on the line in this case.

I believe that under the circumstances of his aggressiveness with which he has spoken to this Court with regard to his activities in this court is solely and exclusively as a result of what he perceives to be a bias and prejudice within the system and, specifically, in Your Honor.

We have, of course, taken the issue of his self-representation and my withdrawal from this case to the Pennsylvania State Supreme Court. Justice McDermott has of course ruled that I am to remain in this case as counsel to Mr. Jamal. Justice McDermott has a history, particularly in the case of Sue Africa, where in fact Justice McDermott has indicated his bias and prejudice against Sue Africa and other MOVE members and MOVE sympathizers. For that

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reason, Your Honor, Mr. Jamal feels, and very strongly, that Justice McDermott's ruling should not and is not final on the issue of his request for self-representation.

Mr. Jamal would further request that Your Honor delay this proceeding so that a Federal District Court may occasion itself to take up the issue of Mr. Jamal's right to self representation.

If Your Honor would permit Mr. Jamal, myself, other counsel to assist him

in the drafting of a petition to file in the Federal District Court so that he would have issue decided by what he considers to be an impartial and unbiased judiciary. For those reasons he would ask that Your Honor delay this proceeding or stay this proceeding so that he can do that.

In addition, while that matter is pending before the Federal District Court or some other Appellate Division of the Federal Courts, that he would ask and, again, demand that John Africa assist him in the defense of his murder charge.

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He also wants to bring to your attention, Your Honor, the jury that now is sitting in judgment of him is biased; that he has not had a full opportunity to select a jury of his peers. We have one black juror who was removed for what one might consider to be mysterious reasons. He, of course, was denied the right to continue as counsel in the selection of those jurors. For those reasons, Your Honor, for those specific reasons and, as well as, in the name of justice, Mr. Jamal asks that Your Honor grant this motion in his petition.

MR. MCGILL: Your Honor, very briefly in response --

MR. JACKSON: Mr. McGill, before you go on just one second before you respond.

(A discussion was held off the record.)

THE COURT: You want to respond then he can respond? Come on, let's move.

MR. MCGILL: Okay.

(A discussion was held off the

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record.)

MR. MCGILL: Judge, very briefly in response to the juror's excuse, as I mentioned before, the reason for the excuse are personal to the juror and her circumstances at the time. I would point out to the Court that it was a joint excuse between myself and Mr. Jackson which is of record and that it was only those circumstances that Your Honor did excuse. However, Your Honor under those circumstances had full power to sua sponte excuse which you did not exercise. So to use the word mysterious is hardly

accurate. I'm sure Mr. Jackson did not mean that as his word but was using Mr. Jamal's word when he said that.

Secondly, as to the issue of representation, the law is emphatically clear as to what the position of the Commonwealth is, the Commonwealth of Pennsylvania or the Justices of the Supreme Court. And it, once again, was ruled upon very recently pursuant to the most recent petition. Your Honor's required, of course as I am, as Mr. Jackson is

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and as Mr. Jamal is to follow the order of the Court. The issue has been decided. He, of course, has an appeal and has an exception to whatever objection he may have.

Your Honor, I would point out that any -- there is no requirement that there be any further delay for any further courts to resolve that particular issue.

As to the issue of whether or not Justice McDermott is in any way biased towards certain individuals, again, that is inaccurate and if anything it should be noted that Mr. Jamal appears to be somewhat biased against Justice McDermott. As the Justice of the Superior Court was leaving the Supreme Court Mr. Jamal screams out, "What you walking away for? What you walking away for, McDermott?"

This is to a Justice of the Supreme Court in court while it was in session. If there was any kind of prejudice it would certainly be in reverse. And there's nothing to substantiate such a claim against the Justice.

MR. JACKSON: Just very quickly,

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the other issue, when Your Honor indeed first considered and subsequently removed Mr. Jamal as counsel, if you will recall, Your Honor, the specific instance was when Your Honor suggested that the issue of my withdraw from this matter should be taken to the Supreme Court, and at that juncture Mr. McGill suggested to Your Honor that Mr. Jamal temporarily be removed as counsel so that that would give me standing to take the issue to the court. I brought this to Your Honor's attention. Your Honor then indicated, "Well, it's going to be done temporarily, I'm going to do it, I'm going to remove Mr. Jamal because he is obstructing and now you have standing to go to the Supreme Court."

Until that time, until that argument, Your Honor had not indicated that Mr.

Jamal was in any way obstructing the process of this trial. And it was at that time that Your Honor then removed Mr. Jamal. I believe the suggestion of Mr. McGill, as well as, the consideration of Your Honor was that in fact

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Mr. Jamal might return to represent himself.

THE COURT: That never entered my mind at all.

MR. JACKSON: Well, Your Honor, it was the --

THE COURT: Let me say this to you, Mr. Jackson: He does not take my rulings as a final ruling at this level. Every time I make a ruling he argues with me for hours. That is disrupting the orderly procedure in this courtroom. If he were an attorney he would never be able to get away with that. You know that. I make a ruling and you accept it because you know you have an exception to my ruling and you have an opportunity to argue that point before the Appellate Court. And if I'm wrong, I'm reversed. But he will not accept my rulings at this level. He just continually is disrupting the proceedings and that's why he's removed.

(A discussion was held off the record.)

THE COURT: That's why I had to

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remove him from the courtroom until he promised to behave, and that's why he's back here because he promised to behave. But if he continues to disrupt the proceedings as he's doing now he's going to be removed from the courtroom; not only removed as counsel but from the courtroom. I can't make it any clearer to him and to you. That's my position. He is continually disrupting this court --

MR. JACKSON: But Your Honor --

THE COURT: -- the orderly proceedings.

MR. JACKSON: If you will, Your Honor, I think any disruptions that, Your Honor, may have been brought to Your Honor's attention has been occasioned by Mr. Jamal's sincere wish and desire to represent himself.

THE COURT: Let me tell you I understand how sincere he is. That's not

the point.

MR. JACKSON: But --

THE COURT: The point is that when the Court makes the ruling that it's final at this level. You take an appeal, you have an exception. I am not going to stand here and

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argue with him for hours and hours and hours.

MR. JACKSON: I understand that.

THE COURT: This case will never be able to procedure.

MR. JACKSON: Well --

THE COURT: I am not going to hear anymore on it. I've heard it. I'm denying it again for whatever time it is and that's it. We'll proceed.

MR. JACKSON: Would you permit one further comment, Your Honor?

THE COURT: If it's on this issue, no.

MR. JACKSON: It is on this issue.

THE COURT: No further argument on this. I've made up my mind. I've told you how I feel. He's been disrupting -- he's doing it right now. It's 11:30 almost and we haven't even gone back to court this morning. All because he wants to disrupt the proceedings, and I'm not going to allow it. Now we're going to proceed. if he doesn't want to sit here, that's fine.

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(A discussion was held off the record.)

MR. MCGILL: Shall I recall the witness, Miss White, on cross-examination?

(A discussion was held off the record.)

THE DEFENDANT: Judge, before the jury comes in I'd like to --

THE COURT: I don't want to hear from you.

THE DEFENDANT: Judge, I understand that you never wanted to hear from me.

THE COURT: Because he is representing you now.

THE DEFENDANT: I understand. He is not representing my interests, Judge.

THE COURT: He is representing you.

THE DEFENDANT: He is not representing me, Judge. If he's not working for me who --

THE COURT: I'm ordering you again to sit down.

THE DEFENDANT: Judge, I have a point to make, and you can order me to sit down.

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You can order me thrown out of this courtroom. That's your prerogative.

THE COURT: Sheriff --

THE DEFENDANT: I am not disrupting --

THE COURT: Sheriff, take him out of the court again. You are disrupting --

THE DEFENDANT: I am not disrupting, Judge.

THE COURT: I am not going to put up with it.

THE DEFENDANT: I am not disrupting. You are disrupting my right to defend myself.

THE COURT: I know.

THE DEFENDANT: I don't want him participating in this case and --

THE COURT: I know you don't and that's why you're disrupting --

THE DEFENDANT: I'm not disrupting. You're playing hangman, Judge. You're taking McDermott's place.

THE COURT: He's doing an excellent job.

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THE DEFENDANT: Executing.

(The defendant was removed the courtroom.)

THE COURT: Bring the jury back in.

(The following took place in open court in the presence of the jury:)

THE COURT: Bring the witness in, please.

MR. MCGILL: Your Honor, Miss White is back there.

MR. JACKSON: Your Honor, Jonathan Black, a member of the bar, is going to assist me in further cross-examination. I will continue to do the questioning, Mr. Black is going to assist me in some other matters.

MR. MCGILL: Your Honor, may I see you at side bar briefly before the witness starts?

(A side bar conference was held on the record as follows:)

MR. MCGILL: Judge, I think at this point there may be an instruction -- perhaps

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we should instruct the jury at this point that, unless you object to it, that the defendant is not present, that you are not to any way let that prejudice you. And I think you should also add that that should not in any way -- that they should not feel any sympathy for the defendant, all in one sentence. Such as you must not let the fact that the defendant's absence in this courtroom in any way affect you through any sympathy, prejudice or bias of any sort.

MR. JACKSON: As long as there is no focus on sympathy. If you say just as he last said, that it should not lead you to draw any sympathy, any inference of sympathy of prejudice or bias in any way, fine. But I wouldn't want it to say you shouldn't sympathize with him. If you say all of them together --

THE COURT: Wait a while. If we're going to have some question about it

why don't we go back in chambers and I'll you draw it up.

(A discussion was held off the record.)

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(Side bar conference ended.)

(A conference was held in chambers off the record.)

THE COURT: Members of the jury, you are not to draw any adverse inferences from the absence of the defendant. You should further refrain from any sympathy, bias or prejudice for or against the defendant. All right. We'll proceed.

MR. MCGILL: Yes, Your Honor. Miss White is present for further cross examination. I have no objection that Mr. Jackson have assistance.

#### COMMONWEALTH'S EVIDENCE

CYNTHIA WHITE, resumed.

#### CROSS-EXAMINATION (Cont'd)

BY MR. JACKSON:

Q. Good morning, Miss White.

A. Good morning.

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#### White - Cross

Q. Miss White, I want to inquire as to -- before we go on into the incident itself, you indicated on direct examination yesterday that you have not participated in any agreement with the Commonwealth; is that right?

A. That's right.

Q. And you indicated to this jury yesterday that, in fact, you had three open charges and that's all; is that right?

A. (No response.)

Q. Here in Pennsylvania?

A. I have other charges but they're not being processed. They not like open.

Q. They're not open?

A. Yeah. They were bench warrants.

Q. Bench warrants. Right. Tell us about the bench warrants. We'll withdraw that question and give you another one. You told this jury yesterday that you only had three open cases in Pennsylvania; didn't you?

A. Yes.

Q. That's not true, though, is it?

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White - Cross

A. No. I have other cases.

Q. So you understand that you're under oath, don't you?

A. Yes.

Q. And you understand the oath assumes you swear to tell the truth?

A. Yes.

Q. Now I'm not going to go through the false statements that we went through yesterday, but why don't you tell us at least from the beginning, from this point on -- we'll forgive you -- from this point on tell us all of the truth. What cases do you have open?

MR. MCGILL: Objection, Your Honor.

THE COURT: I'll let her answer.

MR. MCGILL: All right.

BY MR. JACKSON:

Q. What cases do you have open?

A. I think it's two or three bench warrants and three other open cases.

Q. One or two bench warrants or two or three?

A. I said two or three.

Q. Why don't you know?

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White - Cross

A. I don't remember.

Q. Do you know when the bench warrants were issued?

A. I don't remember the dates.

Q. All right. Look, let's examine this. This incident happened on December the 9th, right?

A. Yeah.

Q. You were supposed to be in court on December the 10th, the next day, weren't you?

A. I don't remember.

Q. You don't remember.

A. No.

Q. Do you remember at a prior hearing me asking you that and you said, "Yes?" I'm sorry, that's not the form, Your Honor.

Well, let me do it this way: You say you don't remember if you had to be in court on the 10th of December?

A. No.

Q. Do you usually remember your court dates?

A. No. If I have the subpoena, yeah.

Q. You didn't have a subpoena?

A. I don't remember.

Q. You don't remember whether you were given a

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White - Cross

subpoena to appear in court December the 10th? Is that what you're telling us?

A. On that date, no, I don't remember.

Q. Did you appear in court on December the 10th?

A. No.

Q. Do you know why you didn't appear in court on December the 10th?

A. I don't remember.

Q. So that you at least had one bench warrant issued -- I mean did anyone tell you? Who told you about the bench warrants?

A. I found out about it later on.

Q. Yes. How did you find out about it?

A. Because I seen one of the subpoenas and the date was over, and it was a bench warrant.

Q. What day was that?

A. I don't remember the date.

Q. You have so many that you don't recall which bench warrant it refers to?

A. I said it was two or three so --

Q. Okay. So you're saying you saw the subpoena and you saw that the date was over. Why did you assume a bench warrant was out? Or did you assume

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White - Cross

it, or did somebody tell you? You said that you found out about it later. Tell us how you found out about the bench warrant?

A. I just did. I just told you.

Q. No. Tell us how you found out about the bench warrant?

A. I assumed that I did have a bench warrant. I didn't appear in court.

Q. You assumed that, is that what you're saying?

A. Yeah.

Q. So you're saying that you never knew for certain that there was a bench warrant?

A. For that specific date I don't remember.

Q. No, never mind that specific date. But you didn't know that you had a bench warrant for some time in December?

A. At one time I did have a bench warrant. I don't remember what date it was for.

Q. You said at one time you knew it?

A. Yes.

Q. And you knew it by assuming?

A. No.

Q. Who told you?

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White - Cross

A. Down in court.

Q. Where?

A. At 8th and Race.

Q. And who told you down there?

A. The Judge.

Q. And when was that?

A. I don't remember.

Q. Was it in December?

A. I don't remember.

Q. Was it in January?

A. I don't remember.

Q. The only thing you remember is what happened on December the 9th; is that it?

A. Yeah, I remember that.

Q. That's the only thing you remember. Okay. Let's go on. Did you get a second bench warrant?

A. Yes.

Q. And do you know for what date that was?

A. No.

Q. So the members of the jury know what a bench warrant is, tell them what it is.

A. When you fail to appear in court.

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White - Cross

Q. What happens?

A. You get a bench warrant.

Q. And who gives you a bench warrant?

A. The Judge.

Q. And the Judge does that because you fail to appear, right?

A. Yeah.

Q. You have at least two of them. Could it have been three bench warrants?

A. I don't know. I said two or three.

Q. Two or three. I know, you don't remember. All right. You were arrested on the 12th of December, weren't you?. Remember, we went over that yesterday? The same date you have a statement to the police.

A. Yeah.

Q. You didn't know about the bench warrant then?

A. I don't remember if it was the 12th or -- I mean --

Q. It probably wasn't the 12th because that's only two days after you were supposed to be in court on the 10th. But remember on the 17th when you changed

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#### White - Cross

the statement up a lot that's when the Judge told you you had a bench warrant, isn't it?

A. I said I didn't remember if it was the 12th or the 17th. I don't remember.

Q. Okay. For the moment, we know that it takes some time for these bench warrants to go through the system. So let's assume for the moment that your failure to appear on the 10th was not given to the Judge at the Roundhouse by the 12th. But we know you were arrested again on the 17th, and we know from your testimony yesterday -- and you correct me if I'm wrong -- you said on the 17th that was the time that you called the police from downstairs -- is that right? -- and said, "Hey, I got something else to tell you?" Wasn't that your testimony yesterday?

A. No, I didn't say I had something else to tell them.

Q. Well, you called them, though, right?

A. Yes.

Q. And you said that was on the 17th when you were downstairs, right?

A. I don't remember whether I said downstairs or

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White - Cross

at the 6th District was when I called, yeah.

Q. But in any event, when you called them because you had already seen that notice that they posted for you in the 6th District on the 17th, if I recall your testimony from yesterday, you said you called them because you remember something else and you didn't tell them or something like that; is that right?

A. No, it's not right.

Q. It wasn't on the 17th?

A. I didn't say that yesterday.

Q. All right. Well, tell us now, then. What did you tell them when you called?

MR. MCGILL: Objection. That is argumentative.

MR. JACKSON: Fine. I withdraw it now.

BY MR. JACKSON:

Q. Fine. Tell us what you told them on the 17th when you called?

A. I called them and I told them where I was at.

Q. Right.

A. And --

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White - Cross

You just said, "Hello, police, I'm downstairs," and hung up?

A. No.

Q. What else did you say? Tell us.

A. I told them where I was at. I said -- they asked me can I come down and they told me I was arrested.

Q. Say that again. They asked you what?

A. Can I come down and I told them I was arrested.

Q. The police asked you if they can come downstairs?

A. No. If I can come down there.

Q. Right.

A. And I said, "No, I was arrested."

Q. Right. Go on.

A. And they told me some more information that they didn't get from me but he don't know because he wasn't the police that was taking the statement.

Q. Okay. Now by the 17th the Judge at the Roundhouse, The Municipal Court Judge at the Roundhouse, had a bench warrant. That means that you would not be released; is that correct?

A. (No response.)

Q. Let me ask you generally. If there's a bench

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White - Cross

warrant outstanding for you, you go down to the Roundhouse, and the Judge says, "You got a bench warrant on you." Doesn't that mean you can't be released? Come on, you know that, don't you?

A. It all depends on what the bench warrant is for.

Q. It all depends on what the bench warrant is for. If the bench warrant is for your arrest, what do you mean?

A. A Judge can lift the bench warrant.

Q. The Judge that issued it, right?

A. Yes.

Q. Was the Judge that issued the bench warrant down at the Roundhouse?

A. I don't remember who issued the bench warrant.

Q. You don't remember who issued the bench -- you don't remember, I'm sure, who the Judge was down the Roundhouse, either, do you?

A. Yes.

Q. Who was it?

A. On which date are you talking about?

Q. On the 17th. Fine. You tell me on all the dates. Who was there on the 12th?

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#### White - Cross

A. It was Judge Harris.

Q. Judge Harris, Kenneth Harris?

A. I don't know his first name.

Q. And who was there on the 17th?

A. Bednarek.

Q. Now you're certain of those Judges, right?

A. Yes.

Q. Now, how is it you're able to remember those two Judges?

A. Cause I went in front of them before and I remember them.

Q. Okay. Was there any discussion, first of all, on the 12th with Judge Harris with regard to your bench warrant?

A. I -- yeah. I told him that the bench warrant was lifted on a date and I had another date to appear and a bench warrant at City Hall. But the bench warrant was not taken off of the computer so the clerk was there the day that I went down there and a bench warrant lifted. So he told the Judge that the bench warrant was lifted.

Q. But that wasn't the truth, though, was it?

A. Yeah, it was the truth.

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White - Cross

Q. You didn't have a bench warrant outstanding for you on the 12th of December?

A. I don't remember the date.

Q. You just said that you told the Judge that it was --

MR. MCGILL: Objection. Can she finish?

MR. JACKSON: I'm sorry. Forgive me, go on.

THE WITNESS: I don't remember the date but I told the Judge that the bench warrant was lifted but it just wasn't off the computer.

BY MR. JACKSON:

Q. So you're saying you're absolutely certain that on the 12th of December you did not have a bench warrant outstanding?

A. I don't remember.

Q. You don't remember. Well, how is it you don't remember but you remember telling Judge Harris that there was none? Wasn't that a lie that you told the Judge to get out?

A. No.

Q. Okay. So your failure to appear on the 10th --

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White Cross

you told the Judge that somehow that was cleared up; is that right?

A. I told him -- the clerk, had told him that was --

Q. Never mind what the clerk told him. What you told him.

MR. MCGILL: Objection, Your Honor.

BY MR. JACKSON:

Q. I'm asking what you told the Judge, not the clerk. What you told the Judge.

A. Yes. I told him it was lifted because I had the paper there and I showed him the paper.

Q. I didn't mean to interrupt.

A. I showed him the paper that it was lifted that they gave me.

Q. All right. Did you appear for a bench warrant hearing between the 10th and the 12th?

A. I don't think they gave me a date for bench warrant.

Q. So how could you have it lifted if you didn't appear?

A. The Judge lifted it at the Roundhouse.

Q. Judge Harris lifted it?

A. If I'm not mistaken I think they called -- I

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White - Cross

don't know. But it was lifted. I don't remember who lifted it.

Q. You're losing your memory again.

MR. MCGILL: Objection, Your Honor.

THE COURT: Please, no comments, Mr. Jackson. Just ask questions.

MR. JACKSON: All right.

BY MR. JACKSON:

Q. We'll get back to the 17th. You already indicated that you have two or three bench warrants still outstanding, don't you?

A. Yes.

Q. Is it one of those outstanding bench warrants for December the 10th?

A. I don't remember the date.

Q. You don't know any of the dates for those bench warrants?

A. No.

Q. All right. Now, let's get to December 17th. Now on December 17th certainly it was on the computer that you had a bench warrant outstanding for your failure to appear on the 10th of December. Now, you indicated that you spoke to someone at homicide;

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White - Cross

is that correct? They told you that they wanted to talk to you; is that right?

A. Yes.

Q. You didn't tell them that you wanted to talk to them; is that right?

A. That's right.

Q. And coincidentally the only time you called them is when you get arrested; isn't that right?

A. That was the only time I seen the picture.

Q. And -- well, you saw it on the 12th, didn't you?

A. Yes.

Q. And between the 12th and 17th you had the number, didn't you?

A. Yes, but I didn't know they wanted me again.

Q. And you knew that you didn't give them any address so that they could contact you; is that right?

A. Yes.

Q. So as long as you never got arrested again they'd never be able to see you again; isn't that true?

A. I don't know.

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White - Cross

Q. You don't know. Okay. But if you wanted to testify in this case, if you saw what you said you saw, why didn't you give them the proper address?

MR. MCGILL: Objection. She didn't say she didn't want to testify.

THE COURT: Rephrase your question, Mr. Jackson.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. If you saw what you said you saw why didn't you give them your proper address?

MR. MCGILL: Objection. What's the relevance of one to the other?

MR. JACKSON: So that the police could contact you to bring you into court so that you could come --

THE COURT: Rephrase the question.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. You didn't give the police your proper address, did you?

A. No.

Q. And the only time the police came in contact

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White - Cross

with you is when you called them on the phone at the instance of your arrest; isn't that true?

A. Yes.

Q. And even though you had their phone number in between arrests you didn't call them; is that right?

A. That's right.

Q. And even though you had these bench warrants outstanding you're saying that there's no deal for you to be out on the street or there was no deal for you to be released on the street? Is that what you're saying?

A. That's what I'm saying.

Q. And on the 17th when indeed there was a bench warrant outstanding for you how did you get released from jail?

A. I just -- I told you before.

Q. Tell us again.

A. The bench warrant was lifted but it was never taken off the computer.

Q. Oh, you're saying on the 17th it's that same bench warrant?

A. Yes, that's the same one that came up.

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White - Cross

Q. And you're saying that the Judge removed the bench warrant without a hearing?

A. What do you mean without a hearing?

Q. Without going to a bench warrant hearing.

A. He gave me a date to go to the bench warrant hearing at City Hall.

Q. Who did?

A. The Judge?

Q. Which Judge?

A. Judge Harris.

Q. Now, you indicated to us earlier -- and you correct me if I'm wrong -- that you know and I know that the system says that the Judge who issues the bench warrant is the one who removes the bench warrant. So are you saying that Judge Harris removed the bench warrant, lifted the bench warrant?

A. I said I don't know. I said when I went there the bench warrant was lifted.

Q. But you know the only one who can lift it is the Judge who issued it; isn't that right?

A. I don't know. I guess so.

Q. You guess so. You told us emphatically earlier that that was a fact; that the Judge who issued it

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had to lift it; is that correct?

A. Yes.

Q. Okay. Now, remember you just told us earlier, of course, that you told Judge Harris that the bench warrant was lifted. That was on the 12th. Now

on the 17th when you appeared before Judge Bednarek you told him the same thing; is that right?

A. Yes.

Q. That the bench warrant was lifted; is that right?

A. Yes.

Q. And you're referring to the same bench warrant?

A. Yes.

Q. And you're saying that although it was Judge Harris there on the 12th some Judge whom you don't know lifted the bench warrant; is that right?

A. Yes.

Q. Now, that's step one bench warrant. The second bench warrant, again, you don't know when you got there, right?

A. No.

Q. You don't know when you got this, right?

A. No.

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Q. You don't know when you got the third bench warrant, either, do you?

A. No.

Q. Because it's not important to you?

A. Yes, but I don't remember.

Q. Now, that's a failure to obey the court order; isn't it?

A. Court appearance, yes.

Q. Yes. So you're in contempt of court; isn't that true?

A. Yes.

Q. On three occasions at least?

A. On two or three...

Q. On two or three. How about -- we'll go all the way back. How about on November the 30th, 1980? Did you appear in Courtroom 362?

A. 362?

Q. 362. I'm sorry, 682 City Hall. my apologies.

A. (No response.)

Q. I know, you don't remember, right?

A. No, I don't.

Q. I didn't think so. How about on 12/18 1980, did you appear in 682 on contempt of court charges?

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A. I don't remember.

Q. I know you don't remember. Okay. How about on 10/10/81, did you appear in 682 for contempt of court?

A. (No response.)

Q. Let me answer for you. You don't remember, do you?

A. Right.

Q. Isn't it that you're so contemptuous of the court that you have no recall whatsoever?

A. I just don't remember.

Q. You just don't remember when you're in contempt of court? Is that it?

A. Yeah.

Q. Fine. We just wanted the jury to know that you're contemptuous of the court. Now, these contempt hearings, the last one being 10/8/81 so that's even before these three outstanding bench warrants were issued; isn't that correct?

MR. MCGILL: I would object to that, Your Honor, that aspect of it. What are you talking about, three bench warrants? Three

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open cases? Anything prior to that is inadmissible. I will object.

THE COURT: Will you rephrase your question so there will be no objection?

MR. JACKSON: Fine.

BY MR.JACKSON:

Q. The last time you appeared in contempt of court was back in October of '81. These three out standing bench warrants that you currently have on you were subsequent to October of '81; is that a fact?

A. I don't understand what you mean.

Q. Sure. You went to some prior hearings for contempt of court. In fact, so that I can have you handle the numbers better, one, two, three, four, you had four prior contempt of court hearings. All right. And the last one being in October of '81. Since October of '81 you had bench warrants issued against you; is that true?

A. Yes.

Q. Three, haven't you?

A. I don't remember. It's two or three.

Q. Two or three. And you would be required to

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have three hearings on each of those bench warrants; is that a fact?

A. Three hearings or three trials?

Q. Three hearings on the bench warrants.

A. Repeat the question.

Q. Yes, ma'am. Given your experience with one contempt of court, when you have a bench warrant outstanding you have a hearing on that bench warrant, do you not?

A. You go to trial.

Q. You don't have a trial. What were those times when you went to 682 for contempt of court? That wasn't the trial, was it? Wasn't that a hearing on the bench warrant? Like, you know, where were you, why didn't you show up? Isn't that what those are?

A. Yes.

Q. So again, my question is: You have three outstanding bench warrants so you're supposed to have three hearings for those bench warrants; is that right?

A. Yes.

Q. Have you gone to a hearing for any of them?

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A. They have me scheduled. I didn't go to court yet. They have me scheduled for me to go through trial.

Q. Who told you that?

A. The D.A.

Q. Mr. McGill told you that?

A. Yes.

Q. Is the D.A. the one who schedules court hearings?

MR. MCGILL: I would object to her knowledge of the system.

MR. JACKSON: Before he didn't want to object about Massachusetts.

THE COURT: Can you rephrase that question?

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. The question is: Anyway, have you had a hearing on anyone of those bench warrants?

A. No.

Q. Do you have a subpoena or any other formal notice indicating when you would have a hearing on those bench warrants?

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A. No,'cause under the law they can't bring me down from being a witness in trial and be on my cases, so they haven't been scheduled yet. They have to go to trial.

Q. Since you're so knowledgeable of the law, and so the jury will understand, you're saying as a result of being arrested and convicted in Massachusetts that you're simply here in this instance right now because the District Attorney requested of the Massachusetts authorities to allow you to testify; is that right?

A. Yes.

Q. And that after you testify you are to go back to Massachusetts; is that right?

A. Yes.

Q. So that you're saying that in effect that we can't, the Philadelphia Courts cannot, try you on those bench warrants or those outstanding cases until Massachusetts is through with you; is that correct?

MR. MCGILL: I would object.

THE WITNESS: It's confusing.

MR. JACKSON: Your Honor, she --

MR. McGILL: Bench warrants and open

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cases are the same thing.

MR. JACKSON: They are not, Your Honor.

MR. McGILL: The three bench warrants are for the three open cases.

MR. JACKSON: Your Honor, they are not the same thing and I think Your Honor well knows that.

MR. McGILL: They refer to each other is what I'm saying, Judge. Obviously they're different.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. When were you arrested in Massachusetts?

A. I don't remember the date.

Q. I know. Generally? It was in May, wasn't it?

A. Yes, I think so.

Q. You think so?

A. I don't remember the date.

Q. Can't you help us a little bit with your memory, Miss White. I mean, it's awfully confusing. Do you know whether it was February, March, April, May, June? I mean, take a guess, pick one of those

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months.

A. It was either April or May, I don't remember.

Q. Either April or May? Weren't those bench warrants outstanding even before you were arrested in Massachusetts?

A. Yes.

Q. So to say that we couldn't try you in Philadelphia because of your trouble in Massachusetts isn't true because you were on the streets of Philadelphia before then; is that right?

A. Yes.

Q. So that we've established then, that you still didn't go to any hearings -- is that right? -- on the bench warrants?

A. Yes.

Q. And we've established further that you got no notice of any hearings for the bench warrants; is that right?

A. Yes.

Q. And we can further establish -- and you tell me if I'm wrong -- that you never appeared at any of your court dates for those open cases, either?

A. Yes, I have.

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Q. On which days?

A. I don't remember the day.

Q. Did you appear for each of your outstanding cases?

A. It was one.

Q. One that you appeared for?

A. Yes.

Q. And two that you did not appear for?

A. Yes.

Q. Why didn't you appear for those two?

A. 'Cause I was in jail.

Q. Where at?

A. Boston.

Q. Well, if you don't know when you were locked up how do you know that you were in jail when the cases were scheduled?

A. 'Cause I remember being in jail. I don't know what to tell you.

Q. How come you remember being in jail if you don't know when you were supposed to be in court?

A. I don't remember the exact date. That's what I'm saying.

Q. Well, how can you say you were in jail?

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A. During the months period that I was in jail.

Q. During what months?

A. It was in April or May.

Q. It's a big difference, Well, when were your two cases scheduled? You're saying your two cases were scheduled April or May?

A. Yes.

Q. You didn't have any scheduled in January?

A. (No response.)

Q. Did you?

A. I don't know.

Q. How about February, specifically February 25th?

A. (No response.)

Q. Could you tell us?

A. I don't know.

Q. How about March?

A. I think that's the case I went to court on.

Q. You went to court in March?

A. I think that was the date.

Q. You don't remember the exact date but you know in March. Okay. Did you go to court in April at all?

A. No.

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Q. The only reason I'm asking you that is because on direct examination in response to Mr. McGill's question you indicated that you were arrested in May in Boston. Okay?

A. No. I indicated that I was in jail here in Philadelphia since May 28th.

Q. Yes. That was in response to my question. But you're saying that if you told Mr. McGill that you were arrested in May that that was incorrect?

MR. MCGILL: Objection. Arrested where?

MR. JACKSON: I'm sorry. In Boston.

BY MR. JACKSON:

Q. You're saying if you told Mr. McGill that it was May that that's incorrect?

A. No,'cause I just said April or May. I don't remember.

Q. Okay. It's only when you talk to me that you don't remember. In response to Mr. McGill you say it without hesitation -- May. So I wonder why you can't remember when I ask you questions.

A. I just can't remember.

Q. Now, you have never been jailed for more than

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a couple hours since December the 9th -- have you? -- by Philadelphia authorities?

A. A couple hours?

Q. Yeah, other than the processing that you go through at the Roundhouse. In fact, how long did you stay?

MR. MCGILL: Objection. Can she answer the question?

MR. JACKSON: I was going to withdraw that question, if you don't mind.

THE COURT: Well, say you're withdrawing it.

MR. JACKSON: I'm withdrawing that question.

BY MR. JACKSON:

Q. On the 12th how long were you in police custody? Strike that. How long were you down at the Roundhouse?

MR. MCGILL: Objection. When?

THE WITNESS: As long as it takes them to process me.

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BY MR. JACKSON:

Q. And after they finish processing you that's when you went upstairs to

Homicide?

A. I don't remember at what point in time I went upstairs to Homicide.

Q. How do you know it took them as long as it took them to process you if you don't remember when you went up to Homicide, Miss White?

A. You're asking me before I went to the Judge, or before I went to Homicide?

Q. So that the jury knows, how long does it normally take you to be processed down at the Roundhouse? Isn't it about ten hours?

A. Yeah.

Q. Okay. How long were you down at the Detention Unit on the 12th?

A. Before what?

Q. You know, the ten hours that you just talked about?

A. Yes.

Q. How long did that take on the 12th?

A. I don't know.

Q. Did it take five hours? Two hours? Eleven?

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Twelve? You can't remember?

A. I don't know. As long as it took them to process me.

Q. And then at some point in time you went up to Homicide?

A. Yes.

Q. So you're telling us, you want the jury to believe, you waited downstairs for ten hours, Homicide waited until you were finished for ten hours? Is that what you're saying?

A. I don't remember whether I went upstairs to get processed.

Q. Okay. How about on the 17th?

A. It's the same thing.

Q. You were processed but you don't remember how long it took or anything?

A. No.

Q. You don't remember at what point you went to Homicide?

A. No.

Q. Now, these Homicide detectives that you talked to, they knew about these outstanding bench warrants, too, didn't they?

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A. I don't know.

Q. The subject never came out?

A. No.

Q. You're certain of that?

MR. MCGILL: Objection. She answered the question.

MR. JACKSON: I just want to be -- I'm just giving her an opportunity to correct it if she wants to.

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Are you certain? The Homicide detectives or D.A.'s --

THE COURT: The objection is sustained.

BY MR. JACKSON:

Q. How about the Assistant District Attorney, Mr. McGill, or anyone in his

office? Did the subject of those bench warrants ever come up?

A. Yes.

Q. How many times?

A. I don't know. They just told me I will be trialed on them, maybe they will be scheduled and I

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will be trialed.

Q. Fine. And you don't know when that was?

A. I don't remember when it was.

Q. It was Mr. McGill that told you that?

A. Yes.

Q. And you know from your own experience that the District Attorney's office doesn't schedule these hearings, don't you?

A. I don't know who schedules them.

Q. You don't? Okay. Aside from the hotel accommodations that you've claimed you've gotten from the District Attorney's office, you have a friend named Smitty, don't you?

A. (No response.)

Q. You have a friend named Smith?

A. Smith what?

Q. His last name is Smith. I don't know his first name. Maybe you can tell us.

A. No.

Q. The man who was arrested when Mr. McGill questioned you about the District Attorney allowing a man to remain out, to sign his own bail, I

thought his name was Smith. Is his name Smith?

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A. No.

Q. What's his name?

A. Robert Small.

Q. Robert Small?

A. Yes.

Q. Has he used the name Smith?

A. I don't know.

Q. When Mr. McGill brought it to your attention what name did he give you?

A. (No response.)

Q. What name did Mr. McGill tell you?

A. (No response.)

Q. Do you remember, Miss White? Do you remember what name Mr. McGill told you? He said, "We let a friend of yours sign his own bail." Do you remember on direct examination you had no problems answering the question? Now I'm asking you.

A. His name Prince.

Q. Pardon me?

A. Prince.

Q. His name is Prince?

A. That was the name that he used.

Q. Prince?

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A. Yes.

Q. But when you were talking to Mr. McGill on direct examination Mr. McGill didn't call him Prince.

A. Excuse me?

Q. Mr. McGill did not call this man Prince, did he?

A. He said, "Your friend."

Q. Yes and then he named him.

MR. MCGILL: Objection, Your Honor. It's inaccurate to my recollection.

THE COURT: I don't remember. Can you rephrase your question?

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Okay. So you're saying, so that I'm correct, your friend Robert Small also known as Prince does not use the name Smith; is that right?

A. I said I don't know.

Q. Now, you knew about his arrest, right?

A. Yes.

Q. When did you find out about his arrest?

A. When I came down.

Q. And you weren't even in town when he was arrested, were you?

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A. No.

Q. And the District Attorney's office took it upon themselves to release this man, let him sign his own bail; isn't that correct? As far as you know.

Q. They released him for security reasons from the local prison.

Q. Is that what they told you?

A. Yes.

Q. Because you don't know because you weren't here, right?

A. Yes.

Q. That's what they told you, "For security reasons we're releasing him?" Is that right?

A. Yes.

Q. Have you ever given this man Robert Prince Small, have you ever publicly given his name out to anyone?

MR. MCGILL: Objection, Your Honor, as being irrelevant.

MR. JACKSON: No, it is relevant, Your Honor. If she's going to give that -- for some reason she was told for security

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reasons why should this man be released?

THE COURT: Go ahead. I'll let your question stand.

BY MR. JACKSON:

Q. The question is: Have you ever publicly given this man's name?

MR. MCGILL: Objection. What do you mean, "publicly?"

MR. JACKSON: At any hearing.

BY MR. JACKSON:

Q. Have you ever given his name?

MR. MCGILL: As what? Her name or what, as what?

MR. JACKSON: Just the name.

BY MR. JACKSON:

Q. Have you ever announced the name as someone who is a friend of yours or someone who is accompanying you, or someone who is doing something for you or something against you? Have you given his name in any context whatsoever?

A. Yes.

MR. MCGILL: I have no objection.

MR. JACKSON: Okay.

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BY MR. JACKSON:

Q. At a hearing? I'm not talking about to the District Attorney. I know they know. Anyone else other than your close friends and the District Attorney and police? Have you given it to anyone else?

A No.

Q. So in other words if there was some kind of security problem it would be a security problem that relates to the District Attorney or your close friends because no one else knew of his existence; isn't that true?

A. No.

Q. You're still saying there was a security problem. All right. But nobody else knows that he even exists but there's a problem for him; is that what you're saying?

A. Yes.

Q. Even though nobody knows that he exists if they -- okay. Moving right along --

MR. MCGILL: I object to that. I don't think she's saying that.

THE COURT: Go ahead.

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By MR. JACKSON:

Q. All right. You know that the District Attorney permitted him to sign his own bail and they brought that to your attention and told you, "We did this for you because he accompanies you? Is that right? Strike that. What did they say? What was the purpose of releasing Prince?"

A. I just told you.

Q. For what reason?

A. For security reasons.

Q. That's the only reason?

A. Yes.

Q. Well, why is Prince so important? Why not Joe Blow in the prison? Why don't they release everybody in the prison for security reasons? I mean, what is it, what is the nature of the relationship between you and Prince that requires or recommends that the District Attorney should recommend that he sign his own bail?

A. He's a close friend of mine and he's been seen a couple times with me.

Q. Do you have any other friends? You only have

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one friend in this world?

A. Close friend, yes.

Q. You only have one close friend?

A. Yes.

Q. And he's the only person in this world that you've been seen with since

December the 9th?

MR. MCGILL: Objection. That is not what she said.

MR. JACKSON: I'm asking.

BY MR. JACKSON:

Q. Have you been seen anywhere with anyone else since December the 9th?

MR. MCGILL: Objection as irrelevant.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. We understand that there's a security problem for Prince because he's close to you and he's been seen with you. My question is: Are there other people that have been seen with you and is there a security problem for them, too?

A. He's the only person that be with me.

Q. So now you're saying absolutely you haven't been with anyone since December the 9th until today? Isn't

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that ridiculous?

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Anywhere on the face of this earth have you been anywhere with anyone else other than Prince?

A. Yes.

Q. All right then. Is there a security problem for all of those other people that you've seen?

A. I don't know.

Q. You don't know but you do know there is one for Prince?

A. Yes.

Q. Simply because he knows you?

A. (No response.)

Q. Is that what you want this jury to believe? Just because you know him -

-

MR. MCGILL: There's an objection. Please let the witness respond.

THE COURT: Please ask her one question at a time.

MR. JACKSON: My apologies, Your Honor. I'm excited. I'm sorry.

THE COURT: Don't get excited.

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BY MR. JACKSON:

Q. Miss White, forgive me. So that we all know, what is it specifically that causes you to believe and conclude because Prince knows you, because he's seen with you, that the District Attorney needs to release him from prison because there's a security problem? Tell us.

A. He's a close friend and also works with me.

Q. Works with you in what way?

A. In what I do.

Q. What do you do that you need him to work with you?

MR. MCGILL: Objection as beyond the scope.

MR. JACKSON: Your Honor, it goes to the --

THE COURT: Let me see you over here.

(A side bar conference was held on the record as follows:)

THE COURT: Where are you going and what is your purpose?

MR. JACKSON: Your Honor, I have reason to believe and I think we can get the

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notes of testimony back on January the 11th in front of Judge Ribner I had information at that time that led me to believe that there was someone -- I don't know whether it was this man or someone else -- that she had a friend in jail that was being released as a result of her testimony and that she had open charges that were going to be dismissed. Now, I admit that I don't have any facts to back that up but based on that now her testimony and Mr. McGill's representations as well that at least on one occasion this man was permitted to sign his own bail.

I want to find out if, in fact, that's all part and parcel -- now she's saying it's security reasons. I want to suggest that it's not for security he signed his own bail but because they were doing that to permit and encourage her to testify. And I think I should --

THE COURT: That's something you would have to ask the District Attorney.

MR. MCGILL: Judge, I don't think --

THE COURT: Because she was away at

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the time, she was in Boston.

MR. JACKSON: I understand that but you personally allowed that kind of information to come out before when Mr. McGill was asking about --

THE COURT: Well, he said that they informed her when she came here that they had allowed this friend to sign his own bail.

MR. JACKSON: Isn't it bias, the motivation surrounding that --

THE COURT: But you're saying that you think that the police or the District Attorney has this motive. How can she testify as to what the motive is of somebody else?

MR. JACKSON: Because of her discussions she's giving now, Judge.

THE COURT: She's admitted that the District Attorney told her that this is what happened.

MR. JACKSON: And I want --

THE COURT: Now, if you want to infer from that that the District Attorney has some motive, fine.

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MR. MCGILL: But going into the fact of her employment, it's obvious that he works with her in prostitution.

THE COURT: I'm obviously aware of that.

MR. MCGILL: Let me finish, if I can?

MR. JACKSON: I may concede that point to you.

MR. MCGILL: The only point I'm suggesting is, that it's been explored and obviously they are in business. We know she's a prostitute. I don't think it needs to be explored here. The bias has already been established, if any.

MR. JACKSON: I'll concede that and I don't need to go any further in the nature of the relationship. What I'm trying to do is to show, number one, that there was no security problem and it's for some other reason, and I guess I've only got a few more questions on that issue altogether.

THE COURT: The thing is I don't know

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if she knows that. As I said, this was done while she was away.

MR. JACKSON: Judge, I think --

THE COURT: And it was told to her when she came here. if you're saying that the District Attorney told her that, "We've released him because he's a friend of yours and we want you to testify," it's a different story.

MR. JACKSON: I think there was something else going on, too, Judge. How would she know that --

MR. McGILL: We're trying to encourage her testimony. Okay. If he wants to pursue that, Judge, I think it's limited to the extent of what she knows.

THE COURT: That's what I'm saying.

MR. JACKSON: What her understanding is, fine.

MR. McGILL: If he were to call Detective Thomas, or somebody like that, who's the assigned detective of the case who's in a position -- that's what Your Honor's getting at?

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THE COURT: Yes.

MR. McGILL: She can always speak to what she knows.

MR. JACKSON: Fine.

THE COURT: You can come right out and ask her, "Did somebody tell you that we let him go because we want your testimony." That's a different story.

MR. JACKSON: Right.

THE COURT: But as it stands now you can draw any inference you want.

MR. JACKSON: But I'm just thinking that I should be permitted to impeach if that's what she is saying. She's saying it's for security reasons and I'm saying it's for something else.

THE COURT: That's what they may have told her and that's why she keeps repeating it. What's that got to do with it?

MR. McGILL: Yes, she said --

MR. JACKSON: I'm going to find out from her as best as she knows if she

knows why she was released.

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THE COURT: That's it.

MR. MCGILL: Sure.

MR. JACKSON: If he's told her.

THE COURT: Those are the words.

MR. MCGILL: If he's told her.

(Side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, let me ask you a few more questions about Prince. You talked to Prince since he was permitted to -- Mr. McGill, I'm sorry. My apologies.

MR. MCGILL: Excuse me, Your Honor. I was wrong, not you, Mr. Jackson. Sorry, Your Honor.

BY MR. JACKSON:

Q. Miss White, a few more questions about Prince. You've seen him since he was permitted to sign his own bail; is that right?

A. Yes.

Q. And you discussed his signing his own bail, didn't you?

A. With him?

Q. Yes.

A. No.

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Q. You never talked about it at all?

A. We just talked about the case.

Q. Just talked about the case? He didn't say, "Yeah, the D.A. let me sign my own bail because of what's going on with us," or something like that?

A. No.

Q. Words to that effect?

A. No.

Q. Nothing like that at all?

A. No.

Q. So then you're saying that as a result of what he told you, you had no reason to think that he was permitted to sign his own bail because - strike that. Did he indicate to you that because of his relationship with you the District Attorney was permitting him to sign his own bail?

A. Can you repeat that question again?

Q. Yes, ma'am. Did Prince indicate to you by words, deeds, actions or otherwise that because of his relationship with you the District Attorney was recommending that he be permitted to sign his own bail?

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A. No.

Q. He didn't? Okay. And of course you didn't think that that was the reason, either, right?

A. That's right.

Q. You just thought that just because -- never mind. We won't go through that. How many times was he permitted to sign his own bail for trial?

A. Once.

Q. Where was he on December the 9th, 1981 at about 4:00 o'clock in the

morning?

A. Home.

Q. How do you know that?

A. That's where he was when I left him.

Q. So you don't know where he was, you're saying, at 4:00 o'clock?

A. Yes.

Q. Pardon me?

A. I left him home.

Q. What time?

A. It was about 2:30, quarter to three, something like that.

Q. I thought you were at a hotel? I'm sorry, not

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a hotel. My correction. I thought you were at 13th and Spruce?

A. I was on the corner.

Q. I know. At that time but now you're saying you were home. You live at 13th and Spruce?

A. Twelfth and Spruce.

Q. So you're saying that you left him at home around the same time that you went to 13th and Spruce?

A. I left and I went up to the corner.

Q. Was he at 13th and Locust that evening?

A. No.

Q. You never saw him at 13th and Locust?

A. At what point are you talking about? That evening?

Q. Tell us, ma'am. Yes, that evening.

A. No.

Q. You're certain of that?

A. Yes.

Q. Describe Prince to us, please?

MR. MCGILL: Objection. Well, I withdraw the objection, Your Honor.

MR. JACKSON: Describe him, please.

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THE WITNESS: (No response.)

BY MR. JACKSON:

Q. How tall is he?

A. About five nine, I guess. I'm not good at heights.

Q. Pardon me.

A. I'm not good at height.

Q. About my height? I'm five nine. About my height?

A. Little taller.

Q. A little taller? Maybe six feet?

A. Yeah.

Q. You know one, two, three, about six feet tall?

A. Yeah.

Q. Is he considered short, or tall? What would you consider him, short or

tall?

A. Tall.

Q. And how much does he weigh?

A. About a 180.

Q. Is his build slender, medium, heavy? What would you consider him?

A. Medium.

Q. His hair, what style is his hair in?

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White - Cross

A. Afro.

Q. Pardon me?

A. Afro.

Q. Afro?

A. Yes.

Q. Has he had a gerry curl or something like that at one point?

A. No.

Q. And you're saying on December the 9th he had an Afro, too?

A. Yes.

Q. You're certain of that?

A. Yes.

Q. Now, is there anything else about the nature of your relationship with the District Attorney's office or the Court's that you'd like to bring to our attention before we go on?

A. No.

Q. Okay. Because we've spent a couple of hours, about something that you could have cleared up yesterday.

MR. MCGILL: Objection. My God.

THE COURT: No comment, please.

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Just ask the questions.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Do you have any agreement by word, or deed or otherwise that would suggest to you what the disposition of your outstanding bench warrant is going to be? Do you know what's going to happen to the bench warrant in other words?

A. I will be trialed for them.

Q. For the bench warrants?

A. Yes.

Q. And what is the District Attorney going to recommend?

A. I don't know.

Q. They didn't tell you?

A. No.

Q. And you didn't ask?

A. No?

Q. You didn't say, "Hey, you know, are you going to help a little bit in this?"

A. No.

Q. You're sure? Never mind. Never mind that question. How about the

outstanding cases themselves?

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MR. MCGILL: Objection, Your Honor. They're the same.

MR. JACKSON: Judge, they're not the same. They're held as two different hearings.

MR. MCGILL: Objection, Your Honor.

THE COURT: Come here.

(A side bar conference was held on the record as follows:)

MR. JACKSON: Judge --

THE COURT: Now Mr. Jackson, you know that as a practical matter -- go ahead.

MR. JACKSON: Could I say --

MR. MCGILL: No, you've been talking all morning. Hasn't he?

THE COURT: Go ahead.

MR. MCGILL: Your Honor, as I understand it, these three bench warrants refer to the two open cases that she has. So that there's a hearing and, of course, there would be a trial. If you're talking about two separate things, yes.

MR. JACKSON: Yes.

MR. MCGILL: And I think that she

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with all this jargon may well be confused that the three bench warrants are because those cases and the last case she was in Boston at the time, they refer to each other.

MR. JACKSON: That is, first of all, Judge, that is not true.

THE COURT: Are you telling me, Mr. Jackson --

MR. MCGILL: What are the dates?

THE COURT: -- the Court puts a separate penalty for the bench warrant?

MR. JACKSON: Judge --

THE COURT: I've issued those bench warrants and never did. The only thing I do is sue out on the bail.

MR. JACKSON: Judge --

MR. MCGILL: Please, let him finish.

THE COURT: I don't give them a separate hearing on the bench warrants. Usually if they come in they're tried on the case and I lift the bench warrant.

MR. JACKSON: Judge, one moment. Judge, because you do that doesn't mean that

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#### White - Cross

she isn't exposed to a penalty for contempt of court. She's had at least four hearings already.

MR. MCGILL: Let me ask you this: Do you have a date for the bench warrants when they were lodged?

MR. JACKSON: When they were lodged?

MR. MCGILL: The date when they were lodged?

MR. JACKSON: I know when they were issued.

MR. MCGILL: You know what I mean.

MR. JACKSON: Lodged is when they found it.

MR. MCGILL: When the Judge --

MR. JACKSON: Issued the bench warrant.

MR. MCGILL: Yes.

MR. JACKSON: On December the 10th.

MR. MCGILL: Go on.

MR. JACKSON: On February -- I can get the specific dates. I know there was one on December 10th.

MR. MCGILL: All right.

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MR. JACKSON: There was one in February. I don't know the exact date.

THE COURT: Just so we don't go too long, are you saying, then, that the District Attorney has some deal--

MR. JACKSON: I think it's --

THE COURT: When the Court issues a bench warrant because they prosecute doesn't mean a trial. I've sat in Municipal Court and that's a laugh. You know that's a laugh.

MR. JACKSON: But Judge, you're not on the jury.

THE COURT: I know that. That's why I say it's not fair.

MR. JACKSON: But --

THE COURT: You see those 38 arrests there. She wouldn't be out on the street if they put her in jail for prostitution. We don't do that here in Philadelphia. You know that and I know that.

MR. JACKSON: Well --

THE COURT: I sat in Municipal Court.;

MR. JACKSON: They put them in

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there sometimes, I think, Judge.

THE COURT: No. I know that.

MR. MCGILL: Can you give me the dates they were issued?

MR. JACKSON: I can give you two.

MR. MCGILL: So they can be a matter of record.

MR. JACKSON: Two.

MR. MCGILL: Two?

MR. JACKSON: One is December the 10th, a bench warrant was issued in Municipal court; the other is, I think, either February 21 or February 25.

MR. MCGILL: And there's another one after that.

MR. JACKSON: Another one that --

MR. MCGILL: That you don't know the date?

MR. JACKSON: Yes. Three but they're outstanding bench warrants.

MR. MCGILL: They're three open cases.

MR. JACKSON: But she was not in

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jail at that time, that's my point.

THE COURT: Let me say this: I have issued bench warrants where Municipal Court Judges have lifted them.

MR. JACKSON: I know sometimes it happens but I think the routine --

THE COURT: No, because unless they found something really serious they usually got them out.

MR. JACKSON: Not anymore, though, Judge.

MR. MCGILL: Not on the prosecution.

MR. JACKSON: Not anymore down at the Roundhouse because they have computerized all ROR bench warrants and everything. It's not done. They issue warrants for L and I violations.

THE COURT: Why don't you ask if there's a violation?

MR. JACKSON: Yes.

THE COURT: Get right to it because you spent a number of hours --

MR. JACKSON: I know, sir.

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(Side bar conference ended.)

BY MR. JACKSON:

Q. Miss White, quite specifically at this very moment, this is June 22, 1982, do you know of any deal or arrangement that you have with the District Attorney's office, Philadelphia Police Department or the Massachusetts authorities that in any way impacts on your testimony that you've given here today?

A. No.

Q. And do you know of any relationship, any deal, or any arrangement between the Philadelphia Police, District Attorney's office here in Philadelphia with regard to Prince?

A. Can you repeat that?

Q. Sure. Is there any deal, arrangement made by the District Attorney's office or Philadelphia Police Department with Prince that's permitting your testimony?

A. No.

Q. You don't know about any?

A. No, there's no deal.

Q. Pardon me?

A. No.

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You said there's no deal?

A. Yes.

Q. How do you know that?

A. Because it wasn't told to me.

Q. Because it wasn't told to you? Just like he didn't tell you that he was being released from prison, either; is that right?

A. Yeah.

MR. JACKSON: Your Honor, I'd like a recess, if I could, at this point?

MR. MCGILL: If Mr. Jackson is finished cross-examination I would like very much to go on redirect.

MR. JACKSON: I'm not finished cross-examination at all.

THE COURT: Two o'clock?

MR. JACKSON: Yes, sir, if you don't mind, Your Honor.

THE COURT: We'll take a luncheon recess until 2:00 o'clock.

(A luncheon recess was taken until 2:00 o'clock p.m.)

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AFTERNOON SESSION

(A conference was held on the record in chambers as follows:)

THE COURT: I just want to state for the record that I had permitted, before the afternoon session beginning, to have Theresa Africa speak to

Mr. Jamal and then I had Mr. Jackson speak to Mr. Jamal as to whether or not he intends to behave himself and be back in court. Let the record indicate that the District Attorney and Mr. Jackson are now back with me in chambers.

MR. JACKSON: Mr. Jamal indicates that he will behave himself if he's permitted to and return to court.

THE COURT: All right. Then he will be permitted to return to court.

MR. MCGILL: Your Honor, also I'd like to point out that before the session started this morning there was a session, a short session, between Theresa Africa and Mr. Jamal, maybe 15 minutes. Also I would make a request that the instruction that Your Honor gave to the jury

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be marked as an exhibit, C-30.

Also I would like to make a record of the fact that yesterday Mr. Jackson made an objection when Cynthia White had stated that she was housed in a hotel for security reasons. At side bar -- I don't know whether this was a matter of record. If it was I'm being repetitious. But at side bar I represented to Mr. Jackson if he was not satisfied with the instruction that the Court would give him that he could ask for additional instructions that there is no specific threat that can be directly related to the defendant; that is, there is no specific threat made to Cynthia White that can be directly related to the defendant, or some such words. Mr. Jackson stated that he felt that such an instruction would not be to his best interest at this time. Is that correct?

MR. JACKSON: That's correct.

THE COURT: All right. Did you want this marked, or the original?

MR. MCGILL: That's good enough.

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C-30. The original or that.

THE COURT: I can give you the original later on.

MR. MCGILL: The original will be marked C-30.

(Conference in chambers ended.)

(The following took place in open court in the presence of the jury:)

MR. JACKSON: May I proceed, Your Honor?

THE COURT: Yes.

(CYNTHIA WHITE, resumed.)

CROSS-EXAMINATION (Cont'd)

BY MR. JACKSON:

Q. Good afternoon, Miss White.

A. Good afternoon.

Q. Miss White, let's get to this incident, if you don't mind. On December the 9th about at 3:58 a.m. you were on the corner of 13th and Locust -- is that right? -- within a ten-minute period of time?

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A. It was around that time.

Q. Around that time. And you were on the corner with a man that you say you don't know; is that right?

A. Yes.

Q. Now, you're sure you don't know him?

A. Positive.

Q. Okay. Do you remember testifying at a preliminary hearing of William Cook? I refer you to the notes of testimony, March 29, 1982, Page 41: "Question: Do you know him in the biblical sense?"

"Answer: I know him."

Q. Do you remember that question and answer?

A. No.

Q. Are you saying you didn't say it?

A. I'm saying I don't remember.

Q. Okay. Let me ask you again. Do you know the man?

A. No. Just talking to him.

Q. Well, why did you say on this date at the preliminary hearing, I'm sorry, at another hearing that you knew the man?

A. I know him by talking to him. I don't know him,

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know him, know him, no.

Q. Did you tell us you didn't know him, know him know him? Did you say that then back on March 29? That's just a few months ago?

A. (No response.)

Q. You said then that you knew him.

MR. MCGILL: Objection. Could he read the question and answer preceding it.

MR. JACKSON: I can do it.

BY MR. JACKSON:

Q. "Question: Well, this man that you were with, what were you talking about? Do you recall?"

"Answer: Just talking. I know him. We were just talking."

Q. So you said it again that you knew him, twice you said it; is that right? Back on March 29th you said you knew him. Now you come in yesterday and today and you tell us you don't know him.

MR. MCGILL: Objection. Your Honor, argumentative. It could be in the

form of a question.

MR. JACKSON: My apologies.

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BY MR. JACKSON:

Q. And once and for all, you did know him on the 29th of March but you don't know him today; is that what you're saying?

A. I know him by talking to him.

Q. You know him by talking to him. And what do you mean by that, "You know him by talking to him?"

A. Just what I said. I know him by talking to him.

Q. I don't understand what you mean by, "Know him by talking to him." Do you understand me?

A. No.

Q. Okay. I've been talking to you for two days. So what do you mean by knowing him and by talking to him?

A. We was just talking, you know --

Q. I'm not --

A. -- enough time, you know, communicating in another way.

Q. So you were mistaken when you told Mr. McGill that you didn't know him?

MR. MCGILL: Objection, Told me?

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BY MR. JACKSON:

Q. When you testified. Forgive me. When you testified that you didn't

know him?

A. I know him just by communicating with him.

Q. But you didn't tell us that before. You just said you didn't know him.

MR. MCGILL: Objection. Repetitious and I guess argumentative at this stage.

MR. JACKSON: Fine, Your Honor. Just another one of those things. My apologies.

BY MR. JACKSON:

Q. Okay. Now you indicated that you were standing on the corner of 13th and Locust; is that right?

A. Yes.

Q. With this man that you kind of know. You were standing on the corner approximately a half hour before this incident happened, did you say? Correct me if I'm wrong. I've forgotten.

A. About a half hour.

Q. You saw the Volkswagen pull up with the police car, right?

A. Yes.

Q. You don't know, by the way, why the police

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pulled the Volkswagen over, do you?

A. No.

Q. And after the Volkswagen was pulled over the police officer got out first and got on the pavement, right?

A. On the street, yeah.

Q. Got out on the street side and then what did he do?

A. He walked over to the Volkswagen.

Q. And then what?

A. And the driver of the Volkswagen got out of the Volkswagen and they were talking.

Q. In the street?

A. Yeah.

Q. Could you hear them talking?

A. No.

Q. How did you know they were talking?

A. I could tell. I could see.

Q. Okay. And then how long did they have a conversation?

A. A few minutes. I don't know. I wasn't timing it.

Q. The only way we're all able to figure out what

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it is you say it is for you to give us at least an estimate, if you can, within a few seconds. if it was a half minute, a minute?

A. Couple minutes.

Q. Couple minutes they talked in the street. Now, during the time that you assumed that they were talking in the street did you see the police officer strike William Cook?

A. No.

Q. Did you see William Cook strike the officer?

A. At what time are you talking about?

Q. In the street. We're still in the street, ma'am.

A. No.

Q. Did you see any struggle?

A. In the street?

Q. Still in the street.

A. No.

Q. So there was no physical contact between the two of them at all; is that what you're saying?

MR. MCGILL: Objection. Where? In the street?

MR. JACKSON: I'm still talking in

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the street.

THE COURT: All right. Repeat it.

BY MR. JACKSON:

Q. We're still talking about in the street. When we get on the sidewalk I'll let you know. Right now in the street was there any physical contact at all?

A. No.

Q. Now once they got on the sidewalk what happened then?

A. A few words passed again and the driver of the Volkswagen then hit the officer in the face.

Q. How long were they on the sidewalk before the driver of the Volkswagen struck the police officer, approximately?

A. Seconds.

Q. Seconds?

A. Something like that.

Q. Before the driver of the Volkswagen struck the police officer did you see the police officer do anything at all to him?

A. Just talking to him.

Q. Just words were exchanged as far as you could determine?

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A. Yeah.

Q. Now, at this time did you happen to notice if the police officer had anything in his hands?

A. I didn't see anything in his hands.

Q. Well, let me back up. Up to the point where the officer was struck did you ever see anything in the police officer's hand?

A. No.

Q. All right. Another thing, when you first saw the Volkswagen, I'm sorry, the driver of the Volkswagen and the police officer apparently talking in the street you were on the sidewalk and you were looking at an angle and the car was also in front of you; is that right? The police car was between you and the driver and the police officer?

A. Can you repeat that again?

Q. Sure. Sure. You were on the corner of 13th and Locust; they were further down towards 12th Street or some distance away, in any event; is that right?

A. Yeah.

Q. Let me refer you to the diagram. You correct me if I'm wrong. You indicate that you were

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approximately here. You've marked it with an "X"; is that correct?

A. Yes.

Q. And you saw the driver of the Volkswagen and the police officer -- excuse me, members of the jury. You saw the driver of the Volkswagen and the police officer someplace in this area; is that correct?

A. When they were talking?

Q. Right around in here?

A. When they were talking?

Q. Yes, in the street.

A. Yes.

Q. So then isn't it a fact, then, that this police car obstructed your view; that you couldn't see what they were doing in the street?

A. No, it didn't. I could still see. You could see through the police car?

A. I could see over the police car.

Q. And what could you see over top of the police car?

A. That they were talking.

Q. But what portion of their bodies could you see?

A. The side.

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Q. The side? From what portion of? From the shoulders up?

A. No.

Q. What portion, then? You saw the entire body?

A. No. I saw from here down to maybe about here.

MR. McGill: Indicating the knees, shoulders to the knees.

BY MR. JACKSON:

Q. You're saying you saw from the shoulders to the knees?

A. Yes.

Q. That's the only portion you saw?

A. Yes.

Q. You didn't see the heads?

A. Yes.

Q. Let me ask you again. What portion of the bodies did you see?

A. From the heads to the knees.

Q. From the head to the knees?

A. Yes.

Q. And you saw that over top of the police car?

A. I could see it from where I was standing at.

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White - Cross

Q. Were you elevated? Were you on a platform of any sort?

A. No.

Q. You were on the sidewalk?

A. Yes.

Q. Your feet were on the sidewalk?

A. Yes.

Q. How tall are you?

A. I don't know.

Q. You have no idea how tall you are?

A. No.

Q. Now, you indicated that after you got to the side -- I'm sorry, the police officer and the driver of the Volkswagen got to the sidewalk, he punched him. Then the officer turned him around; is that right?

A. Yes.

Q. Was there any resistance on the part of William Cook?

A. What do you mean?

Q. Did he struggle with William Cook in any way?

A. No, I didn't see any struggle.

Q. Just turned him around?

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#### White - Cross

A. Yes.

Q. He punched the police officer; police officer turned him around, just turned him around?

A. He turned him around.

Q. He turned him around? Wouldn't it be fair to say that he didn't just turn him around but with a lot of force he turned him around; isn't that right?

A. What do you mean by a lot of force?

Q. Well, you tell me then.

A. You said a lot of force. I'm going by what you mean.

Q. I'm withdrawing that question and I want you to tell me with what kind of force did he turn him around.

A. Just turn him around.

Q. It's the force that turned him around, or did William Cook turn himself

around? Do you know what I'm saying?

A. No, I don't.

Q. I can toss you around or hold you while I'm turning you around, so I'm trying to ask you from what you could see did the officer turn him around or did he turn himself around?

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A. The officer turned him around.

Q. Okay. Now, you indicated that after he turned him around it was at that point that you looked across the street and you saw who you've identified as Mr. Jamal coming across the parking lot; isn't that right?

A. Yes.

Q. Is that the exact time that you first saw him?

A. Who?

Q. Who you say is Mr. Jamal?

A. When he was running out of the parking lot, Yes.

Q. But I mean this was after the police officer had turned William Cook around?

A. Was it the first time I saw Jamal?

Q. Yes.

A. Yes, when I looked over there.

Q. Both William Cook and the police officer were on the sidewalk?

A. Yes.

Q. You're certain of that?

A. Yes.

Q. Okay. Oh, by the way, how far away were you at the time that you were

making these observations?

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A. What observations are you talking about?

Q. The observations of seeing William Cook strike the officer? About how far away?

A. Two and a half car lengths away.

Q. Two and a half car lengths. When you saw this you saw the cab at the corner?

A. Excuse me?

Q. Did you see the cab pull up at the corner?

A. Yes.

Q. At what point during the struggle did you see the cab pull up?

A. I don't remember.

Q. No idea at all?

A. (No response.)

Q. Do you have any idea?

A. No.

Q. Was it after the struggle?

A. I don't remember.

Q. Was it after the shooting?

A. I don't remember.

Q. Well, you can't remember if it was after the shooting, after the struggle -- by the way, the cab driver says that no one else was there on that

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corner. That's why we would like to find out when you said you were there.

MR. MCGILL: Objection, Your Honor. He did not say that. He said he saw --

MR. JACKSON: The cab driver saw no one there.

MR. MCGILL: Objection to his statements.

BY MR. JACKSON:

Q. Can you tell us if, when the police car pulled the Volkswagen over, if you saw the cab come right afterwards?

MR. MCGILL: Objection. She said she didn't know.

THE COURT: I have to sustain that.

MR. MCGILL: Three times.

BY MR. JACKSON:

Q. At what point did you see the cab there?

A. When the police were there that's when I noticed.

Q. You hadn't seen it before then, had you?

A. I wasn't looking at the cab, looking for a cab.

Q. I understand you weren't looking for a cab. My

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question is: You didn't see the cab before that time, did you?

A. No.

Q. So when you said that the cab was there earlier you don't know that for

a fact at all?

A. Repeat that question.

Q. Yes. I withdraw the question.

Now, you indicated that when the shooting took place the driver was on the sidewalk with the police officer and the police officer appeared as if he was doing something. He had turned William Cook around; is that right?

A. Yes.

Q. Then you looked and you saw Mr. Jamal coming?

A. Yes.

Q. In the statement you gave to the police back on 12/9/81 Page 2, Mr. McGill, "Question: When did you first notice the man coming out the parking lot?

Answer: The police officer was on the sidewalk and the driver was in the street."

Do you remember that question and answer?

A. No.

Q. Is it true?

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A. Is it there?

Q. Yes, it is. So if it's there it's the truth.

A. Can you repeat it again?

Q. Yes, ma'am. "When did you first notice the man coming out the parking lot?

Answer: The police officer was on the sidewalk and the driver was in the street."

MR. MCGILL: May I, Your Honor?

THE COURT: All right.

THE WITNESS: That's on the second page?

MR. JACKSON: Yes, ma'am.

THE WITNESS: I don't see it.

MR. JACKSON: Your Honor, may I approach the witness? It's the wrong statement.

BY MR. JACKSON:

Q. See this question, that answer?

A. Okay.

Q. Is it the truth?

A. They were both on the sidewalk.

Q. Pardon me?

A. They were both on the sidewalk.

Q. The question is then, what appears in this

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statement, is it true?

A. what part? Are you just talking --

Q. I'll ask you again so you'll know what part.

"Question: When did you first notice the man coming out of the parking lot?"

Answer: The police officer was on the sidewalk and the driver was in the street."

Q. Is that true?

A. I just said they were both on the sidewalk.

Q. So this is untrue?

A. The question and answer?

Q. Yes, ma'am.

A. Yes.

Q. And that was your answer that you gave on December the 9th, isn't it?

A. Yes.

Q. Well, what reason did you have to lie to the police on that day?

MR. MCGILL: Objection, Your Honor.

BY MR. JACKSON:

Q. I What reason did you have to tell them something that wasn't true?

MR. MCGILL: Objection.

MR. JACKSON: If it's not true, Your

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Honor --

THE COURT: Well, just a minute. It's for the jury to decide. Rephrase your question.

BY MR. JACKSON:

Q. You've indicated that the police officer and the driver were on the sidewalk; is that right?

A. Yes.

Q. So that this is wrong, right?

A. Yes.

Q. You read this statement on December the 9th; is that right?

A. Yes.

Q. And you signed it?

A. Yes.

Q. Indicating that it was true?

A. Yes.

Q. Six months later, today, you're going to come into court and say that it isn't true; is that right?

A. Yes.

Q. All right. Let's get back to this. Both the driver and the police officer were on the pavement. The man you saw running across from the parking lot,

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if I recall your testimony, you saw him for a half second -- is that right? -- as he was coming across the street?

MR. MCGILL: Objection. That was not her testimony.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. How long did you see him coming across the street?

A. You mean how long it took him to come across the street?

Q. No. How long did you observe him as he was running across the street?

A. Until the time he was practically on the curb.

Q. You watched him the entire time?

A. Yes.

Q. You're certain of that now?

A. Yes.

Q. You remember testifying, again, February 8, 1982 in this case?

A. Yes.

Q. Just a minute, Mr. McGill, until I find the page. Okay. Page looks like 55, yes, Page 55.

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See if you recall these series of questions and answers by me directed toward you: "Now again"-- well, let me start by giving you a series of then. They start on Page 53, the bottom of the page, question by me, "Fine. Twenty-two feet. When you saw him there you saw him with a glance; is that right?"

"(No response.)" There was some objection and discussion.

"Question: That's a fact; you glanced and you saw him? Isn't that correct?"

"When I turned over that's what drew my attention." The Court indicates, "She said she glanced and saw him." Then Mr. McGill and I have some discussion.

Now on Page 55, top of the page, first question by me: "Now again, Miss Washington, you indicated that you glanced away -- Answer: Excuse me. Miss White.

"Question: I'm sorry. Miss White, you glance away from the Volkswagen driver and police for how long?"

"Maybe a half second.

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#### White - Cross

"Question: A half second?"

"Yes.

And in that half second you saw the man with the dreadlocks running toward him; is that right?

"Answer: Yes." You remember that series of questions and answers?

A. Yes.

Q. So now you're saying -- my question to you, you're saying today that you followed him all the way from the parking lot to the scene of the shooting? Is that what you're saying today?

A. From the center of the parking lot when I first noticed him right until he got up on the curb.

Q. But your testimony here back on January 8 is that you glanced away for a half second from the police officer and the driver of the Volkswagen?

A. It didn't take him that long to run from the parking lot over to the curb.

Q. So you're saying that this man ran from this parking lot over to the curb in a half second?

A. Yes.

Q. He ran from the middle of that booth, half of

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this parking lot, across Locust Street, aimed and fired in a half second?

A. Yes.

Q. Well, why is it that you said that you turned away for a second and you looked at the police officers, at the police officer, excuse me?

MR. MCGILL: I would object to that. That's not so. Objection.

MR. JACKSON: Do you want me to read it? I can read it again.

THE COURT: Read it.

MR. JACKSON: Yes, sir.

BY MR. JACKSON:

Q. Again I'll reread the question and answer: "And in that half second you saw the man with the dreadlocks running toward him; is that right?"

Answer: Yes."

Now you're saying to us today that you saw him run all the way from the middle of the parking lot, across Locust Street, to the curb in a half second?

A. Yes.

Q. Now, you saw a gun in his hand in that half

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second, as well; is that right?

A. Yes.

Q. At what point did you notice that he had a gun in his hand?

A. In the middle of the street.

Q. So until that time did you notice anything at all about his hands?

A. What do you mean?

Q. Did you see anything in his hands?

A. When?

Q. From the time he was running out? From the time that you first saw him. You said you didn't see the gun --

A. No.

Q. Did you see his hands before you saw the gun in his hand? Do you understand what I'm saying?

A. No.

Q. Did you see where he got the gun from?

A. No.

Q. You just saw it in the middle of the street that he had the gun?

A. Yes.

Q. About how far away was he?

A. From where?

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Q. From you. I'm sorry.

A. Two and a half car lengths away.

Q. All right. I'm just asking, ma'am. Two and a half car lengths in the street; is that right? And that would be some place in the middle of the street here. This is the police car; this is the Volkswagen; this is Locust Street. He was about two and a half car lengths away from you. So you see where there's a "W" right now? Would that be approximately where it was that you saw the gun in his hand?

A. In the middle of the street.

Q. Yes, well that's in the middle of the street.

A. Yes.

Q. How could you tell it was a gun?

A. I could tell.

Q. How could you tell, ma'am? I mean, did you see the gun? It's a two-inch barrel gun so I'm wondering how you saw it, and it's at night.

A. I seen the barrel part.

Q. You saw --

A. The whatever you call it.

Q. Two and a half feet away -- I'm sorry. Two and

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a half car lengths away?

A. Yes.

Q. Then you saw him come to the curb and you saw him fire; is that right?

A. Yes.

Q. Meanwhile what was William Cook doing during this period of time?

A. I don't know. I was watching him.

Q. Fine. I'm just asking you. What was the police officer doing?

A. At what time are you talking about?

Q. While you were looking at who you say is Mr. Jamal.

A. I don't know.

Q. I'm not arguing. I'm just asking you questions, ma'am. Did you see up to the point where the man reached the curb? Did you see the officer have any weapon in his hands at all?

A. No.

Q. Did you see William Cook with any weapon in his hand?

A. No.

Q. Did you notice either one of their hands up to

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this point?

A. Yes.

Q. So you know, in fact, that neither William Cook nor the police officer had anything in their hands?

A. Yes.

MR. MCGILL: Objection. At what point?

MR. JACKSON: Up to the point where the man reached the curb, the man who had the gun reached the curb.

MR. MCGILL: Objection, Your Honor. She's looking at the man who's running across --

THE COURT: Use his name.

MR. JACKSON: William Cook.

BY MR. JACKSON:

Q. Up to the point where the man reached the curb, the man who had the gun, the man whom you say is Mr. Jamal, up to that point where he reached the curb, before the first shot was fired you never saw in fact, you're saying William Cook never had any thing in his hands?

A. At the time he was running across the street or

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before he ran across the street?

Q. Okay. At any point in time at or before the man whom you say is Mr. Jamal reached the curb, at or before, any time before then, did William Cook have anything in his hands?

A. Are you asking me before I seen him period?

Q. At any time before that? At any time before the man reached the curb did you see anything at all in William Cook's hands? Any time, I don't care whether it was -- well, any time before a 24-hour period of time?

A. What I'm asking you is, are you talking about when I noticed Jamal, and you're saying when he's on the curb.

Q. Yes. Well, you noticed Jamal before he reached the curb, you said?

A. Yes.

Q. So I'm saying, at the point where you claim Mr. Jamal reached the curb -- do you remember when you said Mr. Jamal got to the curb?

A. Yes.

Q. So I'm saying, before we go any further, before anything happens at that curb, I'm saying at any other

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time when he was running across the parking lot when the police officer stopped William Cook did you see anything in William Cook's hands?

A. Before I seen Jamal, no.

Q. Before what?

A. Before I seen him, no.

MR. MCGILL: Indicating the defendant with her finger.

BY MR. JACKSON:

Q. Did you see anything in the officer's hand?

A. Before I seen him, no.

MR. MCGILL: Indicating the defendant.

BY MR. JACKSON:

Q. After you saw Mr. Jamal, whom you say is Mr. Jamal, did you see anything in William Cook's hand?

A. After I seen Mr. Jamal?

Q. Yes, ma'am.

A. I wasn't looking at him. I was watching him.

Q. The question is: Did you see anything in his hand? Yes, or no?

A. No.

Q. At no time -- is that right? -- before you left that scene never saw anything in William Cook's hand?

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A. Before I left the scene?

Q. Sure. So in other words, I'm talking about the entire time that you saw William Cook there at that location, at 13th and Locust, did you ever see anything in William Cook's hand?

A. No.

Q. Now, did you ever see anything in the police officer's hand?

A. At what time are you talking about?

Q. At any time from the time you first saw the police officer until the time you left the scene did you see anything in the police officer's hand?

A. No.

Q. Did you lose sight of the police -- strike that -- William Cook at any time during -- strike that. I better do this in steps. You indicated that then the man who you say is Mr. Jamal came to the curb and he fired at the police officer, right?

A. Yes.

Q. Without argument we're going to accept whatever you tell us today. How many times did he fire?

A. At what time are you talking about?

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Q. The first time?

A. One or two times.

Q. One or two times?

A. Right.

Q. You just can't remember whether it was one or two or three or four?

A No.

Q. After he fired one or two times the officer, as I understand your testimony, he fell backwards; is that right?

A. What I said was he turned around, staggered and fell.

Q. Okay. The first time I heard that was when you testified yesterday before --

MR. MCGILL: Objection.

MR. JACKSON: All right. I'll go to the notes of testimony.

MR. MCGILL: Objection.

MR. JACKSON: I'll go to the notes of testimony.

THE COURT: GO to the notes of testimony.

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BY MR. JACKSON:

Q. Let me ask you this: Did you see at any time that after the shooting the officer simply fell backwards?

MR. MCGILL: Again, I would object, Your Honor. If he could look for it in the notes of testimony --

MR. JACKSON: All right. Your Honor, I'll take the time and look for it in the notes of testimony. Your Honor, may I have a moment because I think it's imperative that I find them?

MR. MCGILL: I'll withdraw the objection.

BY MR. JACKSON:

Q. Do you recall testifying back on January the 8th, 1982 that after the shooting the officer fell backwards right away?

MR. MCGILL: I have to object to that.

BY MR. JACKSON:

Q. Do you recall saying that the officer fell backwards?

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A. I don't remember.

Q. Is that what happened?

A. I just told you what happened.

Q. So then if you or anyone else said that the officer fell backwards after being shot it would not be the truth; is that right?

A. He did fall but he staggered, you know.

Q. No, I don't know, ma'am. Tell me.

A. I just did. He did fall back but he staggered.

Q. When you demonstrated to Mr. McGill you indicated that the officer turned around and staggered?

A. Yes.

Q. Is that what you're saying now? Not only did he stagger but he turned around as well?

A. Yes.

Q. How long after the shooting was it before the officer fell to the ground?

A. How long after the shooting?

Q. Yes, after the first one or two shots.

A. Two seconds.

Q. How far did the officer stagger?

A. A little then he fell.

Q. Pardon me?

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A. A little. I don't know.

Q. A couple of feet, between here and this table?

A. No.

Q. Further than that?

A. Closer.

Q. Closer than that?

A. Yeah, it wasn't that far.

Q. Well, using this table, again --

A. I can't see the end of the table.

MR. JACKSON: I think this is approximately two and a half feet, would you say, Mr. McGill, from here to the edge of the table?

MR. MCGILL: Yes.

BY MR. JACKSON:

Q. About two and a half feet he staggered and fell?

A. I say about that.

Q. You say about that, two and a half feet. Okay. Now, this shooting happened between what two cars?

A. The Volkswagen and the police car.

Q. And when he fell where did he fall?

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A. By the other car.

Q. Pardon me?

A. Closer to the other car.

Q. What's the other car?

A. The car that was in front of the Volkswagen.

Q. So that if the shooting happened between the police, I'm sorry, right here between the police car and the Volkswagen, and the shooting happened here, as you said, and he staggered two and a half feet, you're saying that he staggered two and a half feet towards the front of the Volkswagen?

A. Yes.

Q. Two and a half feet. Are you saying, in effect then because the officer was found here between these two cars, are you saying that a Volkswagen is two and a half feet in length?

MR. MCGILL: Objection, sir.

BY MR. JACKSON:

Q. Fine. I'm not saying what you're saying about a Volkswagen. This is where the officer was ultimately picked up at, between the Volkswagen and the Ford; is that right?

A. I don't know.

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Q. You don't know where he was picked up?

A. He was picked up and carried?

Q. Yes, ma'am.

A. I told you where he was at.

Q. Tell me again.

A. He was closer to the other car.

Q. Closer to the other car? You're talking about the Ford?

A. He was in between both of the cars but closer to the other car.

Q. Could you demonstrate, because I'm misunderstanding you? Could you come down, please, and demonstrate, point it out? Would you stand a little bit to the side so the jury can see where you're pointing? You're indicating, if I understand you correctly, that the shooting happened between the police car and the Volkswagen; is that correct?

A. Yeah.

Q. Right about here. And after the shooting happened tell us again what happened. Want to use a pencil?

MR. MCGILL: You don't have to mark it.

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MR. JACKSON: No, you don't have to mark it. Just point it out. Stand a little bit to the side so the jury can see. Start it from the point where you say the shooting happened.

THE WITNESS: He turned around, he staggered --

MR. JACKSON: No, you have to speak up so the jury can hear as well, while you're pointing, if you don't mind.

THE WITNESS: He was here --

MR. JACKSON: Can you hear that? Fine. Go on.

THE WITNESS: -- and he turned around and staggered and fell, fell like laying this way. So it was like closer to the Ford than the Volkswagen.

BY MR. JACKSON:

Q. But wasn't the officer between the Volkswagen and the point where he was picked up?

A. He was closer to the Ford than the Volkswagen. I'm not saying that he wasn't between them.

Q. Okay. He was closer to the Ford than the

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Volkswagen. What you're saying is, although the shooting happened between the police car and the Volkswagen, he staggered the entire length of the Volkswagen before he fell? Is that what you're saying?

A. No.

Q. Well, tell us how he got from this position to that position.

MR. MCGILL: Objection. Let her finish.

BY MR. JACKSON:

Q. I'm sorry. I didn't mean to interrupt you if you were going to say something more. Please go on. Tell us.

A. I just told you.

Q. Tell us how the police officer got from between the Volkswagen and the police car to the position where you said he was closer to the Ford?

A. He staggered and he fell but he was laid out so the body, some of his body, was closer to the Ford than the Volkswagen.

Q. Okay. Okay. Fine. You can return to your seat. Now, let's return to January the 8th, 1982,

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Page 78, the last comment by the witness. The witness is you. "When the gun had fired the officer got hit in the back. You could tell he got hit in the

back. He fell, you know."

By me, "Question: Fine. The officer fell forward?"

"Answer: No.

"Question: To the side?"

"Answer: He fell on his back.

"Question: He fell backwards to the man with the gun?"

"Answer: Yes.

"Question: Fell right away?"

"No.

"Did he stand? How long did he stand up?"

"It was not that long, maybe a second.

"Maybe a second?"

"Maybe a half second."

Do you recall that question and answer?"

A. Yes.

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Q. Indicating that he fell backwards?"

A. Yes.

Q. But now you're saying that he turned before he fell backwards?"

A. Yes. I never did say that he didn't turn and fall backwards.

Q. Okay. I didn't know that. Okay. All right. When you saw the first or second shot or one or two shots fired, I believe you claimed -- and correct me if I'm wrong -- strike that. You saw the first or second shot, one or two shots fired, within a second or a half second the officer turned and fell,

right?

A. Right.

Q. Do you know during this time that these one or two shots were fired what William Cook was doing?

A. No.

Q. The man that you were talking to earlier who left you, who you know or don't know, where was he?

A. I don't know.

Q. You have no idea at all?

A. No. He didn't walk that way. He didn't walk passed me.

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Q. How do you know?

A. Because I would have seen him. He would have been in my view.

Q. Why? You said that you were watching William Cook when you saw Mr. Jamal so how do you know the other man wasn't there?

A. Because if he would have walked passed, he would have been blocking my view from seeing Jamal.

Q. Well, was there anybody blocking your view?

A. No.

Q. You didn't see a cab driver out there blocking your view?

MR. MCGILL: Objection. At what point?

BY MR. JACKSON:

Q. At the point of the shooting. Did you see the cab driver out there on the pavement?

A. When the officer got shot?

Q. Yes, ma'am.

A. No.

Q. You claim after the one or two shots were fired the officer fell and the man stood over the officer, and shot some more; is that right?

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A. Yes.

Q. While you were watching that did you see a cab driver or anybody else?

A. No. I was watching him.

Q. You were just watching him?

A. Yes.

MR. MCGILL: Indicating the defendant.

BY MR. JACKSON:

Q. And you were watching him from that same position at 13th and Locust?

A. Yes.

Q. And you don't know whether or not the cab was there at that point, do you?

MR. MCGILL: Objection. Repetition.

MR. JACKSON: I'll withdraw that.

BY MR. JACKSON:

Q. But you're certain no one else was on that sidewalk except William Cook, the police officer and Jamal?

A. Yes.

Q. You're absolutely certain?

A. That was standing there?

Q. Standing, walking, moving or doing anything else at all on the sidewalk, ma'am?

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A. Yes.

Q. The man who you know kind of, sort of, who left you at that corner, have you seen him since this incident?

A. No.

Q. Haven't seen him at all.

A. No.

Q. Haven't talked to him?

A. No.

Q. Have you looked for him?

A. No.

Q. Has anyone asked You about him?

MP. MCGILL: Objection, Your Honor, irrelevant.

THE COURT: I'm going to sustain it.

MR. JACKSON : Fine.

BY MR. JACKSON:

Q. When the officer fell to the ground and the shooting, three or four shots, were fired, after that you couldn't see that shooting, right?

MR. MCGILL: Excuse me? Objection. At what point?

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MR. JACKSON: Fine.

BY MR. JACKSON:

Q. When you claim the man was standing over top of the officer firing three or four times you didn't see it, right?

A. Didn't see him shoot the officer?

Q. Yes, ma'am. You know what I mean when I say to shoot? It means to fire --

MR. MCGILL: Objection. I think she's trying to answer.

THE: WITNESS: What I seen, him standing over, seeing the gun where I was standing, and he was looking like this down at the officer.

BY MR. JACKSON:

Q. You could see the gun?

A. I could see the front of the gun.

Q. You could?

A. Yes.

Q. You remember testifying back on January the 8th, 1982 -- Your Honor, may I have a moment, again, please?

Before I do that, are you certain

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you saw the gun?

A. I seen the front part. I didn't see the whole gun.

Q. While I'm doing this, Miss White, you indicated that you saw a little bit

of the gun while the man was standing over the officer; is that right?

A. Yes.

Q. You see the flash come out of the gun?

A. I don't remember.

Q. Isn't it a fact, Miss White, that all you did was hear three or four shots?

A. I seen him put his hand like this.

MR. MCGILL: Indicating right hand pointing finger three times in the direction of the ground.

THE WITNESS: And I also heard the shots.

BY MR. JACKSON:

Q. You also what?

A. Heard the shots.

Q. But you don't recall whether or not there was any flash?

A. No, I don't.

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Q. Do you know which direction the gun was pointed?

A. Down.

Q. But you didn't see the flash?

A. I don't remember.

Q. Do you know if it was towards the officer?

A. Yes.

Q. You saw the officer?

A. I could see his -- the feet part of the officer.

Q. And at that point, at that very point, while he was firing down, as you said, what if anything did you see Billy Cook doing, William Cook?

A. I wasn't looking that way.

Q. So do you know in fact that William Cook wasn't firing them?

A. He didn't have anything in his hands.

Q. How do you know? You said that you were watching Mr. Jamal?

A. I'm talking about from the time that I seen him before I watched Mr. Jamal he didn't have anything in his hands.

Q. So did you see whether or not he took something out from his pocket, from his chest, from anywhere?

A. No.

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Q. So you don't know?

A. No.

Q. The man that was with you, do you know if he I was doing any shooting?

A. If he was I think I would have heard him right in my ear because I'm pretty sure he was close by me.

Q. Before when I was trying to find out where he was you didn't know where he was, but now you're saying you're sure he was close by?

A. He didn't walk passed me.

Q. Would you indulge us for one moment, Your Honor? All right. Ma'am, now after you saw this shooting with the officer on the ground you then moved closer; is that right?

A. No.

Q. So up until the time that the man was over top of the officer you never moved from your position? Is that what you're saying?

A. Yes.

Q. And approximately how far away were you while you were making all of those observations of the shooting?

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MR. MCGILL: Objection. Repetitious.

THE COURT: I will sustain the objection. You already indicated that.

MR. JACKSON: She indicated she was two and a half car lengths away --

THE COURT: That's right.

MR. JACKSON: -- when she first saw him in the street, Your Honor.

THE COURT: No, not that, too.

MR. JACKSON: My apologies. I'm sorry.

BY MR. JACKSON:

Q. All right. You were two and a half car lengths away; is that right?

A. Yes.

Q. And while you were watching the shooting take place you saw the shooter's back: is that right?

A. Yes.

Q. The police officer was on his back: is that correct?

A. Yes.

Q. Only other person that was there was William Cook, and you don't know that for certain since you

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weren't watching him at that point: is that right?

A. Yes.

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. After the shooting where did the shooter move? Did he walk?

A. He didn't get up and walk. He went over and slumped down on the curb.

Q. Describe to us as best as you can what you saw him do after he fired, at least what you assumed to be the shooting of the last shot into the officer?

A. He just went over --

Q. When you say; "Went over," could you tell us in terms of distance or direction?

A. To the side of the officer and like slumped down on the curb.

Q. And that was right between the Volkswagen and the Ford?

A. Yes.

Q. So that when he first came between the police car and the Volkswagen and did the shooting; when the police staggered over he followed the officer in effect, right?

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A. Yes.

Q. He pursued the officer?

A. What you mean?

Q. He followed him? He walked after him? Ran after him, or something, moved towards the officer?

A. After he shot and the officer fell then he came over.

Q. Okay. And then -- by the way, you're still two and a half car lengths away?

A. Yes.

Q. Then is that when you moved forward when he sat on the curb?

A. No.

Q. What did you then do after you saw the man sit on the curb?

A. I started to scream and I put my hand over my mouth, and I just stood there.

Q. You didn't scream, though?

A. I said I was like screaming but put my hand over my mouth.

Q. The question is: Did you or didn't you?

A. I started to.

Q. Started to? Did you or didn't you, ma'am?

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MR. MCGILL: Objection.

MR. JACKSON: I don't know what you mean.

MR. MCGILL: Three times she answered started to and started to and started to.

THE COURT: Objection overruled.

BY MR. JACKSON:

Q. So you just stood there silently doing nothing: is that right?

A. Yes.

Q. Still no one else was on the sidewalk?

A. No.

Q. Where was William Cook?

A. He was back towards Jamal.

Q. Are you sure?

A. Yes.

Q. Where was the man that you were with?

A. I don't know.

Q. Are you certain you don't know where he was?

MR. MCGILL: Objection.

THE COURT: Sustained.

MR. JACKSON: Fine.

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BY MR. JACKSON:

Q. Do you know where the cab driver was?

A. No.

Q. All right. After you stood there and you started to scream did you move forward then?

A. No.

Q. At what point did you move forward then?

A. When the police came.

Q. Now, the man you said shot the police officer, when he sat down by the curb between the Volkswagen and the Ford he would have then been two

and a half car lengths ahead of you, wouldn't he?

A. Repeat that again.

Q. Sure. If you saw the shooting from two and a half car lengths away -- the shooting happened between the police car and the Volkswagen. Now we understand and we know from physical evidence that Mr. Jamal and the police officer were found between the Volkswagen and the Ford. So the question is: You were then three and a half car lengths away at the time that this man, who you said did the shooting, sat down by the curb?

A. No. It was -- no.

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Q. Correct?

A. No, I wasn't three and a half car lengths away.

Q. Tell me how far, then?

A. It was the same distance but about a foot or two different.

Q. How could it be the same distance, ma'am, if the shooting happened between these two cars and this is where he was found, Mr. Jamal was found, seated and this is where the police officer was found? So it can't be the same place.

A. I said there's a difference of feet.

Q. One foot?

A. One or two feet.

Q. One foot?

A. One or two feet, I said.

Q. I wouldn't debate the point with you, ma'am. After you saw the officer fall, Mr. Jamal and/or the other person at the curb, what, if anything, did you then do?

A. Repeat the question.

Q. Sure. After the shooting is over what did you then do?

A. I answered that question before.

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Q. Forgive me. Tell me again, please.

A. I said I started screaming. I put my hand over my mouth and I just stood there.

Q. After that?

A. Yes.

Q. What I mean after that what did you do?

A. I stood there. I was watching.

Q. Did you do anything else?

A. No.

Q. Did you -- I thought at some point in time you told Mr. McGill you moved forward.

A. Yes.

Q. When?

A. When the police came.

Q. How far did you move?

A. I moved up I don't know how many feet it was.

Q. How many police were on the scene when you moved up?

A. I don't remember.

Q. Would you approximate for us?

A. I don't remember.

Q. Any police have their guns out?

MR. MCGILL: Your Honor, I would

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object. This area had been covered yesterday.

THE COURT: Sustained.

MR. JACKSON: Not by me, Your Honor.

THE COURT: Yes, it has.

MR. JACKSON: It was only with regard to the statements, Your Honor.

THE COURT: It was covered by you.

MR. JACKSON: Only with regard to her statements.

THE COURT: I said it was covered by you.

MR. JACKSON: But only what she put in the statement, Your Honor.

THE COURT: That area has been covered by you. All right. Move forward, please.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. You saw no officers with their guns out: is that right?

MR. MCGILL: Objection.

MR. JACKSON: Your Honor, may we see you at side bar briefly?

THE COURT: Yes.

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MR. MCGILL: Your Honor, at this point could Miss White have an

opportunity to have a little recess?

(A side bar conference was held on the record as follows:)

MR. JACKSON: Judge, I want you to correct me if I'm wrong, but I specifically -- because I knew that this might be a point -- I specifically referred her to statements only. I didn't get into -- I didn't cross-examine what the testimony was on direct.

THE COURT: Yes --

MR. JACKSON: Only the statement.

THE COURT: -- I remember you going over it yesterday. You've gone over and over it. We've gone over most of this stuff. I've given you a lot of leeway.

MR. JACKSON: I know you have, Judge.

THE COURT: It has to be some time now --

MR. JACKSON: I'm almost done. I only cross-examined on her statements.

THE COURT: Where are we going to

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go now?

MR. JACKSON: Just going to clean up, find out what she saw and that's it.

MR. MCGILL: You mean you're going to go through the alleged beating again?

MR. JACKSON: No.

MR. MCGILL: That's the area that's been covered.

MR. JACKSON: No, no, no, no.

MR. MCGILL: That was my objection.

MR. JACKSON: We're going to see whether, in fact, she lost sight of him.

I am not going through that again.

THE COURT: She answered that question.

MR. JACKSON: I should be done with her in about 15 minutes.

THE COURT: You had gone through that yesterday about her going up to him.

(Side bar conference ended.)

(A discussion was held off the record.)

MR. JACKSON: Your Honor, may

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Theresa talk to Mr. Jamal?

THE COURT: Ask the sheriff.

(A short recess was taken.)

MR. JACKSON: Just to bring us back, could you give me the last question and answer, please?

(The following was read back by the reporter as follows:)

Q. You saw no officers with their guns out; is that right?

BY MR. JACKSON:

Q. At the time when the police arrived where was William Cook?

A. He was towards the wall.

Q. Pardon me?

A. Towards the wall.

Q. Just standing there?

A. Yeah.

Q. Did you see him move from the wall at any time?

A. When the police took him.

Q. Other than that did you see him move?

A. He backed up a little bit more to the wall.

Q. To the wall?

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A. Yes.

MR. JACKSON: Excuse me one moment?

(A discussion was held off the record.)

BY MR. JACKSON:

Q. May I have this marked as Defense Exhibit II, please? Miss White, would you please take a look at that photograph? You notice whose picture that is?

A. That's William Cook.

Q. And what does the picture show?

A. Look like he was hit behind the ear.

Q. Did you see anything behind the ear?

A. No, 'cause I looked across the street.

Q. So you're saying that the only time that you looked away from him was that half second, right?

A. When Mr. Jamal was running, yes.

Q. Well, there was no one else on the sidewalk, was there, other than Mr. Jamal, Mr. Cook and the police officer; is that right?

A. Right.

Q. So can you account for how he was injured?

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A. I don't know.

Q. Pardon?

A. I don't know how.

Q. Did you ever see Mr. Jamal shot? See anyone shooting?

A. No.

Q. Can you account for how he was shot?

A. Can you explain that?

Q. Sure. You know Mr. Jamal was shot, don't you?

A. I found out later.

Q. You found out later. But in your entire length of direct and cross-examination you never told us how he was shot. Could you tell us how he was shot?

A. I don't know.

Q. Have no idea?

A. I didn't see.

Q. Do you know if your friend on the corner shot him?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Do you know if William Cook shot him?

MR. MCGILL: Objection, Your Honor.

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THE COURT: I have to sustain that objection.

BY MR. JACKSON:

Q. Did you see any police officer shoot him?

A. No.

Q. When the police officers arrived after this shooting was supposed to have occurred did you see or hear any police officers shoot him?

A. Can you repeat that again, please?

Q. Sure. When the police officers arrived immediately after the shooting of Officer Faulkner did you see any police officers shoot, or did you hear any shots?

A. No.

Q. All of the shots that you've described to this jury are the shots that you said that Mr. Jamal made; is that right?

MR. MCGILL: Objection, Your Honor.

MR. JACKSON: I'm asking. Well, I ask the question.

BY MR. JACKSON:

Q. Were there any other shots other than those that you said Mr. Jamal fired? Were there any other

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shots fired?

MR. MCGILL: Again, objection. She testified to the shots that she heard and saw.

MR. JACKSON: Your Honor, Mr. McGill is testifying, Your Honor.

THE COURT: Well, will you ask your question again, Mr. Jackson?

MR. JACKSON: Sure.

BY MR. JACKSON:

Q. Miss White, you said that the man who came across the street, he fired once or twice: is that right?

A. Yes.

Q. And then you saw him shoot three or four times and you demonstrated how many times you saw his hand go back and forth; is that right?

A. Yes.

Q. Did you hear any shots in which there was no motion?

A. At what time are you talking about?

Q. At any time.

A. I don't remember. I don't remember.

Q. You don't remember. Did you see anyone run from

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the scene?

A. No.

Q. That's absolute? You're sure?

A. Yes.

Q. When the police arrived after the shooting did they in any way obstruct your vision of Mr. Jamal at the curb? Do you know what I mean by that?

A. No.

Q. What I mean by obstruct, did they get in your way so that you couldn't see Mr. Jamal?

A. No.

Q. Now, even though he was on the curb between the Volkswagen and the Ford you're saying that you had a clear vision of him at all times?

A. While he was sitting on the curb?

Q. Yes, ma'am.

A. Yes.

Q. Well, is there some other time that you did not have a clear vision of him?

A. When they started taking him towards the wagon I was trying to tell the police what I had seen, and when I look back over he was partially to the wagon.

Q. And so you didn't see them actually pick him

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up?

A. What do you mean?

Q. Did you see the police when they picked him up to take him to the wagon?

A. When they started to, yes.

Q. When they started to?

A. When they, you know, picked him up and then I went over to start telling the police.

Q. You saw them drag him, though, didn't you?

A. What I seen was them taking him to the wagon the best way they could because he wouldn't walk.

Q. My question is: Did you see them dragging him?

MR. MCGILL: Objection. Objection. She did respond.

THE WITNESS: I did.

BY MR. JACKSON:

Q. Did you see his hand run into a pole?

A. No.

Q. You say it didn't happen, or you didn't see it?

A. I didn't see it.

Q. One other question. Maybe just a couple more. When the shooting happened of the man shooting the

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police officer, while he was on the sidewalk William Cook was directly behind the officer; is that correct?

A. Repeat that again.

Q. Sure. You said the man came across the street to the curb; he fired the weapon once or twice at the officer; is that right?

A. Yes.

Q. And the officer -- you told Mr. McGill that the man was within 12 inches of the police officer; is that right? Or you correct me. How close was the shooter to the police officer?

A. He wasn't that far.

Q. How far? I thought -- you correct me -- I thought you told Mr. McGill on direct examination that he was 12 inches --

A. I didn't tell him exactly. I believe I showed him, if I'm not mistaken.

Q. Show us. Show us again, please. Can you do it with your hands if you know the distance?

A. A couple feet.

Q. A couple feet. This far, or shorter?

A. A little shorter.

Q. Like this?

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A. Yes.

Q. That close?

A. Yes.

MR. MCGILL: Indicating about a foot and a half.

MR. JACKSON: I'm sorry. Yes.

BY MR. JACKSON:

Q. See if, you recall this question and answer, Page 75 notes of testimony of the preliminary hearing dated January 8, 1982. Question at the top of the page, first question, "By Mr. Jackson" me. "Question: Now, you said the weapon fired: is that right?

"Answer: Yes, sir."

MR. MCGILL: Excuse me. What page again?

MR. JACKSON: I'm sorry. Page 75, top of the page.

MR. MCGILL: Thank you.

BY MR. JACKSON:

Q. For context, "Question: Now, you said the weapon fired; is that right?

"Answer: Yes, sir.

"At the first shooting he was about

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six feet away; is that right?

"Answer: Yes, I guess."

You said back on January 8th he was six feet away?

A. I'm not good at feet or foot. As you can see, I can't tell.

Q. Well, a foot and a half is like this, you've just demonstrated. You're saying you don't know the difference between a foot and a half and six feet?

A. I'm not good at feet or foot.

Q. I'm asking you. Do you know the difference between one and a half feet and six feet?

A. No.

Q. You don't?

A. No.

Q. So that everything that you've told us in court today and yesterday with regard to distance is a guess on your part?

A. Yes.

Q. And in fact, you don't know whether any of those distances were closer or further away?

A. I know they were closer or further away but I don't know feet and foot.

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White - Cross

Q. Well, feet is two foot. Okay? But I'm saying one and a half feet is certainly a lot smaller than six feet, would you agree?

A. I don't know.

Q. You don't know. You indicated when we were talking about heights and distances when I asked you about Prince, I think you said he's six feet tall: is that right?

A. Yes.

Q. And I asked you if you consider him tall, and you said yes; is that right?

A. Yes.

Q. Now, you gave a description to the police that the man who shot the officer was short: is that right?

A. Yes.

Q. Mr. Jamal, would you stand up, please? Is Mr. Jamal short?

A. He's not tall.

Q. After the shooting I still want to know how far beyond the police officer was William Cook?

A. Repeat that.

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Q. Sure. At the curb the man came and shot; the police officer was anywhere from six feet to 12 inches away. We won't debate that. After the police officer was shot where was William Cook? He was on the other side of the police officer, right?

A. (No response.)

Q. Still don't understand?

A. No, I don't.

Q. You said that when the man came to shoot the police officer he had just turned William Cook around; is that right?

A. Yes.

Q. And he had William Cook's hands behind him; is that right?

A. Yes.

Q. So was the officer in contact, physical contact, was he touching William Cook when he was shot in the back?

A. I don't know.

Q. You don't know?

A. I don't remember.

Q. You don't know where William Cook was, then?

MR. MCGILL: Objection. That's not

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what she said. She said she did not know whether the defendant, excuse me, whether the police officer was in contact with Mr. Cook.

THE COURT: Rephrase it.

BY MR. JACKSON:

Q. You don't know whether Officer Faulkner was in contact with William Cook but do you know how far away William Cook was from the officer? Whether he was touching him or not we won't get into. But do you know how far away he was?

A. That's feet and inches and foot again. I don't know.

Q. Okay. Assuming for a moment that from the firing of the officer, where the officer was shot, assuming the bullet would keep on going, would William Cook be in the firing -- in that same direction as the officer?

MR. MCGILL: Objection, Your Honor.

BY MR. JACKSON:

Q. Do you understand?

MR. MCGILL: Objection.

MR. JACKSON: I'm simply trying to orient her.

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THE COURT: I sustain that question.

MR. MCGILL: It's an impossible question.

BY MR. JACKSON:

Q. So that I am clear, if the officer is here, the shooter is here -- you follow me so far?

A. Yes.

Q. Mr. Cook, William Cook, was on the other side of the officer -- is that right? -- next to the wall or near the wall?

A. Yes.

Q. So then he would have been in a straight line to the shooter?

MR. MCGILL: Objection, Your Honor. It depends on too many variables. I object to that. It's an impossible question.

MR. JACKSON: It's not.

THE COURT: Rephrase the question, counsel.

BY MR. JACKSON:

Q. Can you tell us as best as you can where the relative positions of each of those three persons were? You had William Cook, you had the police officer

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and you had the shooter. Were they in a triangular shape, were they right in a row, side by side, zigzag? Tell us.

A. He was at an angle.

Q. What kind of angle, please?

A. Police officer was here.

Q. You have to speak up now.

A. The police officer was standing here and William Cook to an angle.

Q. To the right, or to the left?

A. I don't remember. It was to an angle.

MR. JACKSON: No further questions at this time, Your Honor.

MR. MCGILL: May I redirect, if Your Honor pleases?

THE COURT: Go ahead.

#### REDIRECT EXAMINATION

BY MR. MCGILL:

Q. One, two, three, that's the first statement, second statement and third statement. For the record, I was showing the witness where the statements were in sequence in the book.

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White - Redirect

Q. All right. Miss White, you have before you the statements that you gave to the police; is that correct?

A. Yes.

Q. I'm referring to the first statement which is December the 9th, 1981. Do you have that in front of you?

A. Yes.

Q. I'm going to ask you if you recall giving these answers to the questions that I posed to you at the time. All right.

A. Yes.

Q. "Question: Did you see anything unusual happen outside this morning?"

"Yes, I saw a police officer pull over a Volkswagen. One guy was in the Volkswagen. The police officer got out of the car and went over to the Volkswagen. When he got out to the Volkswagen the driver of the Volkswagen got out. They both walked towards the police car. They got to the front of the car. Another guy came running out of the parking lot on Locust Street. He had a handgun in his hand. He fired the gun at the police officer

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about four or five times. The police officer fell to the ground. I started screaming. The guy who shot the police officer was sitting on the curb."

Skipping down five sentences, "The police handcuffed the man who was sitting on the curb, the man who shot the officer."

Starting on Page 2, "Can you describe" --

MR. JACKSON: Excuse me just a moment, Mr. McGill.

MR. MCGILL: Page 2.

MR. JACKSON: Okay. Go on. I'm sorry.

MR. MCGILL: I'm reading portions of the statement, not the entire statement.

MR. JACKSON: Fine.

BY MR. MCGILL:

Q. Starting on Page 2, are you with me on Page 2?

A. Yes.

Q. First of all, do you recall giving that answer to that question? The one I just read?

A. Yes.

A. All right. On Page 2, "Can you describe the man you saw get out of the

Volkswagen?

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"He was a black male, about 27 years, dark complexion, five eight wearing his hair in dread locks with a tam cap on. I think I saw him before one of the stands at 16th and Chestnut by the movies selling scarfs and hats" --

MR. JACKSON: I'm going to --

BY MR. MCGILL:

Q. Is that the answer you gave to that question?

MR. JACKSON: Objection.

THE WITNESS: Yes.

MR. JACKSON: Your Honor, I am just objecting now because it doesn't refer -- it refers to someone else. I haven't asked her for that description of William Cook. I don't understand the relevance. I would object.

THE COURT: Well, you've got to see me at side bar.

MR. MCGILL: All right, I'll pass by that one, Judge.

BY MR. MCGILL:

Q. "Can you describe the guy who fired the gun?"

"He was a black male, short, in his 20's and he also wore his hair in dread locks."

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Q. Do you recall giving the answer to that question?

A. Yes.

Q. At the time that you actually saw the defendant running from the parking lot, is it fair to say, Miss White, that the time that you had him in view he was running and shooting and then standing over him and then

sitting down?

MR. JACKSON: He's leading the witness, Your Honor. I'd object.

THE COURT: Do you want to rephrase your question?

BY MR. MCGILL:

Q. Would it be fair to say that you had him in view in terms of his standing position for less than about 15 seconds?

MR. JACKSON: Objection. He's still leading, Your Honor.

THE COURT: I'll let it in.

THE WITNESS : Can you repeat it again, please?

BY MR. MCGILL:

Q. How long did you have him in view?

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A. I don't know about time --

Q. Okay.

MR. JACKSON: Your Honor, may she answer the question?

THE COURT: Go ahead.

MR. MCGILL: Answer the question Mr. Jackson objected to.

THE WITNESS: I don't know about time. From the time it took him to run from the parking lot, went over and shoot the officer, come over and shoot him again, and went over the curb and the police came.

BY MR. MCGILL:

Q. That was the full time you had him in view; is that correct?

A. Yes.

Q. Are you generally good at heights?

A. No.

Q. Down to the center of Page 2, "When the guy came out of the parking lot which way did he go?"

"He went between the cars on an angle from the police officer.

"How far away from the police officer

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was the man when he fired the gun?

"A couple of feet.

"How many times did he fire the gun?"

"Four or five times.

"What did the man do after he fired the gun at the police officer?"

"He sat down on the curb."

Do you recall giving that answer to that question?

A. Yes.

Q. Did you at any time in any statement say anything other than the fact that the shooter, the defendant, ran from the parking lot, shot the police officer several times and then went over and sat on the curb? Did you say that all the times that you went over there to the police?

A. Yes.

Q. Do you also recall in that statement saying, while you were reading the statement down at the Police Administration Building, do you recall there observing the other man, William Cook, down at the police station?

A. Yes.

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Q. And do you recall stating there to the detectives, "That's the driver right there?"

A. Yes.

Q. And is that not the photograph that you have identified? Is that correct?

A. Yes.

Q. Mr. Jackson asked you to look at a photograph and I did the other day, too. I am going to ask that these other photographs be marked C-31, 2, 3 and 4. Would you take a look at those four photographs and see if you can identify them? Why don't you look at all four of them at once.

A. That's William Cook.

Q. They're all photographs, additional photographs, of William Cook; is that correct?

A. Yes.

Q. May I see those photographs, again? I am showing you C-34 and ask you is that the hat that William Cook had on at the time that you observed him on that day?

A. Yes.

Q. I am going to ask you if you would, again, refer

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to the second statement now, which would be under, I think, 2B there. The defendant who shot the police officer, did he also have a hat on?

A. Yes.

Q. And what kind of a hat was that?

A. Tan, tan kind of hat.

Q. Would you show the witness C-15? I'm showing you what has been

marked C-15. Can you identify that?

A. Yes.

Q. What is it?

A. That's the hat he was wearing.

Q. Indicating the defendant with your left finger.

Thank you.

At the bottom of Page 2, excuse me -- strike that. At the top of Page 2 on December the 12th, 1981, the first question: "When you first saw the man who was doing the shooting where was he at?"

"Answer: He was running across the street from the parking lot at 13th and Locust right across the street from Johnny's Pizza Place.

"Where was this man when he first began to shoot his gun?"

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"Answer: He was on the pavement where the pizza shop is located."

Q. Do you recall those questions and those answers?

A. Yes.

Q. Down at the bottom the question and answer, "After the man had shot the police officer did you ever lose sight of the shooter?"

"Answer: No, he just sat there on the curb. He didn't try to run or anything?."

Q. Do you recall telling the police that?

A. Yes.

Q. First of all, the individual that you gave the first statement to -- would you stand, please. See this man over here?

A. Yes.

Q. Can you identify him?

A. Detective Chobert.

Q. Did you give him the first statement?

A. Yes.

Q. Thank you, Detective. Now, you gave a third statement on December the 17th. Would you turn to that one?

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Can you ask Detective Thomas to come in, please?

Would you take a look at the first page.

"Question: Miss White, would you go in your own words and tell me when you first saw the police car and what followed after that?

"Answer: I saw the police car in the middle of Locust Street at 13th going towards 12th Street. The top lights and the bright light were on. A Volkswagen in front of it. The police, car then pulled the Volkswagen over to the curb in front of the pizza place." I'll stop there and ask you --

Detective Thomas, would come up here, please?

Can you identify this gentleman?

A. He's Detective Thomas.

Q. And did he take this third statement from you?

A. Yes.

Q. And is he the assigned detective in charge of this whole case?

A. Yes.

Q. Thank you, Detective.

Going on with this, I'm now down at the fourth or fifth line of your answer. "The

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police officer got out of the car and started walking towards the Volkswagen, and the driver of the Volkswagen got out. I couldn't hear what they were saying. They then walked between the police car and the Volkswagen to the sidewalk. The police officer said something else to the driver of the Volkswagen, and that's when the driver of the Volkswagen struck the officer. The officer grabbed him and turned him around. The man's hands was behind his back. The driver of the Volkswagen back was to the officer. That's when the other guy that I saw running from the parking lot ran up and was practically on the curb, and that's when the officer fell down when the guy was shooting at the officer. Then the guy went over to the officer and standing over him shot three more times. The guy went back over to the curb and sat down. The driver of the Volkswagen just stood there."

Moving down to about the center of Page 2 --

MR. JACKSON: Your Honor, I'm going to object at this point. Counsel is simply reading the statement. There are no questions.

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THE COURT: Are you asking her a question?

MR. MCGILL: Yes. I'm sorry, Your Honor. That's quite right.

BY MR. MCGILL:

Q. Do you recall that question and those answers?

A. Yes.

Q. And did you give those answers to Detective Thomas that I just pointed to?

A. Yes.

Q. On Page 2 I'll direct you to the center of the page, "When did the guy you saw running start shooting?"

"Answer: When he was practically on the sidewalk on an angle."

Then you indicated on a diagram; did you not?

A. Yes.

Q. "From where did the man you saw running come from?"

"The middle of the parking lot near the booth in the center

"Question: When did you see that

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the man running had a gun?

"He had it in his hands when he was running across Locust Street."

Do you recall those questions and answers?

A. Yes.

Q. At the bottom of Page 2, "Describe as best you can what happened as the man running was almost on the sidewalk?"

"Answer: He pointed the gun at the police officer and shot about one or two times. Then the officer fell, and he went over and stood above him and shot three more times. From the time that you saw the man shoot the police officer until the time the police put him in a wagon, did you ever lose sight of the man?"

"Answer: No.

"What did the man that was driving the Volkswagen --"

MR. JACKSON: Your Honor, I object again.

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BY MR. MCGILL:

Q. Excuse me. Do you recall those questions and answers?

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. Do you recall those questions and those answers?

A. Yes.

Q. Going on, "From the time that you saw the man" -- I just read that. Excuse me. On Page 3, "What did the man that was driving the Volkswagen do after the officer was shot and fell to the ground?"

"He just stood there.

"Did you see this man move at all later?"

"He backed up to the wall near the pizza shop after the guy that shot the officer had sat down on the curb for a minute."

Do you recall those questions and those answers?

A. Yes.

Q. "Did you see any other person on that particular, sidewalk during the incident?"

"Answer: No, but there was a guy

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in a cab behind the police car."

Do you recall that question and that answer?

A. Yes.

Q. Also on Page 3 do you recall being questioned and answered: "Did you see the police officer that was shot pull his gun?"

"Answer: Not actually but it looked like he grabbed for something on his side."

Do you recall that question and that answer?

A. Yes.

Q. At what point did he grab for something on his side?

A. When he turned around, when he was getting ready to fall he kind of staggered and he turned around.

Q. Now Mr. Jackson asked you if you could account for the time when his defendant over there, Mr. Jamal, was shot. In as much as he asked you whether you could account for it, did you not see the police officer's hand at all once he was beginning to fall after he was trying to grab for something; is that correct?

A. Yes.

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Q. So it could, could it not be --

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. -- that the police officer was grabbing the gun --

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. -- and managed to get it and shot him from on the ground?

MR. JACKSON: Objection.

MR. MCGILL: Your Honor, why is he objecting? He knows what it is. It's a question. He asked her whether she can account for him --

THE COURT: Let's go.

MR. MCGILL: Is that not accurate?

MR. JACKSON: Objection and ask to move to strike.

THE COURT: Yes.

BY MR. MCGILL:

Q. Did you have his hands in view at all times? The police officer's.

A. No.

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Q. Down at Page 3 about three quarters of the way, "Did you see any other persons around the vicinity that may have also seen what happened?"

"Answer: The cab driver behind the police car."

Do you recall that question and answer?

A. Yes.

MR. JACKSON: I object. He didn't read it quite accurately, Your Honor.

MR. MCGILL: Excuse me. The cab driver behind the police car. What did I say? Volkswagen? Sorry.

MR. JACKSON: I think you said in. Go on.

BY MR. MCGILL:

Q. "The cab driver behind the police car.

"Question: Have you ever seen the driver of the Volkswagen before this occasion?"

"Answer: Yeah. I bought my gloves from him at 16th and Chestnut. He sells gloves from a stand and I seen him drive around there in a Volkswagen."

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Do you recall those questions and answers?

A. Yes.

Q. Top of Page 4, "What initially drew your attention to the man that shot the officer?"

"I just looked over there and saw him running from the direction he was going."

Do you recall that question and answer?

A. Yes.

Q. On Page 4 at the bottom, "Can you describe the man you saw doing the shooting?"

"Black male, late 20's, just a little shorter than the police officer he shot, medium build, 160 pounds, dark complexion, dread lock hair wearing a tam hat, dark in color, mustache.

"No further description. Would you know the man who did the shooting if you ever saw him again?"

Your answer, "Yes." Do you recall that?

A. Yes.

Q. Did you sign these statements?

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A. Yes.

Q. I asked that this be marked C-35. Can you identify what C-35 is?

A. A diagram of --

Q. You have to speak up loudly, ma'am.

A. It's a diagram.

Q. Who made that up?

A. Mr. Land.

Q. Mr. Land, you mean the man that made that diagram: is that correct?

A. Yes.

Q. Now, did you do anything to that diagram? Take a look at it.

A. What do you mean anything?

Q. Do you recall making any marks or directing that marks be made on that diagram?

A. Yes.

Q. Explain what that means.

A. I was showing where the shooter was and where I seen the cars at and where I was and where the driver was, the position.

Q. Okay. Just put that aside, if you would. There were several references being

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made to notes of testimony. I'm referring Mr. Jackson to the preliminary hearing notes of testimony before Judge Mekel, at Page 52, do you recall this question and answer: "And you saw his hair, that's the thing that you recall?"

Answer: I seen his face. You asked me what kind of clothing." Do you recall saying that at the hearing?

A. Yes.

Q. On Page 53, "Now, when you first saw him from that distance away was he running, walking, standing or, what?"

"Answer: Running." Do you recall that question?

A. Yes.

Q. And answer. Page 54, "That's a fact, you glanced and you saw him; isn't that correct?"

"Answer: When I turned over that's what drew my attention." Do you

recall that?

A. Yes.

Q. On Page 13, Mr. Jackson, "Did you tell us where they walked, when and how did they get to the sidewalk?"

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"Came up and walked right between the two cars.

"Question: Which two cars?"

"Answer: The Volkswagen and the police car.

"And when they got to the sidewalk what then happened, Miss White?"

"A few more words passed between them. I couldn't hear. And the driver struck the officer.

"Question: And when you say, 'The driver struck the officer,' would you show us what you mean by that?"

"Answer: He hit him with a closed fist to his face."

Do you recall saying that at the preliminary hearing in front of Judge Mekel?"

A. Yes.

Q. Going on, "You are indicating," okay. "And when the policeman was struck by that closed fist what then happened?"

"The officer turned him around and had his hands behind his back like positioned to

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handcuff him.

"And then, Miss White, what then happened?"

"Then that's when it drew my attention across the street, 13th Street, across from Locust, and I noticed a man running out of a parking lot.

"And when this man, when he ran out of the parking lot, what did he do?

"He got almost to the curb and that's when he had fired a shot."

Do you recall those questions and answers?

A. Yes.

Q. On Page 17, "At the time he was shot you indicated also that his back was to the man who shot him?"

"Answer: Yes."

Do you recall saying that to the Court?

A. Yes.

Q. Page 18, Mr. Jackson, "Would you state that position, like again nice and loud?"

"The hands were in back of him in a position, to be handcuffed, ready

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to handcuff the person.

"Now, after that first shot went off by the man who ran across the street as you" -- excuse me. Now, after that first shot went off by the man who ran across the street, as you testified, what then happened?

"Answer: What did the officer do?"

Began to fall.

"Speak loud.

"Falling.

"And then what did you see him do, if anything, while he was falling?"

"Seemed like he was reaching for something.

"And did he, in fact, fall down?"

"Answer: Yes.

"And then what happened after he fell down?"

"The shooter had come over and shot some more times.

"Do you recall how many times while over the police officer the shooter, as you refer to him, shot?"

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"Three or four times."

Do you recall those questions and answers?"

A. Yes.

Q. On Page 78, "Now Miss White, could you tell me what did you see after you saw the flash from the weapon?"

"The officer falling.

"You never actually saw him shot: isn't that a fact?"

"Answer: Yes, I did."

Page 79, "Fine. The officer fell forward?"

"Answer: No.

"Question: To the side?"

"Answer: He fell on his back.

"Question: He fell backwards to the man with the gun?"

"Yes.

"And he fell right away?"

"Answer: No.

"Did he stand? How long did he stand up?

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"Answer: It was not that long. Maybe a second, half a second."

Do you recall those questions and answers?

A. Yes.

Q. On Page 80 and 81, "Again, after what appeared to be the officer reaching for something, what did you actually see him do?"

"Answer: He grabbed for something.

"Question: Grabbed for something.

You didn't see him? He didn't actually grab anything, did he?

"No.

"Question: And he fell back; is that correct?"

"Yes.

"And he fell to the ground?"

"Yes.

"On his back?"

"Yes.

"When he was down on the ground what did you see him do? The officer.

"I couldn't see because that's when

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the shooter came over and came over him and shot at him, and the

shooter's back was toward me at the time.

"Question: He was between you and the police officer? In other words, the man with the gun was between you and the police officer at that time?"

"No.

"Where was he?"

"The officer was standing here, was lying here, the shooter was here and I was on the corner.

"But if the man with the gun was not between you and the officer, why is it -- why couldn't you see? What was blocking, your vision?"

"Answer: His back.

"Question: Who's back?"

"Answer: The shooter's back. I couldn't see the officer."

Do you recall the questions and answers at the hearing when we went through a demonstration?

A. Yes.

Q. Mr. Jackson also asked you to account for any

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kind of injury on Mr. Cook. Do you recall him asking you that?

A. Yes.

Q. After the police officer -- strike that. Did you not see the police Officer and Mr. Cook from the time that they first, Mr. Cook first, came out of the Volkswagen until the time when Mr. Cook hit the officer and the officer began to turn him around: isn't that correct?

A. Yes.

Q. Did you then say that from the time, at that point when the police officer turned Mr. Cook around, as you demonstrated, that you then looked

over and saw the defendant running across?

A. Yes.

Q. And the next time you remember seeing anything on the sidewalk is when the defendant shot the officer in the back; is that correct?

A. Yes.

Q. You don't know what happened then between the time that you looked over and saw the defendant running from that parking lot to the time when you saw the defendant shooting the police officer in the back,

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do you?

A. No.

Q. And you also testified -- I won't read it all --you also testified at the hearing before Judge Ribner: did you not?

A. Yes.

Q. And you also then testified to what happened in reference to Mr. Jamal's part in that particular incident?

A. Yes.

Q. Just read this on Page 93, Mr. Jackson.

Do you recall the hearing --

MR. JACKSON: What's that?

MR. MCGILL: The hearing before Judge Ribner.

MR. JACKSON: Fine.

BY MR. MCGILL:

Q. Questions by Mr. Jackson and your responses, "Now, you further indicated that you saw the man shoot in the direction of the officer; is that

right?

"Yes.

"And you believe that he hit the officer in the back: is that right?"

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Yes.

"Because he aimed it in the direction of the officer and the man driving the Volkswagen; is that correct?"

"In the back, yes.

"Question: Pardon me?"

"Answer: He aimed it in the back.

"Question: You then indicated that he then stood over the officer and fired three or four shots. Is that right?"

"Answer: Yes.

Now, when he stood over top of the officer and fired these three or four shots, his back was to you; isn't that correct?"

"Yes.

"And you couldn't actually see what he was doing, could you?"

"Yes, I could. I could tell he was firing a gun.

"Question: How could you tell?"

"Because he was standing over, shooting.

"Question: How was he shooting?"

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Could you see the gun?

"Answer: I seen a gun.

"Pardon me?

"Answer: I seen a gun, yes."

And then you made a demonstration as to what you observed. Do you recall those questions and answers that time before Judge Ribner?

A. Yes.

Q. And also in the hearing or the trial of William Cook for punching the officer do you also recall testifying very briefly, because it wasn't his trial, about what you saw in terms of the defendant?

A. Yes.

Q. Are you good at time?

A. No.

Q. Now, a lot was said this morning about bench warrants and things like that. Remember that?

A. Yes.

Q. First of all, do you recall on direct examination when I had said to you, "How many cases did you have?" Or I said to you -- in fact, I asked the question; in this way, I believe: "You have three open cases." Do you recall my question and your response as yes?

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A. Yes.

Q. And that's what you have; isn't it? Three open cases; is that correct?

A. Yes.

Q. And no more than three open cases; is that correct?

A. Yes.

MR. JACKSON: Your Honor, I object since counsel knows that's obviously incorrect.

MR. MCGILL: Well --

MR. JACKSON: She has three open cases and three outstanding bench warrants.

MR. MCGILL: Again, I would object to his comments but if Your Honor will allow me some latitude, I'll clear this up.

MR. JACKSON: I object to the latitude Your Honor might give him since it is incorrect.

BY MR. MCGILL:

Q. Now Miss White, is it not true --

MR. JACKSON: I'm sorry, Your Honor. Did you rule on my objection?

THE COURT: Overruled. Go ahead.

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BY MR. MCGILL:

Q. Is it not true, Miss White, that those three bench warrants that Mr. Jackson was talking about for most of the morning refer directly to those three cases which you had already testified were open and that you will be tried for? Isn't that correct?

A. Yes.

Q. And you received a bench warrant for those three cases because you did not appear in court when the trial was scheduled: is that not correct?

A. Yes.

Q. Tell the jury what happens when you do not appear in court and get a bench warrant? What do you then have to do?

A. You go to bench warrant court and they then give you another date to

appear in court for your trial.

Q. Now, what room is that that you go to?

A. Room 875.

Q. And when Mr. Jackson was referring to contempt of court, in that reference, when you do not appear for trial that is what he means by contempt of court; is that correct?

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MR. JACKSON : Objection to what I mean, Your Honor.

THE WITNESS: Yes.

MR. JACKSON: I don't know how this woman would know what I mean.

MR. MCGILL: You mentioned it all this morning.

BY MR. MCGILL:

Q. That's what contempt of court means, doesn't it?

A. Yes.

Q. In reference to you, that is.

A. Yes.

Q. It's not your conduct in court, is it?

A. No.

MR. JACKSON: Your Honor, I am going to object. He's asking her for a legal conclusion with regard to what contempt of court means.

MR. MCGILL: He brought it up, Judge.

THE COURT: I'll let you go next.

MR. JACKSON: Fine, sir.

MR. MCGILL:

Q. Now, those bench warrants that you said refer to

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those three cases, I told you, did I not, that those cases would be tried: is that correct?

A. Yes.

Q. As a matter of fact, one of the cases -- well, previously you had four. One of the cases already has been tried; isn't that correct?

A. Yes.

Q. And isn't it also true that you appeared --

MR. JACKSON: Your Honor, I object. He's constantly leading the witness and I'm going to object.

THE COURT: Will you rephrase your questions?

BY MR. MCGILL:

Q. And where were you when the last case in May was to come up on May the 19th?

A. I was incarcerated in Boston.

Q. And there was a bench warrant as a result of that; is that correct?

A. Yes.

Q. But that was scheduled for trial on that day, wasn't it?

A. Yes.

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Q. Now, would it refresh your recollection if I were to tell you that the trial that you did go to and where you were tried was on April the 17th, 1982,

before Judge Bednarek? Would that refresh your recollection as to the time when you went to trial?

A. Yes.

MR. JACKSON: I'm sorry. What was the date?

MR. MCGILL: April the 27th, 1982, Room 285, Judge Bednarek.

MR. JACKSON: Thank you.

BY MR. MCGILL:

Q. A D.A. Imbriglia, Public Defender Dixon. I told you you had to go to that trial, didn't I?

A. Yes.

Q. As well as these other three?

A. Yes.

Q. When you go to bench warrant court for your charges individually at 875 in the past what has been your experience?

MR. JACKSON: Objection.

MR. MCGILL: He brought up her past experience.

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THE COURT: Is it in reference to these cases?

MR. MCGILL: No, sir.

THE COURT: Okay. All right. Go ahead.

BY MR. MCGILL:

Q. What has been your experience in your prostitution cases when you would go to Room 875?

A. I would go there and they would ask me why didn't I be in court. And I would tell them and they would set a new date for me to come to court for

trial.

Q. In fact, that's the trial commissioner there instead of a Judge, isn't it?

A. Yes.

Q. So this business about bench warrants and appearing at a hearing and all of this that we heard this morning merely meant that the fact of your trials, they will be listed --

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. -- but it simply administratively was not struck from the computer record; isn't that correct?

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MR. JACKSON: Objection, Your Honor. This woman has no --

THE WITNESS: Yes.

BY MR. MCGILL:

Q. And I told you that --

MR. JACKSON: How can she know what happened administratively?

MR. MCGILL: He goes on around three hours this morning trying to make it seem like something it isn't. It's about time to let her know, and you know, and the jury know exactly what it was.

MR. JACKSON: Well, we can bring the bench warrant in, Your Honor.

MR. MCGILL: Oh?

MR. JACKSON: Fine. We'll see then.

(A side bar conference was held on the record as follows:)

THE COURT: I think to settle this the easiest way to do it, why don't you bring Mary Rebstock down here. She's the one that handles these.

MR. MCGILL: Okay.

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THE COURT: This is the way Municipal Court operates.

MR. JACKSON: She can't answer that and you know that, Judge.

THE COURT: But you brought up as to what happened.

MR. JACKSON: To her. To her.

MR. MCGILL: We're all going to talk at once?

MR. JACKSON: He's asking what's going to happen administratively.

THE COURT: Administratively we all know that somehow these are going to be listed for trial.

MR. JACKSON: I know that, Judge, but she can't say that, Judge.

THE COURT: No.

MR. JACKSON: That was the basis of my objection.

MR. MCGILL: All right. Maybe through Municipal Court. I just didn't want her to go off the stand without knowing what it was, which Mr. Jackson admitted in a sense,

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because the jury doesn't know this and doesn't know what happens. I would think that on redirect I have the opportunity --

THE COURT: See, what you should have done is objected to that initially and I could have preserved it, because the only issue here is whether or not any deal is made as far as these bench warrants are concerned. This is really a collateral issue here.

MR. MCGILL: Deals are a part of -- it's a legitimate impeachment device.

THE COURT: If there is such a deal. But as you seem to indicate to me

that this Mary Rebstock who is the Commissioner of Municipal Court, and she's not really a Judge --

MR. JACKSON: No, I know.

THE COURT: And takes care of all of these.

MR. JACKSON: I think it's Judge Meke1.

MR. MCGILL: Thorpe.

THE COURT: Well, no matter who your trial commissioner is --

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MR. JACKSON: Right.

THE COURT: -- none of them are Judges, really, and what they're doing here is administratively taking care of these bench warrants where they didn't show up in Municipal Court. So why are we making such a big issue about it?

MR. MCGILL: Because it was brought up this morning. I'm sorry, Your Honor, I had to come back to this.

THE COURT: Unless there's some deal as far as those bench warrants --

MR. MCGILL: I thought he had a right to develop whether or not there was a deal and try to hit the credibility of the officers.

THE COURT: Well, yes, but I think we're going into a separate hearing.

MR. JACKSON: There is a hearing before the Trial Commissioner.

MR. MCGILL: She just said what happened to her.

MR. JACKSON: Judge, look, I know --

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THE COURT: I know that.

MR. JACKSON: -- you set new bail.

THE COURT: He is not a Judge. You gave the impression somehow that this has to go back to the original Judge. It doesn't go to him.

MR. JACKSON: Judge, it doesn't always have to. I agree.

MR. MCGILL: We're talking about prostitution. You don't put bail on prostitution cases.

MR. JACKSON: Oh, yes, wait a minute. When they fail to appear they do make them when they fail to appear. If she went to a bench warrant hearing Judge she would have to post bail.

THE COURT: It depends on what kind of case. You're talking about prostitution now. You know in Philadelphia nobody goes to jail for prostitution. You have to go to Boston, Massachusetts to go to jail. You know that.

MR. MCGILL: In Massachusetts you get 18 months. Well, how far are we going to

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go with this? I would almost ask for a restriction on cross-examination. I mean, he went through the whole thing this morning.

THE COURT: It depends what his recross is.

MR. MCGILL: I would like to end this witness.

THE COURT: I would like to, also, but --

MR. MCGILL: Rather than bring her back.

MR. JACKSON: I will be about a half hour on recross-examination.

MR. MCGILL: It doesn't mean you're going to allow that latitude.

MR. JACKSON: If the questions are proper the questions are proper.

THE COURT: I'll have to rule. I'm giving you a lot of leeway. It's about time --

MR. JACKSON: Not on this issue, Judge.

MR. MCGILL: Let's go. All he's doing is citing

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that she made consistent statements.

MR. JACKSON: And I'm going to go back --

THE COURT: You've already done that.

MR. JACKSON: Well, I have a chance to go back over what he's done on redirect. On recross I can rebut what she said. On those prior consistent statements I have prior inconsistent statements on what she's given on redirect.

THE COURT: If they're already an issue, if they have already been brought up, you don't have a right to go into them.

MR. JACKSON: If he brought them up on redirect --

THE COURT: Doesn't make a difference.

MR. JACKSON: That's what recross is for, same scope.

THE COURT: If you bring up a subject on cross --

MR. JACKSON: Okay.

THE COURT: -- then he can redirect, come back and show consistent statements. You

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then can't go back into those very same statements.

MR. JACKSON: No, not the very same thing. I'll show some others but it will still contradict what she says.

THE COURT: All right.

(Side bar conference ended.)

BY MR. MCGILL:

Q. Miss White, the end result of these three cases are that you will be tried for them; is that correct?

MR. JACKSON: Objection as to what's going to happen in the future, Your Honor, particularly since she hasn't --

THE COURT: Well, can you rephrase your question?

MR. MCGILL: All right.

BY MR. MCGILL:

Q. Well, what do you know yourself from what you are directly told by me and the District Attorney's office as to what will occur on those three charges?

MR. JACKSON: Objection.

THE COURT: Overruled.

MR. MCGILL: You may answer that.

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THE WITNESS: I will be trialed on them and prosecuted.

BY MR. MCGILL:

Q. With reference to Prince, your friend Prince accompanied you, did he not, to every one of the hearings?

A. Yeah.

Q. In City Hall: is that correct?

A. Yes.

Q. And you yourself are separately housed, are you not, from the general population?

MR. JACKSON: Objection.

THE COURT: Sustained.

MR. MCGILL: Judge, he brought up security.

THE COURT: Let me see you.

(A side bar conference was held on the record as follows:)

MR. MCGILL: He brought up security of Prince as well as hers, Your Honor, and it is my point that since he has brought it up I think it's necessary for me to indicate --

MR. JACKSON: He did.

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MR. MCGILL: -- that there is a basis for her concern.

MR. JACKSON: Judge, most respectfully, Mr. McGill brought up that whole security issue on direct examination. If you recall, that's when I got back to it on cross, and now I don't even see the relevance whether she's housed separately or with someone else as if to suggest that Mr. Jamal --

THE COURT: Yes, I don't think that's an issue here at all.

MR. MCGILL: She's held in security.

THE COURT: So what.

MR. MCGILL: So what?

THE COURT: At whose direction?

MR. MCGILL: Well, a combination of our direction as well as the Massachusetts authorities.

MR. JACKSON: Well, Mr. Jamal --

THE COURT: Well, Massachusetts authorities, Massachusetts doesn't care,

MR. MCGILL: We do, though. That's why she came down.

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MR. JACKSON: Well --

MR. MCGILL: Goddamn it.

THE COURT: Don't get excited.

MR. MCGILL: The thing that gets me, I keep on getting --

THE COURT: Don't get excited. You're going into an area that's not important.

(Side bar conference ended.)

MR. MCGILL: Nothing further, Judge. That's all, Miss White.

MR. JACKSON: Your Honor, may I continue now?

THE COURT: Go ahead.

MR. MCGILL: Excuse me? I do have one other question, just one.

BY MR. MCGILL:

Q. Did you also give a tape, did you not, as to what happened?

A. Yes.

MR. JACKSON: Your Honor, may it please the Court, if he's going to play the tape I think so that the jury and everyone else can have context, the entire tape will have to

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be played.

THE COURT: Well, I don't know what he's going to do.

MR. JACKSON: I simply want that indicated.

MR. MCGILL: Your Honor, what I will do -- although Mr. Jackson was --

MR. JACKSON: I have no objection to the tape being played. Don't misunderstand me.

MR. MCGILL: Are we going to have constant --

THE COURT: No. No. Can I see you?

MR. MCGILL: Before I am going to do it I will mark this and put it in evidence. If he wants to play it, that's fine. If we just don't have anymore side bars --

THE COURT: All right.

MR. MCGILL: What are we up to? C-36. Put it in there, and I have nothing further. He's heard it. I have no further questions, Judge.

MR. JACKSON: Do you wish for me to

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continue, Your Honor?

THE COURT: Yes. Go ahead.

MR. JACKSON: All right.

#### RE CROSS-EXAMINATION

BY MR. JACKSON:

Q. What description did you give to the police Of William Cook?

MR. MCGILL: Your Honor, I would object. If he's going to read questions and answers from the statement, which is what I read, that's fine. If he wants to make it a whole new cross-examination, I object. We have three hours --

MR. JACKSON: Your Honor, wouldn't that be dependent upon what she answers? He's anticipating what I am going to ask.

THE COURT: Go ahead.

MR. JACKSON: Thank you.

BY MR. JACKSON:

Q. What description did you give to the police of William Cook?

A. I don't remember.

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Q. You just went over the statement with Mr. McGill, the statement that you gave of 12/2, I'm sorry on December the 12th, 1981, didn't you? Let me refer you to Page 2 of that statement. I'm sorry. I'm sorry. Let me refer you to Page 2 of the statement you gave on December the 9th, 1981, question at the top of page:

"Can you describe the man you saw get out of the Volkswagen?"

"Answer: He was a black male about 27 years, dark complexion, five eight, wearing his hair in dread locks with a tam cap on. I think I saw him before at one of the stands at 16th and Chestnut by the movies selling scarfs and hats."

Do you recall that question and answer?

A. Yes.

Q. And now I direct your attention to the statement you gave on December the 12th on Page 2 of that statement: "As far as height is concerned was the shooter taller, or shorter than the other man with the dread locks?"

"He was shorter than the other man."

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Do you recall that question and answer?

A. Yes.

Q. So that the shooter would have been shorter than five eight; is that

right?

A. Yes.

MR. JACKSON: Mr. Jamal, would you stand again, please, sir?

MR. MCGILL: Objection, Your Honor.

MR. JACKSON: I just want him to stand for her to look at him.

MR. MCGILL: She hardly had the opportunity that he's giving her now on December 9th.

MR. JACKSON: Please be seated, Mr. Jamal.

BY MR. JACKSON:

Q. We're going to go on now. Again, back on that same statement, 12/12, Page 2, "When he began to shoot did he fire all at once, or were the shots staggered?"

"It sounded like all at once. It sounded like firecrackers."

Do you remember that statement, the

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question and answer?

A. Yes.

Q. It's incorrect, though, right?

A. It did sound like all at once. That's the way it sounded.

Q. I thought you told us earlier that it was one and two, one or two and then three or four shots?

A. I'm saying what it sounded like.

Q. It sounded like. Oh, but you knew it was different?

A. The way it happened, it happened fast.

Q. Same page, ma'am. "Question: Where was this man when he first began to shoot his gun?"

"He was on the pavement where the pizza shop is located."

Is that true?

A. On the street, yes.

Q. "Question" -- I'll read it again. "Where was this man when he first began to shoot his gun?"

"He was on the pavement where the pizza shop is located."

Is pavement and street the same thing to you?

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A. That's what I meant.

Q. Oh, that's what you meant? They just used the wrong word here again?

MR. MCGILL: Objection to again.

BY MR. JACKSON:

Q. Is this correct?

A. I was just using that term for the street.

Q. You usually use pavement for the street?

A. Sometimes.

Q. Mr. McGill referred you to the hearing before Judge Ribner on December, I'm sorry, January 11th. I refer you now to Page 94 of the notes of testimony:

"Question: It's a fact, is it not, that on Friday you said that when he stood over top of the officer you couldn't see and that you only heard the gunshots?"

"Answer: Yes."

Do you recall that question and answer?

A. Repeat it again.

Q. Yes, ma'am. "It's a fact, is it not, that on Friday you said that when he stood over top of the officer you couldn't see and that you only heard the gunshots?"

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"Answer: Yes."

Q. Do you recall that question and answer?

MR. MCGILL: What page was that, sir?

MR. JACKSON: I'm sorry, Page 94.

BY MR.JACKSON:

Q. Do you recall that question and answer?

A. I couldn't see the shots but I could see the gun.

Q. Okay. Fine. I'm glad you said that. Page 96, same date, same hearing.

"Question: Did you see him fire the gun?"

"Answer: I knew he was firing. I didn't see the gun."

That's what you said on January the 11th, 1982 before the Honorable Judge Ribner. Now, is what you're saying today true, or what you were saying then true?

A. I told you what I seen.

Q. I know what you told us. I am asking what is true.

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A. Well, that's it.

Q. What?

A. I seen the part of the gun.

Q. So what you said before Judge Ribner -- and you swore under oath that time, too, didn't you?

A. Yes.

Q. You swore to tell the truth?

A. Yes.

Q. You told the Judge and us then that you didn't see the gun --

MR. MCGILL: Well, objection, Your Honor. She says she sees the gun.

MR. JACKSON: No, she did not.

MR. MCGILL: Your Honor, if we're talking about the full hearing --

MR. JACKSON: May I be allowed to ask the question?

THE COURT: I don't have the notes in front of me.

MR. JACKSON: If he wants to re-redirect he can. I think I'm asking questions right now.

THE COURT: All right. Let me look

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at it.

MR. JACKSON: Fine.

MR. MCGILL: He's referring to 96, 94 is --

MR. JACKSON: Your Honor, should he tell me what questions to ask?

THE COURT: I want to know where you are.

MR. JACKSON: Yes, sir. Page 96 second question.

THE COURT: Go ahead.

MR. JACKSON: Thank you, Your Honor.

BY MR. JACKSON:

Q. Now again my question is: Is what you told Judge Ribner true, or is what you're saying today true?

MR. MCGILL: Well Your Honor, I would object to that because he's taking one question and one answer. If he takes the context of the two or three pages --

THE COURT: Well, I can't tell him. You can go back on it.

MR. MCGILL: Yes, sir.

THE COURT: Go ahead.

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BY MR. JACKSON:

Q. Would you answer my question, Miss White? Is what you said to, Judge Ribner on January 11th, 1982 true or is what you said today true?

A. I seen the gun.

Q. So what you said on the 11th was a lie?

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

BY MR. JACKSON:

Q. So what you said on the 11th was not true?

MR. MCGILL: Objection.

THE COURT: Sustained. It's up to the jury to decide, not you.

BY MR. JACKSON:

Q. Can you tell us why it is that you told us that you didn't see the gun on the 11th?

MR. MCGILL: On Page 96.

THE COURT: No.

MR. JACKSON: Your Honor, may I ask my questions?

THE COURT: Go ahead.

MR. MCGILL: It's inaccurate, Judge.

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BY MR.JACKSON:

Q. Again Miss White, my question to you: Why did you not tell us that you saw the gun on the 11th?

A. Because it was a little part of the gun that I seen. I didn't see the whole gun. I told you what I seen.

Q. Now you're saying the whole gun.

A. I said I didn't see the whole gun. The little part of the gun, the barrel, what you call it. So it's not the whole gun. I didn't say the whole gun.

Q. But the question was -- I'll read it again --

"Did you see him firing the gun?"

"Answer: I knew he was firing. I didn't see the gun." You didn't say I didn't see the whole gun, I didn't see a little bit of it. You said, "I didn't see the gun."

"Question: Could you tell us why you told us then you didn't see the gun?"

"I just answered you."

Let's go on. Same day later on, on the same page: "Isn't it a fact that you just heard the gun fire?"

"Answer: Yes.

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"Question: And you didn't see what was going on over there because your vision was obscured: isn't that correct?"

"Answer: Yes."

MR. MCGILL: Your Honor, I object. That is so out of context I object to the whole thing. I read two or three pages at a time so we got the context. One or two statements is just improper.

THE COURT: I don't have any notes in front of me. I can't --

MR. MCGILL: Then I would object on further examination on that aspect.

THE COURT: You can go back and read it if you have to.

MR. JACKSON: Thank you, Judge.

THE COURT: Let's go. Come on.

BY MR. JACKSON:

Q. Do you recall that question and answer?

A. Will you read it again?

Q. Sure. "Question" --

MR. MCGILL: What page, please?

MR. JACKSON: Ninety-six.

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BY MR. JACKSON:

Q. "Isn't it a fact that you just heard the gun fire?"

"Answer: Yes.

"Question: And you didn't see what was going on over there because your vision was obscured: isn't that correct?

"Answer: Yes.

Q. Do you recall those questions and answers, ma'am?

A. Yes.

Q. So it's a fact you couldn't see? Isn't that right?

A. I just seen him going like this with the thing showing, a gun.

MR. MCGILL: Indicating with her finger pointing towards the ground several times jerking back and forth.

BY MR. JACKSON:

Q. Now Mr. McGill just showed you a diagram as well that you said, I believe, that Police Officer Land prepared: is that correct?

A. (No response.)

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Q. You gave a diagram on 12/9/81 as well; is that right?

A. Yes.

Q. Do you see the diagram on 12/9?

A. Yes.

Q. Would you look at the diagram that you prepared on 12/17? Would you try to look at them both at the same time? Can you do it in that book? I'll give you another, if you'd like.

A. No, I can look at them at the same time.

THE COURT: Just a minute.

MR. JACKSON: Your Honor --

THE COURT: Just a minute. Get C-35.

MR. JACKSON: C-35?

THE COURT: Yes, get C-35. Give it to her. She has it now.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. You're looking at both diagrams now?

A. Yes.

Q. Okay. They're different, aren't they, not in

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terms of the lines but the positions of the different people are different?

A. Excuse me?

Q. The positions of the people are different: is that right?

A. (No response.)

Q. Let me do it step by step. You indicate by an "X" the direction of the man who shot the officer. Now let me first refer you to the diagram you prepared on December the 9th. That's the one that's handwritten. See that one?

A. Yes.

Q. Okay. From that diagram -- and I don't think you indicate -- there's a parking lot on one side of the street: is that right? Maybe we can use this diagram so the jury has the benefit of what I'm talking about. Would you look up, please, and if you can somehow use your diagram as well. You indicate that there is a parking lot on this side: is that right?

A. Yes.

Q. And if you look at the line, the line is drawn

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in a southwesterly direction; is that correct?

MR. MCGILL: Move back, Mr. Jackson.

MR. JACKSON: I'm sorry.

THE WITNESS: Where are you?

BY MR. JACKSON:

Q. Southwest. In other words, you're going from here to there: is that right? Look at the line.

MR. MCGILL: Your Honor, I would object. Can she go to the sketch and show what she means by the diagram?

MR. JACKSON: Fine.

THE WITNESS: Which one are you talking about?

MR. JACKSON: 12/9, that's the only one I'm referring to right now. May I have this marked, please, Mr. Petner?

BY MR. JACKSON:

Q. This is D-12. Miss White, could you come down to the diagram, please. Use this exhibit that's D-12 and demonstrate to the jury, if you will -- if you can possibly hold it up while you're doing it. Let me hold it for you. Demonstrate to the jury --

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this is a parking lot here. See this line? Now, could you demonstrate to the jury -- you see the direction of this line? -- demonstrate to the jury the path that the shooter took and where the relative position of the officer from the shooter is? Do you know what I'm saying?

MR. MCGILL: Miss White, could move over a bit so the jury can see?

BY MR. JACKSON:

Q. In other words, you correct me if I'm wrong so the jury can get the benefit. You indicate that from the parking lot -- we know that this is the parking lot over here: is that right?

A. This the parking lot here.

Q. Yes, I know all this is the parking lot. And from some point in the parking lot this line is going in a southwesterly direction. Would you agree? It's not straight, would you agree?

A. It's at an angle.

Q. And this is the slope of the angle: is that true? In other words, it comes over here and comes over in this direction?

A. How are you comparing this?

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THE COURT: I'm afraid the jury can't hear her.

BY MR. JACKSON:

Q. Would you keep your voice up? I'm asking you to compare the diagram that you gave on December the 9th with this diagram.

A. It's two different diagrams.

Q. Here's the parking lot and here's the pavement; here's the parking lot and here's the pavement. Here's the police car and here's the Volkswagen: here's the police car and here's the Volkswagen.

A. I guess it's coming in a slant.

Q. From which direction to which?

A. From the parking lot over to the car.

Q. And how? Would it be fair to say that it's coming in this direction over to this direction? I'm sorry. My hand might be getting in your way. Isn't it

fair to say that it's coming from this direction into this direction?

A. No.

Q. It's not? Look at the diagram. Is that your handwriting?

A. I don't remember writing that. I don't remember.

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Q. But you signed it?

A. Yes.

Q. So you adopted it as true, didn't you?

A. Yes.

Q. And in this diagram isn't it fair to say that it goes from the parking lot in a southeasterly direction? Is that true? You're looking at it. In other words, it's at an angle like this: is that right?

A. It's an angle. It's coming down this way like this.

Q. Now, the jury didn't hear you.

A. It's like an angle coming like this, coming down.

Q. Now, when you indicated before -- forget that. All right. Now, after the shooting you indicated on this diagram that the officer is here and that the man who shot him is over here -- isn't that right? -- from your diagram?

A. He did come over.

Q. The officer stayed here and he went over?

A. Afterwards he came over.

Q. Well, wait a minute. Look at the diagram.

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You've got the officer in one position, you've got the shooter in another position. Is that the way it's supposed to be?

A. That's the way it was.

Q. Speak up so the jury can hear you.

A. That's the way it was; the officer was there and the shooter was here.

Q. Can you hear in the back?

THE COURT: Let her get back on the stand.

MR. JACKSON: Fine. Get on the stand.

THE COURT: Then they can hear her.

BY MR. JACKSON:

Q. Now, in your diagram -- and you can look at D-12, please. I refer you to that diagram. Now, Miss White, you have the shooter -- if I'm correct and correct me if I'm wrong -- you have the shooter near the Volkswagen; is that right?

MR. MCGILL: I would object. At what time?

MR. JACKSON: All right. Fine.

THE COURT: can you be more specific?

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MR. JACKSON: Fine.

BY MR. JACKSON:

Q. What is this diagram supposed to show?

A. When the officer was over here and the shooter was over here by the car after it happened.

Q. Is that after the shooting, or before, or during?

A. After.

Q. After the shooting: is that right?

A. Yes.

Q. So after the shooting you're saying that the officer was right here where the radio patrol car is; is that right?

A. Excuse me?

Q. The officer is right here at the radio patrol car between the patrol car and the Volkswagen?

A. Yes.

Q. And the shooter is between the Volkswagen and the Ford?

MR. MCGILL: Objection. At what time?

MR. JACKSON: She's already told me what the diagram refers to.

MR. MCGILL: Your Honor, objection. At what time is the shooter --

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THE COURT: You have to ask the witness.

MR. JACKSON: I asked her, Your Honor, and she said after the shooting. I don't know what other time I can get. She's already said that.

BY MR. JACKSON:

Q. Now again, you have the officer between the patrol car and the Volkswagen; is that right? You just said, yes.

A. Yes.

Q. And you've got the shooter now between the Ford and the Volkswagen?

A. Yes.

Q. Okay. Now, is that the way you remember the events on December the

9th?

A. No.

Q. So that was wrong?

A. Yes.

Q. But you gave them that on December the 9th?

A. Yes.

Q. Thank you. Let's get to another diagram, the one that's on the statement that you gave back on

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#### White - Recross

the 17th. I think it's on the 17th where you said that Officer Land prepared it. I think it's been marked as C-35. Take a look at that, take a look at that diagram. You've seen it on redirect.

At what point were those persons supposed to be in those positions that you've got there? Is that before, during or after the shooting? That's the first question.

A. During.

Q. During the shooting?

A. It was getting ready to happen.

Q. So then these are two different times then between the diagram you just looked at and this diagram? They're different times; is that it?

A. This is when it was getting ready to happen.

Q. Please speak up. I'm sorry. I couldn't hear

A. This is when it was getting ready to happen.

Q. So the shooting had not occurred then?

A. This is when it happened, it was getting ready to happen and when it

happened.

Q. Okay. You have an "X" on the sidewalk where the shooting occurred: is that right?

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A. It's on the street.

Q. Pardon me?

A. It's on the street.

Q. What's on the street?

A. The "X" you're talking about.

Q. Okay. That "X" refers to the shooter: is that right?

A. Yes.

Q. Then you have another dark circle that's for the police officer: is that right?

A. Yes.

Q. In this diagram you have the shooter west of the police officer: is that right?

MR. MCGILL: Objection to directions.

MR. JACKSON: That's west.

MR. MCGILL: Objection to her understanding --

MR. JACKSON: That's west.

MR. MCGILL: -- to her understanding the directions.

BY MR. JACKSON:

Q. All right. Let me do it this way. I'm sorry. I don't want to take advantage of you.

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Look, you have the shooter here, approximately here; is that right? See right here?

A. Yes.

Q. And you have the police officer perhaps over here; is that right?

A. It wasn't that far.

Q. I'm not trying to confuse you but what I'm simply trying to show is that you've got the police officer, I'm sorry, the shooter northwest of the police officer; in other words, he's closer to 13th Street than the police officer is.

A. I don't understand what you said.

Q. You know where 13th Street is on the diagram?

A. Yes.

Q. You see where the "X" is the shooter?

A. Yes.

Q. The dark circle is the police officer?

A. Yes.

Q. The shooter is closer to 13th Street than the police officer is; is that correct?

A. Yes.

Q. Okay. At that point where you've got it on the diagram, this is when the shooting took place;

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is that right?

A. Yes.

Q. And the positions of the police officer and the shooter did not change; is that right?

A. Repeat the question.

Q. Sure. According to your diagram now -- and we're referring to this diagram only -- the position of the shooter and the police officer did not change after the shooting? According to your diagram, that is.

A. According to the diagram, no.

Q. Now, would you go back to D-12, look at D-12 for a moment. I think it's right in front of you, ma'am. Now, in that diagram you have the police officer closer to 13th Street than the shooter; isn't that a fact?

A. I think I said on this one this is when it happened and I think I said on this one, this is after it happened.

Q. Right. And I asked you specifically if they changed positions after the shooting, and you said no.

A. On the diagram, no.

Q. Well, the diagram shows the same thing, doesn't

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it?

A. It doesn't show that they moved any.

Q. Are you saying that they moved?

A. The police fell and he came on top of him. That's moving.

Q. And he fell on top of him?

A. I said the police fell and he came on top of him.

Q. And you're saying that that's not shown in either one of those diagrams?

A. No.

Q. It's not?

A. No.

MR. JACKSON: Can I see C-35, again, please? I'm sorry, I have it. No further questions, Your Honor.

MR. MCGILL: Your Honor, may I just take a look at those two diagrams?

THE COURT: Take a look at them.

BY MR. MCGILL:

Q. What did you mean to show by what is on D-12?

MR. JACKSON: Objection as to what she meant to show, Your Honor. The diagram

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speaks for itself.

THE COURT: I overrule that objection. Go ahead.

BY MR. MCGILL:

Q. What did you mean to show by what that diagram -- by the way, are you good at making diagrams?

A. No.

Q. What did you mean by making that diagram? Just demonstrate to us what that diagram says to you as you were the one who made it?

A. I was saying after the officer was shot and he was on the ground the shooter went over and went on the curb --

MR. JACKSON : The shooter came over and did what?

THE WITNESS : And went on the curb.

BY MR. MCGILL:

Q. Demonstrate to us, if you would -- and I want you to hold both of these diagrams and I'll ask the Court to allow -- and it will not be a long examination -- ask the Court to allow her to go to the sketch, again; please.

THE COURT: Can't you bring the

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White

sketch closer? I'm afraid the jury can't see. Can you go up, Mr. Jackson, so you can see?

MR. JACKSON: Fine, sir.

BY MR. MCGILL:

Q. Hold this here. Go on. What did you -- and that was associated with the statement, the first statement, as well as the statement on the 17th, those two diagrams: is that correct?

A. Yes.

Q. All right. And it was meant to explain what you said in the statement?

MR. JACKSON: Your Honor, he's leading the witness.

THE COURT: Just ask the question, please.

MR. MCGILL: All right.

BY MR. MCGILL:

Q. Would you tell us what the first diagram demonstrates?

THE COURT: Are you talking about D-12?

MR. MCGILL: Yes. Sorry. You're right.

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BY MR. MCGILL:

Q. D-12, this would be this. Can you just show that on the sketch what you intended that to represent? Move it. Go ahead.

A. He was coming out the parking lot, ran across the street and shot the police officer, and the police was laying down, and he went over and sat down on the curb.

Q. Now, demonstrate on that sketch what you intended D-12 to show. If you can just demonstrate with your finger.

A. This would be running over, came over, shot the police, the police fell, and he came over and sat down on the curb.

Q. And when he was over the police officer shooting where was he on the sketch?

A. Standing right over him.

Q. Standing right over him?

A. Yes.

MR. JACKSON: Your Honor, I have to object. The witness has already indicated that D-12 indicates the relative positions of the persons after the shooting. So how can

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she say now, "Well, it's during the shooting?"

THE COURT: Please.

MR. MCGILL: Judge, she is showing what she intended to --

THE COURT: I understand that. Go ahead.

BY MR. MCGILL:

Q. Will you take a look at the other diagram that you made, which is C-35. Okay? Would you take that in your hand and would you demonstrate what you meant by that?

MR. JACKSON: Objection.

THE COURT: Overruled.

THE WITNESS: I was telling them how it happened and when he had ran out of the parking lot, came over and shot the police.

BY MR. MCGILL:

Q. Now, show us where he came from the parking lot with your finger, if you could?

A. It was at an angle. Right there, just at an angle.

Q. Okay. And where was he when he first shot the policeman in the back?

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White

A. Right here.

Q. And where was the policeman when he fell?

MR. JACKSON: Your Honor, he's just asking the same questions and not referring to the diagram. I object.

THE COURT: It's what she meant by the diagram.

BY MR. MCGILL:

Q. Is this what you meant when you stated it on the diagram?

A. Yes.

Q. Continue to demonstrate, please.

A. Walked around this side, turned around, staggered and fell, came over, he was standing on top of him.

THE COURT: Speak up a little louder.

THE WITNESS: He came over, stood on top of him and shot some more times. Then he went over and sat down on the curb.

BY MR. MCGILL:

Q. That's what you meant to demonstrate by both of those diagrams, however well you did it; is that correct?

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A. Yes.

MR. MCGILL: Thank you. I have nothing further.

BY MR. JACKSON:

Q. Just a couple more. That's what you meant to do, but both of those diagrams are different from each other; are they not?

MR. MCGILL: Your Honor, I object.

THE COURT: I sustain the objection.

MR. JACKSON: Fine. I have nothing further, Your Honor.

THE COURT: All right. We'll recess for the day until tomorrow morning at 9:30.

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(Court adjourned at 6:00 o'clock until Wednesday, June 23rd, 1982, 9:30 o'clock a.m.)

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THE COURT: Could I see you gentlemen back here with the court reporter just for a second?

(A conference was held on the record in chambers:)

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White

THE COURT: I just want to let you two gentlemen know that we may have a problem on Monday with one of the jurors who is scheduled to take a Civil Service test which would run from 8:30 a.m. to 11:30 a.m. on

Monday, June the 28th, 1982. Now I don't know where we're going to be, in what status, by then, but think about it and see what you want to do. I don't know whether he would be willing to miss the examination and stay on, and whether he wants to get off or not.

MR. JACKSON: Or tell him that the D.A. doesn't want him to but defense counsel will let him.

THE COURT: In all seriousness --

MR. JACKSON: I think under the circumstances I'd excuse him.

MR. MCGILL: I have no objection.

THE COURT: That's not the point. What we could do is let him go over there with one of the court officers and he could stay there, but think about it.

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MR. JACKSON: Sure.

MR. MCGILL: I have no objection.

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IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 23, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Backup Counsel for the Defendant

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(Court convened at 10:00 o'clock a.m.)

---

(The following took place in open court in the presence of the jury:)

MR. MCGILL: May I proceed, sir?

THE COURT: Yes.

MR. MCGILL: Officer Francis Dixon.

---

COMMONWEALTH'S EVIDENCE (Cont'd)

POLICEMAN FRANCIS DIXON, (Badge Number 1776, Sixth Police District), having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. McGill:

Q. Officer Dixon, on December the 9th, 1981 where were you employed?

A. City of Philadelphia in the 6th District.

Q. Did you have occasion, sir, to seize any evidence in this particular case?

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Dixon - Direct

A. Yes, I did.

Q. What was it?

A. It's a bullet.

Q. And do you have it there?

A. Yes, I do.

Q. Where did you seize that evidence from?

A. It came from the defendant's body. I was in operating room at the time.

Q. And who removed it? Do you know?

Dr. Coletta.

Q. All right. I'll ask that this be marked C-37 and shown to the defense council. Could you take a look at C-37, sir?

A. It's still sealed. I have to get it open. It's in a plastic vial which was put in there -- the nurse put it in there in the operating room.

Q. Did you observe that?

A. Yes, I did.

Q. May I see that? Now, also besides Dr. Coletta present there, the supervising or attending physician, Dr. Jarrel was there also, wasn't he?

A. Not when the bullet was removed.

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Dixon - Direct

Q. Where was he then?

A. He had left the operating room. Once all the work had been done inside of the defendant and they closed him that doctor left.

Q. Okay. What do you mean that doctor? Dr. Jarrel?

A. Dr. Jarrel.

Q. But you know of Dr. Jarrel as being the supervisor over Dr. Coletta?

A. That's correct.

Q. That's why his name, Dr. Jarrel, is on the jar?

A. When the nurse placed it in there she put the doctor who was in charge of the operating room's name on this.

MR. MCGILL: Okay. Would you show that to -- I don't think Mr. Jackson has seen that jar.

MR. JACKSON: I'm going to object and move to strike why someone else did something. It's indicating what she's done.

THE COURT: Motion is denied.

BY MR. MCGILL:

Q. What did you do with that particular piece of

Page 5.

Dixon - Direct

evidence?

A. I kept it in the plastic -- I held onto it until homicide detectives arrived on the scene so it could be transported to Ballistics.

Q. And who was the homicide detective that you gave it to?

A. Detective Morton.

Q. Morton?

A. Morton, yes.

MR. MCGILL: Cross-examine.

CROSS-EXAMINATION BY MR.JACKSON:

Q. I'm sorry? Is that Nixon, or Dixon?

A. Dixon -- D-I-X-O-N.

Q. Officer Dixon, did you see, in fact, where the bullet was removed from his body?

A. Yes, I did.

Q. Where?

A. It was in his -- I have to stand up.

Q. Would you please?

A. Yes. In the area of the back right around here, generally.

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Dixon - Cross

Q. So that would be the right lower back?

A. Yes.

Q. Did you have occasion to see where he was shot?

A. No, not specifically.

Q. Well, do you know generally?

A. The front of the body.

Q. Approximately where?

A. I don't know that.

Q. You didn't see it?

A. No. When I saw him he was in a hospital bed and he was covered.

Q. How long did the operation take, sir?

A. I'm not sure.

Q. Can you approximate for us in any way?

A. Well, I didn't have a watch with me. I had to take all my things off to go to the operating room.

Q. And it was just one bullet, wasn't it?

A. That's correct.

MR. JACKSON: Fine. I have no further questions.

Page 7.

Dixon - Redirect

#### REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Officer, you did know that the entrance of the bullet was in the front of his body?

A. Yes, that's correct.

Q. You're not sure where?

MR. JACKSON: I object, Your Honor. He just said he didn't see the wound. How is he going to now say front?

THE COURT: Don't get excited. Okay. Sustained.

BY MR. MCGILL:

Q. Is that correct?

A. Yes.

MR. JACKSON: I object.

THE COURT: The objection was sustained.

MR. MCGILL: Yes, sir. I didn't hear the ruling because he was talking.

THE COURT: All right.

MR. MCGILL: I have nothing further. Thank you.

MR. JACKSON: I have something more, Your Honor.

Page 8.

Dixon - Recross

REXCROSS-EXAMINATION

BY MR. JACKSON:

Q. Since you know where the bullet went and it went through the front, it was higher than where it was removed, right?

A. No, sir. I only know it was in the front. I didn't know where.

MR. MCGILL: I concede that, upper chest.

THE COURT: All right.

MR. MCGILL: Thank you.

---

(Witness excused.)

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MR. MCGILL: Detective Morton.

DETECTIVE JAMES MORTON, (Badge Number 933, Homicide Division), having been duly sworn, was examined and testified as follows:

Page 9.

Morton - Direct

DIRECT EXAMINATION

BY MR. MCGILL:

Q. All right. Detective Morton, did you have occasion to seize any evidence specifically from the hospital and from Officer Dixon in connection with this case?

A. Yes, I did.

Q. What was that piece of evidence?

A. It was a projectile recovered from Mumia Abu-Jamal.

Q. Would you show C-37 to Detective Morton? Can you identify what you have in your hand, C-37?

A. This is the vial I received from the hospital from Officer Dixon.

Q. What did you do with it?

A. I submitted it on a property receipt to ballistics.

Q. Was that on December the 9th, 1981 that you received it?

A. Yes.

Q. From Officer Dixon? What is the property receipt?

A. I don't have it with me.

Q. What is a property receipt?

Page 10.

Morton - Direct

A. It's a property receipt that we make out, a property receipt on the evidence. It's numbered and then we submit it to Ballistics Lab.

Q. I ask this be marked C-38. Show it to the defense, the Court and the witness. I'm showing you what has been marked C-38. Would you take a look at C-38? What is C-38? Can you identify it?

A. That's the property receipt I made out. It's number 854921.

Q. And what did you do with the vial there with the projectile as well as the property receipt?

A. It was submitted to Ballistics.

Q. Where?

A. Ballistics at 8th and Race.

Q. For what purpose?

A. For comparison with officer Faulkner's gun.

MR. MCGILL: Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Detective Morton, you just indicated that you submitted it to Ballistics. Who, who in particular,

Page 11.

Morton - Cross

did you give it to?

A. I don't recall.

Q. You don't recall?

A. No.

Q. No idea at all?

A. No.

Q. Can you describe the person?

A. No.

Q. Have you seen the person before?

A. Probably seen him before but I don't remember who it was.

Q. Have you seen the person since?

A. Probably have, yes.

Q. You said probably have. How did you know that this person was the one to receive the bullet?

A. They were working in Ballistics at the time.

Q. Just happened to be in the lab?

A. Yes.

Q. In the Ballistics Lab?

A. Yes.

Q. And you just gave it to them?

A. Yes.

Q. Now, there's no requirement that you indicate

Page 12.

Morton - Cross

who it is that you give the projectile to, the evidence to?

A. No.

Q. Now, you indicated that the projectile be compared with Officer Faulkner's weapon: is that right?

A. Yes.

Q. Who was it that instructed you to have it compared with Officer Faulkner's?

A. The supervisor in Homicide.

Q. Who is the supervisor?

A. I believe Lieutenant McGowan.

Q. McGowan?

A. Yes, sir.

Q. Did he instruct you in any way to have the bullet compared with anyone else's weapon?

A. No.

Q. Do you know for a fact whether it was compared with any other weapon?

A. No.

Q. Were you given any other evidence to submit to Ballistics.

A. No.

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Morton - Cross

MR. JACKSON: I have no further questions. Thank you very much.

MR. MCGILL: Thank you, Detective Morton.

- - -

(Witness excused.)

MR. MCGILL: Detective Deyne.

- - -

POLICEMAN MIGUEL DEYNE, (Badge Number 1606, Homicide Unit), having been duly sworn, was examined and testified as follows:

MR. MCGILL: Would Your Honor just -- briefly, one moment?

THE COURT: That's okay.

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Detective Deyne, on December the 9th, 1981, did you have occasion to go to Medical Examiner's Office and receive any evidence?

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Deyne - Direct

A. Yes, sir.

Q. What was the evidence that you received?

A. The evidence that I received from Dr. Hoyer; it's a bullet specimen that was given to me inside a manila envelope which was sealed.

Q. Okay. And who gave it to you?

A. Dr. Hoyer, Medical Examiner.

Q. H-O-Y-E-R: is that correct?

A. Yes.

MR. MCGILL: May I see that, please? I ask that it be marked C-39. While you're marking that I'd ask that this be marked C-40 and C-41, these documents, in that order, please;

(A discussion was held off the record.)

BY MR. MCGILL:

Q. First of all, I'll ask you to take a look at C-39, sir. Would you open that up and see if you can identify that? How was it given to you?

A. It was given to me this way.

Q. All right. Sealed. So you didn't see the projectile itself?

A. No. It was already with a white label sealed.

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Deyne - Direct

Q. Okay. Fine. Can you identify what you see there, C-39?

A. This is a small manila envelope. It has a label from the Office of the Medical Examiner.

Q. All right. Let me see if I can first -- can you identify this particular page as the page you had received?

A. Yes.

Q. And what if anything did you do with that particular exhibit?

A. I filled up a receipt given to me by the doctor. I signed it and at that time I returned to my headquarters where I placed the envelope and the contents on a property receipt.

Q. Okay. Take a look at C-40, if you would?

A. Yes.

Q. Can you identify C-40?

A. Yes. It's a photocopy of the receipt I signed for the doctor.

Q. And did the doctor also sign it?

A. Yes. His name is there.

Q. Would you take a look at C-41? Can you identify C-41?

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Deyne - Direct

A. Yes. It's a copy of the property receipt which I made on December the 9th.

Q. And did you sign that?

A. Yes.

Q. And what is your number, your Badge Number?

A. My Badge Number is 1606.

Q. What did you do with the property receipt and C-39?

A. I submitted that to Ballistics at the Police Administration Building.

MR. MCGILL: Cross-examine.

CROSS-EXAMINATION BY MR. JACKSON:

Q. May I have the number of the property receipt again, please?

A. Yes. 854921.

Q. I assume you took it directly to Homicide Headquarters, sir?

A. Yes, sir.

Q. When you came from the Medical Examiner's?

A. Yes, sir.

Q. And at that time that's when you placed it on

Page 17.

Deyne - Cross

property receipt?

A. That's correct.

Q. How long after that did you take it to Ballistics?

A. Immediately after.

Q. Okay. Did you go there alone, sir?

A. Yes, sir.

Q. And who in Ballistics did you give it to?

A. That I can't remember.

Q. You have no idea?

A. Well, in the back of the property receipt it's stamped the time that I gave it to, I believe it's Quinn. There is a signature there but I can't --

Q. There is a signature there?

A. Yes. Yes.

Q. Fine. And could you read the time stamped or is that --

A. Four twenty-six.

Q. And that's on 12/9; is that right?

A. Yes. Yes.

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

Page 18.

Deyne - Redirect

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. May I see that document that you say is stamped? That's 4:26 a.m., or p.m. on that?

A. P.M.

MR. MCGILL: Nothing further.

MR. JACKSON: I have nothing further.

(Witness excused.)

- - -

MR. MCGILL: Officer Zenak.

- - -

OFFICER JOSEPH ZENAK, (Badge Number 5439, Police Pistol Range),  
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MCGILL:

Q. All right. Officer, what is your present occupation?

A. Policeman assigned at Police Pistol Range.

Q. And as part of your duties are you the Custodian of Records?

A. Yes, I am, sir.

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Zenak - Direct

Q. For the --

A. Yes, I keep the City owned gun records.

Q. The City what?

A. City owned gun records.

Q. And the only official record of City owned guns, that is, by City employees in your custody?

A. Yes, sir.

Q. Are you familiar how those records are kept?

A. Yes, sir.

Q. And do you make those records upon the time that you receive the information?

A. Yes, sir. The time the gun is issued or returned.

Q. Have you brought some records in court today?

A. Yes, I have.

Q. Would you take them out?

A. I have them out.

Q. And what records have you brought?

A. It's an IBM card when a policeman is issued a gun at the Police Academy every policeman signs this IBM card here, has his name, badge number, payroll number, the date it was issued and his gun number, gun serial number. It's signed at the time it's issue,

Page 20.

Zenak - Direct

the gun.

Q. Now, is that your main record that you have?

A. We have this signature card every policeman must sign and every week, naturally, the guns are turned in, reissued, and every week it's updated on the microfilm here. I update the records in the computer.

Q. All right.

A. At one time we used to have the paper records as such here. Now everyone's on microfilm.

Q. I'm showing you a document. Could you take a look at that document to see if that is any different than any of those others?

A. This is the original card that the officer signs.

Q. Okay. Now, may we -- do you have a copy of that card?

A. I have a copy because Homicide Unit requested the original.

Q. Okay. Fine. Well then, could I ask that that copy be marked C-42? Is that in any way different than the original?

A. No, sir. It's different material, that's all.

Q. Okay.

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Zenak - Direct

THE COURT: Show C-42 to Mr. Jackson.

BY MR. MCGILL:

Q. May I approach the witness, Your Honor?

Q. All right. Now, I'm showing you what has been marked C-42 which you state is a copy --

A. Yes, sir.

Q. -- of the original records. Now, on that is it also a copy of a signature of the individual?

A. Yes, sir.

What is the name there?

Daniel J. Faulkner

Is there a serial number on that card?

A. Yes, sir, D792117.

Q. Where else will that serial number be recorded?

A. It's recorded alphabetically by card, numerically by card and also on the microfilm and also when it was received by the City on the purchase order.

Q. Would that serial number also be -- where do you get that serial number from originally?

A. The number is taken off the butt of the Smith & Wesson.

Q. Would you take a look at C-23, please? Would you clear that gun, Officer, please, or see if it's

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Zenak - Direct

clear to your satisfaction?

A. Yes, sir.

Q. Would you take a look at C-23 and look at that serial number?

A. I need a screw driver, sir.

Q. You know more about guns than I do, I guess.

A. Well, we do have a number stamped for our convenience in the frame here but sometimes they do stamp the wrong number. The original serial number is on the butt of the weapon.

Q. As far as the side of the weapon is concerned is that supposed to be the same serial number?

A. Yes, sir.

Q. What is that number? Or are you able to see it?

A. D792117. It's kind of hard when there's no light.

Q. May I see the weapon?

A. Yes, sir.

THE COURT: There's a screwdriver.

BY MR. MCGILL:

Q. Where is the part you were looking at?

A. The part I was looking at is right here.

Q. Very good eyes. Would you also use the

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Zenak - Direct

screwdriver?

A. D792117.

Q. Will you take a look, after you put that back -- don't screw it back because defense counsel may want to take a look at it.

A. Yes, sir. I just put it in lightly.

Q. Okay. Would you take a look at the card and read that serial number?

A. D792117.

Q. Is that the same number?

A. Yes, sir.

Q. What was the date of issue?

A. Date of issue is 10/6 of '76.

Q. And is it customary when a police officer enters the Academy to be issued a weapon?

A. Yes, sir. He's issued the weapon from the Academy.

MR. MCGILL: Cross-examination.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Officer Zenak, you indicate that a police officer is issued the weapon at the Academy, every police

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Zenak - Cross

officer is issued --

A. No, sir.

Q. Okay. Tell us how it is some are issued and some aren't.

A. The majority of weapons are issued at the Philadelphia Police Academy. On occasion when a weapon is used on the street they do have revolvers for issue at Ballistics. When a policeman returns the revolver to Ballistics, or detective, they are issued another weapon from the Ballistics Unit. This policy started approximately a year and a half ago. Before that all weapons were issued at the Philadelphia Police Academy, and before that also a few weapons were issued from the Armory Unit which has been

closed now for two years.

Q. Now, is it Homicide that may issue other weapons?

A. No, sir.

Q. I'm sorry?

A. Ballistics.

Q. I'm sorry. Ballistics. I'm sorry. And who at Ballistics would do that? Do you know?

MR. MCGILL: Objection. Beyond the scope, Judge.

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Zenak - Cross

MR. JACKSON: If he knows.

MR. MCGILL: It's not a question of if he knows. It's beyond the scope.

THE COURT: The objection is well taken. I'll explain it to you over here, if you wish.

MR. JACKSON: It's not that important now, Your Honor. Thank you.

BY: MR. JACKSON:

Q. Do you know whether in fact Officer Faulkner was ever issued a weapon?

A. Could you repeat that?

Q. Yes. Do you know whether in fact Officer Faulkner was ever issued an additional weapon?

A. No, sir, he was not.

Q. Do you know that for certain, sir?

A. Yes, sir.

Q. You checked with Ballistics?

A. No, sir. I have the records.

Q. Yes?

A. When Ballistics issues a gun they immediately call me up and tell me what gun they issue. I send maybe nine guns at a time down there, record the

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Zenak - Cross

serial number. Now, when they have to issue a weapon they call me and tell me what weapon they issue, because I have to update it on the computer.

Q. Now, obviously these weapons that you issue to the individual officers are not transferrable, meaning they're not supposed to lend one to a brother officer: is that correct?

A. That's correct.

Q. They might be in violation; is that right?

A. That's correct, sir.

Q. Now, the officers are also permitted, are they not, to purchase weapons on their own?

A. Yes, sir.

Q. But the weapons that they carry on duty are supposed to be the weapons that were issued to them; is that correct?

A. That's correct, sir.

Q. And if they indeed were to carry a weapon that was not issued to them that would also be a violation; is that correct?

A. Yes, sir, unless they get permission from the commanding officer such as Undercover Details or JAD officers.

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Zenak - Cross

Q. Now, you would, of course, know if Officer Faulkner had that permission, would you?

A. Yes, sir.

Q. Did he have any permission to carry any other weapon other than the one that you've just described?

A. That I don't know, sir.

Q. Who would know?

A. I would say probably his commanding officer. I really don't know.

Q. How about Stakeout Officers?

MR. MCGILL: Objection, Your Honor. He's here just to --

THE COURT: I'll sustain the objection. There's no relevancy.

MR. JACKSON: May I just see the weapon, please? Your Honor, may I approach the witness, please?

THE COURT: Yes.

BY MR. JACKSON:

Q. Can you show me the serial number, if you don't mind, sir?

A. Certainly.

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Zenak - Cross

Q. Oh?

A. That's it.

MR. JACKSON: Okay. Thank you very much, Officer. I have no further questions.

MR. MCGILL: Does the Court have any questions, sir?

THE COURT: No.

MR. JACKSON: Oh, I do have some additional questions, if you don't mind, Your Honor.

BY MR. JACKSON:

Q. It's on a point you testified on direct. Just to clarify something for me, Officer Zenak. You indicate that every week the card is updated in some way?

A. That's correct, sir.

Q. Could you tell me how this or what this process is?

A. Yes, sir. Naturally every week guns are being exchanged, men want pensions, a gun may be brought in because it needs repair or reglue. The man returns and is issued another weapon unless he's on pension. Now on Friday I go up and I update this in the

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Zenak - Cross

computer, and the following week they send the updates back on a microfilm which I in turn check to make sure it's correct.

Q. But an individual officer, as an example Officer Faulkner, I mean there has been no requirement that every week he submit something to you: is that it?

A. No, sir.

Q. So as far as you know, once the weapon is issued it's his unless and until you get some information to the contrary?

A. That's correct, sir.

MR. JACKSON: Thank you very much.

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Did you at any time get any information to the contrary from the time that it was purchased or rather from the time that it was issued to him --

A. No, sir.

Q. -- until the time of his death?

A. Excuse me, sir?

Q. Excuse me, sir. Until the time it was issued to him until the time of his death, did you receive

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Zenak - Cross

any information that it was transferred to anyone else?

A. No, sir.

MR. MCGILL: Thank you. I have nothing further with Officer Zenak.

Mr. Joseph Grimes.

- - -

(Witness excused.)

- - -

(A discussion was held off the record.)

JOSEPH GRIMES, (Latent Print Examiner, Evidence Technician 3, Philadelphia Police Department), having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Grimes, what is your occupation?

A. I'm the Latent Print Examiner for the Identification Unit Philadelphia Police Department.

Q. And are you the supervisor of that unit?

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Grimes - Direct

A. Say that again?

Q. Are you the supervisor of that unit?

A. I am the whole unit, supervisor/manager.

Q. Mr. Grimes, would you tell the jury your function, first of all, in the unit, in your unit?

A. The function of the unit is to gather the fingerprints that have been developed at the scene of an incident, file them until such time as a comparison can be made, make that comparison at that time and testify as to the results.

Q. All right. Did you have occasion to receive certain lifts in connection with this case?

A. I did.

Q. And do you have those lifts here today?

A. I do.

Q. Would you take them out, please? Now, before you testify concerning them, would you tell the jury exactly your qualifications for your position?

A. I'm a graduate of the Pennsylvania Institute of Criminology, hold a certificate in Police Science and Administration from Temple University Community College, have attended seminars with Kodak Company and United States Training Department. I'm a lecturer

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Grimes - Direct

in this particular subject in La Salle College, Temple University, Bucks County Community College, Lehigh County College, Philadelphia Community College and the Philadelphia Police Academy.

Q. How long have you been involved in the fingerprint area?

A. Twenty-eight years.

Q. Approximately how many lifts have you made and analyzed?

A. Thousands.

Q. Have you testified in court?

A. Numerous times.

Q. Approximately how often have you testified in court as an expert on this matter?

A. Oh, in the vicinity of 30, 40 times a year.

Q. Sir, what jurisdictions have you testified in?

A. Philadelphia, State of Maryland, and the Federal District Courts.

MR. MCGILL: Cross-examine on qualifications.

MR. JACKSON: May it please the Court, I am familiar with Mr. Grimes' qualifications. I have no questions.

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Grimes - Direct

BY MR. MCGILL:

Q. All right. Mr. Grimes, you do have those prints in front of you, those lifts?

A. I do.

Q. And what were your results in analyzing those particular lifts?

A. There are no identifiable latent prints on these cards.

Q. Now, two of those lifts, sir, were in reference to weapons. Perhaps we could show Mr. Grimes C-22 and C-23. Do you have the lifts from the .38 caliber Smith & Wesson, as well as, the .38 caliber Charter Arms?

A. Yes, sir.

Q. If you need to make reference to the exhibits, the weapons, they're right on your side.

MR. JACKSON: Your Honor, for clarification sake --

MR. MCGILL: Your Honor, do we wish to go to side bar?

MR. JACKSON: Fine.

THE COURT: Yes.

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Grimes - Direct

(A side bar conference was held on the record as follows:)

MR. JACKSON: As I understand it, he didn't take the lifts and for him to start talking about the weapons and the lifts and all, he can't do that because he didn't take them. All he can go by is what was given to him on a card.

MR. MCGILL: Well, he would be testifying as an expert if I ask him any questions in reference to lifts from those particular type of items, those particular type of weapons. He will not testify to the lifts, of taking the lifts.

MR. JACKSON: Oh.

MR. MCGILL: But he may answer questions as an expert to lifts being taken from those kinds of weapons.

MR. JACKSON: Fine.

THE COURT: All right.

(Side bar conference ended.)

BY MR. MCGILL:

Q. All right. First of all, would you explain to

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Grimes - Direct

the jury what you mean by lifts, what you mean by identifiable, and although you have not yet used the words since it hasn't been required,

what you mean by point.

A. A lift is a piece of Scotch tape that has been placed over an area that has been powdered with different colored powders to develop the latent print. When a print is developed and Scotch tape is placed over it in such a way as to lift it and mount it on the back of our form card. A print is a print from the finger. On the finger there are various portions of skin known as papillary ridges. These ridges have characteristics; that is, they divide themselves into two ridges for flat formation. They may do that and come back together again like the eye of a needle. There are various types of things these ridges do, and they're all characteristics. These remain constant through our life and these are the points of identification that we are talking about. Does that answer your question?

Q. Yes, sir. Did you at my request bring a photograph or an exhibit of a fingerprint, of a complete

Page 36.

Grimes - Direct

fingerprint?

A. I did.

Q. Would you show that to the jury, please? All right. Now, I'd ask that this be marked C-43. All right. Now, Mr. Grimes, from your position there, if you could, show the jury what you mean by characteristics?

A. This is a photograph --

MR. MCGILL: Excuse me? It might be better, Your Honor, if the Court would allow me, if Mr. Grimes could perhaps walk over here and speak to the jury closer so the members in the back could see what these ridges look like. Is that all right, Your Honor?

THE COURT: Sure. If Mr. Jackson wishes to come over.

MR. MCGILL: Speak loud so the defendant and defense counsel can hear.

THE WITNESS: This is an enlarged photograph of a fingerprint. The black lines that you see here are the raised portion of the skin, the papillary ridges that are referred to. You can see how they go along, they might

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Grimes - Direct

come along and split into two. It might be like an enclosure of the eye of the needle. There are only approximately six different characteristics but it's the arrangement of these characteristics that are used to identify a print.

BY MR. MCGILL:

Q. Now, is it that a print like that, the Exhibit C-43, is it true to say that that particular print would be unique to only one individual?

A. Yes, sir.

Q. And it is because of the pattern that you've described, the characteristics, the ridges and all the different words that you've described; is that correct?

A. By the characteristics, yes, not the pattern.

Q. All right. Now, you mentioned the word or used the word point. Would you explain what point means and what identifiable means in connection with one's ability to match up a fingerprint to a specific individual?

A. The point of identification are these characteristics. In order to make an identification, that

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Grimes - Direct

is to say, that one print is made by the same person as another print we must have a series of these characteristics or prints depending upon circumstances between 9 and 12 of these characteristics in sequence.

MR. JACKSON: Can you repeat that? I'm sorry. I didn't hear you.

THE WITNESS: So that you have to have a series of these characteristics in sequence approximately between 9 and 12 points are depending upon the circumstances that are present.

BY MR. MCGILL:

Q. And when you have a sufficient number of points, as you stated, at that point you're able to, say that you can have a match up to a specific individual?

A. That's correct.

Q. Thank you, Mr. Grimes. You can return to your seat. Now, I'm going to ask you to take a look at the specific lifts that you had received from Mobile Crime Detection personnel in connection with the two weapons --

MR. JACKSON: Objection, Your Honor.

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Grimes - Direct

There's been no indication that that's where he's received it from.

BY MR. MCGILL:

Q. Where have you received those lifts from?

A. These lifts were received from the Mobile Crime Detection Unit indirectly through an assistant of mine.

Q. And what was his name?

A. His name is Eugene Famighietti who is a part time worker with me.

Q. How is that spelled?

A. F-A-M-I-G-H-I-E-T-T-I. I'm not sure.

Q. And what is his position in your unit?

A. He had worked with me at a point in time and now holds another position. However, in my absence he does stand in for me.

Q. I see. So you had received the lifts from Mr. Famighietti?

A. That's correct.

Q. And is there a notation from whom he received it in your records?

A. There is a signature of Roy Land.

Q. Roy Land -- L-A-N-D as in dog?

A. That's correct.

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Grimes - Direct

Q. And you know that he is from the Mobile Crime Detection Unit; is that correct?

A. Yes, sir.

Q. Now, would you take a look at those lifts that are directly related to the two weapons.

MR. JACKSON: Your Honor, I am going to object. Counsel is testifying.

MR. MCGILL: Your Honor, I'm directing his attention to specific lifts.

THE COURT: Go ahead.

BY MR. MCGILL:

Q. The cards that have on it the weapons --

A. Yes, sir.

Q.-- would you explain what the results were there?

A. The results are that there are no ridge formations on these cards at all. The pattern adhered to the various metal parts of the gun and that is all.

Q. So let me ask you this: How many points are there?

A. None.

Q. None? So obviously you're unable to say anything at all about connecting that to any person?

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Grimes - Direct

A. That's correct.

Q. What are the difficulties in your experience in obtaining prints from weapons?

A. There are many difficulties involved with firearms. You want me to --

Q. Yes, please. Just tell the jury.

A. It is a hard-smooth surface; that is the only thing in its favor. It is usually with a nitrate solvent and an oil which blends with the print and, therefore, nullifies it or it is not taken care of very well. And we have a situation of one print being on top of another print being on top of another print. And over a period of time we get a total reaction from a surface rather than an individual print.

Other problems involved with firearms are the way they are carried. In a holster or in a pocket they are constantly wiped as they are moved in and out of these areas. Any prints are usually smeared or smudged in that procedure. If the firearm is fired the firing of that gun has a tendency to smear the print.

There are approximately 65 of these

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Grimes - Direct

ridges in a given inch and, therefore, it is only one 65th of an inch movement when you see a print.

Q. What is the affect of say perspiration on a weapon on the ability to obtain a print?

A. Well, the print is perspiration that is placed on something.

Q. So that to the extent that it is dry or so it would affect the ability of --

A. Well, the body oils -- all right. There's approximately one and a half percent solution of one and a half percent of solids in perspiration: that is, 98.5 percent water and one and a half percent solids. The water evaporates very quickly and there are body fats and oils that are left. These can dry out over a period of approximately two weeks, in that area, two, three, four weeks. It depends on what happens in the atmospheric conditions.

Q. Do you have a DC number on that particular card in reference to the prints that you received in connection with this case?

A. Yes, sir.

Q. What is that DC number?

A. Year is '81, month is 6, the number 80238.

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Grimes - Direct

Q. And have you signed those cards?

A. I have initialled them, yes, sir.

Q. Is it not true, Mr. Grimes, that from your experience because of the many factors that you mentioned that it is unusual to get a print from a weapon?

A. Yes, sir.

MR. MCGILL: Cross-examine;

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Mr. Grimes, you've been involved with fingerprints for 20 years; is that right, sir?

A. More than that.

Q. Over 28 years.

A. Yes.

Q. How many times have you lifted, you yourself lifted, prints from weapons?

A. Still count them on my fingers, sir.

Q. How many?

A. Approximately eight.

Q. How many times in your experience have you been requested to compare prints that were allegedly lifted

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Grimes - Cross

from a weapon?

A. About the same number of times.

Q. Given the fact, sir, that your position -- how long have you been in your present position?

A. Approximately eight years.

Q. And before then that responsibility was held or shared throughout the Identification Unit; is that correct?

A. That and at the Mobile Crime Lab, yes, sir.

Q. Given the total of the Identification Unit, the Mobile Crime Unit do you have some estimate with regard to how many latent comparisons were made from weapons on a yearly basis?

A. On a yearly basis?

Q. Yes, sir.

A. I would say one or two. I doubt if it was even that high.

Q. And you're only requested to do that when there is, perhaps, a question with regard to who handled a weapon: isn't that right?

A. No. We go through cycles on that. There are times when the administration seems to think we should check every weapon that's involved in any kind of an

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Grimes - Cross

incident and it's through these particular periods we can actually say that it is actually difficult to get a print of a gun.

Q. So you're saying that the frequency with which you have to come in contact with these weapons depends to a large extent on the policy of the Police Department?

A. Yes, sir.

Q. And when was that policy, the present policy that you're operating under, when was that put in force?

MR. MCGILL: Objection, irrelevant, Your Honor.

THE WITNESS: There is no written --

THE COURT: Just a minute. Can you see me over here?

MR. JACKSON: Sure.

(A side bar conference was held on the record as follows:)

THE COURT: What's the relevancy of this area that you're going into?

MR. JACKSON: Simply because he's indicated he's talked about the number of times

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#### Grimes - Cross

that he's lifted or compared prints from a weapon and he's saying --

THE COURT: I think he means successfully.

MR. JACKSON: Yes, I know he's talking about successfully but it's based on -- obviously that number is based on the number that he comes in contact with so he's saying depending on --

THE COURT: I think he should be clearer. I'm not sure.

MR. JACKSON: Well, how do you know --

THE COURT: It's confusing to me. I don't know what he's talking about. When he's talking about one or two a year does that mean he only examines one or two a year successfully?

MR. JACKSON: Successfully.

THE COURT: Therefore is he examining more than one or two weapons a year?

MR. JACKSON: Yes.

THE COURT: I don't think that's clear.

MR. JACKSON: I'll clarify.

THE COURT: What's your objection?

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Grimes - Cross

MR. MCGILL: My objection was that I thought it was beyond the scope -- well the relevancy of this case. I also object to the fact that it's not clear, but I was going to try to clean it up on redirect. I appreciate it being cleaned up now. It's confusing. I hear so many thousands and one or two a year. What does that mean?

THE COURT: I was confused. Let's go from there.

(Side bar conference ended.)

BY MR. JACKSON:

Q. Mr. Grimes, I would like to clarify a few things. You indicated that between the Identification Unit, Mobile Crime Unit and your entire unit there are perhaps one or two successful comparisons a year from latent prints from weapons: is that correct?

A. I don't think it's that high but let's say for -- yes.

Q. And that's an average as well, let's say, for the last five or ten years?

A. That's right.

Q. Now, the number of weapons that come into either

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Grimes - Cross

you, the Identification Unit or the Mobile Crime Unit is somewhat dependent upon the policy of the Police Department; is that correct?

A. Yes, sir.

Q. Now those circumstances or under those few circumstances that you claim that you have successfully compared a latent print from a weapon, do you know or can you tell this jury what factors and circumstances make it more susceptible for successful comparisons?

A. No. It's a question of chance.

Q. So then although you may not have successfully been able to lift or compare a latent print from a weapon that doesn't mean that you got no print at all, does it?

A. No.

Q. It simply means or it may simply mean that you did not get enough of a print for identification purposes?

A. That's correct.

Q. The prints that you've just examined -- I'm sorry -- the lifts that you have examined have no ridges on them at all; is that right?

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Grimes - Cross

A. That's correct.

Q. Now, there are several portions of the weapon -- by the way, you didn't lift these, did you?

A. No, sir.

Q. And you don't actually know, you're assuming that what's on the card is correct?

A. That's correct.

Q. And all that you are asked to do was to look at the card and see if there was anything from which you could make an identification?

A. That's correct.

Q. And you looked at the card and said, "There's nothing on here, there's nothing to identify?"

A. That's correct.

Q. Nevertheless, sir, if you were to examine a weapon, any one of the weapons, and if you were asked to take a lift, where would be the most obvious place that you -- well, what portion would you dust before making -- let me strike that. If you were asked to attempt to lift prints from a weapon, the 38 Smith & Wesson right: there as an example, what portion of the weapon would, you dust?

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Grimes - Cross

A. All the parts, movable surfaces that approximate the size of a finger or half the size of a finger.

Q. So would it be fair to say that you would essentially, particularly since it's a weapon, a revolver, you would essentially dust the entire or every metal portion of the gun except for those little cylinders?

A. Since we're talking about this particular weapon specifically --

Q. Either one.

A. -- this has a hard-smooth surface on the handle, too. It's a polished wooden handle. It's a possibility, or I would say probability, of developing a print of that particular area as well.

Q. Fine. On the handle itself?

A. Yes.

Q. And even if there were no fingerprints you might accept a palm print, at least; isn't that true?

A. No, I wouldn't accept it. No, sir. That's what we're talking about, the frequency of developing an identifiable print.

Q. Isn't that a hard-smooth surface?

A. Yes, sir.

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Grimes - Cross

Q. And you're saying that you wouldn't accept it but it would not be unreasonable to find it, would it?

A. It is a possibility, yes.

Q. I understand. It's a possibility that we always have in latent prints; isn't that true?

A. Well, the surface is a surface that it is possible to develop prints along.

Q. Fine. Now again, with regard to that weapon, the other portions of the weapon, aside from the handle where else would you not accept? I'll stop using the word accept. Where else would you search for a latent print?

A. All the middle parts that present a smooth surface.

Q. And on the .38 Smith & Wesson, if you were asked to do that where could you do that and could you?

A. Same thing.

Q. And could you point out to the jury where those surfaces might be?

A. This handle is checkered so that is not a suitable surface.

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#### Grimes - Cross

Q. Could you hold it high or perhaps stand up so the jury members could see?

A. This is a textured surface which may or may not -- I would try it, and all of the metal surfaces. Yes, all the metal surfaces.

Q. And could you point out -- when you're talking about the metal surfaces, that's on the top of the weapon? There's a metal portion right near the handle or the grip of the gun; is that right?

A. Yes.

Q. Could you point that out to the jury members as well?

A. Right here.

Q. What about the weapon itself that the handle or the grips are attached to

on the side? Your Honor, may I approach the witness?

MR. MCGILL: For the record, Your Honor, this is C-23 he's talking about.

MR. JACKSON: Oh, I'm sorry. Yes.

MR. MCGILL: Again, the weapon is cleared. The weapon is cleared if anyone is concerned what's happening.

MR. JACKSON: I'm sure Mr. Grimes

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Grimes - Cross

wouldn't let me point it at him if it weren't.

BY MR. JACKSON:

Q. Mr. Grimes, the handle on the Smith & Wesson, that's not a hard-smooth surface: is that right?

A. It's a wooden, it's a polished wooden surface, yes, that's possible.

Q. On the handle?

A. No.

Q. That's what I'm talking about. Now I'm talking about the Smith & Wesson, the large one. The small one is a Charter Arms.

A. I'm sorry.

Q. The large weapon. On that one the handles are not smooth and not hard?

A. They're checkered and that breaks up the consistency of a print.

Q. Would you use a powder in searching for a fingerprint on that handle, or would you use some other method to develop a potential latent print?

A. On the handle?

Q. Yes, on that particular kind of handle.

A. On the checkered surface it's impossible to develop a print.

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Grimes - Cross

Q. Under no circumstances at all?

A. Under no circumstances.

Q. If they're --

A. Let me explain myself, if I may?

Q. Sure, sir.

A. I said I need a series of 9 to 12 characteristics associated in sequence in order to identify a print.

Q. I understand.

A. With a checkered surface there's no way I can get a sequence of characteristics. It gets broken up over the surface.

Q. I understand that but that does not suggest that you couldn't get any print at all, though, does it?

A. It does. If we did examine those things, say that it was handled as opposed to not being handled, that's as far as I could go.

Q. Couldn't you further determine whether it, was an arch, as opposed to a whorl, as opposed to a loop?

A. There's a possibility of going that far, yes.

Q. So that would in fact provide some value, invaluable investigative information, would it not?

A. I doubt it.

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Grimes - Cross

Q. Whether a print was loop, or whorl or arch?

A. We're talking about 65 percent of the population.

Q. But it certainly could exclude people. Let me give you this possibility based on your experience. If the suggestion is that Officer Faulkner has a .38 Smith & Wesson, that on each one of his fingers he had all arches, okay, and you search for a latent print on that weapon and you found -- although you didn't find the 9 to 12 characteristics in the proper sequence but you would nevertheless be able to determine that the portion of the print in which you're looking at is a portion of a whorl, or a portion of a loop, that would exclude or that would suggest someone else other than Officer Faulkner handled the weapon: is that true?

A. Yes, that's true.

Q. Fine. Now, with regard to the smaller weapon as well, if you have a handle on it that has a hard surface -- is that correct?

A. That's correct.

Q. So that to the extent that it is more conducive, it would be more conducive than the other handle: is that right?

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#### Grimes - Cross

A. That's correct.

Q. But again the same fact pattern even though you would not have enough points for that comparison, meaning 9 to 12 points of comparison in a proper sequence, you could in certain circumstances determine whether there is an arch, whether there is a whorl or a loop; is that correct?

A. That would be correct.

Q. Now, so that the jury understands, there's basically three major classifications of fingerprint for persons: is that right? Or correct me if I'm wrong.

A. Yes, that's right.

Q. And there are arches, loops and whorls?

A. Right.

Q. So just like we have certain blood tests that don't necessarily say that

you're one, blood tests can exclude certain people?

A. True.

Q. Fingerprints, although you may not be able to positively identify someone, you can exclude someone; is that right?

A. Well, there's a possibility of it, yes.

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Grimes - Cross

Q. And that would be dependent upon whatever it is that you're able to develop. Is that right?

A. That's correct.

Q. Now I understand that what you're saying is that, well, why develop a print or why go to the trouble of trying to develop a latent print on that soft surface when I wouldn't get enough points for a comparison; is that what you are saying?

A. Well, let me qualify that. The checkered area I'll stick to my -- what I said before that we could not determine even the pattern type. The other area above it is a textured area in which I doubt if we could identify a print but as far as the pattern type, yes it's possible.

Q. And a pattern type would serve to exclude?

A. That's what we're talking about here.

Q. Fine. Now, do you know what the fingerprint pattern is of Officer Faulkner?

A. No, sir.

Q. Do you know what the fingerprint pattern is of Mumia Jamal?

A. No, sir.

Q. It wasn't provided to you?

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Grimes - Cross

A. No, sir.

Q. And when you got the latent prints since you saw there was nothing on there, there was no need to even ask for it, I suppose?

A. That's correct.

Q. Now, did you get any latent prints that were taken from -- strike that. The latent prints that you were given, the lifts that you were given, do you know where they were taken from or where they told you they were taken?

A. There's an indication on the card itself, yes, where they're from.

Q. Did you make any additional suggestions as to where they might search for additional latent prints, et cetera, on those weapons or at the scene or --

.

A. No, sir. I wasn't familiar with the scene at all, sir. That was not my function.

Q. So whose function and responsibility would that be? Do you know?

A. It's jointly held by the assigned detective and the Mobile Crime Detection Unit.

Q. Now, the assigned detective would take his cues

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Grimes - Cross

pretty much from the expert in terms of where to look for prints and things of that sort, would he not?

A. Yes.

Q. Or would he simply ask you guys to do something that you couldn't do anyway?

A. No, it's a discussion type thing as to where.

Q. Did you ever discuss it with the assigned detective?

A. No, sir. I wasn't on the scene.

Q. And you a one man shop pretty much, are you not?

A. That's correct.

Q. Now, the Mobile Crime Lab is usually the organization or the unit that goes to the scene?

A. Correct.

Q. And they are somewhat familiar with -- well, supposedly expert in searching for evidence; is that correct?

A. Yes, sir.

Q. Have you had occasion to visit scenes with the Mobile Crime Unit?

A. I was a member of their unit for 13 years.

Q. I thought so. And the members of that unit have

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#### Grimes - Cross

some familiarity with fingerprints and lifting and things of that sort: is that correct?

A. That's correct.

Q. So they could make some independent decisions as to where to search for evidence; is that correct?

A. Yes, sir.

Q. And indeed if you were at the scene and understood that there were weapons as well as other metal parts and pieces, you would at least suggest that each and every one of those metal pieces be searched for fingerprints, would you not?

A. Not knowing the whole story I have to qualify my answer because it depends on what else they might want those pieces checked for.

Q. Explain that to me.

A. All right. An investigator or the Mobile Crime Lab in evaluating a piece of evidence has to decide what that is to be tested for, and if it's more than one test involved he has to determine which one takes precedence because

--

Q. Oh?

A. -- because there's a possibility that that might destroy the value of a second test.

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Grimes - Cross

Q. As an example, if there's a metal object you may want to test it for blood and you want to do fingerprints, you may do the blood test first or something like that?

A. Yes, sir.

Q. Fine. I understand that. What if there was a question with regard to who was in a vehicle? Wouldn't you think that searching for fingerprints would be appropriate?

MR. MCGILL : Objection, highly speculative.

MR. JACKSON: Your Honor, this man is an expert.

MR. MCGILL: Objection. It's not a --

THE COURT: I sustain the objection.

BY MR. JACKSON:

Q. Did you get any latent prints from a vehicle?

A. No, sir.

Q. Do you know if there were any vehicles at the scene based on the reports that were presented to you?

A. No, sir.

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Grimes - Cross

Q. Out of all of the evidence that was seized by the Philadelphia Police Department you got five lifts: is that correct?

A. That's correct.

Q. And on none of those lifts were there any fingerprint patterns at all?

A. No.

Q. On two of them?

A. I didn't say that.

Q. Okay. Tell us.

A. There's a one-quart beer bottle; it indicates it was handled by three fingers; however, there are no ridges at present in that particular pattern and that particular lift. And there's two lifts from a metal can marked Raid, and there are some fragmented ridges on these lifts, not enough to identify them.

Q. So that's two out of three had something that would indicate to you that they were being handled by human hands; is that right?

A. No. There's three.

Q. Three out of five, I'm sorry.

A. Three out of five, yes.

Q. And that's all that you were ever shown, that's

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Grimes - Cross

all that you were ever asked to comment on; is that right?

A. That's correct.

Q. Now, based on the record that you have before you, who was it that took these lifts? Was it Mr. Famighietti?

A. No, sir. The metal can and the beer bottle were Roy Land, that's Officer

Land, Mobile Crime Unit, and the Firearms was an Officer Eberhardt, number 1788 Mobile Crime Lab.

Q. Do you know Officer Eberhardt?

A. Yes, sir.

Q. Do you know if he's trained in taking latent prints?

A. Yes, sir. I trained him myself.

Q. How long ago was that, sir?

A. Oh, approximately ten, 12 years ago, maybe more.

Q. And Officer Land, he's also trained in fingerprint detection or lifting prints, at least?

A. Yes.

Q. Neither one of them are qualified to take comparisons; is that right?

A. That's correct.

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#### Grimes - Cross

Q. Now, isn't it a fact to some extent the development of a latent print and subsequent lift is somewhat depending upon the ability of the person who's performing the task?

A. That's correct.

Q. So that, do you have any indication -- strike that. You don't know what skill or art was used to lift these prints, do you?

A. I do.

Q. You do?

A. Yes. There's powder involved, there's latent lifting tape, transparent tape.

Q. But I mean you didn't see it applied?

A. No, sir.

Q. You didn't see it lifted?

A. That's correct.

Q. So you don't know whether it was done properly or improperly: is that correct?

A. I would say that the results that are in front of me, I would say it was done properly.

Q. How could you tell, sir?

A. What is there is clearly defined. There is not

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Grimes - Cross

enough there to identify it as simple as that.

Q. I understand but you don't know what was done even before the powder was applied?

MR. MCGILL: Objection, repetitious.

MR. JACKSON: It's not repetitious.

THE COURT: Objection sustained.

THE WITNESS: Correct.

MR. JACKSON: I have no further questions, Mr. Grimes. Thank you, sir.

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Grimes, you said one or two comparisons a year if you're lucky?

A. That's correct.

Q. How many attempts?

A. Numerous attempts.

Q. Could you give me an estimate of the number of attempts?

A. Individual guns being sent down might be about ten, 15 a year: however, they usually come in groups of maybe 50, 60, at a time.

Q. And in terms of one or two successful comparisons

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Grimes - Redirect

to other types of items, how many attempts would you make?

MR. JACKSON: Objection. Comparisons is not appropriate, Your Honor.

MR. MCGILL: Successful comparisons.

THE COURT: Go ahead.

MR. MCGILL: Successful comparisons.

THE WITNESS: Other than firearms approximately ten percent of the time.

BY MR. MCGILL:

Q. Now, you indicated in reference or in response to Mr. Jackson's questions -- he's used the words, whorl, loop and arch. A question came up, well, you could exclude people, well, taking an example of a whorl, if you see a certain type of pattern, a whorl, what percent of the population would you exclude?

A. Thirty-five percent would be all -- no, 35 percent of the patterns are whorls. However, the distribution of whorls being mixed in with other types of patterns would be a little bit more than 35 percent of the population.

Q. So in other words, you're saying that whorls are associated with 35 percent of the population?

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Grimes - Redirect

A. Thirty-five percent of the patterns are whorls.

Q. All right. Thirty-five percent of the patterns of the full population?

A. We're talking about ten patterns per person and they're not all whorls, so we can't say they are 35 percent of the population because it's intermingled with a greater number.

Q. What about loops?

A. Loops, 65 percent of the patterns are loops.

Q. What about arches?

A. Arches are very low; that's a five percent factor.

Q. So if we're talking in terms of excluding individuals in terms of population, you're excluding a great number of people because you are talking about a large percentage: is that not accurate?

A. That's correct.

Q. And therefore, you are including a great number of people in a large group?

A. Yes, sir.

Q. And isn't that the reason why you don't really do a job to the extent of a completed nature of whorls and loops and require the full point system?

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A. Plus the fact that its not considered good evidence.

MR. MCGILL: Thank you, sir.

MR. JACKSON: I have a few more questions.

REXCROSS-EXAMINATION

BY MR. JACKSON:

Q. Although it's the responsibility of the Police Department to, of course, arrest and convict, or at least give evidence that would serve to convict an

individual, the question whether or not to exclude people is not consistent with the objective of the police officer involved: is that correct?

A. No, sir, that's --

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Let me do it this way: You indicated that 35 percent of the people are whorls, another 60 or 65 percent for loops and another five or so percent for arches. Again, it would be your druthers I'm sure, to be able to find 9 to 12 points in the appropriate sequence for you to make an identification: is that

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right?

A. That's what I mean, yes, sir.

Q. But again, the point is that even though you've had numerous weapons, you've indicated on redirect, many weapons, maybe 50, and they come in groups at a time, you may not have been able to find an identifiable latent print but at the same time in many of those instances you found ridges or patterns: have you not?

A. Not very often, sir. The problem is that a gun, as I indicated in the beginning of my testimony, that is well taken care of has a coating of oil and nitrate solvent which obliterates all prints. It does not indicate that it was handled even and is impossible to process it because the oil in the body of fluids is what we're after in developing the print. The other aspect, a gun not well cared for and is handled constantly we have what we call a superimposed impression. That is, one print on top of another print on top of another. And even though we might be able to say there are prints on the weapon there's no way we can separate one of those impressions from the next impression.

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Grimes - Recross

Q. Have you ever checked to see in that last category, superimposed prints,

have you ever checked that Smith & Wesson for that?

A. No, sir.

Q. Never been asked?

A. No, sir.

Q. So you don't know if in fact -- because if I understand you correctly, Mr. Grimes, you're saying that if in fact it was not taken care to the extent that it should have, a lot of nitrate and oil on that superimposed pattern or print would be there regardless; is that right?

A. It may be there. It may give me a total reaction, too, a constant coating.

Q. And the only way that you could find that out is for you to dust it: is that correct?

A. If that's what you want to find out. But that's not my goal. That is not what I want to find out.

Q. That's not what you want to find out? And you want to find out what, sir?

A. I'm looking, when I do that type of a job, I'm looking for identifiable impressions that I can identify.

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Grimes - Recross

Q. Fine. And you're not looking to exclude anybody?

MR. MCGILL: Objection. May he finish what he's saying?

MR. JACKSON: I'm sorry. I thought you were finished.

THE WITNESS: I was but there is something I can add to it.

MR. JACKSON: No, sir. If you're finished with the answer you have to wait for my next question.

THE WITNESS: Fine.

BY MR. JACKSON:

Q. You're looking for identifiable characteristics, you're not looking to exclude anyone, are you?

A. That's not true, either.

Q. Are you looking to exclude, then?

A. Yes, but not by an incomplete print.

Q. I understand that, sir, but my question is: Again, do you find arches in there, or all whorls of the suspect or the police officer that would exclude their touching the weapon? Is that right or

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not? Let me strike that. If in fact, again, Officer Faulkner's weapon, if he has a pattern -- and I don't know his fingerprint pattern -- but if he has 36, all whorls on his person in every finger and you find loops or arches, or ten arches on the weapon somewhere that would suggest to you that someone else in addition to Officer Faulkner handled the weapon: is that correct?

A. No. sir. Those --

Q. Go on.

A. Those patterns on there could come from a section of the palm as well and without knowing that and without being able to identify it, it's impossible to say whether it's fingering or palm, unless the area shown to me is greater than what a fingering can be.

Q. So that you're saying that no matter what ridges or patterns you can't tell whether it comes from the palm, or finger, or base of the foot?

A. It's possible unless there is something to indicate that.

Q. Well, are there portions -- are you saying, then,

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Grimes - Recross

that the palm or the base of the foot may touch the weapon at some particular point so as to the extent that you would not know whether or not

it came from a finger, or from the palm or from the base of the foot?

A. Let's exclude the foot.

Q. Don't exclude the foot, sir.

A Well, that's not the normal way of handling a gun.

Q. I understand that.

A. But let's say the palm. The palm does have those types of characteristics and those types of formation on the palm, and without knowing or having anything that would indicate the size, area, and so forth is impossible to tell. That's why it is a question of ethics that we do not go with a partial print under any circumstances.

Q. For a positive identification?

A. That's correct.

MR. MCGILL: Objection. It's getting now to be argumentative.

BY MR. JACKSON:

Q. Sir; I understand what you're saying about

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#### Grimes - Recross

positive identification and I accept what you're is saying with no problem. I'm talking about to the extent that you can at least identify a pattern or a portion of a pattern, you can do that without having, that 9 to 12 points in that sequence? Is that not true?

A. Yes, it is.

MR. MCGILL: Objection. He has. --

BY MR. JACKSON:

Q. Why is it unethical?

MR. MCGILL: Objection to what he means by ethical.

BY MR. JACKSON:

Q. Why is it unethical? Why is it unethical?

A. Unethical in that by having an incomplete print it could be more than one person.

MR. JACKSON: Thank you, Mr. Grimes.

MR. McGill: Thank you. Your Honor, may we have a short recess?

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(Witness excused.)

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(A short recess was taken.)

MR. MCGILL: May I proceed, "Your Honor?"

THE COURT: Yes, please.

MR. MCGILL: Mr. Larry Paul.

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ANTHONY L. PAUL (Supervisor Firearms Identification Unit, Philadelphia Police Department), having been duly sworn, was examined and testified as follows:

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

BY MR. MCGILL:

Q. Mr. Paul, where are you currently employed?

A. City of Philadelphia Police Department.

Q. And what is your position?

A. Supervisor of the Firearms Identification Unit in the Laboratory

Division.

Q. Now Mr. Paul, would you tell the jury, please, your qualifications for that position?

A. Yes. In 1961 I became a police officer with the City of Philadelphia where I successfully completed

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all of my subject matter at the Police Training Academy. I then worked as a police officer, uniform capacity, until 1970 when at that time I became a member of the Laboratory Division as a uniformed police officer.

Now, when I was assigned to the Laboratory I began my training under the supervision of Mr. Howard Montgomery and other members of the Laboratory Division.

My training included the laboratory identification of firearms, of projectiles, of fired cartridge cases and related items. Also serial number restoration, and at that time I was charged with reading the texts that are related to that subject.

I have attended seminars sponsored by United States Army Ordinance in Frankford Arsenal, Philadelphia. The seminar continued to Aberdeen Proving Grounds in Aberdeen, Maryland.

I have been to the Winchester Firearms Manufacturing Company in New Haven, Connecticut.

I have been to the New Jersey State Police Ballistics Laboratory in Trenton, New Jersey

**PLEASE NOTE: The page number changes from 76 to 79, however the content is continuous. There appears to have been a typographical error by the stenographer.**

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and their Pine Tree Casting Plant in Newport, New Hampshire, and that was to observe and study manufacturing techniques and processes.

I have completed firearms investigation cases in Forensic Ballistics for the Federal Bureau of Investigation for the United States Treasury for Bucks County, Chester County, Delaware County, all the surrounding counties in

our area, in our Delaware Valley section.

I have completed the following cases: In 1970 I completed 280 firearms cases, in 1971, 405 firearms cases, in 1972 442 cases, in 1973, 391 cases, in 1974, 429 cases. Now there was approximately 15 microscopic comparative examinations that had to be conducted for each case that was completed. That would give me approximately 29,200 microscopic examinations that I have personally completed.

Now since my appointment as supervisor in 1974 I am no longer able to maintain the status because now I review all of the work that's completed in our section. My job now as supervisor is strictly a working supervisor or in that I am

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responsible for supervising and participating in the examinations and the identifications that are effected in our laboratory. I assign, the work and review the work and now I do the memoranda and so forth. Thank you.

Q. Mr. Paul, how many microscopic comparative examinations of evidence, fired cartridge cases, as well as projectiles have you made as a supervisor? If you can estimate.

A. At least another 30,000.

Q. All right.

A. At least.

MR. MCGILL: Cross-examine on qualifications.

BY MR. JACKSON:

Q. Good afternoon, Mr. Paul.

A. Yes, sir. Good afternoon, sir.

Q. Sir, have you published anything in any journals, any publications?

A. Unfortunately no, sir, I have not.

Q. Now Mr. Paul, are you familiar with the, I guess The Statistical Predictors of -- let me do it this way: You have empirical evidence in fingerprints

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that enough empirical information about fingerprints to come to the conclusion that indeed there are no two fingerprints alike? Would you agree with that?

MR. MCGILL: I would have to object to this. I am not objecting to it as cross-examination but as cross-examination of qualifications.

MR. JACKSON: Your Honor, I assure you it relates to the qualifications.

MR. MCGILL: All right.

MR. JACKSON: If you will allow me, Your Honor?

BY MR. JACKSON:

Q. To the extent that there is enough empirical evidence to say in fact that there are no two fingerprints alike, would you say we have a similar amount or enough empirical evidence to say that there are no two bullets fired by the same weapon?

MR. MCGILL: I would have to object, Your Honor. That's not qualifications. That has to do with the substance of his testimony.

MR. JACKSON: Your Honor, it doesn't go to the substance. It goes to whether or not --

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THE COURT: You're not here to give him a test.

MR. JACKSON: No, sir.

THE COURT: That's what you're doing.

MR. JACKSON: I'm just testing his qualifications to do it.

THE COURT: Not that way, please. That you can ask after he's been accepted by the Court.

BY MR. JACKSON:

Q. Let me ask you this: Are you familiar with the Crime Laboratory Proficiency Test and Research Program?

A. Somewhat, vaguely I'm familiar with it.

Q. Philadelphia was a participant in this: is that correct?

A. Yes, that's correct.

Q. Now, I believe this was conducted, at least it was published in 1978, so would it be fair to say that you were working for the Police Department at that time?

A. Yes, sir.

Q. And are you familiar with the findings of this

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Crime Laboratory Proficiency Test and Research Program?

A. Yes, sir.

MR. MCGILL: I would have to object to that, Your Honor, as qualifications.

MR. JACKSON: It goes to his qualifications, Your Honor, because it's --

THE COURT: Let me see you over here.

(A side bar conference was held on the record as follows:)

MR. JACKSON: I'm simply trying to find out to the extent of what the extent of his knowledge and expertise is. If he's familiar with Ballistics and things of that sort. What I'm asking are things that are directly related to Ballistics.

THE COURT: What's this got to do with this?

MR. JACKSON: Pardon me?

THE COURT: He's been accepted as an expert in Common Pleas Court numerous times. He's been in my courtroom numerous times.

MR. JACKSON: Your Honor, I think

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that --

MR. MCGILL: Judge, I have no objection to his questioning his qualifications but these more go to the substance of what he will testify to, such as, "Are you familiar with certain tests and what they mean, certain results," and so forth and so on.

Questions like, "Have you read anything or have you submitted articles," obviously are competent questions on cross-examination as to qualifications, but not familiar with this particular journal.

THE COURT: Or this process.

MR. JACKSON: Judge --

MR. MCGILL: I mean if he's familiar with a process, microscopic examination, that's fine. If he's talking about a test or something that would not be part of qualifications that's improper.

MR. JACKSON: Judge, the only way that I can later on cross-examine him with regard to a test or examination or anything is to find out in advance what he's familiar with.

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THE COURT: You do that when you go to cross-examination. He's been accepted as an expert and he testifies and on cross-examination you can bring out these different other tests.

MR. JACKSON: I don't have any problems doing it if Your Honor is going to let me. I thought the best way to do it is in advance.

THE COURT: That has nothing to do with qualifications.

MR. MCGILL: What is that one book you're looking at?

MR. JACKSON: That's one book, that's the only book. There are a couple of other tests I want to find out if he's familiar with. That's the only book.

THE COURT: You can do that during your normal cross-examination.

MR. MCGILL: Sure.

THE COURT: Nothing wrong with that.

MR. MCGILL: I have no objection to that.

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THE COURT: Then you're testing his ability to be able to speak as an expert.

MR. JACKSON: Sure.

THE COURT: But now we're talking merely if he's an expert. And he has been accepted as an expert numerous times. He's been in Federal Court and I know that as a fact.

MR. JACKSON: Yes, Judge. The only problem is if I wanted to cross-examine him on XYZ Test --

THE COURT: If he made a certain test, okay, and you want to cross-examine whether or not this other test would be better than the test that he used, fine. There's nothing wrong with that.

MR. JACKSON: Fine.

THE COURT: Okay.

MR. JACKSON: Very well.

(Side bar conference ended.)

BY MR.JACKSON:

Q. We've established, sir, that you are familiar somewhat with the Crime Laboratory Proficiency Test

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and Research Program; is that right?

A. Yes, sir.

Q. Are you familiar with Trace Metal Detection Test?

A. No, sir.

Q. Not at all?

A. No.

Q. Anyone in your unit that is?

A. No, sir. That would be the Criminalistics Section.

Q. Criminalistics?

A. Yes, sir.

Q. And you're familiar with, I think it's called, the Walker Test or Grice Test?

A. I went to school then to FBI for that, sir.

Q. So you're familiar in your --

A. I went to school for it but in our section we don't apply the Walker or the Grice Test at all. Again, we leave that to the Criminalistics Section. We do more in analysis for distance determination, that sort of thing. We will do that but that's not to establish the presence of leads or nitrates or nitrites.

Q. That's Criminalistics?

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A. That's correct.

Q. I just want to understand the scope of your expertise, that's all, sir.

A. That's all right.

Q. And the Neutron Activation Test, that's also done by Criminalistics?

A. That's correct, sir. I believe that's sent out of the department.

Q. To the FBI?

A. That's correct.

Q. But the test is conducted by Philadelphia Police, but it's analyzed by the FBI?

A. That's correct, sir.

MR. JACKSON: Fine. Thank you. I have no further questions as to his qualifications at this time, Your Honor.

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Did you have occasion to supervise the

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examination and comparisons done in this particular case, the case of Commonwealth versus Mumia Abu-Jamal?

A. Yes, sir.

Q. Do you have a report with those particular findings?

A. Yes, sir, I have.

MR. MCGILL: I would ask, please if the following exhibits could be placed before Mr. Paul, C-22, C-23 also C-39, C-40, 41 and 44. May I approach the -- I ask that this be marked C-44, that's C-43. I'll ask that this be marked C-44 and shown to defense counsel. That's the fragments.

MR. JACKSON: Fine, thank you.

MR. MCGILL: And C-37. And with C-39 if you could put the document C-40 and 41 with C-37, the document C-38. All right. Document C-40 and 41 with C-39, and C-37 with C-38 document.

I would ask you, if you would, Mr. Paul, to take a look at all of those exhibits, first C-22 and C-23, the revolvers and the associated envelopes. Also I ask you to take

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a look at C-37 and C-38, C-38 the document, C-37 the vial. And also C-39

and the documents 40 and 41. Finally, C-44.

MR. JACKSON: Your Honor, may I consult with Mr. McGill for one moment?

(A discussion was held off the record.)

MR. JACKSON: Thank you, Your Honor.

BY MR. MCGILL:

Q. Have you examined them all?

A. Yes, sir, I have.

Q. First of all, can you identify C-22 and C-23?

A. Yes, sir.

Q. They are the two weapons. Would you take a look at C-23?

A. Commonwealth Exhibit C-23 is a Smith & Wesson revolver. It's a Model 10 with a 4-inch barrel, caliber .38 Special, blued steel, serial number D792117, and that number is engraved or imprinted to the frame of the firearm.

Q. Did you examine that weapon?

A. Yes, sir, I did.

Q. Did you determine anything with reference to

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powder fouling and dirt?

A. Yes, sir. The examination of the firearm disclosed that powder fouling and dirt was in the barrel and one chamber of the firearm with powder fouling, dirt and lint in the remaining chambers. There is a note that the hammer spur is bent. The hammer spur of the firearm would be the portion of the firearm that would be used to manually cock the gun in order to discharge it. It would be the hammer spur.

Q. All right. In reference to the envelope that's associated with that

particular weapon, could you tell us what you determined from that envelope?

A. Yes, sir.

Q. What is that?

A. This is a manila envelope containing the ammunition that was associated with that, Commonwealth Exhibit 23, and that contains five cartridges, caliber 38 Special, manufactured by Remington and it is City-police type issue ammunition. There is contained in the envelope one fired cartridge case and that, again, is Remington Manufacturer, caliber .38 Special, and a microscopic examination showed that fired

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cartridge was fired in Commonwealth Exhibit 23.

Q. How were you able to determine that?

A. Taking a test specimen from the subject revolver and then comparing the test specimen that was fired in that revolver against the evidence specimen that was submitted with the revolver on our forensic comparison microscope.

Q. What is the significance of -- and you have your report there, I believe?

A. I have, sir.

MR. MCGILL: Mr. Jackson, you also have a copy of the report?

MR. JACKSON : Yes, I do.

BY MR. MCGILL:

Q. Now Mr. Paul, what is the significance of the wording examination disclosed powder fouling and dirt in barrel in one chamber?

A. It indicates that the firearm had one chamber of the cylinder that had been discharged and not clean, which was a nitrocellulose residue of burnt gun powder in that chamber area. It's very pronounced in that one chamber area. By design of the arm the design prohibits large amounts of that residue to go

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into any of the adjoining chambers. Obviously microscopically we will find particles partially burnt, unburnt particles of gun powder in the other chambers but not to that degree. So that discloses to the examiner that it was just one chamber that was fired in that gun.

Q. Now, I believe you already said it but I'll ask you specifically. Did you determine whether or not the revolver, that Exhibit C-23, is operable?

A. Yes. It was determined that the arm is operable. We found one problem -- I assure you all that this firearm is indeed unloaded. We found that the arm, because of the cracked hammer spur, the bent hammer spur could not be fired in single-action phase of shooting.

Q. Would you explain what single-action and double-action means?

A. Certainly I will. To fire an arm there are two ways to discharge this particular revolver: one is that when you grasp the revolver that you pull the pressure on the trigger, that pressure on the trigger compresses the main spring, it cams an action around causing the cylinder to revolve bringing a fresh

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cartridge to chambers.

When you reach the end of that compression you then get a fall-off from the camming action of the trigger against the action of the hammer under tension of the main spring and it allows the hammer to fall with sufficient force to designate the cartridge causing the gun to discharge. That is one system of shooting a firearm of this type.

The second would be to cock the gun manually. You are causing all of the same things to occur but what you are doing is that you're manually pulling this hammer.

Now with this firearm we found in a laboratory under normal pressure it will not cock. You have to apply severe pressure to the back of the hammer because of that bend, and it will cock, it will hold. But it's not supposed to be in that particular fashion. And then to discharge that arm

now you apply light pressure to the trigger and it will discharge.

So we found this to be a malfunction with the single-action phase of shooting. And microscopically when you examine this spur you find that

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there is no dirt in that crack: that crack is very, very clean, which would lead the examiner to believe that that crack had occurred at the time of the incident and not two months prior or a month prior or a week prior. Because just because of the appearance of that crack that was at the top of the hammer spur.

Q. On that point, is that particular result which you have raised as a hammer spur being bent, is that consistent with the result of perhaps that weapon being dropped and hitting the ground?

A. It could be, yes.

Q. However, as I understand what you've said, as far as double-action is concerned -- which means no cocking, just means you pull the trigger -- you don't worry about cocking it with your thumb, right?

A. That's correct.

Q. You just pull the trigger. That does not affect your ability to pull the trigger on a double- action; is that correct?

A. Absolutely. No affect on it whatsoever.

Q. So you could fire that on double-action?

A. Sure.

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Q. Without a problem?

A. That's right.

Q. Would you take a look at C-22, please, the other revolver? Would you tell the jury, please, what that revolver is, what you found about that

revolver and also the contents of the envelope associate with it?

A. Okay. That's a .38 caliber also. It is Charter Arms revolver, different manufacturer than the other revolver. It has a shorter barrel, 2-inch barrel, the firing capabilities are the same. It carries its chamber for a .38 Special cartridge. It is blued metal, serial number is 510293. The one difference is that because of the nature of the smaller revolver being a model undercover it is chambered for a five-cartridge. The other firearm is chambered for six. This one is chambered for five cartridges.

This was submitted on Property Receipt Number 854912. Examination disclosed powder fouling and dirt in the barrel and five chambers of the cylinder, which means that that residue was present in all five chambers of the cylinder of this particular firearm. The cylinder being that portion

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of the gun that contains the cartridges that are going to be fired or that have been fired.

Q. Now, you mentioned the powder fouling and dirt were in all five chambers. Is that the same type of powder fouling and dirt that you said was in the one chamber of C-23?

A. Yes, that's correct.

Q. Okay.

A. Essentially it's the same, nitrocellulose residue. Now, with this was also submitted one Smith & Wesson fired cartridge case, caliber .38 Special and four Federal fired cartridge cases caliber .38 Special.

Now, they were lead stamped with a Plus P designation. The Plus P designation on the lead stamp by the manufacturer indicates that the manufacturer had loaded that ammunition with a little greater, a little more gun powder, and what it did is to create more pressure far more velocity for the cartridges. So that when this ammunition was discharged in the firearm it would create approximately 21,000 pounds of pressure in the chamber driving the projectile forward with greater force. And the City issued ammunition would discharge at approximately

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16,000 pounds of pressure driving that projectile forward through the barrel with less force.

Now all of that is offset because the Plus P ammunition was placed in a revolver with a shorter barrel, which means that all of that gun powder that was in that cartridge did not have that much time to burn. So some of the gun powder was wasted.

Q. Now Mr. Paul, if I could interrupt you there.

A. I'm sorry.

Q. The difference between the regular, if I use my word, regular ammunition and Plus P ammunition in that barrel, in that 2-inch barrel, what would be the effect in that gun, that gun which you have in your hand now, of Plus P cartridges in relation to the regular type of cartridge in that barrel?

MR. JACKSON: Objection.

MR. MCGILL: In terms of velocity.

MR. JACKSON: Objection as to regular and irregular. There's been no establishment that that bullet is irregular or anything like that. I think that the characterization is improper.

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THE COURT: Use some other terminology.

MR. JACKSON: It's improper.

BY MR. MCGILL:

Q. The standard type of ammunition for that particular weapon that you have in your hand, what standard type of ammunition would that be?

A. That would take the same ammunition that the City issues: it would be standard velocity, .38 Special cartridge that would give approximately 16,000 pounds of chamber pressure, and it would drive the projectile forward through the barrel at approximately 700 feet a second.

Q. Okay. Now my question is: Considering the standard type of ammunition for that weapon, if you take the standard type of ammunition in comparison to the Plus P ammunition for that weapon --

A. Yes?

Q. -- what would the effect be in terms of velocity and impact?

A. Okay. Instead of going 700 feet a second from the muzzle of the 2-inch barrel with standard velocity and ammunition, if you use Plus P ammunition you would gain about 200 to 300 feet a second so that

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it would move approximately 900 feet a second because it does have that greater power.

Q. Would it then be fair to say, sir, in your conclusion that Plus P in comparison to standard ammunition for that weapon would tend to have, because of the powder, a deeper penetration when fired from that weapon?

A. Yes, that's fair.

Q. All right. By the way, there was no Plus P's in the police officer's weapon, were there?

A. No. It was all City issued ammunition.

Q. Would you take a look at C-37 and C-38?

A. Exhibit C-37 is a .38 caliber projectile contained in a plastic vial that was submitted to our laboratory on Property Receipt 854921.

Q. Now, would you describe what that bullet specimen is?

A. That is a .38 caliber bullet weighing 151.5 grains bearing two knurled cannelures, one smooth cannelure. Cannelures are the little irregular designs going around the circumference surface used by the manufacturer to contain a lubricant for the projectile. The nose area and circumference surface

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are flattened, mutilated and mushroomed, distorted bearing numerous foreign markings destroying the major portion of the rifling markings; the base edge is distorted out of round.

The general rifling characteristics are five lands and five grooves with a right-hand direction of twist.

Now the general rifling characteristics are the engravings or impressions of the rifling that has been placed by the manufacturer to the inner surface of the barrel of the firearm. The rifling inside of the firearm is placed so as to stabilize the projectile in flight and lend to the firearm accuracy. That's the only reason that manufacturer put rifling in there. And as you would look down the barrel of the firearm, you would view helical or spiral grooves cut to the inner surface of that firearm.

Now, as a projectile is fired, the projectile has a sliding impression of that barrel and it takes a perfect negative of the inner surface of the barrel. When you view the evidence microscopically against a test specimen, you then see very,

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very distinct repetitive markings known as striations that are individual characteristic markings within the general rifling characteristics.

Q. What did you do with that particular bullet, that Exhibit C-37?

A. Exhibit C-37 was first of all identified as having five lands and grooves with a right-hand direction of twist --

MR. JACKSON: I'm sorry. I couldn't hear you, sir.

THE WITNESS: Was identified as having five lands and grooves with a right hand direction. It was then compared against a test specimen from Commonwealth Exhibit 23 being the Smithe & Wesson City-owned firearm.

BY MR. MCGILL:

Q. What were the results?

A. The result of the microscopic comparison show that Commonwealth

Exhibit 37 was fired from Commonwealth Exhibit 23, or that bullet was fired from the City owned gun.

Q. Now, would you lift that City owned gun, C-23,

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up?

A. This would be the revolver that fired Commonwealth Exhibit 37.

Q. And also C-31.

A. And C-37 is the .38 caliber bullet specimen.

Q. The ammunition that you have indicated was fired from C-23, .38 caliber; is that correct?

A. That's correct, Sir.

Q. And of course the weapon itself was .38 as is that particular Exhibit C-31. Now, would you tell the jury how you can tell if everything is .38? There are an awful lot of 38's in the world and there's an awful lot of 38 ammunition. Tell this jury how you can tell that that specific bullet that you saw and that you have shown them, C-31, was actually shot from one specific unique weapon, that one which you have in this courtroom. Explain to that jury, if you would, please.

A. First, when the bullet itself was examined it is reflected in our Firearms Unit Report that it was .38/.357 because in the beginning of the examination the diameters of the projectiles are the same. Manufacturers interchange .38 caliber

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bullets with .357 bullets routinely so that the bullet itself could have been either. But to determine now what caliber firearm discharged it and which firearm within that realm we'll now discuss.

The manufacturer when he is drilling the bore of the firearm cuts into that firearm the rifling, and in the case of Smith & Wesson he cuts five lands and five grooves with a right-hand direction of twist. The lands would look

very much like the parapets on the old-time Medieval castles. Consider those in a circular fashion in the inner surface of barrel.

The grooves are exactly what they are, they are depressions between the parapets or between the lands in the barrel.

Now when the manufacturer is cutting this steel he's using a piece of steel to cut the steel. Since the tool steel that's used in the manufacture or the ordinance steel that's used in the manufacture of this gun barrel is not totally homogeneous it will have harder areas and softer areas throughout it. The tool steel, the tool that's used

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to cut also will have harder areas and softer areas in it. So that now as the instrument is used to cut it will cut very cleanly and smoothly in one area of that steel.

It will have a tendency to maybe dull or shatter in another section. It may suffer a nick or a small depression in another area. And all of these imperfections and all of these irregularities that are cut time after time after time cause individual accidental markings to the inside surface of that barrel. Those individual markings are as unique to that gun as your own fingerprints are to you.

Now, when that firearm is discharged and we take a perfect negative of the inner surface of that barrel we then have a bullet that is unique and individual to that firearm only.

Q. How do you then go about determining whether the test, or excuse me, whether the evidence bullet in fact was fired from that weapon? What method do you use?

A. Armed with the evidence recovered from the body or from the scene we will then load the questioned

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firearm with ammunition of the same type and design, same caliber and discharge it into a recovery system. We will then remove the test specimens that have been discharged and compare them microscopically

on a microscope that is designed specifically for this type of work.

It is a comparison microscope. This microscope has a binocular head which is very much like looking through a pair of binoculars, very much like it. There's a left and right ocular, and you look through it just like binoculars. It has an optical bridge that moves your vision to the left and to the right, crosses optical bridge and down through the objective lenses to the specimen that you are examining.

You place a specimen on the left side of the microscope and you place the questioned specimen on the other side of the microscope being physically approximately 18 inches apart. Optically you bring them together and you overlay them on the optical bridge or the microscope itself. When you view these accidental markings or these striations that go across your field of view in harmony with

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each other you then have enough for a conclusive comparison.

You then go to another land and groove area and you compare that again. And that is the basis for the microscopic analysis.

Q. Now Mr. Paul, will you take a look at C-39 and also take a look at C-22, the Charter Arms revolver.

A. Exhibit C-39 is a manila envelope marked "Faulkner, Daniel, 6236 Harley Avenue, content bullet."

Q. Now what I would ask you is, did you make an attempt to compare that particular projectile to any weapon and what results did you get. Before you answer that question I'll ask one other question that really is in reference to the other bullet.

You mentioned that was a microscopic comparative examination and what was the total number of microscopic examinations you've taken, actually made or supervised in connection with evidence bullets to weapons.

A. In excess of 50,000.

Q. Fifty thousand was that?

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A. Yes.

Q. Okay. All right. Would you now answer that question that I just asked you in reference to C-39 and C-22?

A. Exhibit C-39 suffered a great deal of damage and a great deal of mutilation. It was not possible to identify this with a specific firearm. It is caliber .38. It is severely mutilated, marked uncoated lead hollow base, caliber .38/.357 -- that I explained previously -- bearing a portion of a smooth cannellure, weighing 138.7 grains, nose area and circumference surface extremely mutilated and distorted, gouged, bearing numerous foreign markings, destroying the major portion of the rifling markings: base edge distorted and mutilated.

General rifling characteristics indeterminable with a right-hand direction of twist, which means that there were insufficient markings remaining on the surface to be able to determine even the total general rifling characteristics.

There was only sufficient legible or readable markings to say that it had a right-hand direction of twist. That's all.

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Q. Now, the rifling characteristics, are they consistent with characteristics of either of those -- well, specifically of the Charter Arms revolver?

A. Yes.

Q. Which is C--

A. Yes.

Q. All right. At least let me get one thing straight for myself: There is no way that you can make any comparison of that bullet because it was just too cut up?

A. That's correct.

Q. Mutilated. So that's where we're starting so there's no definite match up just like you made in the other bullet in the other revolver?

A. Yes. Absolutely not.

Q. So then it would be impossible not only to trace it to one gun but it perhaps could be the type of gun. How about, or is it proper to say or is it possible and consistent to say that that was fired from a .38?

MR. JACKSON: Objection as to possibilities, Your Honor. Your Honor, I withdraw the objection.

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MR. MCGILL: What do you mean?

MR. JACKSON: I withdraw the objection.

MR. MCGILL: You may answer the question, then.

THE WITNESS: It's possible to say that it was fired from a revolver with that type of rifling, with the Charter Arms type of rifling.

BY MR. MCGILL:

Q. But it's also, of course, possible that it could be fired from another one, too?

A. Emphatically.

Q. There's no way simply of telling? It's too cut up?

A. That's right.

Q. Hollow base, the bullet specimen was hollow base, what's that mean?

A. Hollow base bullet specimen was designed configurations placed by Federal Manufacturer, that manufacturer of the bullet in the hopes to achieve a more perfect projectile for accuracy and for power and so forth. It has no significance other

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than that.

Q. But that is at least a component of Federal --

A. Yes, that's correct, sir.

Q. And are some of those cartridge cases that you have there that were fired that are in the envelope associated with the firearms revolver, C-22, are they also Federal fired cases?

A. Yes.

Q. But other than that that's about all you can do with that bullet then?

A. Yes.

Q. All right. Did you drop something?

A. Yes, I dropped a cartridge case earlier.

Q. Would you take a look at C-44. When you do that I'll refer you to your report, number 3, Property Receipt Number 850629.

A. Commonwealth Exhibit 44 is a manila envelope containing four white envelopes marked "City of Philadelphia". Those envelopes are further marked one through four.

Envelope number 1 containing a copper jacket. That jacket is used or was used to contain the lead projectile so that you would have

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Paul - Direct

the lead projectile inside of this cup or jacket made of copper.

Envelope number two contains a flattened bullet specimen, again, identified as caliber .38/.357 bearing a portion of one knurled cannellure weighing 151.3 grains, nose area and circumference extremely flattened, gouged, mutilated, distorted, bearing numerous foreign markings destroying the rifling characteristics. It was not identifiable and that is the remains of that projectile.

Envelope number three contains lead fragments. The lead fragments are unidentifiable.

Q. Okay now, Mr. Paul.

A. Envelope number four --

Q. I'm rushing you there.

A. -- again contains a lead fragment and that also is unidentifiable.

Q. Yes, sir. Would you tell us what the difference between a specimen and a fragment is, a bullet specimen and a fragment?

A. We break evidence down to identify the difference or to distinguish the difference between a bullet fragment, a bullet specimen. A lead

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Paul - Direct

fragment is a fragment that has or bears no rifling or similar characteristic markings. It could be a piece of lead, just a lead fragment, from a projectile. A bullet fragment would have some basis or have some bearing of being part of a projectile. It would have a part of a land or a groove, part of knurled cannellure, something other than just a fact that it isn't lead. A bullet specimen, of course, is a projectile that would be almost in its entirety that you can distinguish that specimen clearly.

Q. All right. Now, these were submitted by whom?

A. Specimens were submitted to our laboratory by Officer Land, number 9894 of Mobile Crime Detection Unit on December 9, 1981 at 10:41 a.m. on Property Receipt Number 850629.

Q. Now Mr. Paul, you also stated that all of those specimens, jacket and fragments, they're all unsuitable for comparison purposes?

A. That's correct, sir.

Q. Is that what you meant when you used the word unable to be identified?

A. Yes, that's correct, sir.

Q. In reference to item 2 which is your item 2, is

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Paul - Direct

there an indication as to whether or not that specimen was hollow base?

A. Yes. That was a hollow base specimen.

Q. Uncoated lead hollow base?

A. That's correct, sir.

Q. The fragment on item 4 indicates the weight as 39.4 grains?

A. That's correct.

Q. What significance, if any, is the fact of that small amount of weight?

A. Just that it is a very small portion of the entire projectile and that the projectile did strike a surface with sufficient force so as to cause it to just fragment into such small pieces.

Q. And also, Mr. Paul, is it true that as a projectile will go at a target and perhaps through a target that the particular projectile while it is dividing into fragments may well lose grains and therefore weight?

A. Oh, yes. Yes.

Q. So would it be accurate or is it consistent with this sort of weight that's lifted, 39.4, or a low amount of weight that a projectile could have gone

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Paul - Direct

through a target, left grains in a portion of the target, continued its way through the target, hitting something else, fragmenting and losing grain along the way?

A. Yes.

MR. JACKSON: Objection. Well, he's answered it now.

MR. MCGILL: Thank you. Your Honor, It's five after one. Perhaps the jury would want to --

THE COURT: Recess for lunch? We'll recess for lunch till 2:30.

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(A luncheon recess was taken until 2:30 o'clock p.m.)

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AFTERNOON SESSION

(Court reconvened at 2:45 o'clock P.M.)

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(The following took place in open court in the presence of the jury:)

THE DEFENDANT: Judge, there's an issue I would like to raise.

THE COURT: Take the jury out.

THE DEFENDANT: I say they can stay if the Judge wishes. What I have to say is very brief.

(The following took place in open court out of the presence of the jury:)

THE COURT: Mr. Jackson, you have something you are going to call to my attention?

THE DEFENDANT: Judge --

MR. JACKSON: I don't, Your Honor.

THE DEFENDANT: Judge, I'm addressing you, not Mr. Jackson, and the issue is, again, that Mr. Jackson has been appointed by Court to represent me. I do not wish to have him represent me. I brought this to you consistently--

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THE COURT: I know that. This must be the tenth time.

THE DEFENDANT: Judge, I'm not counting the times but apparently it's not --

THE COURT: I know it's a lot of times, I know.

THE DEFENDANT: Obviously that's very true and apparently it's still

creating a problem with you.

THE COURT: Not with me at all.

THE DEFENDANT: It's creating a problem with me, it's creating quite a problem with me. Mr. Jackson is not whom I want assisting me representing me.

THE COURT: You told me that time and time again. I told you before I ruled on that and that is it. Now we're proceeding with the trial. Will you please --

THE DEFENDANT: Judge --

THE COURT: -- sit down and be quiet?

THE DEFENDANT: I would like to place

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it on the record that he is not representing me. I would like to have John Africa represent me.

THE COURT: I know. It's there on the record numerous times. You don't have to put it in again. Will you please sit down so we can proceed with the trial?

THE DEFENDANT: Judge, can we proceed with John Africa? Is that at all possible?

THE COURT: No, it's not possible at all.

THE DEFENDANT: Can we proceed with the assistance of John Africa?

THE COURT: No, we can't.

THE DEFENDANT: Why is his participation expressly denied?

THE COURT: Mr. Jamal, I'm not going to sit here and argue with you time and time.

THE DEFENDANT: Judge, I'm not asking to argue with you.

THE: COURT: I've already ruled on I that.

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THE DEFENDANT: I understand that, Judge.

THE COURT: The Supreme Court has ruled on that issue, and that is it.

THE DEFENDANT: I understand. I would like it to be appealed and that's --

THE COURT: Well, you talk to your attorney.

THE DEFENDANT: He is not my attorney. He's your attorney if he's been appointed by the Court.

THE COURT: You do what you have to do.

THE DEFENDANT: I'm not a lawyer.

THE COURT: That's exactly it.

THE DEFENDANT: That's why I've been sharing the issue with you.

THE COURT: That's what I've been telling you all along.

THE DEFENDANT: I know that. I have no problem with that.

THE COURT: I'm not here to raise issues with you.

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THE DEFENDANT: You are not raising the issue, Judge. I'm raising the issue.

THE COURT: Mr. Jamal, I've gone over this with you endlessly. You've been ruled on. I am not going over it again with you.

THE DEFENDANT: Just because I have been ruled on doesn't mean it's to my satisfaction, Judge.

THE COURT: Mr. Jamal, unless you sit down so we can proceed with this trial you're going to have to be removed again.

THE DEFENDANT: Judge --

THE COURT: You're disrupting the orderly proceedings of this court.

THE DEFENDANT: This is an obstruction or destruction.

THE COURT: Yes, it is.

THE DEFENDANT: It's a point, very serious point, for me. I am fighting for my life. That's why I want John Africa here.

THE COURT: It's been ruled on.

THE DEFENDANT: I understand but not

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to my satisfaction.

THE COURT: By the Supreme Court.

THE DEFENDANT: Not to my satisfaction.

THE COURT: I can't help it if you're not satisfied with it.

THE DEFENDANT: If I'm not satisfied with counsel representing my life, my interests, are you to choose counsel for me now?

THE COURT: That's already been ruled upon by myself and by the Supreme Court.

THE DEFENDANT: Can it be appealed to a Federal District Court Judge?

THE COURT: You ask Mr. Jackson. I don't care where it goes.

THE DEFENDANT: You say you don't care? I do know that process. That's why --

THE COURT: Well, I'm not here to instruct you on the process.

THE DEFENDANT: I haven't asked you to instruct me on the process. I want you to --

THE COURT: That's why --

THE DEFENDANT: Yes, it can be I appealed.

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THE COURT: That's why you have Mr. Jackson.

THE DEFENDANT: You've got him here.

THE COURT: No, you've got him.

THE DEFENDANT: He wants to withdraw.

THE COURT: As I told you before, if you want to know anything about the law ask Mr. Jackson.

THE DEFENDANT: I'm not asking any questions about the law, Judge. What I am asking is that I be able to appeal the decision of my right to represent myself in this case where my life is on the line.

THE COURT: You ask Mr. Jackson that question.

THE DEFENDANT: I'm asking you, Judge. Why should I ask you and then ask him? I suppose I'm to ask McGill, too?

THE COURT: I am not here to answer questions for you. Will you please sit down?

THE DEFENDANT: It's not a question I'm asking, Judge. It's an issue that I want addressed.

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THE COURT: Well, that issue has already been addressed.

THE DEFENDANT: By McDermott. Of course McDermott is not the final say on this.

THE COURT: He is as far as I'm concerned.

THE DEFENDANT: Can it be raised in Federal District Court?

THE COURT: You ask your attorney Mr. Jackson.

THE DEFENDANT: I want to ask you. That's why I'm asking you.

THE COURT: You may want to ask me anything you want but I'm not answering any questions for you. Ask Mr. Jackson, he's your attorney.

THE DEFENDANT: Judge, I do not want to proceed in this trial.

THE COURT: I'm not your attorney, either, so don't ask me.

THE DEFENDANT: I am not asking you. It's not a question of admission.

THE COURT: You're asking me if you

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could --

THE DEFENDANT: I'm asking if I could? I'm telling you. This is not a question but a statement.

THE COURT: If you're telling me you can do it, then do it. Do whatever you think you have to do.

THE DEFENDANT: Then do what?

THE COURT: I don't know. Whatever you think you have to do.

THE DEFENDANT: You're not listening to me, Judge.

THE COURT: I'm not listening to you now? Please sit down so we can proceed.

THE DEFENDANT: Judge, I insist on the right of John Africa to assist me in my defense.

THE COURT: Mr. Jamal, I am directing you to sit down so that we can proceed with this trial.

THE DEFENDANT: And I am insisting on my right --

THE COURT: If you refuse to sit down

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you are disrupting the orderly proceedings of this court.

THE DEFENDANT: I am not disrupting --

THE COURT: And you will be removed.

THE DEFENDANT: I am not disrupting anything.

THE COURT: You won't sit down and keep quiet so we can proceed.

THE DEFENDANT: Judge, this is my trial --

THE COURT: I know it is.

THE DEFENDANT: -- and my life at stake here.

THE COURT: Okay. Mr. Jamal, I guess you have to leave.

THE DEFENDANT: If I am removed I want it on the record I do not want Mr. Jackson to represent me.

THE COURT: I know. It's on the record.

THE DEFENDANT: And I do not want him to participate in this case. I want John Africa to represent my interest in this case,

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Judge.

THE COURT: Do you want to stay or do you want to go?

THE DEFENDANT: That's your decision. I didn't say I wanted to leave. Do you want me to leave, Judge?

THE COURT: If you want to sit down and be quiet you can stay.

THE DEFENDANT: I do not want to sit down and be quiet if my interests are going to be ignored as if I'm not here and my life is not on the line. This is your case.

THE COURT: I take it you want to be removed?

THE DEFENDANT: I don't take it at all.

THE COURT: My order is that you be quiet and sit down.

THE DEFENDANT: I am not going to sit down and be quiet while my right to defend myself is being --

THE COURT: All right. He's decided. You may go.

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THE DEFENDANT: I do not want him to defend me or function in my role, Judge.

THE COURT: All right. Take a walk.

THE DEFENDANT: You take a walk. I don't want him to do anything in this case, Judge. I want John Africa to represent me.

THE COURT: Fine. Send him to law school. You gentlemen, could I see you over here for a second?

(The defendant was removed from the courtroom.)

(A side bar conference was held on the record as follows:)

THE COURT: Evidently this is a strategy, again.

MR. MCGILL: Yes.

THE COURT: What I want to know from you gentlemen, do you want me to give that same statement again, or do you think that --

MR. MCGILL: The same statement again.

THE COURT: -- or do you think I would

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be overemphasizing it, or what?

MR. JACKSON: I think that --

MR. MCGILL: It's up to him.

THE COURT: It's really up to you to make a decision. I've said it once and I'll be glad to say it again. I'll say the very same thing that I said before. It may call their attention to the thing. Of course, they know he wasn't here once before. Yesterday he was, yesterday morning he was gone for one hour from 11:30 to 12:30 and now he's gone again.

MR. JACKSON: Well, Your Honor, in an abundance of caution I think a precautionary instruction would be required.

THE COURT: Okay.

MR. JACKSON: Particularly since we've given it one time and not give it

another time --

THE COURT: Okay. You may be right. I would just rather you make the decision.

MR. JACKSON: Yes, I request the same precautionary instruction.

THE COURT: All right.

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(Side bar conference ended.)

MR. MCGILL: Your Honor, before you let the jury in, the Commonwealth objects, again, to what clearly appears to the Commonwealth as his continual strategy to not be present in order to gain a certain amount of sympathy from the jury, to have them feel to a certain degree, sorry for Mr. Jackson who is doing an outstanding job. His strategy becomes more transparent on a daily basis and the Commonwealth continues to object. Thank you.

THE COURT: Bring the jury back in.

(The following took place in open court in the presence of the jury:)

THE COURT: Members of the jury, you are not to draw any adverse inference from the absence of the defendant. You should further refrain from any sympathy, bias of prejudice for or against the defendant. We'll proceed, Mr. Jackson.

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ANTHONY L. PAUL, resumed.

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Paul - Cross

CROSS-EXAMINATION

BY MR. JACKSON:

Q. Good afternoon, Mr. Paul.

A. Good afternoon, sir.

Q. Earlier I asked if you were familiar with the Crime Laboratory Proficiency Test and Research Program. I believe you indicated that you were vaguely familiar with it?

A. Yes.

Q. Are you familiar with the fact that participated in this Philadelphia program?

A. Yes, sir.

MR. JACKSON: May I have this marked as Defense Exhibit, I think it would be 13?

THE COURT: Yes.

MR. MCGILL: May I see what you're referring to?

MR. JACKSON: Sure. I'm sorry.

MR. MCGILL: Which pages?

MR. JACKSON: I am going to refer to several statements but I guess the introduction is a summary so maybe four, five and six. It's in the beginning. This is a copy of it, the

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Paul - Cross

very beginning. I'm sorry. This is an excerpt.

(A discussion was held off the record.)

BY MR. JACKSON:

Q. Could you hand that to the witness, please?

Mr. Paul, if you could just glance through it, and to the best of your knowledge and information would that be a true and correct copy of the test that I've referred to, the Proficiency Test?

A. Yes, sir, to the best of my knowledge.

Q. And it's been published by the Law Enforcement Assistance

Administration; is that correct?

A. Yes, sir.

Q. Now again, Philadelphia was in fact a participant in this program and at the conclusion of this study isn't it a fact that 28.2 percent of the laboratory submitted unacceptable responses regarding firearms?

MR. MCGILL: I would have to object to that, Judge, as phased. What laboratory, when, under what conditions?

MR. JACKSON: Okay.

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Paul - Cross

BY MR. JACKSON:

Q. Let me back up. Are you familiar with the way the test was conducted, sir?

A. Just vaguely.

Q. Isn't it a fact that there were laboratories selected from around the United States to submit data to LEAA Law Enforcement Assistance Administration regarding some known substances or known evidence?

A. Yes.

Q. And one category of evidence had to do with firearm identification and bullets and things of that sort?

A. Yes.

Q. And isn't it a fact that as a result of all of the tests that were conducted by LEAA that 28.2 percent of the results submitted by laboratories across the country were unacceptable?

MR. MCGILL: Objection.

THE COURT: May I see you over here?

(A side bar conference was held on the record as follows:)

THE COURT: Where are we going?

MR. JACKSON: I just want to show

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the possible and in fact, indeed, the fallibility of the testing procedure.  
Twenty-eight point two percent are --

THE COURT: What's that got to do with Philadelphia?

MR. JACKSON: Because Philadelphia was a participant in it.

THE COURT: Were any of them found unsatisfactory?

MR. JACKSON: Yes.

THE COURT: Why don't you dig into that?

MR. JACKSON: I guess the problem would be, Judge, that in references to the particular test the awareness that the supervisor, Mr. Paul, would have would be relevant in determining whether or not he could answer the question in effect is --

MR. MCGILL: The use of Mr. Paul testifying by reading this out loud, inasmuch as he's only vaguely familiar with it, and also you have to know all of the specific areas of the testing, who tested, what the qualifications were, what the circumstances

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Paul - Cross

were --

THE COURT: That's true, too.

MR. MCGILL: It's so highly speculative, Your Honor, it can only do one thing and that is confuse the issue by using statistics in general conditions. Unless all those factors are known it is improper to cross examine on that. And in order for them all to be known they have got to all be cited and have charts and a basis laid which would take a considerable amount of time. I think it's an unfair question as stated and as presented, this whole

line of cross-examination.

MR. JACKSON: Judge --

MR. MCGILL: It's different, for example, if you say a psychiatrist that you have, like Dr. Sadoff on the stand and you are cross-examining him on his book, or a hypnotist on the stand and you're cross-examining him on a specific area of hypnosis which is his familiarity, those tests are done, as Mr. Jackson will admit, I'm sure, under various conditions, under various personnel, with

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Paul - Cross

different qualifications themselves.

THE COURT: We don't know what their qualifications are.

MR. JACKSON: Judge, I haven't been able to say anything. He's telling you what the test is and it's wrong.

THE COURT: Okay. You tell me what the test is.

MR. JACKSON: Judge, what I'm saying is this man's been qualified as an expert, you've accepted him as an expert.

THE COURT: Right.

MR. JACKSON: He's given expert information with regard to firearms and bullets and things of this sort.

THE COURT: Right.

MR. JACKSON: And he's led the jury to believe that, of course, within certain boundaries it is a very exacting science. The very issue as to whether or not it was exacting was taken up by LEAA and it shows that indeed it is not an exacting science. He says that he is vaguely familiar --

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Paul - Cross

THE COURT: Wait a minute. Who is LEAA?

MR. JACKSON: Law Enforcement Assistance --

THE COURT: So what?

MR. JACKSON: They conducted a test to determine --

THE COURT: Fine. But who are they to testify and justify their conclusions?

MR. JACKSON: Philadelphia submitted their tests to them.

THE COURT: I don't care about that. But who is LEAA? Who are the people that did this book? Who are they?

MR. JACKSON: Judge --

THE COURT: Let me say this: You've got your own expert. You've got Mr. Fosnick, right?

MR. JACKSON: But that's not the issue.

THE COURT: Wait a while. If he wants to come in and testify on these bullets and anything else, bring him in. That's fine.

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Paul - Cross

MR. JACKSON: But Judge, this is another issue with regard to the possibility of my using Mr. Fosnick. It seems to me that this man says he's going to the seminars, studies, that and the other, that's the basis of his expertise, but if in fact I can indicate on cross-examination that his expertise is not as exact --

THE COURT: Fine. Look, you've got an expert to look at that bullet, check those guns --

MR. JACKSON: But see, Judge --

THE COURT: -- and disagree with him.

MR. JACKSON: -- you told me I could ask this before because it goes to his expertise.

THE COURT: I didn't know what you were going to ask.

MR. JACKSON: That goes to the expertise.

THE COURT: It has nothing to do with it.

MR. JACKSON: It goes to the time

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Paul - Cross

he was supervising, Judge.

THE COURT: You bring somebody in.

MR. JACKSON: It's a publication.

THE COURT: I don't care about a publication. You can't put a publication in here. You bring the people in who conducted this investigation and you put them on the stand.

MR. JACKSON: He participated in it, Judge.

THE COURT: All they did is collect --

MR. JACKSON: He did the test, he did.

THE COURT: You talked about LEAA like it's something up in the air.

MR. JACKSON: No. But they collected the information.

THE COURT: I don't care. What qualifications do they have?

MR. JACKSON: He did the test, Judge.

THE COURT: I'm not going to --

MR. MCGILL: Paul did?

MR. JACKSON: He did. He and the

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Paul - Cross

staff did the test --

THE COURT: What test?

MR. JACKSON: -- and gave the information to LEAA.

THE COURT: Wait a while here.

MR. JACKSON: Yes.

THE COURT: You mean he himself told them?

MR. JACKSON: Yes. He gave them the information.

THE COURT: Answer my question.

MR. JACKSON: I did.

THE COURT: Did Mr. Paul tell LEAA that this was not an exact science?

MR. JACKSON: I don't know the exact words that he used, Judge.

THE COURT: Let's find out.

MR. JACKSON: What I'm saying to you --

THE COURT: Show me in the book.

MR. JACKSON: What I'm saying to you is that Mr. Paul and Mr. Carlin and I think there may be two or three other people on the staff during the time this test was collected

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Paul - Cross

all that LEAA did, they were really a reservoir for the information. Philadelphia, as well as a number of other cities across the country, they did tests on information that LEAA gave them. They conducted the tests and they themselves, Mr. Paul and the staff, then they sent it back to LEAA, and LEAA just published the information but it was his test.

THE COURT: Wait a while. You're still not telling me anything. What does this mean?

MR. JACKSON: The results of his tests --

THE COURT: The result of his test showed what?

MR. JACKSON: -- 28.2 percent of the tests were unacceptable.

THE COURT: His?

MR. JACKSON: Yes.

THE COURT: His are wrong?

MR. JACKSON: Yes.

THE COURT: You said the examination --

MR. JACKSON: Not his alone.

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Paul - Cross

THE COURT: That's what I'm trying to find out.

MR. JACKSON: I don't want to misquote him but if it's not 28 percent he can tell me what percent.

THE COURT: I'm not talking about that.

MR. JACKSON: He did the test. It's his test.

THE COURT: Unless we get the jury out and we find out from him --

MR. MCGILL: That's fair to do that. We have to get the jury out and perhaps we can go into chambers or in here.

THE COURT: We have to take a five-minute recess or ten-minute recess.

(The jury was excused.)

(The following took place in chambers on the record:)

THE COURT: Maybe you can show me first.

MR. JACKSON: This is a summary of the information of the book, this is an article

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Paul - Cross

from another book, and this summarizes the different tests.

THE COURT: And you're saying we have to go through all the tests they made from drugs, firearms and just a series of things? I think the best way to handle this is to bring the witness in here and let him answer the questions out of the hearing of the jury.

MR. MCGILL: Can I see what you're talking about?

MR. JACKSON: Remember, this is just a summary of the book, that article there.

THE COURT: Don't talk too loud.

MR. JACKSON: I'm sorry.

THE COURT: Tell him to come in.

MR. JACKSON: He's familiar with the book itself because we talked briefly.

MR. MCGILL: It sounds a little bit unfair.

THE COURT: Do you mind just standing?

THE WITNESS: No. No. Please.

THE COURT: I'm not quite sure where he's going and I don't understand his theory,

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that's why we brought you back here.

MR. JACKSON: I guess what I need to know is, I know the publication of this LEAA publication is from 1978. I've forgotten exactly when the testing, the period of time of the testing, took place. But based on the time that I hear that you said that you were supervisor and in the Ballistics Laboratory, it should have been during the time that you were supervisor

or, at least working in there.

THE WITNESS: Yes.

MR. JACKSON: And the question is: Do you in fact remember participating in the program, first of all? And maybe you can describe it to the Judge, what it was you did?

THE WITNESS: Okay. I don't recall all of the specifics of that program. I do recall that that was conducted through our captain at that time, Andy Handworker, and the tests were sent to our laboratory. We examined the pieces of material that were issued, that were sent to us, and we sent a report back to our captain.

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Paul - Cross

Now I don't have personal knowledge that our captain ever forwarded these responses to this board of inquiry. That's as much as the knowledge that I have that I know first-hand.

MR. JACKSON: So that I'd have to -- I guess Your Honor is going to say I have to bring the captain in?

THE COURT: You have to bring somebody in. Did you personally --

MR. MCGILL: May I get to the bottom line? Twenty-eight percent of what?

MR. JACKSON: Maybe I can back up this way. I think as an example they may have submitted a bullet. You can conduct a test to determine what caliber it is, what gun it came from, or something like that, I'm assuming, and 28.2 percent of the responses that they got back were wrong.

Now the range was, I think, 3.8 to 33. something percent that were wrong. It's my understanding that in Philadelphia it was 28.2 percent that were unacceptable. Now that's,

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Paul - Cross

the information I'm reading.

MR. MCGILL: Twenty-eight point two percent of the total amount sent

from Philadelphia?

MR. JACKSON: Yes.

THE WITNESS: No. Excuse me? The percentages of laboratories reporting results of unacceptable proficiency. The word is unacceptable, not wrong.

MR. JACKSON: My apologies.

THE WITNESS: Of 21 tests three of them were concerning firearms, one tested a number of laboratories responding with data was 124. The number of unacceptable responses was 35, thus the 28.2 percent of unacceptable responses.

THE COURT: But that just does not apply to Philadelphia alone?

THE WITNESS: No. They're talking about laboratories.

THE COURT: In other words, they're talking about the whole country?

THE WITNESS: That's right, of 124

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Paul - Cross

laboratories that responded.

THE COURT: So in other words, even Philadelphia could have been a 100 percent right?

THE WITNESS: That's correct.

THE COURT: And we don't know that?

THE WITNESS: That's correct, because secrecy was of the utmost discretion of this report, as I can recall.

MR. JACKSON: That's true. Because what had happened, I think every one was given a code number, a secret code number.

THE COURT: What good is that in this case? That's all I care about.

MR. MCGILL: I object.

THE COURT: What do I care about 28 percent out of the whole United States being wrong?

MR. JACKSON: That isn't my understanding.

THE COURT: That's what he's reading to me.

MR. JACKSON: I understand that and I understand that and

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Paul - Cross

I'm not contradicting him.

THE WITNESS: This is not --

MR. JACKSON: And my source of information suggests something else, and I'm not arguing these figures he's reading from.

THE COURT: If the thing was secretive, as you say, how in the world can we ascertain what the true percentage was in Philadelphia?

MR. JACKSON: Because theirs, my understanding is, theirs is the source that has the key and knows the key.

THE COURT: You better bring that source or key in.

MR. MCGILL: Is this the guy?

MR. JACKSON: I think someone in the Police Department knows.

THE WITNESS: Please be assured -- and I consider myself to be still under oath -- I do not have that information as to our accuracy or our error of factor in our laboratory.

MR. JACKSON: I made the assumption that he would be the one. I didn't know that there was somebody above him or something like

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Paul - Cross

that. I will withdraw the question.

MR. MCGILL: You're saying that we do have some source of information

that shows the number of Philadelphia responses and the number of Philadelphia unacceptable responses?

MR. JACKSON: Yes.

MR. MCGILL: Personally wise?

MR. JACKSON: Yes.

MR. MCGILL: For a particular period during 1978? Is that what it is?

THE WITNESS: The entire testing program consists of 21 tests.

MR. MCGILL: Twenty-one in the entire program?

THE WITNESS: Yes. And three of them were firearm tests.

MR. MCGILL: And of those three that includes the entire country?

THE WITNESS: Yes.

MR. JACKSON: That's what that table there represents.

THE COURT: But we don't know whether the three firearm tests were 100 percent right.

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Maybe the inaccuracies were in some other department.

THE WITNESS: That's absolutely correct.

MR. JACKSON: That is possible.

THE COURT: That's what I'm talking about. He's here for one thing only. He's not accountable for criminalists or anybody else.

MR. JACKSON: I understand that, Judge, but even if what you're saying is true, it could be that Philadelphia just dealing with firearms they could have given 100 percent acceptable findings with the firearms, but my information is that Philadelphia was on the average as bad as most of the other major cities.

THE COURT: In firearms?

MR. JACKSON: Yes, in firearms, too.

THE COURT: You better get your source in here.

MR. MCGILL: At least some documentation.

MR. JACKSON: But wait a minute, if

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you will, Judge. All I'm simply saying is, fine, I don't have to prove it through Mr. Paul.

THE COURT: You can't prove it through him because he doesn't know what you're talking about.

MR. JACKSON: I asked him if he was familiar, and my assumption was if he didn't know, no one would know. Now, he says he has a captain and there's probably someone else. I accept your ruling. I have no argument. I'm simply saying because of the information I think I have I wanted to find out if it was true through him, and if it worked I didn't need anybody else.

THE COURT: All right. Is there any other issue we have to resolve while we have him out here?

MR. JACKSON: I don't have anymore statistics like that. I'm going to ask him some questions about statistics with regard, as an example, fingerprints you can say --

THE COURT: He's not here for

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fingerprints.

MR. MCGILL: No, it's as a comparison.

MR. JACKSON: Yes. With fingerprints you can say 100 percent with absolute certainty there are no two alike. When you do the same thing with

a weapon can you answer that yes, no two weapons can fire the same bullet? I don't think you can. I don't know but maybe he will say yes, you can. But I will to this effect be testing his expertise.

THE COURT: On that phase?

MR. JACKSON: Yes.

MR. MCGILL: But you're not going to come up with books or any other things, or are you?

MR. JACKSON: If I brought the books he probably knows more about it than I do. There are no more tables or percentage charts.

MR. MCGILL: I'd like to take a look at it if you do.

MR. JACKSON: I don't think so. That's pretty much it. I will ask him about

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a number of tests, if he's familiar with it or isn't. I'll ask him whether he used them in this case.

THE COURT: Fair enough.

MR. MCGILL: The tests to determine the comparison?

MR. JACKSON: The comparison and with regard to the tests on the weapon as well.

MR. MCGILL: All right. That's fine.

MR. JACKSON: Okay.

(Conference in chambers ended.)

(The following took place in open court in the presence of the jury:)

MR. JACKSON: May I proceed, Your Honor?

THE COURT: Yes, please.

MR. JACKSON: Thank you.

- - -

ANTHONY L. PAUL, resumed.

BY MR. JACKSON:

Q. Now Mr. Paul, you've been with the Philadelphia Police Department in the Ballistics Laboratory for about how long?

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A. Since 1970, sir.

Q. 1970. You became supervisor in '74; is that right?

A. That's correct, sir.

Q. Now, you've given us already a description of the courses and educational background that you have in Ballistics. I'm going right to the weapons themselves. You've conducted various tests on both weapons: is that correct?

A. Yes, sir.

Q. Now specifically with regard to the Smith & Wesson, which is C-23, you conducted several tests, number one, to determine that it was defective in some way; is that correct?

A. Yes, sir.

Q. Now, would you explain to me and the jury as well whether, in fact, the defect had anything to do or has any impact on the safety mechanism or the safety lock in that weapon?

A. It would have no effect on the safety lock. The --

Q. None whatsoever? I'm sorry. Go on.

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Paul - Cross

A. The Smith & Wesson has two safeties that are incorporated in the firearm itself; number one is a hammer lock that is a physical safety that is employed in the frame, the second safety that they call a primary safety is the rebound slide, and both safeties are operational and working in that particular firearm, sir.

Q. Are you saying as well that the oversized hand grip on a Smith & Wesson, that, too, has no impact on the safety lock?

A. That's essentially correct. That's what I'm saying. When we look at the gun and we are assured that it is not loaded --

Q. Yes, sir.

A. -- and what we're saying is that presuming that the firearm was loaded -  
-

Q. Yes, sir.

A. -- and that we were going to cock the gun manually by pulling the hammer to its fullest position, with the hammer spur bent in the way that it is the gun will not cock by itself without applying a good deal of extra force. Say that your fingers were to slip from the hammer, in that position the firearm

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will not discharge.

Q. It will not discharge?

A. No, sir, it will not because of the primary and the secondary safeties are both operational. That was checked for, sir.

Q. Okay. So did you conduct what is called a percussion test or some sort of drop test?

A. A drop test?

Q. Yes.

A. I did not.

Q. Did anyone conduct it?

A. Not that I know of.

Q. Is there some reason why it wasn't conducted? Let me stop you. Can you explain to the jury what a drop test is?

A. Okay. A drop test is performed when a firearm is cocked and then you drop that firearm to see if the hammer falls accidentally. And you put a primer shell inside of the cartridge, inside of the chamber, and that allows the firearm to discharge if it were so disposed to do. I did not do that because we already are dealing with a firearm with a bent hammer spur

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and with the top portion of the back strap of the hard rubber grips interfering with that free movement of the arm.

Q. So that you're saying, in effect, that aside from the bent mechanism that the grips on the weapon itself interferes with the free flow of the hammer?

A. With that hammer spur bent back, yes, sir.

Q. Okay. So then are you saying that if you conducted the drop test you know for certain what the results of that test would have been?

A. I don't know for certain but falling back on my background I would feel that this already has push off force being applied to it. At this very moment there is a force being applied to the back of this hammer.

Q. Right.

A. When the firearm is being manufactured and it goes through one of its checks at the company there is a check called push-off and that check is when you push on the hammer spur to see if the hammer will let go by itself. And all that really does is tell you whether or not you have satisfactory sear engagement with the searing cock cage on the inside

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mechanism of the firearm.

Q. Did you conduct a push-off test on the weapon once you received it?

A. I did not, sir.

Q. Did anyone?

A. Not to my knowledge.

Q. Was there some determination that a push-off test was also not required?

A. Just that what I'm showing you, that's the only way that I base it on.

Q. So simply based on your experience you thought that it was just unnecessary?

A. Yes, sir.

Q. It's a fact that had you conducted the push-off test or had you conducted the drop test there may have been some results different than what your expectations are?

A. There's always that possibility.

Q. But you nevertheless didn't and no one else did: is that right?

A. That's correct, sir.

Q. Is the percussion test and drop test pretty much the same thing? Are you familiar with the

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percussion test?

A. I'm not familiar with that phrase.

Q. Okay. Now, one other thing with regard to the safety lock. So that I understand it -- and I'm really ignorant about these weapons -- one of the safety locks in that Smith & Wesson, C-23 I think it is, when your finger is in that little loop --

A. The trigger guard.

Q. -- the trigger guard, you disengage or do you disengage the safety lock?

A. Yes, sir. When you have the firearm in a cocked position and you prevent forward motion of the trigger you then stop both safeties and the gun will discharge.

Q. Now Mr. Paul, given the oversized grips -- and we'll assume for a moment that the weapon did not become defective until some time later on. But let's assume that the weapon was fine but it had those grips on it, would it require more pressure to fire this weapon than a similar Smith & Wesson without the grips?

A. I'm sorry, somewhere in there I got a little --

Q. Sure. It's my understanding -- and correct me

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Paul - Cross

if I'm wrong -- that to some extent those oversized hand grips will interfere with the movement of the hammer on that weapon; is that right?

A. No, that's incorrect. It will not interfere with the movement of the hammer if that hammer was not bent.

Q. So you're saying now it's only as a result of the hammer being bent that the hand grips are interfering with it?

A. Oh, yes. That was my --

Q. Okay.

A. -- my statement from the beginning.

Q. My apologies, sir. Now, you indicated that you assume that the hammer was bent very recently and you conducted your test on December the 10th, I believe?

A. Yes, sir.

Q. Could you tell us how recently?

A. No.

Q. Could you tell us whether it was in a 24-hour period, 48, one week, one

month?

A. Not with any scientific accuracy no, sir.

Q. So that as far as the -- the weapon can still

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fire; is that right?

A. Oh, yes.

Q. So that if Officer Faulkner had that weapon it could have been defective for weeks: is that right?

A. Yes, it could have been.

Q. And given the fact that the hammer would have been bent with the oversized grips it would have required more pressure to fire than a similar Smith & Wesson without the defect and without the hand grips; is that right?

A. That's correct.

Q. Now, for my benefit as well as the benefit of the jury, is there some way you can describe to us how many pounds of pressure one normally needs to fire and then how many pounds of pressure one would need to fire that weapon? You know, the ratio and the difference, can you tell us?

A. The difference in shooting the weapon in a double-action phase where you would just pull the trigger straight through there would be no appreciable difference. The manufacturer recommends approximately eight pounds of pressure to pull through so that you can have that firearm discharge. The single-action

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position would vary somewhat in getting the gun to cock and then to fire it it would require about three and a half, four and a half pounds of pressure.

Q. Is there any way that you can estimate how much a gun, no defect, no oversized hand grips, how much pressure it would take to cock the weapon

normally?

A. No, because that's the area of the malfunction, in the area of manually cocking the gun, and once it reaches its fullest rearage position you must push on it additionally to have it lock in that sear engagement and that is the area of the malfunction.

Q. Now Mr. Paul, I believe that I was beginning to discuss the first time I started questioning you with regard to empirical data that exists with regard to firearms. Now, we've heard testimony earlier regarding fingerprints and we know from television, as well, that there are no two fingerprints alike.

Now with regard to firearms and bullets you've testified earlier with regard to your examination and analysis of various projectiles and lead fragments and things of that sort. Can you say with 100 percent certitude, as we would say with fingerprints, that no two guns could place the same

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striations, same markings on a bullet?

A. I can say that the probability would be 275 billion to one --

Q. Two hundred --

A. -- of having the same markings produced by two different guns.

Q. And what --

A. So that even though it is possible, it is highly improbable.

Q. And that's based on what, sir?

A. That's based on a study done --

Q. Did you conduct the study?

A. I did not conduct that study, sir.

Q. I'm asking you -- maybe I should ask this question: Based on your own personal knowledge do you know whether in fact two weapons could place the same markings on the same bullet?

A. I do not.

Q. You do not know?

A. No, sir.

Q. Now the other question, sir, let me get to the lead fragments, first of all. Those fragments that you examined earlier -- I don't know if you necessarily

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Paul - Cross

have to go to them. You examined them and you could make no determination other than the fact that they were lead fragments perhaps from a projectile: is that correct?

A. That's correct.

Q. Could you determine the age, how long they may have been fragments as opposed to bullets?

A. No, sir.

Q. So you don't know whether or not they just came from a bullet or had been there for years; is that right?

A. Well --

Q. You tell me. I don't mean to put words in your mouth.

A. I would say that they would be fairly recent. By fairly recent I'm talking about they were not lying on the street like for a month or two months or anything like that because they weren't oxidized.

Q. And by oxidized could you explain to us --

A. I'm talking about the oxidation that would be present on the lead itself. It wouldn't have a white powdery substance that lead develops after it has been weathered and aged for a period of time. No, that

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was not present on the projectiles.

Q. Now, can you in any way, given all of the lead fragments that you've had, if you were somehow able to use some Crazy Glue and put them altogether would they amount to another bullet, another projectile? Do you follow my question?

A. Yes, I do.

MR. MCGILL: I would have to object only because of the location of the fragment, the projectile, in the bullet specimen in order to make a determination that they would be the one.

THE COURT: I'll allow you to bring that out.

THE WITNESS: No, there wouldn't be.

BY MR. JACKSON:

Q. Not enough?

A. Not enough.

Q. Now, you examined a total of how many projectiles?

A. Five, I believe.

Q. Five?

A. I believe it was five.

Q. It was three projectiles, there were eight lead

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fragments and one bullet jacket. Okay. Now, we know one projectile was removed from Mr. Jamal; we know that one projectile was removed from Officer Faulkner; the third projectile was given to you by Officer Land?

A. That's correct.

Q. And that was taken from the doorway of -- well, I don't know what information was given to you.

A. No. I just have -- it was just listed as two on that property receipt that was admitted.

Q. Fine. Now, other than the bullet taken from Officer Faulkner and the bullet taken from Mr. Jamal, this third bullet, what were your results in your examination of that bullet, sir?

A. It was unsuitable for comparison purposes: it was indeterminable.

Q. Now, is that as a result of the manner in which it was fired, or the manner in which it may have been retrieved?

A. It was -- since I wasn't there when it was retrieved I really don't know.

Q. There is no -- you can't tell whether it may have been the markings on the projectile that may have

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Paul - Cross

been caused by some other source after firing?

A. I see what you mean. Such as an instrument that was used to dig the projectile away from the surface that it struck?

Q. Exactly.

A. No, there was no presence of marks of that nature like a pocketknife or an instrument that was used to scrape it.

Q. Now, if I understand you correctly, the only bullet that you've been able to positively identify is a bullet that was removed from Mr. Jamal. You can positively identify that bullet as coming from C-23; is that correct?

A. That's correct, sir.

Q. Now, when you're saying positively I still understand you to say that you're not necessarily saying 100 percent certain but maybe 99 percent: is that fair?

A. No -- well, I'm saying that it came from that gun.

Q. Is that fair? No question about it in your mind?

A. No question about it in my mind.

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Paul - Cross

Q. Now with regard to the other bullets that were in Officer Faulkner, you can't tell which weapon it came from: is that right?

A. That's correct.

Q. Now, you indicated on direct examination that the bullet was fired from a gun -- well, let me strike that.

You first indicate that the markings, the striations, the lands and grooves and all of that, were indeterminable?

A. That's correct.

Q. Would you explain to us -- because it seems like I can't reconcile the two things -- when you say that it's indeterminable yet it's similar, to get you to believe that it may have fired from a Charter Arms, if it's indeterminable how can you tell that it may have been fired from a Charter Arms?

A. Okay. When you look at the bullet specimen itself you will find that the individual significance of the specimen, the individual striations that were engraved that would permit me or permit the Firearms Examiner to say that a specific firearm discharged it, those individual characteristics are gone.

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Q. Right.

A. The general characteristics being part of the eight lands and grooves with a right-hand direction of twist, you have a part of that still exposed with sufficient quantity to be able to say that a firearm rifled with eight lands and grooves with a right-hand direction of twist discharged that projectile. But you can't say which firearm with eight lands and grooves fired that projectile. Is that clear?

Q. Yes, I understand, sir. A Charter Arms has eight lands and grooves; is

that correct?

A. Yes.

Q. How many Charter weapons are there? Do you think?

A. Conservatively a million.

Q. A million. How many other weapons are manufactured that have eight lands and eight grooves and I think you said a left --

A. Right-hand.

Q. Right-hand --

A. Would you be satisfied with three right off the bat? Arminius, Firearms Import/Export and Charter Arms are all eight lands and grooves with a right-hand

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direction of twist.

Q. Tell us how many, approximately, how many millions of guns have eight lands and grooves and how many would provide this bullet?

A. Multiples of millions.

Q. Multiples of millions?

A. Yes.

MR. JACKSON: I have no further questions. Thank you.

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Paul, would you take a look at C-22, the Charter Arms?

A. Yes, sir.

Q. From the standpoint of the weapon itself what effect does a 2-inch

barrel have on accuracy?

MR. JACKSON: Objection. Beyond the scope.

MR. MCGILL: Move to reopen for those few questions, Your Honor.

MR. JACKSON: Objection.

THE WITNESS: The question was, what

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effect does a 2-inch barrel have --

MR. MCGILL: Have on the accuracy. Obviously, it depends a lot on the one who's shooting it but --

THE WITNESS: It's accurate within 60 yards.

BY MR. MCGILL:

Q. Now, in reference to, again, that particular weapon, what effect, if any, if it exists, would a recoil have on the accuracy?

A. It would have a tendency to throw the firearm astray on recoil.

Q. Would there be recoil on that weapon?

A. Yes, you would suffer a recoil with this firearm.

Q. What would be the reason why a recoil would be present in that weapon?

A. A few reasons. First of all, you're dealing with a shorter barrel so you still have the gun powder burning rapidly as the projectile is exiting the barrel, and that causes recoil. Secondly, you have a lighter weight firearm which amplifies the recoil. If the firearm is heavier then you have a

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firmer platform from which to shoot. If the firearm is lighter then you have

less of a platform from which to shoot and you have more severe recoil.

Q. We're using the word recoil. Tell the jury what a recoil is.

A. Recoil is the effect that the shooter feels when the firearm is discharged as a result of the propellant powders burning inside of the cartridge and the projectile exits. It is at that point the part of that -- if you recall, we talked about chamber pressure. Part of that 18,000 pounds or 21,000 pounds of pressure that is burning here, when that projectile exits you feel that recoil. That's the residual gases blowing rearage against the firearm itself.

Q. If you're talking about a recoil then if I have a gun -- and I'm pointing out that gun, the one you have right there -- then on a recoil you mean your hand might move like this?

A. That's correct.

Q. I'm indicating my right hand jerking a little bit. Is that the recoil effect?

A. Yes.

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Q. Would it be fair to say that it would be certainly for the purposes of accuracy in the shooter's best interest to get as close to the target as you can with a recoil like that?

A. Yes.

MR. JACKSON: Your Honor, I object. You can show that with any gun it's best to go as close you can.

MR. MCGILL: I withdraw that question.

BY MR. MCGILL:

Q. That is operable -- is it not? -- that weapon that you had made the determination on?

A. Yes, sir.

Q. And of course is unloaded?

A. Yes, sir.

Q. What kind of trigger pull does it take for that weapon to fire in your experience?

A. It falls within the same specifications as the Smith & Wesson.

Q. And how much is that?

A. About eight pounds, ten pounds, double-action and about four single-action.

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Paul - Redirect

Q. All right. Eight to ten pounds double?

A. Double-action.

Q. That means hand pressure?

A. Yes. That's squeezing the trigger and compressing the main spring.

Q. Now, you did indicate, I believe, that there was eight pounds for the Smith & Wesson, too?

A. Yes.

Q. That's C-23, the one you had before?

A. That is correct.

Q. As I understand your testimony -- and I want to make sure it's clear to me -- that there is no question that with or without the defect that you have pointed out in the Smith & Wesson it can be fired double-action without a problem: is that correct?

A. Oh, yes, sir.

Q. So that it is not a perfect weapon but it does not affect its ability to fire?

A. It can be fired single-action as well.

Q. But at least double-action there is no problem?

A. That's correct.

Q. Would you, as long as you're holding that up

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that way, would you fire that in double-action, fire that upwards, just pull the trigger upwards?

A. Just to show that this firearm is indeed empty, void of any ammunition, the double-action shooting phase would be to squeeze the trigger and in squeezing the trigger you compress the main spring cocking the hammer allowing it to fall at the end of the trigger pull.

Q. Would you do that in one motion? Would you with the Court's permission, come out here --

MR. JACKSON: Your Honor, I object. What is the relevance?

MR. MCGILL: Quite relevant, Your Honor.

THE COURT: I don't know.

MR. JACKSON: I'd like an offer of proof, then.

THE COURT: All right.

(A side bar conference was held on the record as follows:)

MR. MCGILL: Your Honor, what the Commonwealth intends to do is, we've already determined this gun was operable as he fired it.

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It is the Commonwealth's intent to prove first degree murder, it was his intent to shoot, shoot to kill. It is my request at this point, Your Honor, to ask Mr. Paul to come out to the floor area and demonstrate with his weapon pointing to the floor three or four shots. It is relevant, most relevant, because it is meant to show an intent to kill.

THE COURT: What is the difference?

MR. MCGILL: Because the facts in this case were --

MR. JACKSON: I don't understand the value of having him point a gun. Why not him, or why not me do it? I mean to use this witness -- it's irrelevant, has no probative value. All its being used for, Judge, is to inflame the passion of the jury. There's no probative value of that whatsoever.

MR. MCGILL: It's quite probative, Your Honor. The reason is, this is the basis for it, it's to show the intent and premeditation and deliberation of his act.

MR. JACKSON: This witness is going

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to do --

MR. MCGILL: Let me finish. Because he is the most qualified expert in terms of Ballistics that we have here, unless Mr. Jamal would like to show us.

THE COURT: He can do that from the witness stand.

MR. JACKSON: I'm saying even from the witness stand it has no probative value.

THE COURT: Well, you can show him the difference between double-action and single-action.

MR. MCGILL: Judge, I do not want to do this. It's probative for this reason: What I wanted to do is -- I have to show an intent and deliberate intent to kill, Judge. It's my obligation to show that to the jury. I want them to see that with the double-action, three or four times shooting that weapon, show the effort, the intent of the actions --

THE COURT: But really if we're going to do that then we should load it, if that's what you're talking about.

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MR. MCGILL: I am not going to load it.

MR. JACKSON: That's my point.

MR. MCGILL: How could that possibly be relevant?

MR. JACKSON: That's the only way.

THE COURT: You want to show the whole thing you just load it.

MR. MCGILL: Load it.

THE COURT: Yes. Let me say this: He can show us from the stand and he can tell you how much pressure there is --

MR. MCGILL: I'm not interested in the pressure because it's not a situation, Judge, where you stop --

THE COURT: The pressure is showing the intent. In other words, if you have to use pressure to pull a gun, that's more likely to show intent than it would if it accidentally went off, for instance. You know if you have --

MR. MCGILL: I understand what you're saying.

THE COURT: -- if you have a single

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cock it's easier to go off.

MR. MCGILL: But the facts demonstrated through our eyewitness would be this way and I would like the jury to see that weapon.

THE COURT: The jury can see the weapon.

MR. JACKSON: Judge, the witnesses have already demonstrated. They had this witness come on to do the same thing. It's cumulative.

THE COURT: Yes.

MR. MCGILL: By this time we have the weapon, Your Honor, and it's important for me to show how the --

THE COURT: You can show it if you want when you're summing up.

That's different.

MR. JACKSON: That's right, as long as he doesn't load it. I'm sorry; I didn't mean to interrupt.

MR. MCGILL: Could he show from the stand four shots pointing downward?

THE COURT: He can show, if you want to, the pressure and get his feeling as to

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the pressure, how much pressure it takes to shoot this gun. That's relevant to show that somebody intentionally shot it and it didn't go off accidentally.

MR. MCGILL: Of course.

MR. JACKSON: But he's already answered that.

THE COURT: He may have.

MR. JACKSON: He's got it from you. He said eight pounds.

MR. MCGILL: He said eight pounds and he pushed it. I would like to see him -- he's certainly qualified to do it, to demonstrate four shots.

THE COURT: You can do that when you sum up.

MR. MCGILL: You don't want me to do it, Judge?

THE COURT: No.

MR. MCGILL: All right.

(Side bar conference ended.)

BY MR. MCGILL:

Q. All right. I'll withdraw that question.

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In other words, each time you would use that weapon on double-action you would require that same pressure, eight to ten pounds from one's hand; is that correct?

A. That's correct, sir.

Q. What was the reason why a drop test and push off test were not used?

A. Because the firearm had that defect. It had the bent hammer.

Q. What possible difference could that test have resulted in in terms of showing any kind of relevant data for your examination?

A. I felt as though it would have no difference.

Q. Finally, I believe that you had mentioned this before, you mentioned this 275, was that million?

A. Two hundred and seventy-five billion to one.

Q. Billion to one that it would not be a different gun?

MR. JACKSON: Objection, Your Honor. It's not within his personal knowledge.

MR. MCGILL: All right. I withdraw that.

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BY MR. MCGILL:

Q. But it is fair, is it not, to say from your experience for those number of years that in your mind there is no question that that bullet was fired, the bullet C-37 was fired from that revolver; is that correct?

A. Sir, let me say that in my opinion the projectile in question was fired from Commonwealth Exhibit 23 to the exclusion of all others.

MR. MCGILL: Thank you. Nothing further.

MR. JACKSON: Just briefly, Your Honor.

RE-CROSS-EXAMINATION

BY MR. JACKSON:

Q. So that I'm certain as well, with regard to the bullet that was found in Officer Faulkner, you're certain that there might be multiple millions of guns that could have fired the bullet?

A. That's correct.

Q. The other thing, Mr. Paul, so you can explain it to us, I think you spoke about a jacket, bullet

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Paul - Recross

jacket?

A. Yes, I did.

Q. That was also submitted to you?

A. Yes.

Q. Do you know from what bullet it came from?

A. No, sir.

Q. And could you tell us whether or not a bullet jacket would be more appropriate for a Smith & Wesson, or more appropriate for the Charter, or does it make any difference?

A. The --

MR. MCGILL: Objection. What was the question again?

MR. JACKSON: Yes.

THE COURT: I want to know what jacket?

MR. JACKSON: There was a jacket, bullet jacket, found at the scene and Mr. Paul indicated that he examined it. I wanted to find out within his expertise whether or not it would be more appropriate for that jacket to be on a bullet that's in the Smith & Wesson as opposed to a Charter, or if it

makes any

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Paul - Recross

difference at all.

MR. MCGILL: More appropriate? I don't understand how that is relevant.

MR. JACKSON: Well, based on his expertise.

MR. MCGILL: Well, they can be fired from either.

THE COURT: All right. I'll let him answer.

MR. JACKSON: Thank you.

BY MR. JACKSON:

Q. Would you answer that, sir?

A. It can be fired from either.

Q. Fine. So you have no way of knowing, based on the information I've given you thus far, knowing whether the jacket was on the bullet or from a bullet in the Smith & Wesson or the Charter; is that correct?

A. That's correct.

Q. Now, the jacket is used for what purpose? I think you've explained it but I have some more questions so could you explain it again what it is used for?

A. The jacket is used primarily in conjunction

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Paul - Recross

with a small point or hollow point type of bullet and the jacket restricts the expansion or it controls the expansion of the projectile when the projectile strikes its target.

Q. Would you explain that restricted expansion?

A. Okay. It also acts as a gas seal around the base of the projectile so that if we go back to our original chamber pressure and if we think of those 18,000 pounds of pressure or 21,000 pounds of pressure, if we have a jacket bullet or a bullet with a copper cup surrounding the lead bullet itself -- the bullet is sitting in a copper cup called the jacket. If we look at that, when the projectile is fired, the base of the bullet being copper acts as a gas seal so that you have, in essence, a more effective projectile.

If we go to the other end of the spectrum where the projectile now strikes its target, with that copper cup filling up an area above a hollow point projectile, when that projectile strikes the copper cup acts so as to control the projectile in its expansion so as to prevent that projectile from fragmentation, total fragmenting, and losing all of

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Paul - Recross

its shock of power. That controls it, allows it to go from 30 caliber to 58 calibers, just say hypothetically, and then stop at that point.

Q. But would that jacket prevent fragmenting?

A. It would help to control fragmentation.

Q. You talked earlier about standard, the bullets that, I guess, are the standard bullets that the police are issued. Are they jacketed?

A. No, sir, not right now.

Q. So that if we assume that the bullets in Officer Faulkner's gun were City issued standard bullets, there would have been no jackets on them; is that right?

A. That is correct, sir.

Q. Now, was there any indication, other than the one jacket that you were given, was there any indication that there were jackets on any other bullets or projectiles that were found at the scene?

A. No, sir.

Q. Another thing, sir, when the bullet is fired I\* lead comes out of the gun, the barrel of the gun; is that correct?

A. Yes, sir.

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Q. Now, with the Smith & Wesson, and I suppose a Charter -- let me do them one at a time.

The Smith & Wesson, I guess that's C-23, when it's fired the lead will travel how far approximately? Is there a limit to how far the powder and lead -- I guess it's called, is it nitrate?

A. Yes, the gun powder?

Q. Yes.

A. The burning gases.

Q. Yes, the burning gases.

A. All right. The burning gases from a 4-inch barrel using City ammunition?

Q. Yes, sir.

A. Usually run about three feet and then you get a very fast, very rapid, fall off to almost no residues at all, between soft contact and barely touching. At three feet you will get some residue. In distances up to two feet you can determine, you can get a discernible pattern. In other words, you can reproduce that pattern over and over and over.

Q. Beyond from two to three feet you then get an irregular pattern but you won't get residues.

Q. How about primer lead?

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Paul - Recross

A. Primer lead?

Q. Yes.

A. You can get primer lead.

Q. Well, tell me, primer lead does not project as far as the nitrates: is that right? In other words, I think you've indicated that the nitrates, that you might find it up to about three feet. My understanding is that with the primer lead you may not find it any further than 18 inches or so?

A. Yes, I would say that that's -- I'm trying to think of the exceptions. The primer lead, when the projectile is fired the primer lead and some of the primer material will blow out actually in front of the projectile, and 18 inches is not uncommon to find primer.

Q. Okay. Would it be fair to say that if you find the nitrates you ought to find the primer lead, too?

MR. MCGILL: Objection. It's beyond the scope of direct examination, as well as, relevance.

MR. JACKSON: It goes to his expertise. He's talking about nitrates --

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Paul - Recross

THE COURT: It's all very interesting but let me see you over here.

MR. JACKSON: Your Honor, it goes to his report.

(A side bar conference was held on the record as follows:)

THE COURT: Yes, it may be in his report but where is the relevance, in this case? Enlighten me so I can understand.

MR. JACKSON: You have the nitrates that go up to three feet.

THE COURT: I know all of that. Why is it relevant?

MR. JACKSON: Because in some instances they find the nitrate but not primer --

THE COURT: I know that but why is it in this case? I don't care if it's in the report.

MR. MCGILL: I will object. Primer lead where?

MR. JACKSON: Right here.

THE COURT: I don't care if it's in there. Is it relevant for any reason?

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Paul - Recross

MR. MCGILL: The only primer lead, if you're talking about close range primer lead residue, you're talking about evidence of close range firing which is not in this report.

MR. JACKSON: But he's the --

MR. MCGILL: In other words, you don't have those fragments, close range firing you don't have that. I mean all you've talked about in this report is bullets. If he's talking about primer lead residue the appropriate person to talk to would be a Criminalist or chemist who I will put on.

MR. JACKSON: Judge --

MR. MCGILL: And if ne wishes to call back Mr. Paul I will make him available.

MR. JACKSON: That's what I'm trying to avoid. Judge, this is the -- and I have no problems with me calling him back.

THE COURT: This is all interesting --

MR. MCGILL: I object.

THE COURT: -- but --

MR. JACKSON: I only have two more --

THE COURT: This drop test was

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Paul - Recross

interesting. What's that supposed to show? You mean if you drop the gun there are effects to that?

MR. JACKSON: Yes. I wanted to find out if it was done. There's only two

or three questions --

MR. MCGILL: I would object to anything further.

THE COURT: If it becomes necessary you call him back.

MR. MCGILL: I will make him available.

THE COURT: Okay.

MR. JACKSON: All right.

(Side bar conference ended.)

MR. JACKSON: Mr. Paul, I'm going to withdraw that question and I have another one for you -- I have no further questions of you now.

MR. MCGILL: I have one area brought up on recross and that is it.

BY MR. MCGILL:

Q. I believe there was a question as to the fact

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Paul

that a Smith & Wesson, as well as, the Charter Arms could have fired a second bullet specimen. In reference to the question that he asked you, would you take a look -- well, you don't even have to take a look. Having examined the Smith & Wesson, the policeman's revolver, having examined that, sir, what did you find inside?

A. You mean submitted with the revolver?

Q. That's correct.

A. Four out of five submitted with the revolver I found four Remington cartridges, caliber .38 Special having 158 grains, semi wadcutter lead bullets, and one Remington fired cartridge case that is consistent with the other four cartridges.

Q. Look at your report under number one.

A. I'm sorry, five Remington cartridges.

Q. Five.

A. And one --

Q. Speak to them.

A. Five Remington cartridges, caliber .38 Special, nickel plated case, uncoated semi wadcutter bullets, City issue type. The next item, fired cartridge case, number one.

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Paul

Q. All right. By reading it all you found five live bullets not fired and one fireable; is that correct?

A. Yes.

Q. And also you have determined that the fired, excuse me, the projectile that had been submitted, C-37, was fired from that revolver, right?

A. That's correct.

Q. And it was fired one time?

A. That's correct.

MR. MCGILL: Thank you. That's all Your Honor, the Commonwealth's next witness -- may I see Your Honor at side bar?

(A side bar conference was held off the record.)

THE COURT: I think we're going to adjourn early today, for a change, until tomorrow morning at 9:30. We'll be prompt, please.

May I see you?

(A side bar conference was held off the record.)

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(Court adjourned until Thursday, June 24, 1982, 9:30 o'clock, a.m.)



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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed,

Judge

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

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Courtroom 253, City Hall  
Philadelphia, Pa.

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June 24, 1982

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Before: HONORABLE ALBERT F. SABO, J. and Jury

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APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Counsel for the Defendant

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Page 2.

(A conference was held in chambers on  
the record as follows:)

MR. MCGILL: I am putting on the record, again, that the Judge has permitted Theresa Africa to speak with --

MR. JACKSON: Janet Africa.

MR. MCGILL: I'm sorry. It's Janet this morning.

THE COURT: That's Janet, the other one wasn't here.

MR. MCGILL: -- to speak to Mr. Jamal, and she has been doing it for about ten, fifteen minutes. I believe there was a time when you and Miss Africa and Mr. Jamal were talking together.

MR. JACKSON: Just briefly, only to tell me that they didn't want me to sit there, that's all.

MR. MCGILL: I mentioned this to Mr. Jackson before. I'd ask, again -- I realize this is not his personal fault but the defendant's -- I'd request once again pursuant to the rules of discovery any statements or any

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names of witnesses that he would call. He indicated to me that as far as he knew the only, witness that he would call, if he decides to call them, would be the witnesses he has told me about, meaning Jessie Hightower, Robert Pickford and the two doctors, Doctor Cudemo and Doctor Anthony Coletta.

MR. JACKSON: Could I interrupt? With the possibility, depending upon who you call I may call, there be witnesses that you've already gotten statements from, some of your witnesses.

MR. McGILL: My witnesses?

MR. JACKSON: Yes.

MR. McGILL: Any statements that I have given you --

MR. JACKSON: Yes.

MR. McGILL: Apparently, you do not have any other statements.

MR. JACKSON: Oh, no.

MR. McGILL: But at least you would give me an indication before the defense who it might be so that I would know.

MR. JACKSON: Sure.

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MR. McGILL: I've also made a request and I believe I made a request, yes, before Judge Ribner for this, the names of all possible character witnesses. This was done at the same time as the request for the criminal records. Any witnesses that he may call I made a request of Mr. Jackson of the names of all potential character witnesses so that I could make a check on their records and, at least, know also who they are, if he intends to call any. There is an indication that he may call some. I've received no names of character witnesses; therefore, I can only assume that the character witnesses that he did use at the hearing, the bail hearing, would be the only character witnesses that he could put on, because they're the only ones that I've been notified of. I would petition to exclude, Your Honor - so everyone's on notice -- to exclude the testimony of anyone who I'm not informed of at this point -- because I think that I may rest my case tomorrow -- and at this point I've received no word except what Mr. Jackson has done

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pursuant to the rules of discovery.

MR. JACKSON: Your Honor, may it please the Court, with respect to any fact witnesses I have no disagreement with the Commonwealth. Regarding character witnesses, aside from the difficulties that I'm having with Mr. Jamal, and Mr. Jamal has indicated to me, at least previously, that he intended to present character witnesses, I can appreciate the concern that Mr. McGill has for determining what police record they may have but I don't think it would be appropriate to exclude character witnesses simply because he hasn't gotten the names in advance. Character witnesses, as you might suspect, are presented to some extent depending upon their availability. Mr. Jamal has previously indicated, to me at least, that he has several witnesses who were character witnesses who were coming from Europe. Whether in fact that occurs I don't know, but even those persons who may be in the Philadelphia community, I think to just exclude them without knowing when and if they're going to come -- I'm sorry, to

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exclude them because there is no prior notification I think would work to a severe disadvantage to him. Mr. McGill could simply, when and, if they're going to be presented, he can call and get a record check on them. I don't think that presents any kind of overwhelming problem.

THE COURT: I don't know how long it would take to get a record check but I see nothing wrong with giving him the names in advance even if you don't call them.

MR. JACKSON: Judge, let me assure you and Mr. McGill, I have no names at this point. I have absolutely no names.

MR. MCGILL: This is what the discovery rules are meant to avoid.

THE COURT: All that we can hope is that Mr. Jackson will talk to Mr. Jamal and try to get them from him and tell him that if he doesn't give them to us that they may very well not be permitted to testify. That's all I can do. I can't force him to give them to Mr. Jackson.

MR. MCGILL: Of course.

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THE COURT: Let's be practical. I can't force him to do anything. I can't force him to sit in the chair.

MR. MCGILL: I will point out that he's been very adamant before the trial

started in getting the criminal records of my witnesses and I did give them to him. So I've abided by the court rule.

THE COURT: All right.

MR. MCGILL: I am ready to go if you are. Off the record.

(A discussion was held off the record.)

(A short recess was taken.)

(A conference was held in chambers off the record as follows:)

MR. JACKSON: Your Honor, may I advise the Court that after Mr. Jamal has conferred with Janet Africa for, I guess, now about fifteen minutes or so he's indicated to me that it's his intention to be silent in the courtroom and not to be disruptive and he would generally behave himself pursuant to the Court's request.

THE COURT: Okay. One other thing.

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You're not using D-10. You took it back?

MR. JACKSON: D-13 I think was the book.

THE COURT: Yes. D-13 is the book.

MR. JACKSON: Yes.

THE COURT: And D-10 is the mug shot of Cynthia White. You took that back?

MR. JACKSON: Yes, I did.

THE COURT: Just so we have our records straight.

MR. JACKSON: I'm not going to be able to use them so I just took them back.

THE COURT: All right.

(conference in chambers ended.)

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(Court convened at 10:25 a.m. The following took place  
in open court in the presence of the jury:)

THE COURT: Good morning.

MR. MCGILL: May I proceed with my next witness?

THE COURT: Yes.

MR. MCGILL: Commonwealth's next

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Land - Direct

witness recalling Roy Land, Officer Roy Land.

COMMONWEALTH'S EVIDENCE CONTINUED

POLICEMAN ROY L. LAND, (Badge Number 9394), recalled.

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. MCGILL

Q. Officer Land, pursuant to your duties as part of the Mobile Crime  
Detection Unit, did you have occasion to go to the Jefferson Hospital?

A. Yes, sir, I did.

Q. And did you have occasion to make a sketch?

A. Yes, sir.

Q. And did you also have occasion to have some photographs taken?

A. Yes, sir, I did.

Q. I'll ask that these photographs be marked C-45 in this order, 6, 7 and 8,  
9, 10, C-50 and C-51 and also the sketch to be marked C-52.

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Land - Direct

All right. Now officer Land, I'll ask you, if you would, with the Court's permission, you could come down with the sketch, as well as the photograph, to this chart or at least this stand here to put up the sketch, please.

All right. Officer, can you identify C-52, the sketch?

A. Yes, sir. That's a copy of a rough sketch that I did.

Q. And what is it made of? I mean, what does it represent?

A. It is the Receiving Ward of the ward of Jefferson Hospital.

THE COURT: Why don't you move that sketch where you're standing, maybe that will be better. Turn it around so the jury can see. Can you see over there?

MR. JACKSON: Yes, sir.

THE WITNESS: It's the Receiving Ward inside Jefferson Hospital, the Accident Ward.

BY MR. MCGILL:

Q. Speak loudly, if you would. Where is the hospital located?

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Land - Direct

A. Tenth and Walnut.

Q. Would you indicate what that represents, the sketch, as far as the Receiving Ward is concerned?

A. Yes, sir. At Tenth and Walnut, Jefferson Hospital they have a small driveway which is between Sansom and Walnut that circles around the hospital. This being the main entrance leading into the Emergency Room. This is showing you the Receiving desk where people go to sign in, names and what have you.

To follow in an easterly direction, there's another set of double doors. You can see back into the emergency area where the doctors, nurses, what have you, where they work and everything else. This is just a desk, chairs,

waiting lounge and the large floor area.

Q. All right. What time did you make that sketch?

A. That sketch was made on February 4 of 1982 at 6:40 p.m.

Q. All right. And did you also take photographs of the area?

A. Yes, sir, I did.

Q. They have been marked C-45 through C-51. Will you take a look at those and see if you can identify each, first of all, as photographs that were taken by yourself.

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Land - Direct

A. Yes, sir, they are.

Q. Would you start with C-45 and show on the sketch what the photograph represents.

A. Yes, sir. This is a view inside the Receiving ward, it's a view looking towards the southwest corner of the Accident Ward. This is looking in this direction showing the entrance doors leading in.

C-46 is a view looking towards the -- I'm sorry. The first one, C-45 is a view looking towards the southeast corner.

C-47 is a view looking towards the southwest corner, in this direction, then showing the same doors leading.

This is a view showing the emergency doors leading into the Accident Ward from outside.

C-48 is a view looking towards the northeast corner inside the Emergency Room which is showing the emergency doors or the doors leading back into the operating room, or whatever that may be.

C-49 is a view looking north inside the Emergency Room taken approximately from the front door looking at the back wall.

C-50 is looking towards the northwest corner

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Land - Direct

inside the room showing the part of the area of the receiving area and showing the hallway and doors leading to the rear of the receiving desk.

C-51 is basically showing the same general area but now it's showing more of the receiving desk, the area where people have to go to give their names and everything.

Q. What are the measurements of the area as represented by the sketch?

A. The measurements were taken from the wall to the nearest object being the door opening leading in is four foot eight, which is a door that springs open, continuing around from the door over to the adjoining wall would be four foot. Each measurement is broken up to where a section ends and begins, first as a corner wall continuing to a window and then stopping and measuring the window, the length of the window. That's why everything is broken down as such. This being three inches, this being, supposed to be two foot, another six inches, three foot being the doorway, ten inches being the doorway to the wall, continuing all the way around, two foot eight part of the receiving area and the nine foot in front of the receiving desk.

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Land - Direct

Q. Say from the side part of the wall area where you have the lines indicating the boundaries on that sketch going north and south what is the distance from the lower portion of the area here, if you're able to tell, up until here, which is the northern part of the line?

A. (No response.)

Q. If you can tell.

A. I'm adding up the individual numbers. Approximately twenty-nine feet from the south wall to the north wall.

Q. Now, did you have occasion to take photographs or measurements of any of the areas beyond that area which is represented on the sketch?

A. No, sir, I did not.

Q. But as far as any kind of emergency area or treatment rooms and so forth back on this side you did not get involved in that at all, correct?

A. Correct.

Q. And you made that sketch, sir, as well as the photograph, at my request; is that correct?

A. Yes, sir.

MR. MCGILL: Cross-examine.

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Land - Direct

CROSS-EXAMINATION

BY MR. JACKSON:

Q. Officer Land, from that diagram, if you're standing in that lobby area is there another automatic door other than the door leading from the street?

A. Yes, sir.

Q. Where would it be?

A. That is the door on the far northeast corner that leads back into wherever. I did not go back there.

Q. Okay. Now, by an automatic door, that's one of those doors where you step on the treadle and the door opens up?

A. Either that or it had an electric eye which extended over the top of the door. One of them had that and the other one was a step-on, but I'm not sure which one.

Q. Was there another one other than the one -- there are two automatic doors all together?

A. Yes, sir.

Q. The one leading from the street to the lobby and then one leading into the treatment rooms?

A. Yes, sir.

Q. And the treatment rooms would be in which

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Land - Direct

direction?

A. It would be north after you go through the second set of automatic doors.

Q. So then you'd go through the automatic doors and make a left-hand turn to go to the treatment rooms?

A. To the best of my knowledge, yes, sir.

MR. JACKSON: Fine, sir. I have no further questions.

MR. MCGILL: Thank you, officer. Do you have any questions, Your Honor?

THE COURT: No.

MR. MCGILL: Thank you.

THE DEFENDANT: I have some questions.

THE COURT: You are excused.

THE DEFENDANT: Mr. Land, when were those photographs taken?

MR. MCGILL: Your Honor, may we go to sidebar?

THE DEFENDANT: Commonwealth Exhibits 46 to 52, when were they taken? You can answer the question.

THE COURT: No, you can't.

THE DEFENDANT: If you know.

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THE COURT: Just remain standing there.

THE DEFENDANT: Is it true that the photographs were taken February of this year?

MR. MCGILL: Can we just go to sidebar?

(A sidebar conference was held on the record as follows:)

MR. MCGILL: Can we get everybody out of the room?

THE COURT: You are excused, Officer Land.

THE DEFENDANT: Why can't he answer my questions, Judge?

(The following took place in open court out of the presence of the jury:)

(Sidebar conference was held on the record as follows:)

MR. JACKSON: If they're leaving there's no reason to have a sidebar.

THE COURT: All right.

(Sidebar conference ended.)

THE DEFENDANT: Why can't he answer the question, Judge?

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THE COURT: He's answered whatever questions your attorney wanted to ask him.

THE DEFENDANT: But he didn't ask the questions I wanted asked.

THE COURT: He's already answered that question that he went there in February of this year.

THE DEFENDANT: What are they supposed to reflect if the incident was in December of 1981?

THE COURT: He said that he took them February of this year. If you were sitting there paying attention you would have heard that.

THE DEFENDANT: What were they supposed to reflect if this incident happened in December?

THE COURT: I know that. They reflect what it looked like in February of 1982.

THE DEFENDANT: Why can't you let him answer the question, Judge?

THE COURT: He's already answered that, quite obviously. Now will you sit down and be quiet and let's proceed.

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THE DEFENDANT: Judge, I was asking the question in the spirit of proceeding. Obviously I'm not obstructing anything.

THE COURT: Yes, you are.

THE DEFENDANT: Again, I am not.

THE COURT: Yes, you are.

THE DEFENDANT: I would like to protest the continued presence of Mr. Jackson as my defense. He is not my counsel. My counsel is John Africa.

THE COURT: I know that.

THE DEFENDANT: You know that? Then why won't you allow him to assist me at defense table?

THE COURT: Because I made that ruling over and over and over again. No sense in going into it again.

THE DEFENDANT: It is sense in going into it again when it was not done to my satisfaction.

THE COURT: Mr. Jamal, are you interrupting the court proceedings intentionally?

THE DEFENDANT: Pardon me, Judge?

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THE COURT: Is there a motive in what you're doing?

THE DEFENDANT: Yes. My motive is freedom.

THE COURT: I see.

THE DEFENDANT: Is there any motive in your actions in denying my right to represent myself?

THE COURT: You're disrupting the decorum. That's why you can't represent yourself. There's no finality.

THE DEFENDANT: The finality, Judge, is --

THE COURT: We could be standing here arguing all day long for weeks on weeks, and I'm never going to convince you of anything.

THE DEFENDANT: Yes, you can.

THE COURT: No, I can't.

THE DEFENDANT: If you can convince me that he can get me acquitted I'll have no problem with that. I can convince you that John Africa can.

THE COURT: I can't look into the future.

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THE DEFENDANT: I'm not talking about magic.

THE COURT: In the future, I can't answer that question.

THE DEFENDANT: I'm not asking you to look into the future. I'm asking you to deal with the present issue which is before you; John Africa as my counsel, as my defense in assisting.

THE COURT: We've already ruled on that and the Supreme Court has ruled on it. So can we proceed?

THE DEFENDANT: Sure, we can, Judge. Can I ask questions of these witnesses?

THE COURT: No.

THE DEFENDANT: Can I make a closing argument?

THE COURT: No, not at this time.

THE DEFENDANT: I didn't mean at this time Judge. At the time when closing argument is prepared can I make a closing argument when it's proper?

THE COURT: I cannot rule on that

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question at this time.

THE DEFENDANT: Okay. Can I question the prosecution witnesses of my own choice at at time which I choose?

THE COURT: No. Your attorney will do all that.

THE DEFENDANT: That's not my attorney you keep pointing to. He is here at your insistence. I've ask that he be withdrawn; he's asked that he be withdrawn. He's your attorney, Judge, not mine. He functions for you and not for me.

THE COURT: He's doing a very good job for you.

THE DEFENDANT: That's easy for you to say because you're not on trial.

THE COURT: I know that. You're not here half the times because you don't know what he's doing.

THE DEFENDANT: Well --

THE COURT: The other times he's here and doing a good job. You're not paying attention.

THE DEFENDANT: Again, that's your

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assumption that I'm not paying attention. I have a book full of notes to reflect I am paying attention.

THE COURT: Oh, you have been paying attention?

THE DEFENDANT: Yes, I have. This is a trial for my life. It's not for yours.

MR. MCGILL: I would have no objection if Mr. Jamal has some questions to confer with Mr. Jackson, and he can ask the questions.

THE COURT: I have no objection to that. As a matter of fact, they have been conferring together and I'm assuming that Mr. Jackson is asking the questions that Mr. Jamal feels that he should ask.

THE DEFENDANT: Judge, I would like to ask questions of several, at least three, prosecution witnesses.

THE COURT: You see I've already ruled. Mr. Jackson will be your attorney. Now, do you have any questions you wish him to ask? Just tell it to him and I'm sure he will ask them.

THE DEFENDANT: Can I ask questions of

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several prosecution witnesses, Judge?

THE COURT: Just give the questions to Mr. Jackson and he will ask them.

THE DEFENDANT: I understand what you're saying. Can I ask questions?

THE COURT: I'm answering your question. Whatever questions you have you just give them to Mr. Jackson and he will ask the questions.

THE DEFENDANT: Can I ask questions of several prosecution witnesses?

THE COURT: You don't understand English.

THE DEFENDANT: Apparently you do?

THE COURT: Yes. I told you, if you have any questions give them to Mr. Jackson and he will ask the questions.

THE DEFENDANT: Why can't I ask questions of my choice, Judge?

THE COURT: Are you going to sit down and let the Court proceed with the next witness?

THE DEFENDANT: I've got no problem with the Court proceeding with the next witness.

THE COURT: All right. Sit down.

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THE DEFENDANT: I would like to ask questions of that witness if I so desire.

THE COURT: Are you going to sit down and let the Court proceed?

THE DEFENDANT: Are you going to answer my question, Judge?

THE COURT: I did answer --

THE DEFENDANT: You keep saying--

THE COURT: -- I told you, no, you will not ask any direct questions. You

will give them to your attorney and he will ask them.

THE DEFENDANT: That's not my attorney. You keep pointing to him. That's your attorney.

THE COURT: Okay.

THE DEFENDANT: It's not okay with me because you're not on trial.

THE COURT: Mr. Jamal, are you going to sit down so we can proceed with the next witness?

THE DEFENDANT: I have no problem with his proceeding, Judge. I would like to ask questions of several prosecution witnesses of my choice.

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THE COURT: Well, unfortunately I've ruled that you will sit down and any questions you have you give to Mr. Jackson.

THE DEFENDANT: Mr. Jackson is representing your interest. He's not representing mine. He was employed by you and not employed by me. He's being paid by the court and not being paid by me. I would like defense assistance of my choice. I renew my motion for John Africa to assist me in this matter.

THE COURT: That request is denied for the tenth time.

THE DEFENDANT: I'm not counting, Judge. It's important and that's why I keep bringing it to your attention.

THE COURT: I know. You have and I've ruled. All right. Let's call the next witness.

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(witness-excused.)

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MR. MCGILL: Bring in the jury.

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(The following took place in open court in the presence of the jury:)

THE COURT: Call your next witness please.

MR. MCGILL: Yes, Ms. Priscilla Durham.

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PRISCILLA DURHAM, having been duly sworn, was examined and testified as follows:

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes.

-----

#### DIRECT EXAMINATION

BY MR. MCGILL;

Q. Ms. Durham, can you hear me?

A. Yes.

Q. Ms. Durham, where are you currently employed?

A. Thomas Jefferson University Hospital.

Q. What is your position there?

A. Security officer.

Q. And on December the ninth, 1981 where were you employed?

A. Thomas Jefferson Hospital.

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#### Durham - Direct

Q. Now, on that particular day in the early morning hours sometime between four and five a.m. did you have occasion to observe anything unusual in reference to this case?

A. Yes. I observed Mr. Jamal when he was brought into the Emergency

Room.

Q. And explain exactly what happened and then just basically let the jury know exactly what you observed?

A. Well, approximately the same time that Jamal was brought into the emergency area I was inside the emergency area behind the double doors. The double doors opened just as Jamal was placed on the mat leading into the Emergency Room treatment area. At this time I didn't know -- all I did was hear him say, "I shot the mother fucker and I hope the mother fucker dies." And it was at this time that I realized who it was in reference to, what was going on.

Q. And where was he when he said that?

A. He was directly at my feet.

Q. And what immediately happened after that?

A. Well, in, you know, the scuffle with him and the police trying to contain him and the other policeman asking me where could they place him I just tried to

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Durham - Direct

think and, you know, proceed with the next business.

Q. Okay. After the defendant said that what if anything or what were any other -- did you hear any responses from anybody?

A. I heard a police officer respond, "If he dies you die."

Q. Ask Officer Bell to come in?

Can you come up here, Officer, please?

Can you identify this gentleman, this officer?

A. Yes, that was the officer.

MR. McGill: Would you identify yourself for the record?

OFFICER BELL: Officer Gary Bell, Badge Number 1217, Sixth District.

MR. MCGILL: Thank you. You may leave.

-----

(Officer Bell excused.)

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BY MR. MCGILL:

Q. Where was officer Bell when he said that?

A. He was within the area, you know, like to my right, I believe.

Q. What happened after the defendant said that and

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Durham - Direct

then Officer Bell responded in that way?

A. Well, I immediately left, went around the other side to open up a door so they could bring Jamal through the other side.

Q. And then what happened?

A. When I opened the door and told the police officers which way to bring him they were still, you know, trying to control him. He again shouted, "Yeah, I shot the mother fucker and I hope the mother fucker dies." And that's when he was brought into the Emergency Room, and then I left the area.

Q. Okay. Now Officer Durham, you are familiar with the Jefferson emergency area, waiting area rooms, are you not?

A. Yes.

Q. How long have you worked there?

A. Five years in December.

Q. Has the structure of the area, that is, the entrance way to the Emergency Room, to the double doors where all this occurred, has that structure physically changed at all?

A. No.

Q. Since December the ninth, 1981, to February the

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Durham - Direct

fourth, 1982?

A. No.

Q. May I have those photographs, C-45 through C-51, please?

I'm specifically now showing you C-43 -- and please show this to the defense. I want to make sure they are aware of which one it is.

MR. JACKSON: Yes.

BY MR. MCGILL:

Q. Can you identify what C-49 represents?

A. Yes. This is the area that I was talking about when Mr. Jamal was placed and the double doors where I was standing behind the door.

Q. Okay. Now, can you show that photograph to --

A. Okay. Mr. Jamal was placed here and I was on the other side of those doors so we both simultaneously was on this mat at the same time.

Q. What happens when you step on the mat?

A. The doors automatically open up from either side.

Q. Was he partially inside that area? If you can recall.

A. When the doors opened he may have, you know --

Q. Okay. Now I'm showing you the sketch. This is

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Durham - Direct

the sketch that has been testified to by Officer Roy Land who took the

same photograph. The sketch he says is -- shows an entrance way where I'm indicating now, and I'm showing you C-43. This has been testified to as a straight-on shot from here back.

A. Yes.

Q. Are you square now with what the sketch represents?

A. Yes.

Q. Would you demonstrate, just put a "J" where this occurred? Now you'll assume, say that you're also aware, assume that these are the doors.

A. Right.

Q. Okay. Now you also said, Officer Durham, that after the defendant said that, "I shot the MF'er and I hope he dies," and the officer said, "If he dies you die," you then went to do something. Can you show where you went.

A. Okay. It's off this area, naturally, but through these doors and around. You walk through the nurses' station and you come around on this side where there is another door leading to the emergency area which is directly across from where Mr. Jamal was.

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#### Durham - Direct

So I just went back through here and went around and came up this side, because the door is locked from this side, you can't open it from this side. So I had to go around the other side and open the door.

Q. And did you open the door?

A. Yes, I did.

Q. And then you indicated that something else happened?

A. Yes.

Q. Show us on the sketch approximately where it happened.

A. Okay. As I stepped through this door, you know, to alert the policemen to bring Mr. Jamal this way, you know, they were still trying to control him. He again shouted, "Yeah, I shot the mother fucker and I hope the mother fucker dies," and that's when they, you know, rushed him through

the doors.

Q. Okay. You may resume your seat. Do you know where he then went after he left the doors? Did you pursue him?

A. Sure. I led them to the family room.

Q. And what was the reason for that? Why was he moved initially?

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Durham - Direct

A. Because he was standing right in the middle of the treatment area. Officer Faulkner was -- well, he wasn't within eyesight of him. All the police were around. He was in the immediate treatment area within feet and I just felt that he should be out of that area.

MR. MCGILL: I see. Now I'm going to show you what has been marked C-50 and C-51.

Mr. Jackson?

MR. JACKSON: All right.

BY MR. MCGILL:

Q. Can you identify what those photographs represent?

A. This photograph here, right behind here is a door which is the door that I led Mr. Jamal through which is adjacent, in this chart, is directly across which would be here. He was on the other side of the cigarette machine where the double doors are.

Q. Okay. When you say --

A. This machine here, candy machine here, I'm sorry. Here's the double doors and this was like so, so it would be across from there.

Q. All right. Are you then saying that this photograph represents this area?

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Durham - Direct, Cross

A. Yes.

Q. And C-50 represents this area?

A. Yes.

Q. Oh, yes, by the way, Officer Durham, as a Jefferson Hospital personnel are you employed as part of the Philadelphia Police Department?

A. No. Just Jefferson University.

Q. Okay. You're employed and paid by the hospital, right?

A. Yes.

MR. MCGILL: Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Officer Durham, how long have you been a security officer?

A. Approximately eight to nine years.

Q. Prior to coming to Jefferson where were you a security officer?

A. I was an inspector for Mohler Detective Agency, 66th and Ogontz Avenue.

Q. Mohler is it?

A. M-O-H-L-E-R.

Q. Any other agency you worked for, ma'am?

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Durham - Cross

A. I was a store detective for Bonwit Teller's.

Q. For how long?

A. Approximately eighteen months.

Q. Anywhere else, ma'am?

A. I was employed at the Blum Store.

Q. What capacity?

A. Store detective.

Q. By the way, let me back up. At Bonwit Teller did you work for Bonwit Teller, or did you work for another organization?

A. Bonwit Teller's.

Q. At the Blum store did you work for the Blum Store?

A. Yes.

Q. Anywhere else, ma'am?

A. No.

Q. And how long at the Blum store?

A. Maybe six months, six to eight months.

Q. And where is that store located?

A. It was located at 13th and Chestnut.

Q. What police district is that?

A. Sixth District.

Q. And Bonwit Teller's is where?

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Durham - Cross

A. Seventeenth and Chestnut.

Q. What police district is that?

A. Sixth District, also, I believe.

Q. So you had occasion to come in contact with the Sixth District Police Department on a number of occasions, would it be fair to say?

A. Yes.

Q. Did you know Officer Faulkner?

A. No, I did not. I --

Q. Did you --I'm sorry.

A. I've seen him several times.

Q. Where?

A. In the hospital.

Q. Speak to him before?

A. As a matter of fact, I had spoke to him about two hours prior to his death.

Q. What did you talk about?

A. Officer Faulkner had just brought in a little seven-year old, I believe she was a seven-year old black rape victim. He apprehended the suspect.

Q. You saw him apprehend him --

MR. MCGILL: Excuse me? I did not hear that? May I have that read back?

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Durham - Cross

MR. JACKSON: No. It's inadmissible testimony. She's talking about something that, I'm sure, she's been advised --

MR. MCGILL: I want to hear what she said.

MR. JACKSON: But she can't tell me what he did.

THE COURT: Go ahead.

MR. MCGILL: Well, can I have it read back?

MR. JACKSON: Your Honor, it's inadmissible so I object to having it read back and I ask that it be stricken.

THE COURT: Then you better start asking individual questions.

MR. MCGILL: Judge, may I ask that part that Your Honor would find admissible read back?

THE COURT: Can you read back --

MR. JACKSON: Your Honor, can you read it back at sidebar? If it's inadmissible you can hear it and then rule --

MR. MCGILL: She said she observed, and you asked, "What were you talking about," and

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Durham - Cross

she said she observed, apparently, when Officer Faulkner came in two hours or something before then, and at that point she then went on to say what occurred. I'm trying to find out what--

THE COURT: Come over here just a minute.

(A sidebar conference was held on the record as follows:)

THE COURT: Just a minute. Don't get excited. Mr. Jackson, you had asked her what she talked to Officer Faulkner about and now she's telling you.

MR. JACKSON: He went out and arrested a rape suspect. She didn't see him.

TUE COURT: He must have told her that.

MR. MCGILL: Let's read it back, Judge.

MR. JACKSON: Well, let's read it.

THE COURT: He told her that.

MR. JACKSON: She didn't say that.

THE COURT: Then read it back.

MR. MCGILL: Wait a minute. Wait a minute, Judge. If she says something and he's afraid --

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Durham - Cross

THE COURT: Just a minute.

MR. JACKSON: I'll start all over again. You don't have to read it back.

MR. MCGILL: I want it read back.

MR. JACKSON: Well, I'm withdrawing the question and if he asks it on redirect, let him do that.

THE COURT: All right. What does it say?

MR. MCGILL: I can't understand why something was said and all of a sudden I can't hear --

MR. JACKSON: You can hear. Go ahead. I'm sorry.

THE COURT: Read it back.

(The following was read back by the reporter as follows:)

"Answer: Officer Faulkner had just brought in a little seven year old, I believe she was a seven year old black rape victim. He apprehended the suspect."

MR. MCGILL: She saw him bringing him in. It's not a question of hearsay.

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Durham - Cross

MR. JACKSON: The seven-year old victim --

THE COURT: We don't know. You have to ask her.

MR. JACKSON: I asked her if she saw it and she said, "No."

MR. MCGILL: Wait a minute. Let me finish. It's not inadmissible what she observed.

THE COURT: I know that.

MR. MCGILL: And she expressed what she observed. That's why I wanted it read back. Secondly, she then said that he had apprehended a suspect. The question is, "What were they talking about?"

THE COURT: Sure. That's why I wanted to know what they were saying.

MR. MCGILL: It's not inadmissible.

THE COURT: Of course not.

MR. MCGILL: You asked her what they were talking about.

MR. JACKSON: Fine.

THE COURT: Okay.

(Sidebar conference ended.)

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Durham - Cross

BY MR. JACKSON:

Q. Officer Durham --

MR. MCGILL: Is the question withdrawn?

MR. JACKSON: Yes, it is.

THE COURT: No, the question is not withdrawn. The question and answer stand.

MR. MCGILL: May I question about it on redirect, sir?

THE COURT: Ask what you want.

MR. MCGILL: Thank you.

BY MR. JACKSON:

Q. Officer Durham, did you observe Officer Faulkner make the arrest?

A. No, I didn't observe him make the arrest but I observed him bringing his suspect to the hospital.

Q. Do you know about what time it was?

A. No, I don't.

Q. You said it was about two hours before he was brought back; is that right?

A. Yes.

Q. Now, when he came in on that earlier occasion did he come in with anyone else other than the suspect?

A. Yes.

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Durham - Cross

Q. Who else?

A. I Believe it was the victim, it was a relative of the victim.

Q. Any other police officers?

A. No.

Q. Now, you indicated that you've seen Officer Faulkner a number of times; is that correct?

A. Yes.

Q. Would that be related to your occupation at Jefferson Hospital?

A. Yes.

Q. He's been to the hospital a number of times?

A. Yes.

Q. You've talked to him a number of times?

A. Yes.

Q. And sometimes you've talked to him about things other than your work; is that true?

A. Not normally.

Q. Well, you talked about your work at night?

A. Yes.

Q. And what specifically -- strike that. On those occasions when you spoke to him when he visited the hospital how long did those conversations

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Durham - Cross

last?

A. It depended, you know, it depended on the nature of what we were talking about. It depended on whether or not he was drinking coffee, or he was going to get coffee. I mean we had no -- we didn't hold long conversations. We never timed them.

Q. Did you work shift work, ma'am?

A. No.

Q. So you worked steady twelve to eight or eleven to seven?

A. Yes.

Q. Would it be fair that the police you came in contact with at Jefferson Hospital were by and large from the Sixth District?

A. No, because Jefferson is a rape center as well and we get police from wherever rapes occur.

Q. Fine. But other than on rape cases: ma'am?

A. Yes.

Q. They had been solely and exclusively the Sixth District; is that correct?

A. Yes.

Q. How often did you have occasion to see and speak to officers from the Sixth Police District?

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Durham - Cross

A. I am a security officer. If I have an arrest the Philadelphia Police have to come and take my prisoner. So I mean, we're talking about maybe six days a week.

Q. Once a day?

A. Once a day, twice a day. It all depends on, you know --

Q. And you give statements to the Philadelphia Police Department?

A. Yes.

Q. When did you let the police or the District Attorney know about what you've just testified to?

A. When you say what I just testified to --

Q. Yes. When did you let the police know that you heard Mr. Jamal say, "Yeah, I shot him and I hope he dies?" Let me ask you this way: isn't it a fact that you didn't tell them until sometime in March?

A. You asking me about the Police Department now, right?

Q. Police Department or the District Attorney, yes, ma'am.

A. Okay. Yes, I did not talk to the District Attorney's office until -- what was it? -- February or

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Durham - Cross

whenever.

Q. Did you try to contact them before?

A. No.

Q. This incident happened in December, right?

A. Yes.

Q. You saw police after that, didn't you?

A. Yes.

Q. And you saw police in January, didn't you?

A. Yes.

Q. And you saw police in February, didn't you?

A. Maybe not. I was out or work.

Q. You were what?

A. I was out of work.

Q. The entire month of February?

A. You said -- I'm not sure of the dates but I was out of work for about six weeks, six to eight weeks from December up until the time that I was questioned.

Q. And was anyone looking for you? Did you get a notice from the police that the District Attorney was looking for you?

A. No.

Q. You hadn't initiated any effort to let them know that you heard that; is that right?

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Durham - Cross

A. No. I had already given a statement.

Q. To whom?

A. Jefferson investigators.

Q. When did you give that?

A. The very next day.

MR. JACKSON: Your Honor, I'd like a copy of that statement and I'd ask that before I proceed with my cross-examination I get a copy of the statement.

MR. MCGILL: I would be -- I've never seen one, Your Honor. It's Jefferson Hospital material. I would be very glad to have it brought over.

THE COURT: You can proceed with cross and we'll make arrangements to see if you can.

MR. JACKSON: Your Honor, obviously the contents of the statement is going to impact on my cross-examination.

THE COURT: Cross-examine her about something else. You call her later on.

MR. MCGILL: She'll be available. I'll try to get it now, Judge. May I find out where it is?

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Durham - Cross

BY MR. JACKSON:

Q. A. Whom did you give it to?

A. Bartelli of the Jefferson Investigator Department.

Q. You gave it to him when?

A. I think it was either the next day or two days after the incident.

Q. You never told the police that you gave the statement to anyone, did you?

A. I assume that's why I was contacted, was because of that. I didn't, you know --

Q. You assume that -- the question is: Did you ever tell the police that you gave a statement to someone?

A. No. Nobody asked.

Q. Isn't it a fact that you were told that the reason the police wanted to talk to you was because of the abuse complaint that Mr. Jamal filed?.

A. I'm sorry. Could you --

Q. Yes. When you were contacted by the police weren't you told that they

wanted to talk to you because Mr. Jamal stated that the police beat him?

A. Yes, I was first --

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Durham - Cross

MR. MCGILL: Objection, Your Honor. I object to that. Mr. Anthony Jackson, the attorney representing this defendant, made the complaint.

THE COURT: Rephrase your question.

MR. MCGILL: Mr. Jamal has said nothing.

BY MR. JACKSON:

Q. Weren't you contacted by the police that I on behalf of Mr. Jamal had accused the Police Department of beating him?

A. Internal Affairs, yes.

Q. Yes, ma'am.

A. Yes.

Q. So that's the reason you were contacted. So why did you say you assumed it was because of your statement?

A. Well, I didn't know.

Q. You just said that they told you that it was because of the complaint that he made; isn't that true?

A. When I was contacted by the Police Department nobody told me what they -- all they wanted to know is what I knew.

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Durham - Cross

Q. But didn't you --

A. Why I was called they never told me.

Q. Didn't you just say that you were told when you were first contacted by

the police that they wanted to talk to you because a complaint had been filed on behalf of Mr. Jamal?

A. Yes.

Q. So you did know when you talked to the police.

A. I did know that there was a complaint filed? Is that what you're asking me?

Q. You did know the reason why they wanted to talk to you?

MR. MCGILL: Objection. There are different types of questions being asked this witness.

THE COURT: Just ask the question and let the witness answer. Go ahead.

MR. JACKSON: I'm asking the question.

BY MR. JACKSON:

Q. Did you not know when the Internal Affairs office spoke to you what he wanted to talk to you about?

A. Yes.

Q. And in fact, didn't you know that he wanted to

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Durham - Cross

talk to you about Mr. Jamal being beaten by the police?

MR. MCGILL: Objection, Your Honor. That assumes that it occurred.

THE COURT: You have to rephrase it. Ask the witness.

BY MR. JACKSON:

Q. Didn't you know that the officer wanted to talk to you about the complaint that Mr. Jamal made relative to a beating?

A. Now let me see if I -- are you asking me did I know this prior to me talking to Internal Affairs?

Q. No.

A. Or at that moment?

Q. At that moment?

A. Sure. They let me know what they wanted when they got me.

Q. So when you said that you assumed that they were calling you or contacting you about your statement to Bartelli you were incorrect; is that right?

A. Yes. I didn't know whether he had given them the statement or not. You know, I just gave it to him.

Q. Now, did you ever tell the police that you gave a statement to Bartelli?

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Durham - Cross

A. No.

Q. So that as far as you knew -- strike that. Do you know at this point what, in fact, Bartelli did with the statement that you gave?

A. No, I do not.

Q. Was it a written statement?

A. No. I believe I just dictated it to him.

Q. You just dictated it to him?

A. Yes.

Q. And he took it down?

A. Yes, and I think I signed it.

Q. You think? Okay. Do you know what happened to the statement?

A. No, I do not.

Q. Have you said -- did you read the statement after giving it?

A. Yes.

Q. And it was true?

A. Yes.

Q. And you're saying that the substance of the statement is the very same that you've testified here today?

A. Yes.

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Durham - Cross

Q. Now back to this night on December the 9th, you've indicated that you first heard Mr. Jamal before you saw him; is that correct?

A. Yes.

Q. And he was on the lobby side of the automatic doors?

A. Yes.

Q. And you were on the other side?

A. Yes.

Q. Now, you heard a voice say -- correct me if I'm wrong -- -Yeah, I shot the mother fucker and I hope he dies?"

A. Yes.

Q. Now that was in response to a question. Did you hear the question?

MR. MCGILL: Objection, Your Honor. He's not testifying. She said no such question that was in response to.

THE COURT: Let the witness answer the question.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Did you hear any voice or any noise or anything

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Durham - Cross

at all before you heard his voice?

A. No, I did not.

Q. You didn't hear him fall or be placed on the floor?

A. No, I did not.

Q. You didn't hear any police officers muttering or doing anything at all?

A. There was mass confusion in that area. There was a lot of things going on. I didn't really know what was going on until I heard him make that statement.

Q. And that is the only thing that you heard?

A. Other than I heard the officer say, "If he dies you die?"

Q. No. ma'am. Before that.

A. No.

Q. So the first thing that you heard relevant to Mr. Jamal was, "Yeah, I shot the mother fucker and I hope he dies?"

A. Yes.

Q. Did you assume that that was in reference or in response to a question?

MR. MCGILL: Objection, assumption.

THE COURT: I sustain that.

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Durham - Cross

BY MR. JACKSON:

Q. Do you know if that was in response to a question?

A. No.

Q. You don't know?

A. No.

Q. Didn't it seem reasonable that it was in response to a question?

MR. MCGILL: Objection.

THE WITNESS: No.

THE COURT: Sustained.

BY MR. JACKSON:

Q. All right, ma'am. Now, that was the first thing that you heard and after hearing that then the doors opened up?

A. No. The doors were open then.

Q. I thought you said that you heard his voice but didn't see him?

A. I didn't. I never saw him until I looked down. I was on one side of the door; he was on the other side of the door. Simultaneously me and Jamal arrived on the mat. When the door opened there he was and that's when I heard --

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Durham - Cross

Q. And how was he on the floor, ma'am?

A. How was he? Stretched out on the floor. The police had his arms, they had his legs, they were trying to control him.

Q. Was -- I'm sorry. Go on. Okay. Was he on his back or on his stomach?

A. He was on his back.

Q. So that his head was facing you and his feet were facing away from you?

A. Yes.

Q. Did you see whether in fact he was bleeding?

A. No, sir.

Q. And you say simultaneously you were on the mat and he was on the mat and you heard what he said at the same time; is that right?

A. Yes.

Q. How many police officers were around?

A. That's all that was around was police officers. I could tell you fifty, a hundred and still be wrong. I don't know.

Q. Well --

A. It was a lot of -- I mean the place was crowded with police, the waiting area inside -- I don't know.

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Durham - Cross

Q. With regard to Mr. Jamal, in the immediate area of Mr. Jamal, how many police officers?

MR. MCGILL: I have to object. At the time the statement was made, or before...or after?

MR. JACKSON: Yes, at the time of the statement. That's right.

THE WITNESS: I don't know.

BY MR. JACKSON:

Q. You can't estimate for us, ma'am?

A. Fifteen, twenty.

Q. What were they doing?

A. They were trying to control their prisoner.

Q. No. Tell us what they were doing.

A. Sir, I don't know. When the doors opened Mr. Jamal was hollering, the police was hollering. I immediately left this area.

Q. All right.

A. Now I don't know what they were doing. One was holding his legs, somebody has his arms; they were trying to control their prisoner. I did not stand there and watch and see what they did.

Q. I didn't ask you whether you stood there and

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Durham - Cross

watched what they did, ma'am.

A. I'm trying to let you know.

Q. Would you wait for my question?

MR. MCGILL: Objection. Let her finish.

THE COURT: Just --

MR. JACKSON: Your Honor --

THE COURT: -- Let her answer. Don't argue, please.

BY MR. JACKSON:

Q. The question is: What did you see them do? I don't want you to tell me they controlled him. I want you to tell us what they actually did, what you saw them do to him.

A. I didn't see them do anything. I was there for a moment and I was gone.

Q. Now, you said that you heard Mr. Jamal holler. What kind of hollering?

A. I mean he was thrashing and he was making noises.

Q. What kind of noises?

A. He was fighting the police.

Q. What kind of noises?

A. For a moment what I could hear -- I didn't hear

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what he was saying.

Q. Officer Durham, I wasn't there. I want you to tell us as best you can recall what the noise was.

A. I don't know what he was doing.

Q. Was it screaming noise?

A. No it wasn't screaming. It wasn't noises like that. He was, you know, -- what can I say? When you be in custody by the police, you know, you're uncontrollable, you're saying things, and the whole time --- like I said, I was there only for a moment. When I realized what was happening I just got out of the area.

Q. You are saying he was uncontrollable and he was screaming and hollering: is that right?

A. Yes.

Q. You knew he was out of control: is that right?

A. Yes.

Q. And you saw a police officer on his legs and on his hands or on both of his arms: is that right?

A. Yes.

Q. And there were about fifteen officers surrounding him, but you don't know specifically what they were doing?

A. Well, I'm not going to say that there was fifteen

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officers. There were fifteen, maybe, officers around but not necessarily fifteen officers dealing with Mr. Jamal.

Q. Okay. Now, wasn't his hands tied, didn't he have his hands in

handcuffs?

A. Yeah, he had his hands in handcuffs but they was underneath his back, so officers had him around the shoulder, you know, in his forearms.

Q. So he wasn't doing anything with his forearms and his hands --

A. Right.

Q. -- his hands were behind his back?

Q. When you say he was thrashing around with his arms --

A. You know, when you're laying back you can move like this and you have your feet --

Q. I understand that. One officer had his foot and one the other leg and he was hitting them with his elbow?

A. The officers were controlling their prisoner. I didn't stay there long enough. They had just brought the man into the emergency area, number one.

Q. Why did they need -- strike that.

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#### Durham - Cross

Did you see a need for them to control him?

A. Yes.

Q. Because he was handcuffed and his hands behind his back and he was on the floor shot?

A. He wasn't controllable.

Q. What do you mean by that?

A. What do I mean? If they had just let him lay there I could see from the way that he was there he would have been all over the area. Even though you're handcuffed and you're laying down you still have a great deal of mobility.

Q. How?

A. Easily.

Q. Tell me, ma'am.

A. You have your legs, you can move around.

Q. So you stood there long enough to make that determination?

A. No. I made that determination from being a security officer observing handcuffed prisoners.

Q. Who are shot in the chest and on the floor on their back?

A. (No response)

Q. How many times have you seen prisoners handcuffed

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with arms behind their back, shot in the chest and with fifteen officers around?

A. I never seen prisoners handcuffed and hands in the back and shot in the chest acting like that, either.

Q. Have you seen any?

A. No.

Q. This is the first time?

A. Yes.

Q. So you have no experience and that's an estimate on your part, isn't it?

A. I would think that anybody that would be shot would be trying to get some help and not the way he was acting.

Q. Have you been shot, ma'am?

A. No.

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Now, when the door opened and Mr. Jamal was there were there any officers between you and Mr. Jamal?

A. No.

Q. Did you see any weapons or anything in any of the officers' hands?

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A. No.

Q. You didn't see any, or you didn't see the hands?

A. I didn't see everybody's hands.

Q. Did you see whether any of the officers were kicking him?

A. No.

Q. You didn't see it?

A. No.

Q. How close were these officers to him aside from those that were holding on each of his limbs?

A. How close were the other officers close to him?

Q. Yes, ma'am.

A. Well, if you got one man behind another man how close is that?

Q. I don't know.

A. Well, that's as close as it is.

Q. Now, you indicated that later on you heard him say that again, right?

A. Yes.

Q. And he said, again, "Yeah, I shot the mother fucker and I hope he dies?"

A. Yes. And that's all? You didn't hear anybody else

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say anything, did you, other than, "If he dies, you die?"

A. Yes.

Q. You Didn't hear any other officers say anything at all?

A. No.

Q. Are you saying that they didn't say it, or that you didn't hear it?

A. I didn't hear it.

Q. Now, the second time that you heard him make the second statement where were you at that point?

A. Do you want me to show you on the chart, or tell you?

Q. Okay.

A. I was directly across from the area where the double doors are.

Q. So you would have been near the receiving desk?

A. Yes.

Q. And where was Mr. Jamal at that time?

MR. MCGILL: I would object to that. I think that's too general and vague, "near the receiving desk." Perhaps Miss Durham, can show us where.

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THE COURT: If he wants to.

MR. JACKSON: Your Honor, why is Mr. McGill telling me how to

conduct my cross-examination?

THE COURT: You can go into that.

MR. MCGILL: Yes, sir.

MR. JACKSON: Thank you.

BY: JACKSON:

Q. Now again. Miss Durham, you were across that doorway that you opened up, is that right?

A. Yes.

Q. Fine. And where was Mr. Jamal?

A. He was still at the double doors.

Q. Still on the floor?

A. Yes.

Q. Still on his back?

A. I don't know.

Q. Couldn't see him?

A. No.

Q. Could you see the officers?

A. Yes.

Q. Could you see what they were doing?

A. No.

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Q. Could you see what Mr. Jamal was doing?

A. No.

Q. And you, of course, have no idea at all what was happening to Mr. Jamal during the time that you walked from that double door around from the treatment area and to the opposite side?

A. No.

Q. Did you hear Mr. Jamal holler or scream during that period of time?

A. No.

Q. If in fact there was noise or hollering or screaming could you hear it from where you were?

A. No.

Q. So it was not until you opened the door again that you could hear any noise that was out in the lobby area?

A. Right.

Q. And after you opened that door you then indicated that they picked him up?

A. Yes.

Q. And they dragged him, or they brought him over?

A. Yes.

Q. And they went through the room and took him to

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#### Durham - Cross

a treatment area?

A. To a family room, yes.

Q. What's a family room, ma'am?

A. It's a room where they usually keep families of waiting -- you know, for people waiting for medical treatment.

Q. They didn't take him to a treatment room right away?

A. Well, no, they didn't.

Q. Were there treatment rooms available?

A. Yes.

Q. But nevertheless they took him to the family room. After they took him to the family room is that when you heard the officer say, "If he dies you die?"

A. No.

Q. When was it?

A. When they was at the double doors.

Q. Before you went around --

A. Before I went around.

Q. Okay. And that was Officer Gary Bell. Let me go back to that, if you don't mind, for a second. You heard Mr. Jamal say what he said and you saw what you saw. Where was this officer at when he told Mr. Jamal,

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"If he dies you die?"

A. He was to my right. So I'm standing on the mat, I'm standing right here in these double doors.

Q. Show it to the jury, ma'am. Go ahead.

A. I'm standing right here and on this side of the double doors, and Officer Bell was somewhere in this area to my right, and Mr. Jamal, he was approximately in this area here.

Q. So how close was Officer Bell to Mr. Jamal?

A. He wasn't really close to him at all.

Q. Now, by the way, did you know if Mr. Jamal was injured?

A. No, I did not.

Q. So you didn't have any idea at all why they would bring him to the hospital?

A. No.

Q. Then why did you go around and open the doors?

A. Because the officers were hollering at me where could they put him at.

Q. So you did hear them say something.

MR. MCGILL: Objection. May she finish her answer?

THE COURT: Please let the witness

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answer her question.

MR. JACKSON: My apologies to the officer. Go on. My apologies to you.

THE WITNESS: I had testified earlier that I heard an officer ask me around the same time that Officer Bell was stating, "If he dies you die," an officer was asking me where could they put Mr. Jamal. And that was my reason for leaving the area and going to open the other door.

BY MR. JACKSON:

Q. Anything else you recall them saying other than Officer Bell saying what he was saying and the other officer asking you where they could put Mr. Jamal?

A. No.

Q. And when the other officer asked you where could they put Mr. Jamal you weren't thinking that Mr. Jamal was a patient?

A. No.

Q. And did you recommend the family room?

A. Yes.

Q. Do they normally bring prisoners to the hospital?

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A. Yes.

Q. When they're uninjured?

A. Yes.

Q. Bring them in for identification purposes, right?

A. Yes.

Q. Was Officer Faulkner conscious at any time?

A. No.

Q. So he couldn't make any identification, could he?

A. No.

Q. Officer Faulkner was at the hospital first; was he not?

A. Yes.

Q. And you saw him when he was brought in?

A. No.

Q. But you knew that he was in there before Mr. Jamal; is that right?

A. Oh, yes.

Q. And before Mr. Jamal arrived at the hospital, were you advised by any of the police officers as to who it may have been that shot the officer?

A. No.

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Q. They never told you anything at all?

A. No.

Q. All they told you was that he was shot?

A. Yes.

Q. Did you ask any questions?

A. No.

Q. When he was in, Mr. Jamal was in, the family room, how long was he in the family room?

A. I'd say maybe less than five minutes, long enough for me to go get some medical personnel, somebody to know that he was back there.

Q. Did you know then after he was in the family room that he was injured?

A. Mrs. Keating came out and said he was injured, yes.

Q. Mrs. --

A. Keating.

Q. Who's Mrs. Keating?

A. Nurses' supervisor.

Q. She came out and told you that?

A. No, she didn't necessarily come out and tell me.

Q. I just want to know how she came in contact with Mr. Jamal.

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A. Well, I don't know how she came in contact with Mr. Jamal. The only thing I know is when I came out of the room Mrs. Keating and somebody else was on the way, which I was on my way to get them, anyway. They went into the room and came out, and that's when Mrs. Keating said that they had to get Mr. Jamal to the treatment area because he was shot.

Q. Now, when Mr. Jamal was in the family room he was on his back then as well?

A. I don't know.

Q. You didn't see him at all?

A. Oh, no.

Q. But I mean you just saw them bringing him in the room?

A. Yes.

Q. And when they brought him in the room you immediately left?

A. I never went in the room. I just showed them where the room was at.

Q. Now, did you see them take him to a treatment area?

A. Yes.

Q. How did they take him?

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A. They drug him.

Q. They drug him. By the way, when you opened the door to the family room and he was on the other side of the room how did they get him from the other side of the room to the family room?

A. They lift him up. They tried to walk him but he wasn't walking.

Q. Wasn't walking?

A. You know, they pulled him to the back of the area.

Q. How did they pull him?

A. By his arms.

Q. And where were his feet?

A. His feet was on the floor.

Q. So they were dragging his feet?

A. Yes.

Q. And when they took him to the treatment area they didn't take him on a stretcher?

A. No.

Q. You have stretchers and wheel chairs in the hospital?

A. Yes.

Q. Were they right there in the emergency area?

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A. Yes.

Q. Did anyone ask you for either one of them?

A. No.

Q. Did anyone use any of them?

A. No.

Q. When Officer Faulkner was brought into the hospital did you see him brought in?

A. No.

Q. Do you know a Dr. Rita Cudemo?

A. Yes.

Q. Do you recall seeing Dr. Rita Cudemo that evening?

A. Yes.

Q. Do you recall seeing her in the lobby of the waiting room of the Emergency Room?

A. No.

Q. Do you recall specifically where you may have seen her or if you saw her at or about the time Mr. Jamal was brought into the hospital?

A. No, I do not.

Q. The area where Dr. Cudemo works, could you just -- is it on that diagram, or could you point it out?

A. No.

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MR. JACKSON: It's not. Okay.

(A discussion was held off the record.)

MR. JACKSON: Your Honor, may I have your indulgence, please?

(A discussion was held off the record.)

BY MR. JACKSON:

Q. By the way, did you know Mr. Jamal before that evening?

A. No.

Q. Did you see his brother William Cook?

A. No.

Q. And you hadn't known Officer Bell, as well; is that correct, or did you know Officer Bell?

A. No.

Q. That evening was the first time you had seen him?

A. I seen him but I don't know him.

Q. You had seen him before. Did you see him before that evening, I mean earlier that evening?

A. No.

Q. Seen him a number of times at the hospital?

A. Yes.

Q. About as often as you saw Officer Faulkner?

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A. Yes.

Q. So you didn't know Officer Faulkner any more than you knew Officer Bell?

A. No.

Q. Did you talk to Officer Bell, as well, a number of times? Is that right?

A. Yes.

Q. About the same kind of things you talked about with Officer Faulkner?

A. Yes.

Q. Were they partners?

A. I don't know.

Q. Did you see them together when you saw them?

A. When you say together you mean they walk into the hospital together, they leave together?

Q. Well, no.

A. I mean --

Q. Generally being in the hospital about the same time.

A. No. Well, I can't answer that.

Q. By the way, ma'am, were you advised or told by one of your supervising officers to assist the police?

A. No.

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Q. You just acted on your own?

A. No.

Q. Why did you do what you did?

A. Well, my job in the Emergency Department that night was to assist whoever, be it the Police Department, Jefferson employees, you know, whatever, whatever. Where you can be used then you be, you know, you're there.

Q. That --

A. I was not assigned to the Police Department that night.

Q. No. I understand that. Ma'am, I'm not asking that. First of all, were you assigned to the Emergency Room that night?

A. No.

Q. So then where were you assigned that night?

A. I'm a patrolman. I have the whole building.

Q. So you were told by someone, I assume --

A. Yes.

Q. -- to go there.

A. Yes.

Q. Who was that?

A. Lieutenant Williams.

Q. So that was the supervisor?

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A. Yes.

Q. So you were told to go there?

A. Yes.

Q. How much earlier than you arrived were you told to go there?

A. (No response.)

Q. How long were you in that emergency area before you saw Mr. Jamal?

A. Oh, I had been in there, I guess, about maybe forty-five minutes or so.

Q. Forty-five minutes?

A. I'm not sure. Anywhere from a half-hour to forty-five minutes.

Q. Do you know if that was before, or after Officer Faulkner arrived?

A. After.

Q. So then you're saying that Mr. Jamal would have arrived half an hour or forty-five minutes after Officer Faulkner?

A. No, I'm not saying that. You asking me -- what was the original question?

Q. Okay. I wanted to know, first of all, how long -- maybe I'm confused -- how long you were in the Emergency

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Room before you saw Mr. Jamal.

A. Maybe a half-hour, forty-five minutes.

Q. Now, how long were you in the Emergency Room before you knew that Officer Faulkner was brought in? If you know.

A. Approximately the same length of time.

Q. So you're saying that they came in about the same time.

A. No. I'm saying maybe a half-hour, forty-five minutes later is when Mr. Jamal was brought in.

Q. Okay. Half-hour or so after the officer.

A. Yes.

Q. Now, do you prepare any kind of reports? I mean, do you have a log or something that you prepare or you write while you're patrolling?

A. No.

Q. You don't clock in anywhere or anything?

A. No.

Q. So there'd be no reason for you to know any of the exact times that you were at any place in particular; is that right?

A. Right. Only if an incident comes up and I have to fill out an incident report is when I'm required to

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know times.

Q. Okay. Did you prepare an incident report for this evening?

A. I didn't have to.

Q. When you say you didn't have to, is that because this was not out of the ordinary?

A. Well, it wasn't a hospital -- you know, it was just an emergency problem. That wasn't a security problem.

Q. Now ma'am, do you recall whether in fact at any time that you saw Mr. Jamal in that hospital that you saw an injury to his head?

A. No.

Q. Did you see any blood on or about him anywhere?

A. No.

Q. Nowhere?

A. No.

Q. How close did you get to Mr. Jamal the first time? And I believe you said he was right in front of you but just so we'll know approximately.

A. I was on him. I was on top of his -- his head was at my feet.

Q. Right on top?

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A. Yes.

Q. Okay. And when they brought him to the family room did they bring him by you?

A. No, because I was in front of them and then --

Q. Okay. And then you saw them take him from the family room to the treatment room?

A. Well, not all the way. I just, you know, seen him when they went in to get him and they started out and I went somewhere else. I didn't see him go to the treatment area.

Q. Now you're still employed at Jefferson Hospital, ma'am?

A. Yes, I am.

Q. Same capacity?

A. Yes.

Q. Same shift?

A. Yes.

Q. Same responsibilities?

A. Yes.

MR. JACKSON: No further questions.

THE COURT: Can we take five?

MR. MCGILL: Miss Durham --

MR. JACKSON: Just a moment, please. I

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just have one.

BY MR. JACKSON:

Q. The words that Officer Bell spoke, "If he dies you die," you're certain he said that?

A. Yes.

Q. It couldn't have been any other officer?

A. No.

Q. And could you tell us how it is that you remember those words so precisely?

A. Because Officer Bell was very upset behind Officer Faulkner. We had all been in the area around Officer Faulkner, me and him. That's how we arrived at the area, almost the same time because we were just like walking around, you know. So that's how I know it was him, because we was practically together except he was into his thing and I was into mine.

Q. Now, he couldn't have used any other words, though?

A. Yeah, he could have.

Q. So you're saying that he said that but you don't know that he said that?

A. No. I'm sure that's what it was, "If he dies you die."

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Q. You're sure?

A. I'm sure.

Q. And what if anything was Officer Bell doing when he was talking to Mr. Jamal?

A. Probably trying to get around another officer, because the area was just crowded. He couldn't --

Q. You say probably trying to get around him?

A. Yeah, because he was on my right and neither one of us could get around four police officers. This area --

Q. But you're saying he was trying to get around.

A. I'm saying initially we were on our way out of the area, that's how we happened to get going that way. So I'm saying -- you're asking me what was Officer Bell trying to do. I imagine he was trying to get out of the area, and we both happened to run across Mr. Jamal being there.

Q. But when he said that to Mr. Jamal what did you see him, other than speak the words, what did you see him do with his hands?

A. I didn't see him do anything.

Q. Nothing at all?

A. No.

Q. Did he have anything in his hands?

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A. I didn't see his hands.

Q. Did you see his feet?

A. No, I did not.

Q. You don't know what his feet did or what his hands did?

A. No.

MR. JACKSON: No further questions.

THE COURT: Can we take a five-minute recess?

(A short recess was taken.)

PRISCILLA DURHAM, resumed.

(The following took place in open Court in the presence of the jury:).

THE COURT: Mr. McGill?

MR. MCGILL: It may be appropriate to have the jury out for a moment.

THE COURT: All right.

(The following took place in open out of the presence of the jury:)

THE COURT: What's the problem?

MR. MCGILL: Maybe Mr. Jackson can tell us. I assume Mr. Jamal, the defendant in this

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case, was about to say something.

THE COURT: Is he?

MR. JACKSON: I don't know, Your Honor. He hadn't indicated to me that he was, sir. I do not know.

THE COURT: Do you want to say something or are you going to stand up, or what are you going to do?

THE DEFENDANT: (No response.)

THE COURT: Well, he's not saying anything so I assume he's not going to behave himself.

MR. MCGILL: Yes, sir.

THE COURT: You realize if you interrupt in front of this jury I'm going to have to remove you again.

THE DEFENDANT: Judge, you can remove me again and again and again and again and again and again. I am going to point out to you what is important to me; that this is my trial; that this man is your employee, not mine; that he is functioning for the court system, not for me; he is not doing what I am telling him and directing

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him to do but what you are ordering him to do. So I choose to sit down because you can hear me from the seat.

THE COURT: Okay.

THE DEFENDANT: I am protesting his appointment, his continuing functioning here. I wish for him to be withdrawn immediately.

THE COURT: Denied.

THE DEFENDANT: And I would like to have John Africa appointed to assist me in this matter.

THE COURT: Denied.

THE DEFENDANT: Judge, you can call the jury in and I don't care if they hear it, frankly, because it's the truth.

THE COURT: You mean you're going to make some statements in front of the jury?

THE DEFENDANT: Well, I had planned to defend my life in front of the jury. I plan to represent myself in front of the jury. I plan to cross-examine witnesses in front of the jury. I plan to make a closing statement and argument in front of the jury. But obviously you have

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other plans.

THE COURT: In other words, you're telling me if I bring the jury in you're going to stand up and start making statements in front of the jury?

THE DEFENDANT: I didn't say that at all, Judge. I told you what I plan to do.

THE COURT: Okay. We'll bring the jury in and we'll play it by ear. Like I told you before, if you act up --

THE DEFENDANT: Judge, I'm not acting up. I'm not acting at all. I'm telling you the truth.

THE COURT: All right.

THE DEFENDANT: Judge, that doesn't mean anything, that threat about removing me.

THE COURT: I know it doesn't.

THE DEFENDANT: Well then, you need to stop saying it, then.

THE COURT: Okay. I have to let you know I am going to do this.

THE DEFENDANT: Okay.

THE COURT: All right.

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THE DEFENDANT: For the record, I would like to have Anthony Jackson withdrawn from this case. He would like to be withdrawn from this case. I would like to have John Africa appointed in my assistance in defense of this trial.

THE COURT: Denied again.

THE DEFENDANT: I would like to cross-examine that witness, Judge.

THE COURT: Denied.

THE DEFENDANT: I'd like to ask her several questions.

THE COURT: Denied. Give your questions to Mr. Jackson.

THE DEFENDANT: I don't want to give them to Mr. Jackson.

THE COURT: Fine.

THE DEFENDANT: He's your employee and not mine, and I'd like to ask those questions whether you deny it or not.

THE COURT: Denied.

THE DEFENDANT: Miss Durham, why did you wait until February the 2nd to give your,

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statement?

THE COURT: Okay. Remember what I told you.

THE DEFENDANT: Miss Durham --

(The following took place in open court in the presence of the jury:)

THE COURT: All right. Hold up the jurors.

(The following took place in open court out of the presence of the jury:)

MR. MCGILL: Before the jury goes can I ask Miss Durham one question before he --

THE COURT: He's not going to let you.

THE DEFENDANT: Miss Durham, why did you wait until February the 2nd to make your statement?

THE COURT: Okay. Mr. Jamal, it is obvious to the Court that you intend to disrupt the proceedings in front of the jury.

THE DEFENDANT: I am not disrupting. It's obvious I intend to defend myself.

THE COURT: And once again I am removing you from the courtroom.

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THE DEFENDANT: It's obvious, Judge, that I am defending myself.

MR. MCGILL: Judge --

THE COURT: Let the record indicate that the jury was in, practically sitting in their first seats here, when he started asking questions. That's why I sent the jury out immediately. I knew what he was going to do and I just wanted to put it on the record. What's your problem?

THE DEFENDANT: Let the record reflect I'm defending myself; that I want John Africa to assist me in this matter --

MR. MCGILL: May I request --

THE DEFENDANT: -- and Anthony Jackson represents the Court's wishes, and not mine.

MR. MCGILL: Your Honor --

THE DEFENDANT: He wants what you want done and not what I want done. I want appeals filed immediately.

MR. MCGILL: Your Honor, may I request that the defendant be held back there for a moment until Miss Durham can be asked specifically

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to point the defendant out. She's been using the name -- not using the name defendant but Jamal, and I would like him to do that.

THE COURT: Hold him back there. You should have done this before.

MR. MCGILL: I recognize that but it's necessary.

THE COURT: It may not be that necessary. It's quite obvious who she's referring to.

THE DEFENDANT: It's obvious what you're doing, Sabo.

(The defendant was removed from the courtroom.)

THE COURT: You can ask her if the gentleman was seated there. If he was the one --

MR. MCGILL: He could do that.

THE COURT: I know we're going to have trouble getting him back in the courtroom.

MR. MCGILL: If he's right back there --

THE COURT: No, I don't want the jury to know that he's coming out of there. That's my problem.

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MR. MCGILL: Well, he could stay there.

THE COURT: I don't want to keep moving them in and out. Come here, I want to see you.

(A sidebar conference was held on the record as follows:)

THE COURT: Once again I'm going to ask Mr. Jackson if he wants me to in anyway give any cautionary instructions or --

MR. JACKSON: I think, again, Your Honor --

THE COURT: Once again?

MR. JACKSON: I think that even if it happens a hundred times I think at any point to stop doing it is likely to signal something.

THE COURT: Yes.

MR. JACKSON: And I know it's --

THE COURT: I will.

MR. MCGILL: Getting back to having him stay here, I don't think that's a good idea.

MR. JACKSON: I don't, either.

THE COURT: I think I'm going to send him up.

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MR. MCGILL: What I could do is this --

THE COURT: You can ask the question --

MR. MCGILL: May I say it first?

THE COURT: Go ahead.

MR. MCGILL: If I could say, "The individual that you have stated, has he been in the courtroom this morning?" She'll say, "Yes." Where has he been standing or seated? He has been seated," and she'll point over there. And I'll say, "In this chair? That's correct." And then you could at that point stipulate that if he were brought --

MR. JACKSON: No, no, no, no.

THE COURT: He doesn't have to stipulate to that.

MR. JACKSON: It's the defendant.

MR. MCGILL: No. No. Stipulate that if the defendant were sitting in that chair that's the one she would say --

THE COURT: Give the jury some sense --

MR. MCGILL: Give the record some sense.

THE COURT: Well, it's in the record.

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You should have done it when he was quiet.

MR. MCGILL: Judge, I should do a lot of things. I make a mistake, what am I going to do?

THE COURT: What do you want me to do? Bring him out here? He's going to be acting up in front of the jury. If I bring him out here he's going to start acting up.

MR. JACKSON: It seems to me --

THE COURT: It's obvious.

MR. JACKSON: Where is he? He would he sitting in that chair. Let the record reflect the defendant --

THE COURT: "Was sitting in this chair" you can do that.

MR. MCGILL: All right. I'll do that.

THE COURT: Sheriff, take him upstairs.

(Sidebar conference ended.)

(The following took place in open court in the presence of the jury:)

MR. MCGILL: Your Honor, if it please the Court, I have --

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THE COURT: Just a minute.

MR. MCGILL: I'm sorry.

THE COURT: Members of the jury, you are not to draw any adverse inferences from the absence of the defendant. You should further refrain from any sympathy, bias or prejudice for or against the defendant. All right. Proceed, Mr. McGill.

MR. MCGILL: Yes. Sorry for that misunderstanding, Your Honor.

THE COURT: That's all right.

MR. MCGILL: Your Honor, I have over the course of the time of Mr. Jackson questioning this witness asked one of my detectives to go over to Jefferson Hospital --

THE COURT: If you have something to say about that, would you please see me at sidebar?

MR. MCGILL: Okay, sir.

(A sidebar conference was held on the record as follows:)

THE COURT: What's your problem?

MR. MCGILL: I just got the statement

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that he wanted.

THE COURT: Okay.

MR. MCGILL: And I'm going to bring it to him.

MR. JACKSON: I don't think to bring that up in front of the jury is appropriate.

MR. MCGILL: I said I would get it.

THE COURT: Wait after you redirect then you can make it and give it to him, because I said that I would allow him to further cross-examine.

MR. MCGILL: That's right. That's why I was going to let him have it now for recross-examination.

MR. JACKSON: Your Honor, rather, give me the statement and if there's something in the statement that I don't want to cross-examine --

THE COURT: You don't have to. You asked for it.

MR. MCGILL: And I said I would get it.

THE COURT: And he said he would supply it.

MR. MCGILL: What about now?

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Durham - Cross

THE: COURT: Do it now.

(Sidebar conference ended.)

(A discussion was held off the record)

BY MR. JACKSON:

Q. Miss Durham, I have gotten a copy of what purports -- may I have this marked Defense Exhibit 13 now? Or 14?

THE COURT: Yes.

MR. JACKSON: Mr. McGill has a copy.

THE COURT: All right.

BY MR. JACKSON:

Q. Show it to the witness, please. Read it, Miss Durham. You've had an opportunity to review D-14; is that correct?

A. Yes.

Q. Earlier when I questioned you with regard to the statement that you perhaps gave to your supervisor at Jefferson Hospital you indicated that you dictated a statement orally; is that correct?

A. Yes.

Q. Is that the statement?

A. Yes.

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Durham - Cross

Q. As it was being dictated it was being typed immediately onto a typewriter?

A. No.

Q. So that is not the statement then?

A. No.

Q. So again we still don't have the statement that you gave; is that correct?

A. Not the handwritten one.

Q. And you signed the handwritten statement?

A. No. I said I believe I may have signed the statement. I didn't say whether I had or not. I didn't remember.

Q. Did you review the statement after you gave it to see if it was accurate?

A. No.

Q. So in other words, you don't you don't know what was written?

A. No.

Q. So anything that would be brought in here you'd have no idea at all when it was written; is that correct?

A. I'd know if I said it.

Q. But you won't know whether or not you used those words because you've -- strike that.

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Durham - Cross

You wouldn't know whether the statement was yours or not if someone just brought a sheet of paper in here, is that correct?

MR. McGill: Objection. That's not what is happening.

THE COURT: Can you rephrase your question?

MR. JACKSON: Sure.

BY MR. JACKSON: You haven't signed any statements, you haven't reviewed any statements either today or on December the 10th to say that that was the statement you gave is that correct?

A. No.

Q. It wouldn't be a guess?

A. I'd know if I said it or not.

Q. You would know word for word what you said?

A. No.

Q. So how would you know if it was your statement,

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Durham - Cross

Ma'am?

A. Because I know what I said.

Q. All right. I am not going to debate that with you. But moving right along, we know that you have not adopted any statement so we can introduce any statement but --

MR: McGill: I would object to that.

THE COURT: Please don't comment.

MR: McGill: I would object to that because she says she knows what she said.

THE COURT: Please. All right.

BY MR. JACKSON:

Q. Do you know whether in fact that you told your supervisor whether or not Mr. Jamal was bleeding?

A. No I didn't know.

Q. You didn't know what?

A. If I had told them that. You asked me --

Q. I asked you before and you said, "No."

A. Right.

Q. Now my question is: Do you know whether or not you told them?

A. No.

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Durham - Cross

Q. You didn't tell them he was bleeding?

A. I don't know.

Q. Would you review the statement that is in front of you ma'am, D-14?  
Now, although I know -- tell me, is that the statement you gave?

A. Yes.

Q. And it says in that statement that he was bleeding or words to that effect?

A. Yes.

So that portion of your statement is incorrect?

A. You say it's incorrect?

Q. I'm asking?

A. No, I don't say it's incorrect.

Q. Well is it?

Q. No. If I said it on December the 10th, than that's what it was.

Q. So you were wrong when you said that he wasn't bleeding?

A. Yes.

Q. Okay. Now, let me get back to the cross-examination. At what point did you notice he was bleeding?

A. I don't remember.

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Durham - Cross

Q. Do you know where he was bleeding?

A. No.

Q. And in fact, you don't remember bleeding but you're just saying that if it's in the statement it must be true?

A. No. I'm saying that on December the 10th when I made this statement everything was more fresher than it is now. And I would go along with the statement made December the 10th as opposed to me saying this morning that he wasn't bleeding because I didn't remember him bleeding --

Q. Is there anything --

A. -- but --

Q. I'm sorry. I didn't mean to interrupt.

A. But on December the 10th, whatever that was, the next day, naturally I was more alert as to what went on the very next day as opposed to five months later.

Q. I understand and I am not arguing with you. You've had an opportunity to reflect. Is there anything else that you may now remember that you didn't remember earlier?

A. No.

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#### Durham - Cross

Q. Do you remember whether in fact any of the officers were kicking Mr. Jamal?

A. No.

Q. Do you remember whether in fact the officers were striking Mr. Jamal?

A. No.

Q. Do you remember hearing Mr. Jamal holler and scream as if in pain?

A. No. As in defiance.

Q. As if in defiance? Well you have explained that to me a minute.

A. Well, okay. If someone is being kicked or punched, I mean you can distinguish between somebody hollering from pain and hollering just to be hollering.

Q. Fine. And your saying the fact that Mr. Jamal was shot in his chest wasn't paining him at all?

A. Well, I didn't know he was shot.

MR. McGill: I object. She did not state whether she was aware of it.

BY MR. JACKSON:

Q. Whether you were aware of it or not, you're saying that his crying and hollering was in defiance and not pain?

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Durham - Cross

A. Pain in reference to him being kicked or hit?

Q. I don't know what --

A. Well, that's what you asked.

Q. No ma'am. I just asked whether he was hollering and screaming in pain whether being kicked or being hit.

A. I don't know if he was shot so I couldn't say.

Q. You're saying that the hollering and screaming was in defiance?

A. In reference to him being kicked or beaten as far as the gun shot wound, I have no knowledge.

Q. So how could you say --

A. So I'm saying the assumption that whether I saw anyone kick him or hit him, no, I did not. At this time I had no knowledge that he was shot so how could I say that he was hollering because he was shot and I didn't know.

A. I want to know how you can say he was hollering in defiance?

A. Because even the way he was shouting it was more of a boast thing.

Q. And that makes you believe --

A. Yeah.

Q. So based on your experience there at Jefferson

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Durham - Cross, Redirect

Hospital, given the bullet wound to Mr. Jamal's chest, would you assume he was in pain?

MR. MCGILL: Objection.

THE COURT: I sustain that objection.

MR. JACKSON: No further questions.

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Would you read that statement first please?

MR. JACKSON: I would object. May we see you Honor at sidebar?

THE COURT: Yes.

(A sidebar conference was held on the record as follows.)

THE COURT: Do you have the statement? Give me the statement.

MR MCGILL: Yes.

MR. JACKSON: If I may give the basis of my objection -- I'll let you read first.

THE COURT: Well, I don't think you have to read the whole thing. If you're trying to affirm that she said this statement down here you can read that part.

MR. JACKSON: Or refresh her recollection.

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THE COURT: Or just ask her.

MR. MCGILL: Also it's a prior consistent statement.

THE COURT: I know.

MR. MCGILL: He went into the business. Do you recall now whether he was kicked or hit? That certainly gave the inference to the jury that that is in that statement somewhere.

THE COURT: Wait a minute. Let me see this. Well, there's nothing in here that says he was bleeding.

MR. MCGILL: There is one thing.

THE COURT: Where?

MR. MCGILL: Excuse me Judge for taking it from you.

THE COURT: Oh, I see.

MR. JACKSON: But Judge, whatever inference the jury may get from my questions -- after the question about bleeding I left it and said, "Let's get back to this incident now that you remember the bleeding." But for her to be able to use this statement without ever having adopted it, you can't use that.

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MR. MCGILL: He already said, "Do you recall."

THE COURT: Yes. She said this was her statement.

MR. JACKSON: She's just assuming. She never adopted it at the time she gave it.

THE COURT: You cross-examined her on it. You don't have to go over the whole thing. I think you should ask her if she remembers this last part - well, I don't want to say the word.

MR. MCGILL: I understand.

THE COURT: Actually, all of this is unnecessary.

MR. McGill: He brought in the aspect of the fact about not being treated for awhile Judge on his cross-examination, that they did not take him right away. Were there rooms available? Were there wheel chairs available? And it says here that he was, in fact - states the police took him to the family room about 16:30, later two doctors went to the family room and said that Jamal needed treatment.

THE COURT: You can ask her about --

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MR. JACKSON: Judge, I object to the statement because she hasn't adopted the statement. I'm just given a piece of paper saying that's her statement she's saying that it must be and I don't know how you can use that.

MR. McGILL: She does recall.

MR. JACKSON: Anybody could have typed that up. Judge, she never adopted it.

THE COURT: She talked to these people up here.

MR. JACKSON: That is what it says. We don't know that.

THE COURT: She said that.

MR. JACKSON: She said it was handwritten, Judge. She said she never saw that.

THE COURT: She gave a handwritten statement and they took the handwritten statement and typed this.

MR. JACKSON: We don't know that. Judge, you can't assume that.

THE COURT: You can't assume that they didn't. Look, you cross-examine on that statement.

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MR. JACKSON: No, I did not, Judge. I asked about the bleeding.

MR. McGill: Once you started you put the whole thing in issue.

MR. JACKSON: But I didn't read it.

THE COURT: That's your problem.

MR. McGill: Let me ask her to refresh her recollection.

THE COURT: Yes. From this point down in here about the doctors ten minutes later and this point about here.

MR. McGill: Okay.

THE COURT: These two, that's all.

MR. JACKSON: Fine.

(Sidebar conference ended.)

BY MR. MCGILL:

Q. All right. Could you read the portion starting with -- may I approach the witness?

THE COURT: You can ask her the question.

MR. JACKSON: I would object.

THE COURT: Ask her to refresh her memory.

MR. JACKSON: Fine.

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BY MR. MCGILL:

Q. Would you take a look at the statement, please? Would you take a look at the seventh line down -- by the way, who did you give the statement to? Is there anything there that refreshes your recollection as to who --

MR. JACKSON: I would object. She indicates that she did not --

THE COURT: Overruled. He's trying to refresh her recollection. Go ahead.

BY MR. MCGILL:

Q. Do you recall who you gave the statement to?

A. Yes. Officer Bartelli, Bagley.

Q. Bartelli and Bagley?

A. Yes.

Q. Were there two people?

A. Yes.

Q. And do you recall from looking at that document when you gave the statement?

A. December the 10th at 2:16 a.m.

Q. And what year?

A. 1981.

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#### Durham - Redirect

Q. In reading the last part of the first paragraph do you recall telling the interviewers that the police took the defendant to the family room and at about ten minutes later Mrs. Keating and two doctors went to the family room and said that the defendant needed treatment? I'm paraphrasing but do you recall saying that to the interviewer?

A. Yes.

Q. Is that accurate?

A. Yes.

Q. Do you recall then telling the interviewer that the police then took the defendant -- you used the name Jamal, I'm using defendant --

MR. JACKSON. Your Honor, I'm going to object. He's testified for the

witness in both questions.

THE COURT: If you want it read --

MR. JACKSON: Your Honor, he still isn't permitted to lead her.

THE COURT: Ask her whether that refreshes her memory.

BY MR. MCGILL:

Q. Does that refresh your recollection as to what

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occurred?

A. Yes.

Q. So the police then took the defendant to the cardiac room right after the ten-minute time period in the waiting room?

MR. JACKSON: Objection, leading.

THE COURT: Overruled.

MR. MCGILL: You have to say yes, or no.

THE WITNESS: Yes.

BY MR. MCGILL:

Q. The next paragraph, would you read that to yourself, please? Does that refresh your recollection as to where you saw the defendant lying when you observed his bleeding?

A. Could you --

Q. Does that refresh your recollection as to where you saw the defendant lying when you observed his bleeding?

MR. JACKSON: Objection. Your Honor, she's already said that she doesn't know where he was bleeding and when he was bleeding.

THE COURT: Go to the next one.

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THE: WITNESS: No.

BY MR. MCGILL:

Q. Your answer is no, it doesn't?

A. No.

Q. Now, would you read the next statement the next line.

A. "Miss Durham stated that Jamal shouted Yeah. I shot the mother fucker and I hope he dies."

Q. You said that on December 10, 1981?

A. Yes, I did.

Q. Also I'd ask that this be marked C-53, please, the statement to Internal Affairs.

While that's being marked, Miss Durham, it's a fact that that investigation was initiated by the defendant through his attorney. Did you determine who that was?

A. Yes.

Q. Do you know the results of the investigation of the District Attorney's office?

A. No.

MR. JACKSON: Objection.

MR. MCGILL: Okay. Withdraw that, then.

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BY MR. MCGILL:

Q. But then the momentum to ask the question came from the defense; is

that true?

MR. JACKSON: Objection.

THE WITNESS: Yes.

MR. MCGILL: Show the witness the document.

MR. JACKSON: Would the witness be instructed not to answer the questions if there is an outstanding objection, please?

THE COURT: Objection is overruled. Please wait until I get a chance to take a look at the statement before you start.

MR. MCGILL: Sorry, Judge.

BY MR. MCGILL:

Q. Would you take a look at that statement and review it? Have you had an opportunity to review it?

A. Yes.

Q. May I approach the witness, Your Honor? In reference to C-53 -- Mr. Jackson, on page three -- do you again state -- you don't have to say it again -- but, did you again state what you heard the

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defendant say?

A. Yes.

Q. And did you there state that the defendant had said that twice, at least twice?

A. Yes.

Q. And is that accurate?

A. Yes.

Q. That was on February the 9th, is that correct?

A. Yes.

Q. Miss Durham, you used, on cross-examination, two words in reference to his remark, one word was defiance and the other word was boasting --

MR. JACKSON: Objection. They're both conclusions and beyond the scope of this witness's expertise.

MR. MCGILL: He brought out the both of them and questioned on them.

THE COURT: Go ahead. Overruled.

BY MR. MCGILL:

Q. Would you explain what you mean?

MR. JACKSON : Objection. It's not relevant.

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THE COURT: Overruled. Go ahead.

MR. MCGILL: That means you can answer, when he says overruled.

THE WITNESS: Well, what I meant by boastful was I mean being on the street as long as I have everybody knows, you know, street lingo and whatever, and it's just that it was my interpretation of Mr. Jamal when he was brought into the Emergency Room that night that he was doing everything he could to intimidate the police officers, and that's why I used that word.

MR. JACKSON: Fine, Your Honor. I'll again object and move to strike.

THE COURT: No.

MR. MCGILL: Not if he brings it out, Judge.

THE COURT: I said, no.

MR. MCGILL: Sorry, Judge.

THE COURT: Don't get excited.

BY MR. MCGILL:

Q. You used the word Jamal and you used the word defendant several times. Although Mr. Jackson presently is seated in this chair, that individual, was he in the

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courtroom this morning?

A. Yes, he was.

Q. And where was he?

A. He was sitting where Mr. Jackson is now sitting.

MR. MCGILL: That's indicating, Your Honor, where the defendant in this case, Mumia Abu-Jamal was seated. Is that correct, Mr. Jackson?

MR. JACKSON: Yes.

BY MR. MCGILL:

Q. Now, you did state in response to Mr. Jackson's questions something about contact that you had with Officer Faulkner an hour or two hours before. Now would you explain that?

A. Yes. Officer Faulkner had brought in a little girl. I believe she was around six or seven years old. A black, female who had been sexually assaulted --

MR. JACKSON: Objection unless the witness knows that she's been sexually assaulted, Your Honor.

MR. MCGILL: The question on cross-examination was --

THE COURT: Overruled.

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MR. MCGILL: What did you talk about?

THE COURT: Go ahead.

MR. MCGILL: Go on.

THE WITNESS: The victim along with some relatives and friends, if I'm not mistaken, accompanied her to the hospital. One of the guys that came with the victim to the hospital had left the emergency area and was doing whatever, and Officer Faulkner was aware that the guy was there and had gone and left the emergency area and came back with him.

BY MR. MCGILL:

Q. And you used the word suspect?

A. Yes.

Q. Did you later determine that Officer Gwen Thomas was the assigned investigator in that particular arrest?

MR. JACKSON: Your Honor, objection. That wouldn't go to Gwen Thomas.

MR. MCGILL: He brought it out.

THE COURT: Okay. Don't get excited. Go ahead.

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BY MR. MCGILL.

Q. Did you later find that out?

A. Yes.

MR. MCGILL: Thank you, ma'am. Take a look at the officer's log, please.

MR. JACKSON: Your Honor, may we see you at sidebar, please?

(A sidebar conference was held on the record as follows:)

MR. JACKSON: I'm going to object to any questions he asks her about the officer's log. She's got nothing to do with that.

THE COURT: Where are you going into the log?

MR. MCGILL: We're going to ask her to take a look at this document and

whether or not this could refresh her recollection as to the time when she saw Officer Faulkner with this particular individual as well as the family.

MR. JACKSON: It's not her notes.

MR. MCGILL: That's correct.

MR. JACKSON: So they can't use that for refreshing her recollection.

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THE COURT: Can you even read this thing?

MR. JACKSON: You can't use that to refresh her recollection even if she could.

MR. MCGILL: I'll tell you what it says. It says "140 South 14th, rape -- not 14. I can't read that. "South 11th. rape suspect ID'd, Jefferson Hospital, Route 2, sex crimes. 2:05" --

THE COURT: What's this, the time?

MR. JACKSON: Yes.

MR. MCGILL: 2:05.

MR. JACKSON: You are getting behind the point, Judge.

THE COURT: 2:05 then she's right. Then about two hours --

MR. JACKSON: But Judge, she can't use this. It's not hers. You can't use someone else's statement to refresh your recollection.

MR. MCGILL: Okay. I'll withdraw it.

THE COURT: Yes, that's not right.

(Sidebar conference ended.)

MR. MCGILL: I withdraw the question.

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BY MR. MCGILL:

Q. Did you know that Officer Gary Bell was Officer Faulkner's former partner --

A. No.

Q. -- at that time?

A. No.

Q. Did you find that our later?

A. No.

Q. You indicated confusion around that area, in and out of the area that is indicated by that sketch. What did you mean by that?

A. Well, it was just a lot of policemen, you know, there. Mostly all policemen. Everybody. you know, inspectors, everybody was there. It was just mass confusion.

Q. Was there a lot of movement back and forth?

A. Yes.

Q. In other words, they just didn't go in there and stand around. Was there a lot of movement?

A. Yes. Well, the area itself is not very big inside or out so you sort of had a spill over, people who couldn't get in and those trying to get in and out.

Q. Now, you had indicated although you had a review

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of the statement -- did you have an opportunity to take a good view, a fair view, of the defendant in reference to determining whether or not he was injured?

A. No.

Q. Was it your function to determine whether or not he was injured?

A. No.

Q. As a matter of fact, why was it that you felt it important to see that the defendant was, in fact, removed to the waiting room?

MR. JACKSON: Objection.

THE COURT. I'll let her answer.

THE WITNESS: Could you repeat the question?

MR. MCGILL: All right. The question was, why was it that you felt that it was necessary at that time to remove or have the defendant removed from that area after those remarks.

MR. JACKSON: Objection, your Honor. The question was posed to her by a police officer. It wasn't her feeling that caused him to be moved

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MR. MCGILL: Perhaps we can ask her to answer the question.

THE COURT: Go ahead.

MR. MCGILL: Instead of Mr. Jackson --

THE COURT: You can answer it.

THE WITNESS: Well, like I said, when I heard Mr. Jamal make the statement simultaneously the police were asking me where could they place him. As I said before, Officer Faulkner was not far from that area and I wanted to clear that area from Mr. Jamal.

BY MR. MCGILL:

Q. Now also normally in reference to giving the statements to the police when would it be that you would give a statement to the Philadelphia police in what kind of a situation?

A. In an official capacity, if I myself called them. As far as police business, I have no interference. I don't have to make statements to the police --

Q. Okay.

A. -- when they bring in prisoners, that's their prisoners and we don't have anything to do with it.

Q. Would you, for example, if it was a crime that

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occurred in the hospital then would you become actively involved and give statements if you were a witness or in any way connected with it?

A. Yes. It would have to be within the hospital.

Q. So your duties, then, really were limited in terms of responded to interviews in the normal course of events to your supervisor in the hospital, which you did.

A. Right.

Q. And the next time that you had an opportunity, I believe -- well, the next time that you told anything to the police was when they came to you on February the 9th?

A. Yes.

Q. Was there any other security officer in that general area there?

A. Yes.

Q. There? Who?

A. Officer James Legrand.

Q. He is also a security officer?

A. Yes, he is.

Q. Do you see this individual?

A. Yes.

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Q. Can you identify this individual?

A. Officer James Legrand.

Q. Officer James Legrand?

A. Jefferson security officer.

Q. Thank you very much. Was he the individual that was in that general area?

MR. MCGILL: Thank you. No further redirect.

MR. JACKSON. I have a few questions, if you don't mind.

#### RE-CROSS-EXAMINATION

BY MR. JACKSON:

Q. You indicated that before Mr. Jamal was brought in you hadn't discussed the shooting of officer Faulkner with anyone, right?

A. No.

Q. That you just indicated to Mr. McGill that because Mr. Jamal was in the area near Officer Faulkner you wanted to clear the area: is that right?

A. Yes.

Q. Is that because you wanted to keep them separated?

A. No. Because, like I said, behind the statement

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that I had heard I just didn't think it appropriate that he be in earshot of the wounded officer?

Q. Why?

A. I don't know. My own reason, no particular-- reason. I just felt that he should have been moved to another area.

Q. If you didn't hear any questions you didn't know he was the one who

shot the officer, why did you assume he was talking about the officer?

A. I just assumed -- first of all, the hospital was closed at this --

Q. What do you mean?

A. It was medically closed. There wouldn't have been no medical emergencies other than, you know -- so what I'm trying to establish is that I knew when I saw him that he was not, per se, another hospital case because the emergency area had been closed.

Q. I don't understand you at all, ma'am.

A. Well -

Q. Explain to me -- I mean, you say it's closed and people are going in the hospital?

A. All right. What I'm trying to say is, at this time there was a medical emergency involving Officer

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Faulkner.

Unless it was, I mean, an extreme life-saving, you know, like somebody just jumped off the bridge or out of a window, the hospital was closed. Because there was mass confusion there was no place to even bring anybody else, they couldn't even get through the door. So when Mr. Jamal arrived and he was shot and he was saying, 'Yeah, I shot this man' --

Q. You say shot what?

A. I'm not going to repeat what I said. I said it already.

Q. Go on.

A. I just took it upon myself to clear him from this area.

Q. I understand that. But you still didn't make me understand why it was you knew that Jamal was talking about that officer?

A. I can't explain how I knew. He said it and I understood what he meant, and I acted on that.

Q. You --

A. He didn't call the officer by name. He didn't say, I shot the police officer. I mean it was just instinct. I don't know how. You can call it motherly instinct or whatever, I just knew what he was talking

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about.

Q. You just knew?

A. Yes.

MR. JACKSON: Thank you. No further questions.

MR. MCGILL: I have no further questions, Your Honor.

THE COURT: I have none.

MR. MCGILL: None, Judge?

THE COURT: All right. We'll recess for lunch until 2:15.

(Witness excused)

(A luncheon recess was taken until 2:15 o'clock p.m.)

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AFTERNOON SESSION

(A conference was held in chambers on the record as follows:)

THE COURT: Let the record indicate we're back in chambers.

MR. JACKSON: Yes. I just talked to Mr. Jamal relative to his behavior and activity in the court this afternoon. Mr. Jamal indicates that the judge has not satisfactorily dealt with his question, so it's intention to speak to the judge.

Based on that I informed him that the judge would not permit him to return to the courtroom. Mr. McGill intends to --

THE COURT: You indicated to me that he said he has no intention to sit and be quiet and that he would disrupt the proceedings; is that right?

MR. JACKSON: He said it was not his intention to be quiet.

THE COURT: That's what I mean.

MR. JACKSON: Okay.

THE COURT: So in effect what's he going

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to do is disrupt the proceedings in front of the jury again. If I were to bring him back in and bring the jury into the courtroom he would then stand up again and continue with what he was doing before, is that what you're saying?

MR. JACKSON: In all due respect to the Court, it was that he would not be quiet.

THE COURT: That's what I mean.

MR. JACKSON: Fine. That's what he said.

THE COURT: Otherwise I can bring the jury in now and we'll find out.

MR. JACKSON: He says he will not be quiet and your Honor --

THE COURT: I will take the position --

MR. MCGILL: I would be willing to put the jury in.

THE COURT: What I am doing is avoiding his acting up in front of the jury again.

MR. JACKSON: Yes.

THE COURT: And I understand what you're telling me, that he will act up again in front of the jury, that's why I'm not going to bring

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him out, because to bring him out would only bring to their attention once more the fact that he's going to be removed from the courtroom.

MR. JACKSON: That's correct, Your Honor. And based on that possibility I have recommended to Mr. McGill and ask that Your Honor consider a stipulation by me that in effect Officer Gary Bell, who is the next witness of the Commonwealth -- I would stipulate that in fact it was Mumia Abu-Jamal that Officer Bell saw at Jefferson Hospital in the Emergency Room lobby floor on 12/9/91 and that for all purposes of that identification it is the defendant.

I also would like the record to reflect that this stipulation is a result of my concern and in abundance of caution that if in fact Mr. Jamal is going to conduct his behavior as he's indicated to me, my feeling is that the impact on the jury would be adverse and they would necessarily draw some negative inferences from his conduct, and I feel that the stipulation would neutralize that inference as much as possible.

THE COURT: Fair enough.

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MR. MCGILL: I'll agree.

THE COURT: All right. He can go back up.

(Conference in chambers ended.)

(A short recess was taken.)

(A conference was held in chambers on the record as follows:)

MR. JACKSON: I have just gone back to Mr. Jamal and indicated that he's now going to be taken up to the sheriff's cell room. He requested that he be permitted to be taken back to the prison immediately. I suggested to him that it's my understanding of the law that he has to remain here and be available even if he's not actually in the courtroom. Again, I'm bringing this to Your Honor's attention and Your Honor can --

THE COURT: I think he should stay upstairs.

MR. MCGILL: Yes, I would ask that that be done.

THE COURT: Just in case.

MR. JACKSON: I think the rules are that's

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Bell - Direct

why they have to bring him to court everyday even if he's not here.

THE COURT: He's got to stay up there, court officer, tell the sheriff.

(Conference in chambers ended.)

(Court reconvened at 2:50 o'clock p.m.)

(The following took place in open court in the presence of the jury:)

THE COURT: Good afternoon, ladies and gentlemen.

(A discussion was held off the record.)

MR. MCGILL: Your Honor, the Commonwealth's next witness is Officer Gary Bell.

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OFFICER GARY BELL (Badge Number 1217, Sixth District) having been duly sworn, was examined and testified as follows:

MR. MCGILL: May I proceed, Your Honor?

THE COURT: Yes, please.

#### DIRECT EXAMINATION

BY MR. MCGILL:

Q. All right. Officer Bell, on December the 9th,

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1981, did you have occasion to go to the emergency area of Jefferson Hospital in Jefferson Hospital?

A. Yes, I did.

Q. And for what purpose did you go there?

A. As a result of information I received over police radio I responded to the Emergency Room at Jefferson hospital.

Q. And when you arrived where did you go?

A. I was met by other officers that were there ahead of me and they directed me to the room where the doctors were treating Danny.

Q. Now, what was your relationship with Officer Faulkner?

A. I was a close friend of his for approximately five years and his former partner.

Q. You mean former partner in a police wagon?

A. We worked the wagon together, 602 wagon.

Q. Approximately how long were you partners?

A. He came over from one squad which was the squad he was in previously specifically so we could work together on the wagon. For approximately a year.

Q. Were you also a friend of his family?

A. Yes. I was.

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#### Bell - Direct

Q. When you went there what did you do after you were directed to where he was?

A. I went over to the room on the side and I opened the door and I looked in and I saw Danny on the table being worked on by the nurses and doctor.

Q. All right. And what then occurred?

A. I watched for several minutes and I heard from -- I don't know who said it -- somebody behind me said they were bringing the guy that shot him. And I turned and several officers brought a male in and laid him on the floor in the hospital just inside the doors.

Q. Now before they did that you were where? Before that -- did you see them bring him in, or just hear they brought him in?

A. I didn't see actually them bringing him in.

Q. Okay. And you were with Officer Faulkner, in the room where he was?

A. That's correct.

Q. Where he was being attended. Okay. At that time when they brought this man in what did you then do?

A. I walked over to him. I wanted to see who did it, who shot him. And I looked at him and he looked up

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Bell - Direct

at me. He said, "I shot that mother fucker and I hope the mother fucker dies." Those were his exact words to me.

Q. What did you do?

A. I said something back to him. I said, "He shouldn't be the one that dies, you should."

Q. Could it even have been something like --

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. -- "If he dies you die?"

MR. JACKSON: Objection. He's putting words in his own witness's mouth.

THE COURT: Yes. Could you rephrase your question?

BY MR. MCGILL:

Q. Could it have been said in another way?

A. It's possible. I was angry at the time.

Q. And what did you then do?

A. I walked away before my emotions got the best of me. I felt it best that I not even be near the man and I walked back over to where Danny was, and I stayed there and watched the doctors again for several minutes work

on him and try to bring him back.

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Bell - Direct

Q. So at that point he was not yet even dead?

MR. JACKSON: Objection.

THE COURT: Rephrase your question.

BY MR. MCGILL:

Q. Was he dead at that time? What was his condition?

MR. JACKSON. Objection.

BY MR. MCGILL:

Q. What was Officer Faulkner's condition?

MR. JACKSON: Objection.

THE COURT: Okay. Overruled.

THE WITNESS: He was bleeding from, badly, from the face, head.

BY MR. MCGILL:

Q. What then did you do?

A. I left the room again for approximately three or four minutes and I assisted the Night Command personnel captain in making arrangements to notify his family.

MR. MCGILL: Your Honor, at this time the stipulation between Mr. Jackson and myself that if Mr. Jamal, the defendant, were present, the witness would identify the defendant as the man who made that remark, the defendant being Mumia Abu-Jamal. Is that correct, Mr. Jackson?

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Bell - Direct

MR. JACKSON: That's right, that this officer would say that, yes.

THE COURT: Ladies and gentlemen of the jury, remember I told you that you can only take that from which you hear from this witness stand as evidence; however, there's an exception to that rule. When both attorneys on each side stipulate to a fact you can take that as a definite fact. All right.

BY MR. MCGILL:

Q. By the way, if the man were present you would have no problem identifying him, would you?

A. No, I would not.

Q. As a matter of fact, you were here during the course of this trial --

MR. JACKSON: Objection, Your Honor.

THE COURT: There is a stipulation.

MR. MCGILL: All right. There is a stipulation. All right. It's been stipulated to. I have nothing further. Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

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#### Bell - Cross

Q. Officer Bell, how long have you been assigned to the Sixth Police District?

A. Approximately two years and three months.

Q. And how long have you been a police officer?.

A. It will be six years in August.

Q. And you were at the -- well, obviously, you were at the hospital. Did you give a statement to the assigned detective or to Night Command or anyone within twenty-four hours of your activities there at the hospital?

A. No.

MR. MCGILL: Objection. In reference to what?

BY MR. JACKSON:

Q. In reference to any of your activities relevant to Officer Faulkner's shooting?

A. No, I don't believe I did.

Q. By the way, were you assigned to a radio patrol car on December the 9th?

A. No, I was not.

Q. But you were working during that time?

A. That's correct.

Q. And you were on foot patrol?

A. Yes, I was.

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Bell - Cross

Q. Do you carry an Incident Report Log with you, a book with you?

A. A 48 book?

Q. 75-48 book.

A. That's correct.

Q. You did have one with you?

A. Absolutely.

Q. Would you explain to the jury what an Incident Report 75-48 is used for?

A. A 75-48 is an Incident Report. It's used on any radio call or any contact you have with any individual is recorded on this piece of paper. It's a form, it's duplicated and you sign your name, badge number and fill in the details as to the exact time, location and anything else for your assignment.

Q. Did you prepare a 75-48 with regard to your contact with regard to Mumia Abu-Jamal?

A. No, I did not.

Q. Indeed you're telling us that in fact the first time that you ever told police that Mr. Jamal made those remarks was on the 25th of February after Mr. Jamal made a complaint about being beaten; isn't that true?

MR. MCGILL: Objection, Your Honor. Mr.

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Bell - Cross

Jackson made the complaint. I've heard nothing from Mr. Jamal.

MR. JACKSON: I'll rephrase it so we get the question again.

BY MR. JACKSON:

Q. Isn't it a fact that the first time you gave the statement to the police relevant to what you stated Mr. Jamal said to you was on February 25th after Mr. Jamal through me made a complaint of police abuse; isn't that correct, sir?

A. I gave a statement on the 25th of February; that's correct.

Q. And weren't you advised that as a result of the complaint lodged upon Mr. Jamal through me that the statement was being asked of you --

MR. MCGILL: Objection, Your Honor. It's established he made a complaint.

MR. JACKSON: Your Honor, may I ask, may I do this cross-examination?

THE COURT: Go ahead.

MR. JACKSON: Thank you.

BY MR. JACKSON:

Q. Again, sir, I'll ask the question as many times as

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Bell - Cross

it takes. Again, on the 25th of February were you not advised that as a

result of a complaint of Mr. Jamal through me who wanted to find relative to his being beaten by the police --

MR. MCGILL: Objection. The question is when did he make a statement and where.

MR. JACKSON: Your Honor, may I?

THE COURT: I know. Don't come to any conclusions. All right.

MR. JACKSON: Your Honor, this is what he was advised. He signed the statement.

THE COURT: Ask him what he was advised. Please, rephrase your question.

BY MR. JACKSON:

Q. Were you not told by Sargent Vargas --

THE COURT: Just a minute, come here.

(A sidebar conference was held on the record as follows:)

THE COURT: Your question presupposes that he was advised by Mr. --

MR. JACKSON: He was.

THE COURT: Wait awhile. I don't care what you've got on that paper, why don't you ask

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Bell - Cross

him?

MR. MCGILL: May I state my objection, first of all?

MR. JACKSON: Wait a minute.

THE COURT: I want to get that point --

MR. MCGILL: I'd like to state that objection then we know why I'm objecting.

MR. JACKSON: I don't get a chance to say anything.

MR. MCGILL: Let me state the objection and then you can respond to it.

THE COURT: Go ahead.

MR. MCGILL: The objection is to this: It is not relevant under what conditions he gave a statement in terms of why the statement was given. The only relevance is that a statement was made on February the 25th putting all sorts of statements in light. The reason for it, weren't you advised that the reason for this was such and such and such and such? What that amounts to is Mr. Jackson testifying through alleged abuse a question to this particular witness. It is simply not relevant to this trial

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in that form. The only form that is relevant is why did he wait until that time to say. Did you give a statement to the police at that time, asking a question in this form, is irrelevant to this case. This is not a civil proceeding, Your Honor. That's why. And I think it's an indirect way of --

MR. JACKSON: Obviously there is a bias of the officer, that's relevant. And I now obviously have an opportunity to develop and discover any bias that this officer -- it's on the document he signed.

THE COURT: I don't care. He's telling you that he's a very good friend of his --

MR. JACKSON: I understand that.

THE COURT: -- if you want to argue that's bias. He worked with him, he's a police officer, if you want to argue that's bias. But to ask this police officer has anybody ever accused him of beating this defendant --

MR. JACKSON: But all --

THE COURT: Well --

MR. JACKSON: Judge, what's I'm saying

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Bell - Cross

is at the scene he indicated he didn't know anybody's name and at the hospital he was beaten. This officer was interviewed as a result of the complaint that he made through me, and the only time he gave the statement, the police officer, is when he was interviewed. The bias, of course, is that he may have beaten Mr. Jamal.

THE COURT: Wait awhile.

MR. MCGILL: Oh, God.

THE COURT: Let me stop you right there. If that's the situation why don't you develop that first?

MR. JACKSON: Judge, what I'm simply saying is that I don't think that I should be required to state each and every opportunity for bias but to --

THE COURT: Wait awhile. You're jumping to a conclusion.

MR. MCGILL: I don't understand you.

THE COURT: How about the prior witness, the witness who's a security guard for Jefferson? She didn't beat that defendant.

MR. JACKSON: Fine and --

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#### Bell - Cross

THE COURT: Wait awhile. And yet she was interviewed by the Internal Affairs.

MR. JACKSON: As a witness.

THE COURT: She was interviewed not as a witness but she was interviewed for what she might know.

MR. JACKSON: I understand.

THE COURT: Okay?

MR. JACKSON: But Judge --

THE COURT: You're presupposing that he was beaten and there's no evidence thus far except for what the officers have testified to. Maybe in your defense you can bring in evidence to show he was beaten, and that's

fine.

MR. JACKSON: I'm not saying the beating would be the only bias. I'm saying whatever the bias is. If in fact the man who's accused of shooting the officer is now saying, "The police officer has beaten me up," isn't there a possibility of a bias -- a possibility?

THE COURT: Wait a minute. Anything is a possibility. You don't put in your questions as if that's a conclusion. If you want to ask

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Bell - Cross

him if he was interviewed by Internal Affairs, fine.

MR. JACKSON: And can I --

THE COURT: That's the first time you asked that, but you can't ask him if he was interviewed necessarily because you've already indicated that as a basis of your complaint. He was interviewed and let's leave it at that.

MR. JACKSON: I understand.

THE COURT: That's it.

MR. JACKSON: Why can't I ask him why he was interviewed?

THE COURT: He doesn't know.

MR. JACKSON: He does.

THE COURT: Wait awhile. Because he happens to be a police officer who happened to be somewhere near him? Did Internal Affairs indict him for anything?

MR. MCGILL: Absolutely not. The D.A.'s office cleared the whole thing.

MR. JACKSON: Judge --

MR. MCGILL: This is why --

MR. JACKSON: Let me explain this.

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THE COURT: I know, Jackson, I know what you're trying to do and I've made my ruling. That is not proper.

MR. JACKSON: Would you let me explain? If police are going to interview and someone from Internal Affairs is going to interview him, and they tell him why --

THE COURT: What's the difference? It's not relevant to this proceeding.

MR. JACKSON: It brings out possible bias, Judge.

THE COURT: Not necessarily. How would he be biased?

MR. JACKSON: Because that's his partner.

THE COURT: Oh, the other girl, the other officers, doctors --

MR. JACKSON: That's a possibility of bias.

THE COURT -- they were all biased?

MR. JACKSON: You mean to tell me, Judge --

THE COURT: Let me tell you they were interviewing because you made a complaint and

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Bell - Cross

they wanted to see if there was any justification for the complaint. They were, naturally, going to interview everybody who they thought might have been around when this happened.

MR. JACKSON: Okay, but Judge --

THE COURT: Okay.

MR. JACKSON: If we follow what you're saying that means even if he was beaten they just wanted to beat anybody. I couldn't accuse anybody of it.

THE COURT: You can't. You can ask this man, you can ask him. That's a different story. You can ask him whether he beat him or laid a hand on him

or did anything.

MR. JACKSON: Judge, you're saying even though he told him the reason why he was being interviewed that I can ask him the reason why he was being interviewed?

THE COURT: I think it's irrelevant.

MR. JACKSON: That's not so, Judge.

THE COURT: You've already brought that out once.

MR. JACKSON: What?

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THE COURT: You brought out once that you made a complaint.

MR. JACKSON: But you're not permitting me to ask this question.

THE COURT: It's in there once, that's enough. It shouldn't even have been in in the first place but it's in there now and that's all. You're trying to draw a conclusion that he was beaten. You cannot do that.

MR. JACKSON: I am not, Judge.

THE COURT: Yes, you are.

MR. JACKSON: Simply --

THE COURT: I am not going to allow that question. Look --

MR. JACKSON: The beating has nothing to do with it.

THE COURT: I don't care. I don't care. I don't care. I don't care why the Internal Affairs did it. They had to do it. This is their procedure. Somebody makes a complaint, they have to do it and that's it. Why they do what they do I don't care.

MR. JACKSON: All I'm simply saying is,

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I can't bring out certain things in the statement?

THE COURT: I'm just saying that as you quoted it to me --

MR. JACKSON: I'll read it if you want.

THE COURT: I don't care. But what you're saying is not admissible. I don't care if Internal Affairs or why Internal Affairs questioned him. That's their problem.

MR. JACKSON: But Judge, let me ask you this: You're saying that the contents, the questions and answers of this statement, are not admissible?

MR. MCGILL: No.

THE COURT: I didn't say that. I'm just saying that the fact that they told him that they're interviewing him because they got a complaint of an alleged beating is not relevant to any questions that you may have of this officer as to his bias or prejudice.

MR. JACKSON: So I can't --

THE COURT: So I think there's enough possibility for you to argue prejudice and bias

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#### Bell - Cross

from the very fact that he said that he was a personal friend of his, knew him, worked with him, he's a fellow officer, all of those things.

MR. JACKSON: But I had a hundred different reasons, Your Honor. Couldn't I have two hundred reasons?

THE COURT: Get two hundred. I don't care.

MR. JACKSON: That's what I'm saying; this is an additional reason.

THE COURT: What I'm saying is, why somebody else did something is not relevant to this witness's bias.

MR. MCGILL: Judge --

MR. JACKSON: Well --

MR. MCGILL: -- if I can stop you here, I will not object if he wants to ask one question like -- now I think it's very clear to the jury at this point, anyway, what it is because of the last two or three questions that were not responded to, that were objected to, particularly in light of the fact that Priscilla Durham stated that it was in response to this complaint -- if

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Bell - Cross

he wants to say in response to a complaint made by the defendant through me did you give various answers to various questions, I will not object to that.

MR. JACKSON: I can just read that. Why don't you read this? If I were to say Officer, isn't it a fact that they said that we are questioning you concerning and then go on. I mean it says the same thing. That way we don't have to improvise on the language. I think it's essentially the same thing you said.

MR. MCGILL: No. I don't like that because it's too much in the question referring to testimony, like you're testifying. I think it is clear enough to say a complaint lodged by the defendant through you that these questions were asked.

MR. JACKSON: Okay. All right. Fine.

MR. MCGILL: That certain questions were asked.

THE COURT: Okay.

MR. MCGILL: I won't object to that.

(Sidebar conference ended.)

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Bell - Cross

BY MR. JACKSON:

Q. Officer Bell, again, isn't it a fact that you were interviewed on 2/25/82 as a result of a complaint that was lodged by Mr. Jamal through me with regard to some complaint?

A. That's correct.

Q. At no other time prior to February 25, 1982 did you give a statement relevant to anything that Mr. Jamal may have said?

A. No. I did not.

Q. And you never prepared a 75-48?

A. There wasn't one required for that.

Q. You came in contact with a suspect, did you not?

A. That's correct.

Q. When you normally come in contact with suspects don't you prepare a 75-48 if not a 75 -- well --

A. If I had been the arresting officer I would be required to make a 48.

Q. You're saying that you never prepared a 75-48, an Incident Report, when you are simply assisting another officer?

A. Not normally.

Q. Do you ever do it?

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Bell - Cross

A. No, you don't.

Q. You.

A. No, I don't.

Q. So you would have no indication at all at a certain time if you were assisting a brother officer there would be no indication where your time was?

A. On a Patrol Log it would be but not on a 48. The officer making the initial contact on the arrest would submit the 48, and if anybody assisted him it would be on the Patrol Log.

Q. You were requested by Night Command to assist in come capacity; is that right?

A. Because I knew the family, I knew Danny's wife. He asked me questions, whether he was married, whether he had any children, where he lived, how they could get in touch with his wife.

Q. And you obviously had an interest in Officer Faulkner and his family?

A. Absolutely.

Q. And you knew who the assigned detective was?

A. At that time no, I did not.

Q. Did you know before February 25, 1982 who the assigned detective was?

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A. No, I don't believe I did.

Q. Did you ever make any efforts to find out?

A. There was no reason for me to find out who the assigned detective was.

Q. Well, didn't you think the information with regard to that statement you said Mr. Jamal gave you, didn't you think it was relevant and important?

A. Yes, I did.

Q. But you didn't take any steps whatsoever to convey it to anyone?

A. At that time it was a very, very emotional time for me --

Q. I'm sure it was, Officer.

MR. MCGILL: Objection. May he respond?

THE COURT: Let him respond. You asked him a question. Please.

THE WITNESS: I watched my best friend die in front of my own eyes.

MR. JACKSON: Yes, sir.

THE WITNESS: And the last thing I thought about was talking to anybody. I wasn't even thinking clearly at the time.

BY MR. JACKSON:

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Bell - Cross

Q. I can appreciate that, sir. But again, not until February 25th when you were asked -- didn't you think again --

A. When I was directly asked I responded with my answers.

Q. I understand that you responded when you were asked back in February. My question is: At that time didn't you think what you heard, what you say you heard, was important enough for you to seek out an investigator and tell him, "That the man who's accused of shooting my best friend told me he shot him?"

A. I did tell him that.

Q. When?

A. When he asked me.

Q. In February?

A. That's correct.

Q. But the question is: Didn't you think it was important enough to tell him before then?

A. Yes, I did think it was important enough. I wasn't thinking clearly. I put it in the back of my mind at the time.

Q. Did you tell anybody else before you spoke to Sargent Vargas --

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Bell - Cross

A. Excuse me?

Q. Did you tell anyone else what you heard before you spoke to Sargent Vargas?

A. I don't believe I did, no.

Q. You never told that to anybody?

A. No, I did not.

Q. Just kept that a secret?

A. Kept it in my mind, yes.

Q. Because you were upset?

A. Very upset, very angry.

Q. You ever obtain a statement from any other defendant in your eight years as a police officer?

A. Yes, I have.

Q. Did you convey this statement to the assigned detective or to someone else?

A. Probably did, yes.

Q. I take it you're saying that this case is unusual because it was your best friend that was involved and your emotions prevented you from conveying it?

A. At the time it's probably what it was, yes.

Q. Well, at the time, sure.

A. Yes.

Q. But in all due respect, Officer Faulkner died

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Bell - Cross

on December the 9th; is that correct?

A. That's correct.

Q. So then you had the rest of December and January and almost the end of February is when you were asked the question. That's the first time you let anybody in this world know what you say you heard.

A. That's correct.

Q. Did you see anyone beat Mr. Jamal, sir?

A. Excuse me?

Q. Did you see anyone beat Mr. Jamal in the hospital?

A. No, I did not.

Q. Did you beat him?

A. No. sir.

Q. Pardon me?

A. No. sir.

Q. Did you see anyone kick him?

A. No. I did not.

Q. When you first saw Mr. Jamal where was he?

A. He was laying on the floor just right around the area of the double doors leading into the Emergency Room.

Q. How many officers were around him or near him?

A. There was several. I couldn't be sure how many.

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#### Bell - Cross

Q. Were they in physical contact with him?

A. I don't believe so, no.

Q. So that he was just lying on the floor by himself?

A. He was handcuffed.

Q. Behind his back?

A. That's correct.

Q. And he was laying on his back?

A. Laying on the side.

Q. Laying on the side. Was he doing anything to anybody?

A. No, he wasn't. He was laying there -- he was moving around, squirming, but he wasn't doing anything to anybody then.

Q. Wasn't kicking anybody?

A. No.

Q. Wasn't kicking anybody with his elbows or shoulders, was he?

A. Not that I can recall he wasn't.

Q. Was he hollering?

A. He was mumbling something.

Q. Do you know what?

A. I couldn't understand exactly what he said at

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#### Bell - Cross

times and other times when he told me that he shot Danny then I heard what he said. He said it very loud.

Q. He said he shot Danny?

A. "I shot the mother fucker, I hope the mother fucker dies," those were his words.

Q. In all due respect, how did you know he was talking about your former friend?

A. I assumed he was.

Q. That's an assumption. He never said he shot Danny?

A. No. He said, "I shot the mother fucker, I hope the mother fucker dies."

Q. Now again, Officer, you saw nobody in physical contact with him -- and by the way, did you see blood on Mr. Jamal?

A. I don't recall seeing any, no.

Q. Did you look at his face?

A. Yes, I did, looked right in his eyes.

Q. Did you look in his chest area?

A. I may have.

Q. Now, when you looked directly in his eyes did you see a scar over top of his eye?

MR. MCGILL: Scar?

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BY MR. JACKSON:

Q. I'm sorry. Did you see blood?

A. I don't recall seeing no blood, no.

Q. Not at all?

A. It could have been there. I don't know. I don't remember seeing --

Q. You didn't see blood in the chest area, you've already said?

A. No. I didn't.

Q. How long did you watch him on the floor?

A. Probably less than a minute.

Q. And after he said what he said to you, you said that you walked away because you didn't want to get caught up with it?

A. I felt I had to walk away, yes.

Q. Fine. And did you hear him say anything else after you left?

A. No, I did not. I believe they removed him to a bed to be treated after that.

Q. Now I understand that you've told us what you said Mr. Jamal said. Do you recall a police officer saying anything to him?

A. Other than myself?

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Bell - Cross

Q. Yes, sir.

A. Not offhand I don't.

Q. Now you tell us that he made those remarks to you when you first came upon him; is that right?

A. That's right.

Q. So you don't know whether or not he was responding to a question or some other officer?

A. I wouldn't know that, no.

Q. Because he said to you, "Yeah, I shot the mother fucker and I hope he dies?"

MR. MCGILL: Objection. That's not the words he used.

MR. JACKSON: I'm sorry, Officer. Tell me, again. If I'm misquoting, I apologize.

THE WITNESS: He said, "I shot the mother fucker, I hope the mother fucker dies."

BY MR. JACKSON:

Q. So he didn't say, "Yeah,- at first?"

A. No, he didn't.

Q. You're certain of that?

A. I'm almost positive.

Q. Almost positive. Do you know the security officer Priscilla Durham?

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Bell - Cross

A. Do I know of her?

Q. Yes.

A. I know of her. I don't know her personally.

Q. Do you remember seeing her on the night of this incident, December 9th?

A. There was quite a few people there. She could have been there. I don't know. I couldn't name the people that were there.

Q. When you saw Mr. Jamal and he made the remark to you he was -- in terms of your -- strike that. Where were you actually seated or standing at the time that you came in contact with Mr. Jamal in the Emergency Room?

A. He was laying on the floor on his, it would be his, right side.

Q. Let me stop you, if you don't mind. I mean, was he in the doorway, wasn't he in the doorway?

A. He was right by the doorway, yes.

Q. Was he on the rubber mat that opens the automatic door?

A. I think he was, yeah. I think he was.

Q. And you were on the other side of the door?

A. No. I was -- he was on his right side leaning

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Bell - Cross

this way and I was standing right here.

Q. Right next to him?

A. Yeah, within about maybe a foot and-a-half away from him.

Q. And you just walked right up to him and that's when he said it?

A. I walked up to him, I leaned down and I looked at him. I stared at him, because I wanted to see who he was.

Q. As you were approaching him how long did it take you to approach him?

A. A few seconds.

Q. Few seconds? And the other officers were mumbling something around him, or he was mumbling something?

A. There was mass confusion at this point in the Emergency Room between the doctors and the police, police personnel, there was a lot of people talking. I don't know if they were talking at me, at him, or who they were talking to.

Q. And when he was coming in someone said to you, "They're bringing in the man that shot Danny," or words to that effect?

A. I heard it from behind me, yes.

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#### Bell - Cross

Q. And you heard those words from behind you, and where you eventually saw Mr. Jamal was also behind you; is that right?

A. That's correct.

Q. Did you hear any scuffling?

A. No. Just --

Q. And you never saw any scuffling?

A. When I turned around he was already inside on the floor at the point when I turned around and came around the desk at the nurses' station.

Q. You don't know how he got on the floor?

A. I assume he was brought in by police.

Q. I mean, do you know why he was on the floor as opposed to a wheel

chair, stretcher or on his feet?

A. I think they were looking for a bed to put him in.

Q. You don't know?

A. No, I don't.

Q. They just laid him on the floor while they looked for a bed?

A. That's correct.

Q. How long did they leave him on the floor?

A. I'd say just maybe a minute or so, not much more

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#### Bell - Cross

than that.

Q. Now, I understand that you said that you walked away for several minutes and you went back and looked at Officer Faulkner, and then you came back and saw Mr. Jamal again?

A. No, I didn't say that.

Q. If I'm wrong I'm sorry.

A. I know I didn't say that.

Q. You walked away --

A. After I walked away from Jamal I went back over to the room where Danny was being treated and I stayed there for several minutes.

Q. Yes?

A. And assisted the Night Command captain and notified his family.

Q. So you never saw him again? Mr. Jamal.

A. When he was being treated I saw him, yes.

Q. But he was --

A. Which would have been maybe five, ten, fifteen minutes later.

Q. He was in a treatment room, then?

A. Yes.

Q. My apologies, then. When you saw him again in

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Bell - Cross

the treatment room did you say anything to him?

A. No, I did not.

Q. So the only words you ever had with him were the words when you first came upon him?

A. That's correct.

Q. And you said something like, well, "He shouldn't die, you should die," or something --

A. Something to that effect, yes.

Q. You didn't say, "If he dies you die?"

A. I might have said that. I was quite angry, hurt. I couldn't believe that somebody like that could do that to somebody else.

Q. I understand. And you wanted him punished, did you not?

MR. MCGILL: Objection.

THE WITNESS: That's what the Court's for today.

THE COURT: He's already answered.

BY MR. JACKSON:

Q. Wouldn't you think your testimony, certainly the testimony you're giving here today, would be helpful in punishing him?

A. I'm just telling the truth.

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Bell - Cross/Redirect

Q. I didn't ask you that, sir.

A. That's not for me to decide whether to punish him or not.

Q. My question is: Wouldn't you think it would be helpful in punishing giving the testimony you're giving today.

MR. MCGILL: Objection, sir.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Did you ever discuss with your brother officers, your wife, your girlfriend, uncle, brother, somebody, anybody, what you said you heard this man say?

A. No, I didn't.

MR. JACKSON: No further questions, Your Honor.

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Officer Bell, is it not true that consistent with the normal procedure --

MR. JACKSON: Objection. I'm sorry. I withdraw the objection.

BY MR. MCGILL:

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Bell - Redirect

Q. -- when a complaint is made everybody that's even remotely concerned with the incident is interviewed when there's a complaint in Internal Affairs; isn't that true?

A. That's true.

Q. And are you aware of the results of the District Attorney's investigation,

sir?

MR. JACKSON: I'm sorry? Of who's investigation?

MR. MCGILL: D.A.'s office, D.A.'s investigation.

MR. JACKSON: I object, Your Honor.

MR. MCGILL: May we see you at sidebar?

(A sidebar conference was held on the record as follows:)

MR. JACKSON: The basis of my objection is, first of all, he's asking him about Internal Affairs and now he's asking --

MR. MCGILL: Will you keep it down?

MR. JACKSON: -- he's asking him about Internal Affairs and then he jumps to the results of the D.A.'s investigation.

MR. MCGILL: All right. Let me explain.

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#### Bell - Redirect

First of all, this is the reason I'm bringing this in at all -- it's a confusing and a collateral matter that's creating an issue that does not exist. The reason I say that is certainly I can't find relevance in the beating, alleged beating, in terms of voluntariness of statements. However, it is not relevant to bring in complaints and other things. That is not anticipated but merely a question of the usual procedure when a complaint is made. With these complaints that are going through Internal Affairs, as a matter of course when there is any kind of substantial claim whatsoever with that complaint it is then directed towards the District Attorney's office for a review. Specifically in this case Mr. Jackson asked through Mr. Jamal or rather Mr. Jamal asked through Mr. Jackson for the District Attorney's office to make a recommendation with reference to the Internal Affairs interviews. We had one hundred fifty interviews all of which defense counsel has which we were specifically asked to review. They made a very big point of the D.A.

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#### Bell - Redirect

not moving quick enough and make a decision.

As a result of the request a decision was reached, a report was made and mailed to Mr. Jackson and, I assume, Mr. Jamal read it as well as a carbon copy to Judge Ribner who had asked for it. Those results are known.

It is extremely unfair. The results are that there are no substantiated claims, no substantiated claims. The problem is once you raise an issue like this and then you leave it hanging it gives it the aura of some kind of truth to it. Now this is not a question of civil law, it's not a question of civil damages, rather. It's a question of the credibility of the various witnesses and allowing to get into the collateral matters puts the Commonwealth at a disadvantage unless it can stand up itself and say there were no substantial claims whatsoever given at all. And then letting it hang, oh my God, getting some sympathy for the defendant.

MR. JACKSON: May I respond?

MR. MCGILL: Judge, I will say at this point that I will not ask this question and I'll

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#### Bell - Redirect

leave this area alone as long as Mr. Jackson will leave the area alone.

MR. JACKSON: No. No.

THE COURT: Can't you stipulate as to what the results were?

MR. JACKSON: No.

MR. MCGILL: Sure.

THE COURT: If you can't --

MR. MCGILL: I will do it.

THE COURT: If he can't bring one of your people in and show that there were no substantiated --

MR. JACKSON: Fine, because I would like to cross-examine whoever it is who made the investigation.

MR. MCGILL: Wait a minute. You're not serious, of course, first of all?

MR. JACKSON: If he brings him in I will.

MR. MCGILL: That is absolutely --

THE COURT: I will let you ask him the question and let's get it over with.

MR. MCGILL: The question here is that

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Bell - Redirect

he cannot go into that area. That's the thing. He cannot.

THE COURT: You are asking him --

MR. MCGILL: Are you aware of the results? I think he's aware of the results?

MR. JACKSON: From the D.A.'s office, he never said he knew anything about that one. It was only asked of him about Internal Affairs. That is my point.

MR. MCGILL: Judge -- will you please?

THE COURT: What's your question going to be so I can rule?

MR. MCGILL: The point I have to make, Judge, is this: The area should not be pursued one way or the other.

THE COURT: But make your objection at the right time and --

MR. MCGILL: I will withdraw the question at this point.

THE COURT: If he goes into that area again --

MR. MCGILL: I will object to him going into that area. I want Your Honor to rule now

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Bell - Redirect

that he cannot go into that area.

THE COURT: I don't know what he is going to bring on the defense. As

far as your witnesses are concerned, you bring your witnesses in for a certain point, a certain purpose. I will limit him to cross-examine for that purpose only, not to try to bring in for the defense. What he's going to do when he comes to his defense, I don't know. I'll have to worry about that at that time.

MR. MCGILL: I'm talking about cross-examining my witnesses.

THE COURT: I'm talking about that.

MR. MCGILL: I want to ask a question --

THE COURT: You bring your witnesses in for a specific purpose. I will not allow him to bring in this so-called beating or whatever he's talking about through your witnesses at this time.

MR. MCGILL: All right. Fine.

THE COURT: If he wants to bring in the witnesses, that's different.

MR. MCGILL: He can ask him whether he's

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beaten anybody, that's fine.

THE COURT: I didn't say you can't do that, of course.

(Sidebar conference ended.)

MR. MCGILL: I withdraw the question. Your Honor. I have nothing further, Your Honor. Thank you.

MR. JACKSON: Nothing further.

- - -

(Witness excused.)

MR. MCGILL: Detective Sobolusky.

- - -

DETECTIVE ROBERT SOBOLUSKY, (Badge Number 748, Central Detective Division), having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Detective, on December the 9th, 1991, were you a member of the Philadelphia Police Department?

A. Yes, I was.

Q. Where were you assigned?

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Sobolusky - Direct

A. Central Detective Division.

Q. Did you have occasion to seize any evidence in connection with this case?

A. I did.

Q. What was the nature of the evidence that you seized?

A. Clothing.

Q. From whom?

A. From the defendant.

Q. The defendant Mumia Abu-Jamal?

A. That's correct.

(A discussion was held off the record.)

BY MR. MCGILL:

Q. Did you have occasion to make out a property receipt?

A. Yes, I did.

Q. Could you mark that, please, the next number, which I believe is C-54, and C-55? First of all, take a look at C-55. Can you identify that exhibit?

A. Yes, sir.

Q. What is it?

A. It's a copy of a property receipt, City Property

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Sobolusky - Direct

Receipt.

Q. Where did you see it before?

A. I made this up.

Q. Is that the property receipt in connection with the clothing that you seized from the defendant?

A. Yes, it is.

Q. Now I will not ask you to take out all of the clothing in that bag that's marked C-54 but I will specifically ask if you could find in that a holster. Take that out of that bag, C-54.

All right. Leave the rest of the clothing in there in case Mr. Jackson will want to view it. Now, would you take that -- first of all, identify what you just took out.

A. A leather holster, shoulder holster.

Q. I'll ask that that holster be specifically marked C-56 and shown to defense counsel and the Court. I'm showing you what's been marked C-56. Can you identify that?

A. Yes.

Q. What is it?

A. It's a black leather shoulder holster.

Q. Where did you seize that?

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Sobolusky - Direct

A. From the defendant.

Q. Are you able to identify the defendant?

A. Oh, yes.

MR. MCGILL: Your Honor, at this point, again, there is a stipulation between Mr. Jackson and myself that if Mr. Mumia Abu-Jamal was here this detective would identify Mr. Jamal as the defendant, as the individual, he took the holster from.

THE COURT: Once again I remind the jury that I have told you that I want you to consider as evidence only that which you hear from this witness stand and from no outside sources. However, when there is a stipulation between counsel as to a certain fact you may accept that as a fact. Go ahead.

BY MR. MCGILL:

Q. All right. Where did you seize the clothing from?

A. The clothing was taken from the defendant himself.

Q. All right. And where was the holster taken from?

A. From under his left arm next to his body.

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Sobolusky - Direct, Cross

Q. And when did you do that?

A. Time?

Q. Date.

A. December 9, 1981.

Q. Where?

A. Inside the Jefferson Hospital Emergency ward.

Q. Do you know approximately when?

A. Around 5:00 a.m.

MR. MCGILL: Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Detective Sobolusky, did you also remove from Mr. Jamal a jacket?

A. No, sir.

Q. Did you obtain a jacket, sir?

A. Yes, sir.

Q. You did.

A. Yes, sir.

Q. Who removed it?

A. I don't know.

Q. Let me back up. You did remove the holster, though?

A. I helped him in removing the holster, yes.

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#### Sobolusky - Cross

Q. Who helped?

A. Hospital personnel.

Q. And you didn't see who removed his jacket?

A. No, Sir.

Q. Who did you get the jacket from?

A. The floor right under the table.

Q. And who told you that it was his jacket?

MR. MCGILL: Objection as to hearsay.

MR. JACKSON: I just want to know. I don't know whether it's true or not. I would want to know who said it.

MR. MCGILL: I would like a lot of things, too, but it's not admissible.

THE COURT: Let me see you over here.

(A sidebar conference was held on the record as follows:)

THE COURT: Are you saying that this is not his jacket?

MR. JACKSON: I'm not, Judge. I just want to know -- I don't know.

THE COURT: He says that it was.

MR. MCGILL: It's hearsay, that's all, Judge. Maybe he doesn't know, maybe he does. I

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#### Sobolusky - Cross

don't want to develop inconsistencies with physical evidence.

MR. JACKSON: Judge, I'm not asking him for the truth that's being said. I want to know if anyone told him. I'm not necessarily contesting it. I want to find out at this point and later on it may be relevant, it may not. I have a right to ask whether it's true or not.

MR. MCGILL: It's hearsay.

MR. JACKSON: I'm not asking it for the truth.

MR. MCGILL: Then it's not relevant.

MR. JACKSON: It is. The clothing where he's shot?

MR. MCGILL: Then that's the truth.

MR. JACKSON: That's not.

THE COURT: Ask him why he picked it up.

MR. JACKSON: And then he's going to say because I was told. I am not trying to get -- again, that seems to be more clearly --

THE COURT: It may have been because it was just underneath that table where he was

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Sobolusky - Cross

lying.

MR. JACKSON: That's what I'm trying to find out.

THE COURT: Was the jacket cut open like by --

MR. MCGILL: I don't know if the jacket was.

MR. JACKSON: The shirt was.

MR. MCGILL: The shirt was.

MR. JACKSON: That's why I'm saying the easiest way to do it -- he didn't just go in and pick up the jacket. I'm sure somebody said something, and I want to find out who it was to make sure we have the chain of custody. That's what I'm concerned about.

MR. MCGILL: I object. It's hearsay.

MR. JACKSON: How about the chain of custody?

MR. MCGILL: It's not admissible evidence.

THE COURT: Then I won't admit it in. Just because he's identified it doesn't mean I'm going to admit it into evidence. If he doesn't

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Sobolusky - Cross

sustain this chain of custody you're talking about it's at his peril but you can't later on use the jacket.

MR. JACKSON: I can't find out who told him? I'll ask him why he has the jacket, then.

MR. MCGILL: It's all much ado about nothing. The fact is if the jacket is underneath the thing and there's nobody else in the room --

MR. JACKSON: He's testifying. I don't know that.

THE COURT: He said it was laying there.

MR. MCGILL: I'm not testifying. I'm saying it at sidebar. And there's no one there in the room and he's there, obviously there's an inference that can be drawn that that is his jacket. It's not all the chain of custody, it's a question of weight.

THE COURT: Somebody may not have told him. Did he say somebody told him?

MR. JACKSON: I will ask.

THE COURT: Ask him why he picked it up. He might say, "Because I thought it was his."

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MR. JACKSON: Fine. That's all I wanted to know.

THE COURT: Okay.

(Sidebar conference ended.)

BY MR. JACKSON:

Q. Detective Sobolusky, why did you pick up the jacket?

A. Because I was there to gather evidence, any kind of evidence.

Q. And so you assumed that the jacket was evidence?

A. Yes.

Q. What about his shirt? Do you have the jacket?

A. Yes, sir.

Q. Could you show that to me, please? Now that jacket is in substantially the same condition that it was in on December the 9th, 1981?

A. Yes, sir.

Q. Was there any picture on the back of that jacket?

A. I don't recall.

Q. If there was a picture wouldn't you recall? You said substantially the same now as it was then.

A. Yes.

Q. So if there was a picture on it then there'd be

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Sobolusky - Cross

a picture on it now?

A. Yes.

Q. There is no picture on it now, would you agree? In the back of the jacket or anywhere?

A. I agree.

Q. Pardon?

A. Yes, sir, I agree.

Q. There's no picture?

A. There's no picture.

Q. Fine. Now Officer, at the top of the right chest of the jacket could you tell us what you see there?

A. I don't see anything.

Q. How about the left chest, sir?

A. Nothing unusual.

Q. Any blood on the jacket, sir?

MR. MCGILL: I have to object, Your Honor. He's not a chemist.

BY MR. JACKSON:

Q. Any stains, any holes anywhere in the jacket, sir?

A. Some residues here. I don't know if it's blood or what.

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Sobolusky - Cross

Q. Fine. I'm not going to ask you to tell us whether it's blood or Kool-Aid or anything else.

A. There are stains on there, yes.

Q. Fine. Any holes in the jacket?

A. Not that I can see.

Q. Okay. You picked that up right off the floor of the hospital?

A. That's correct.

Q. Who was in the hospital room with you? If you can recall.

A. There were several, maybe two, three people, hospital personnel.

Q. No other police personnel?

A. Not that I remember.

Q. Now, did you obtain a shirt belonging to Mr. Jamal?

A. Yes, that's correct.

Q. Do you have that, sir?

A. Yes.

Q. Would you take that out for us, please?

A. An outer shirt or --

Q. You can take them all out because I'm going to ask you to get to all of them.

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Sobolusky - Cross

A. Okay.

Q. Now, any stain of any sort or any holes in the shirt? For the record, the shirt appears to be a dark blue flannel shirt; is that correct?

MR. MCGILL: I would object, Your Honor. Let the jury --

MR. JACKSON: Fine. My apologies.

BY MR. JACKSON:

Q. Can you describe it for the record, sir?

A. It appears to be a dark blue flannel shirt.

Q. Thank you, sir. Can you tell me if there are any stains or holes in the shirt?

A. Well, there are stains. I don't know about holes. It's torn.

Q. Where would it be torn, sir?

A. Looks like a sleeve is torn.

Q. And what sleeve would that be, sir?

A. Looks like the right sleeve, looks like it was cut away.

Q. See any other cuts or holes in the shirt?

A. No, I can't see any.

Q. And that shirt is in substantially the same condition that it was in on December the 9th, 1981?

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Sobolusky - Cross

A. That's correct.

Q. By the way, any picture on the front or back of that shirt?

A. No, sir.

Q. You have a polo shirt there, sir?

A. Pardon?

Q. You have a polo shirt or Tee shirt inside there?

A. This appears to be a polo shirt or Tee shirt.

Q. Did you remove that from Mr. Jamal?

A. No. I didn't. I was present when it was removed.

Q. By hospital personnel?

A. Yes.

Q. Do you recall whether in fact, or do you know whether in fact it has any holes in it? I'm not trying to force you to handle it, but do you remember or do you see any holes in it?

A. I don't see any holes --

MR. MCGILL: I would object. I think the appropriate party would be the chemist who will testify since they've done tests on the shirt. I would object. It's unfair to ask him.

MR. JACKSON: It's unfair to ask him if there's a hole in it?

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THE COURT: Come over here.

(A sidebar conference was held on the record as follows:)

MR. MCGILL: Judge, the objection goes to this: The chemical lab does significant amount of work on each of these garments --

THE COURT: Did he turn all of this over to the chemical lab?

MR. MCGILL: Yes.

THE COURT: Why didn't you bring that out?

MR. MCGILL: Why didn't I bring it out? Of course he had turned it over.

THE COURT: But if he had said that -- he's assuming that he had control of it.

MR. MCGILL: I don't think he is.

MR. JACKSON: I'm assuming that he picked it up.

THE COURT: You know what he did, took whatever they gave him, went to the chemical lab and turned it over.

MR. JACKSON: I think he looked at it.

THE COURT: Why don't you ask him?

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MR. JACKSON: I did.

THE COURT: You ask him if he sees a hole now.

MR. JACKSON: Fine. I will ask him if he saw a hole.

MR. MCGILL: The objection I have -- seriously, let's get moving -- the objection I have is since the chemical lab cut it open --

THE COURT: You concede that.

MR. MCGILL: It's putting him in a very bad position.

MR. JACKSON: I will withdraw the question.

MR. MCGILL: I keep on hearing two voices. I will take Mr. Jackson that Tumosa will testify and he will have a field day with Mr. Tumosa, if he wishes.

MR. JACKSON: Let me ask him what he remembers, if anything, when he took it from him.

THE COURT: Let me say this: If all he did was take the clothing, put it in a bag and cart it off, that's the end of it. He didn't

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Sobolusky - Cross

do anything to it.

MR. JACKSON: I'm not saying he did anything to it.

THE COURT: Why are we going into all of this? Let's find out. Ask him.

(Sidebar conference ended.)

BY MR. JACKSON:

Q. Detective Sobolusky, you saw the shirt removed from Mr. Jamal? The shirt or polo shirt?

A. To the best of my knowledge, yes.

Q. Okay. And what if anything did you then do with the shirt? It was given to you?

A. Yes.

Q. What if anything did you then do?

A. I gathered everything up and put it in a plastic bag.

Q. Okay. Let me ask you this: Did you examine any of those items in a hospital room?

A. No, sir.

Q. Didn't look at them at all? Just took them from him and put them in a bag?

A. I may have looked at them but I didn't scrutinize them.

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Sobolusky - Cross, Redirect

Q. So then it would be fair to say that you're really not in a position to say that they're in the same condition now that they were in December the 9th?

A. They're in the same condition.

Q. They're in the same condition?

A. As far as I know, yes.

MR. JACKSON: Thank you. I have no further questions.

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Detective, what did you do with the bag of clothing once you gathered all the clothing together and put it in the bag?

A. I recorded them on the property receipt and submitted them to the chemical lab.

Q. And did you not submit it to the chemical lab for purposes of testing?

A. Yes, sir.

MR. MCGILL: I have nothing further. Thank you, Detective.

MR. JACKSON: I have nothing further.

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(Witness excused.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge



IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 25, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Counsel for the Defendant

Page 1A.

COMMONWEALTH'S EVIDENCE

<u>WITNESS</u>	<u>DR.</u>	<u>CR.</u>	<u>REDR.</u>	<u>RECR.</u>
Michael Scanlan	4	12	58	65
Albert Magilton	75	81	104	107

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COMMONWEALTH'S EXHIBITS

EXHIBIT

59 Photograph

IDENTIFIED

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(Conference was held on the record, in chambers, as follows:)

MR. JACKSON: I just spoke with Mr. Jamal, after he's had an opportunity, I guess, five, ten minutes or more, with Janet Africa. Mr. Jamal indicates to me that he no longer wants Judge Sabo to deliver messages through me, and that if the Judge wants to talk to him, the Judge knows where he is. He further indicates that if the Judge wants to know what he intends to do, let the Judge ask him, either back there in the room or in open Court, because he will not give me an answer, because it's not a question that I'm making, but it's a question of the Judge's. And if the Judge wants to know, the Judge should ask him.

So, as a result of that, he has not given me any indication at all as to what he's going to do.

THE COURT: All right.

MR. JACKSON: He did indicate when I asked him specifically, what he was going to do,

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he said, that he was going to do what was right, and with no further explanation.

THE COURT: All right. We might as well bring him in real fast.

(Conference in chambers ended.)

(Conference held on the record, with the defendant present, as follows:)

THE COURT: Let the record indicate we're at side bar with Mr. Jamal. The Court would like to know whether or not you've changed your mind, and will be respectful and not disruptive in the orderly procedure of this trial, and whether or not you wish to come back into the courtroom under those conditions.

THE DEFENDANT: I've never been disruptive of this trial. I will do what

is right.

THE COURT: What do you mean, do what is right? Does that mean you're going to step up again in front of the jury and start asking questions, and making comments or statements in front of the jury?

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THE DEFENDANT: No, doing what is right means, I'm going to do what is correct.

THE COURT: All right. Then you can come in. If you behave yourself, you'll stay and if you don't you will go out.

(End of side bar conference)

(Whereupon the jury entered the courtroom and the following took place:)

THE COURT: Good morning, ladies and gentlemen.

MR. MCGILL: Your Honor, may I proceed?

THE COURT: Yes.

MR. MCGILL: Mr. Michael Scanlan is the next witness.

MICHAEL SCANLAN, having been duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Scanlan, can you hear me, sir?

A. Yes, sir.

Q. All right. Speak up loudly please, so that the jury can hear you, as well as the defense counsel, and the defendant.

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#### SCANLAN - DIRECT

How old are you, sir?

A. Twenty-five.

Q. On December 9th, 1981, a little bit before 4:00 a.m., did you have occasion to be at the area of 13th and Locust Streets?

A. Yes, sir.

Q. Where were you?

A. I was at the intersection of 13th and Locust, the traffic light.

Q. Were you on the sidewalk, or were you in a car?

A. I was in my car.

Q. Were you stopped or were you moving?

A. I was stopped. I came to a stop at the red light.

Q. Would you tell us what you observed.

A. I noticed the policeman talking to a gentleman in front of his police car, and he told the gentleman to turn around, and as he was talking with the man he told him to turn around and --

MR. JACKSON: Objected to, unless this witness heard it, your Honor.

Q. You can only say --

THE COURT: Rephrase your question.

Page 6.

SCANLAN - DIRECT

Q. You can only say what you observed. Did you hear him say turn around?

A. No, I didn't.

Q. Just tell us what you heard or what you observed.

A. I could tell they were talking because their mouths were moving. The black gentleman turned around and spread-eagle in front of the Volks -- in front of the police car, while the officer was going to, I think, pull out his handcuffs.

MR. JACKSON: Objection as to what the officer was going to do.

THE COURT: Will you rephrase the question.

Q. What did you observe the officer and this man do?

A. They were talking. The black man spread-eagle in front of the car, and while he was spread-eagle he swung around and struck the officer in the face with his fist.

Q. All right. And at that time what then did you observe?

A. At that point, the officer reacted, trying to subdue the gentleman, and during that time another man came running out from a parking lot across the street towards the officer and the gentleman in front of the police car.

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SCANLAN - DIRECT

Q. And what happened?

A. I saw a hand come up, like this, and I heard a gunshot. There was another gunshot when the man got to the policeman, and the gentleman he had been talking to. And then the officer fell down on the sidewalk and the man walked over and was standing at his feet and shot him twice. I saw two flashes.

Q. And did you know whether or not any of those shots -- you were pointing -- first of all, for the record, when the man came over from the parking lot, you were demonstrating something with your hands. Will you show the jury again?

All right. You're indicating for the record, the index finger pointed forward, thumb pointed in the direction of the ceiling, and your three fingers, remaining three fingers cupped.

Then you stated that there was a shot, one shot, and then another shot you heard, and then the officer falling.

A. Yes, sir.

Q. And then the man went over and pointed down?

A. Yes, sir.

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SCANLAN - DIRECT

Q. And then you heard two more. Are you sure of that two. Was it more or less, or what?

MR. JACKSON: Your Honor, I'm going to object. He's just testifying now.

MR. MCGILL: I'm repeating what he said.

MR. JACKSON: Objection.

A. It could have been two or three. I remember seeing two flashes.

Q. Do you know whether or not any of those shots hit the officer?

A. Yes, sir. I could see that the one hit the officer in the face.

Q. How?

A. Because his body jerked. His whole body jerked.

Q. His body jerked?

A. Yes, sir.

Q. Where was he then, when his body jerked, after the shot?

A. Where was the officer?

Q. Yes.

A. He was laying on the sidewalk, face up.

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SCANLAN - DIRECT

Q. Now, at the time -- I think you used the word -- well, first of all, with the Court's permission, would you come down. I'm going to ask for a demonstration, Mr. Scanlan. I'm going to ask you to demonstrate what you meant -- just do it right here.

A. Okay.

Q. And you, for this matter, sir, for this particular time, you'll be the man that the police officer was talking to. And when you said he was, I think you said spread-eagle, he fell or something like that?

A. Yes, sir.

Q. Okay. And would you demonstrate what the police, excuse me, what this man did, and if you could, would you demonstrate the force that you remember from what you observed, and my hand here will be the officer's face. Will you demonstrate what that man did?

MR. JACKSON: Objection. He could not possibly demonstrate the force used, your Honor.

MR. MCGILL: He can certainly demonstrate what he observed.

MR. JACKSON: He cannot. I object.

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SCANLAN - DIRECT

THE COURT: Go ahead. Objection overruled.

A. He was spread-eagle. He fell on the front of the car, and he spun around like this.

Q. Okay. Now, you've indicated there was a closed fist, at least your demonstration was a closed fist in your right hand.

A. Yes, sir.

Q. Was that what the man had?

A. Yes, sir.

Q. Okay. You may go back there, please. Now, at the time that the officer was struck -- do you remember what part of his face he was struck?

A. Yes, sir. It was his right side of his face.

Q. Do you recall where?

A. Between the right eye and the cheek.

Q. You're indicating with your right hand, index finger, right portion of an

area on your cheek, below I guess it would be below the temple area, but on the cheek, right-hand side of the face in front of the ear. At the time the officer was struck, did his face -- his body make any movement?

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SCANLAN - DIRECT

A. Yes, it sent him backwards, he flinched. His face was thrown to one side.

Q. You said the police officer responded and attempted to subdue him. What did he do?

A. He pulled out a flashlight or billyclub, and reacted by trying to subdue the man, by striking him above the shoulders.

Q. Okay. Was it at this time, while he was doing this, you saw the young man from the parking lot running across the street?

A. Yes.

Q. Now, what did you then do after you saw the officer shot? First of all, if you recall, in what direction was the officer's back to the man who was running across the street, and who shot him?

A. His back was towards him.

Q. Was towards the man who shot him?

A. Yes, sir.

Q. Now, after the man fell down, the police officer fell down, as a result, and then the man went over and fired at him some more, what did you then do?

A. I then took a left turn on 13th Street, and went to find a police van to bring a police officer back to the shooting.

Page 12.

SCANLAN - DIRECT

Q. And were you able to do that?

A. Yes, sir.

Q. Now, would estimate the entire time, really, that you had this particular scene in view?

A. When I came to the traffic -- the traffic light had just turned red, so maybe 30 seconds at the most.

Q. No more than that; though?

A. No, no, sir.

Q. So you had him in your view for a relatively short time; is that correct?

A. Yes, sir.

MR. MCGILL: Thank you. Cross-examine. I do have one other question, sir.

Q. Are you able to identify anybody, either the driver, or the man who ran over and shot the police officer?

A. No, sir.

MR. MCGILL: Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Mr. Scanlan, where were you coming from, sir?

A. I just dropped a friend off at the Academy House Apartments.

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#### SCANLAN - CROSS

Q. Had you been drinking, sir, or had any other intoxicants?

A. Yes. I had a few cocktails.

Q. How much earlier from the time you arrived at that intersection?

A. A couple of hours before then.

THE DEFENDANT: Mr. Scanlan, could you describe the second man that you saw run across the parking lot?

THE COURT: Just a minute, Mr. Jamal. Mr. Jamal, please take a seat.

THE DEFENDANT: I'm cross-examining this witness.

THE COURT: Take a seat, Mr. Jamal, please.

THE DEFENDANT: Can I finish my cross-examination, and then sit down?

(Where upon the jury was excused from the courtroom and the following took place:)

THE DEFENDANT: Can I finish my cross-examination?

What was the first man wearing, Mr. Scanlan?

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#### SCANLAN - CROSS

What kind of clothes did he have on? What was the second man wearing? Judge, he's not answering my questions.

THE COURT: I know he's not.

THE DEFENDANT: Why isn't he?

THE COURT: Because I already told you before when we were at side bar, that I expected you to behave yourself.

THE DEFENDANT: I'm behaving myself. I'm fighting for my life.

THE COURT: I know you are, so is Mr. Jackson.

THE DEFENDANT: How the hell do you know?

THE COURT: All right. That's it.

THE DEFENDANT: How do you know what he's doing?

THE COURT: Sheriff, take him out. You're being removed because you're disruptive to the Court proceedings.

THE DEFENDANT: I'm not disruptive. I'm not disruptive. I'm fighting for my life. This is my trial.

THE COURT: Take him out, take him upstairs. When you learn --

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SCANLAN - CROSS

THE DEFENDANT: Your Honor, you're behaving in a way to get me killed, get me convicted, aren't you?

THE COURT: Take him out of the courtroom. Take him out of the courtroom.

THE DEFENDANT: I do not want him working here. I want him out of here. I do not want him to participate in this damn sham. Okay?

THE COURT: Okay.

THE DEFENDANT: Then send him out, if it's okay.

THE COURT: All right.

MR. JACKSON: Your Honor, before we -- could I -- there are some notes of testimony here and Mr. McGill has a report.

THE COURT: All right.

(Side-bar conference, as follows:)

THE COURT: I brought the attorney to side bar to see whether or not Mr. Jackson wants me to once again read this same statement.

MR. JACKSON: I think so, Judge.

MR. MCGILL: I would ask that, too, Judge.

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SCANLAN - CROSS

THE COURT: All right. Did you have something else?

MR. JACKSON: Yes. I just wanted to -- because I don't have a copy of the statement, I would like to take maybe a minute, just to look through the statement.

MR. MCGILL: Sure.

MR. JACKSON: Because I don't have it.

(End of side-bar conference)

THE COURT: Let me know as soon as you are ready.

(A short recess was taken.)

(Whereupon the jury entered the courtroom and the following took place:)

THE COURT: Members of the jury, you are not to draw any adverse inferences from the absence of the defendant. You should further refrain from any sympathy, bias, or prejudice for or against the defendant.

MR. JACKSON: May I proceed, your Honor?

THE COURT: Yes.

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#### SCANLAN - CROSS

#### CROSS-EXAMINATION (CONT'D.)

BY MR. JACKSON:

Q. Mr. Scanlan, you indicated -- just to get us back in posture -- you dropped a friend off at the Academy House, you had a few cocktails, maybe a couple hours earlier. Is that right?

A. Yes, sir.

Q. You made your observation of what you saw from the intersection of 13th and Locust, and as I understand it -- well --

MR. JACKSON: Do we still have the diagram?

THE COURT: Will you turn it around so the jury can see it?

MR. JACKSON: I'm sorry. My apologies.

THE COURT: Can everyone in the jury see it? No? Turn it around, please.

Q. Mr. Scanlan, may I ask you to approach that diagram, please, and there is a pointer there you can use.

Now, so you will at least be oriented, this is Locust Street, and this is 13th Street. I believe you would have been traveling in an easterly direction at about right here; is that correct?

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SCANLAN - CROSS

Q. Does that diagram fairly and accurately demonstrate or depict the scene as you saw it back on December 9th, 1981?

A. Yes, sir.

Q. Now, when you were at that stop light, sir, did you take any notice of the police car or any individuals before the shooting occurred?

A. On --

Q. Strike that. Let me do it this way. When you came to the intersection, did you immediately look ahead and see the police officer and the man?

A. Yes, sir.

Q. Now, when you saw them, you looked ahead, the man, was standing out in the street already; is that right?

A. Yes, sir. He was already out of the car.

Q. He was already out of the car?

A. Yes.

Q. And the police officer approached him? Is that correct?

A. Yes, sir.

Q. And the police car was behind the Volkswagen; is that correct?

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SCANLAN - CROSS

A. Yes, sir, that's correct.

Q. Can you estimate for us the distance from where you were parked and where the police officer and the driver of the Volkswagen were parked?

A. I was stopped right here, and the two gentlemen were talking over here.

Q. I see. Do you know, as far as you're concerned, could you estimate the distance that was?

A. Maybe two car lengths.

Q. Two car lengths?

A. Yes.

Q. Now, my question about it being two car lengths -- for instance, you were to the west of Locust -- I'm sorry, west of 13th Street; is that right.

A. I was first --

Q. Go ahead.

A. First car at the traffic light.

Q. First car?

A. Yes.

Q. So we can assume that 13th Street is at least one car length; is that right?

A. That's correct.

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#### SCANLAN - CROSS

Q. So, on Locust Street was there any cars behind the police car?

A. I don't believe so, no.

Q. No cars behind the police car?

A. No.

Q. And was the police car right at the corner, was it some distance from the corner?

A. Some distance from the corner.

Q. How much, as best you can estimate? How many car lengths from the corner was the police car parked?

A. One, at the most.

Q. One at the most. Any other individuals on the street, excluding for the moment the shooter? Anyone else -- did you see anyone else on the street at that time?

A. All I focused on was the policeman and the gentleman in front of the car.

Q. You may have focused on the policeman and the other man, did you see anyone else on the street?

MR. MCGILL: Objection. He answered it.

MR. JACKSON: He said he didn't focus on it.

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#### SCANLAN - CROSS

THE COURT: He said he couldn't see anybody, could he? Objection is sustained.

A. I didn't see anyone else.

Q. So there was no one else on the street, then, sir?

MR. MCGILL: Objection, he didn't say that.

THE COURT: Objection sustained.

Q. Did you hear anyone else talking, sir?

A. No, sir.

Q. Now, I'm just going to ask you a few questions so that you can get the relative positions on the people on the diagram, and then I'll ask you to go back to your seat.

When you first saw the man that ran across the parking lot, where did you first see him?

A. He was coming -- running out of the parking lot.

Q. Do you know from what position in the parking lot, what location?

A. No.

Q. And the police officer and the driver of the Volkswagen, where were they standing when you first saw them?

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SCANLAN - CROSS

A. In front of the police car.

Q. And that would have been in front of the police car, but behind the Volkswagen?

A. Yes, sir.

Q. So they were out of the traffic lane?

A. Yes.

Q. Okay. Fine. Will you return to your seat, please?

Now, when the police officer approached the driver of the Volkswagen, the driver of the Volkswagen was immediately directed to spread-eagle; is that right?

A. A few seconds after that.

Q. There was some conversation?

A. Yes, sir.

Q. Did you see the driver of the Volkswagen pull out any cards, any wallet?

A. I don't remember.

Q. You were in a position to see it, though, weren't you?

A. Yes, sir.

Q. And you didn't see his hand pull out anything from his pockets or his wallet or anything like that, did you?

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SCANLAN - CROSS

A. I think the officer was looking at his driver's --

Q. You think?

A. He was looking, I think, at a piece of paper in his hands.

Q. In whose hands?

A. In the police officer's hands.

Q. All right. And after that the man spread-eagle?

A. Yes, sir.

Q. On the front of the vehicle or -- let me do it this way.

Where were his feet, in the traffic lane, or in between the cars?

A. Right in front of the car, in the middle of the cars.

Q. And the police officer patted him down--or you tell me.

A. No, I don't remember that, no.

Q. He was spread-eagle and all of a sudden he swung backwards?

A. Yes.

Q. He swung at the officer; is that right?

A. Yes.

Q. Today, you're testifying that he hit the officer. Are you certain that he hit the officer?

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SCANLAN - CROSS

A. Yes.

Q. Did you tell the police that?

A. Yes, I did.

Q. Or did you tell them that he swung at the officer?

A. I may have used that phrase, but he did strike the officer.

Q. Okay. But it was your intention if you said swung you meant that he hit him.

A. Yes.

Q. Fine. After he swung at the officer or hit the officer then the officer pulled a blackjack out; is that right?

MR. MCGILL: Objection. He didn't say that.

THE COURT: Well, rephrase your questions.

Q. Did the officer pull a blackjack out?

A. It was either that or a flashlight. I can't be sure.

Q. You told the police it was a blackjack, didn't you?

A. I believe so, yes.

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#### SCANLAN - CROSS

Q. But you're saying it may have been -- it may have been a flashlight?

A. Yes.

Q. Then he hit the man several times?

A. Couple of times on the shoulders.

Q. Two or three times?

A. Three at the most.

Q. And you're saying you know for certain it was in the shoulder area?

A. Between the shoulders, the neck and the arm.

Q. How about behind the ear?

A. I can't say for sure.

Q. These blows that the officer struck, were they right in succession or was there time in between each of them?

A. They were in succession.

Q. After he struck the man, the man went -- his knees buckled; is that right?

A. Yes, sir.

Q. He began to fall from the automobile?

A. He didn't fall, his knees kind of buckled, he ducked down kind of.

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#### SCANLAN - CROSS

Q. By the way, can you describe that man for us? The driver of the Volkswagen.

A. He had on a coat that came down almost to his kneecaps.

Q. Do you know what color?

A. It was dark green, maybe.

Q. Height?

A. Looked like an Army coat.

Q. Height?

A. Maybe five-ten.

Q. Weight?

A. A hundred and seventy pounds.

Q. You saw Mr. Jamal sitting here a moment ago, didn't you?

A. Yes, sir.

Q. Was it about his height and weight?

A. I can't say for sure.

Q. Did you see the age?

A. The age?

Q. I mean, could you estimate the age?

A. No.

Q. Was the man heavy-set, thin, or -- I know you've given us the height and weight but just --

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SCANLAN - CROSS

A. Regular build.

Q. Do you recall what kind of pants he had on?

A. No, I really couldn't give you that.

Q. Now, it was shortly after the police officer -- the man started -- his knees started to buckle that you saw this other man come from the parking lot and you saw this other man come from the parking lot -- you didn't see a gun in his hands?

A. Not until he got over -- all I saw was the hands together, the motion like this.

Q. Okay.

MR. MCGILL: Indicating the index finger pointed forward, your Honor, sweeping motion from his leg, throughout the front of his body.

MR. JACKSON: Fine.

Q. The man who ran from the parking lot got over -- he was in the street; is that right?

A. Yes.

Q. The police officer and the other man, they were also in the street; is that

correct?

A. Right in front of the car.

Q. Right in front of the car?

A. Yes.

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SCANLAN - CROSS

Q. I believe it's your testimony -- or you -- correct me if I'm wrong -- that you heard a shot; is that right?

A. Yes, sir.

Q. You didn't see the flash at that shot, did you?

A. No.

Q. After you heard that first shot the officer went down; is that right?

A. No, there was, I believe, another shot. It was about five or six seconds, then the officer went down on the sidewalk.

Q. Maybe I'll do this, Mr. Scanlan. Would you take a moment to review both of these statements.

MR. JACKSON: I can have them marked, if you like, your Honor. I think it would be 6 and 6a, for identification purposes.

(Discussion off the record)

Q. Mr. Scanlan, the first one you see is indexed as 6, and then 6a, a hand-written statement. Just take a moment to review that, please.

I'm sorry. Did you look at the hand-written copy, as well? It's right underneath of it, I believe. I

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SCANLAN - CROSS

wanted you to review it for the content, to perhaps refresh your recollection.

A. Is that it?

Q. Yes. I want you to look through it, so that your recollection may be refreshed, as to what you told the police that night.

Now, you've also provided a diagram to the police; is that right?

A. Yes, sir.

Q. And in that diagram, can you tell the jury, first of all, where in fact you've indicated that there were other people around.

A. All I noticed were the three -- the three gentlemen.

Q. But there is a diagram there that you've given; is that correct?

A. Okay, yes, besides those three -- yes, I do remember.

Q. Yes. Can you describe to the jury where you placed those other people?

A. Two people were to the left of my car.

Q. And that would have been where, sir?

Page 30.

#### SCANLAN - CROSS

On the northwest corner of 13th and Locust Street?

A. I believe so.

Q. Right here, Club Whiskers, right?

A. Yes.

Q. That would have been -- excuse me, maybe you could come down and show them. I don't want to get in the way of the jury.

If you can, use a pointer, perhaps, and stand to the side and do it.

A. Right here.

Q. Two people on the northwest corner. Do you remember whether it was a man or a woman or two men?

A. No.

Q. Was there another person there someplace?

A. This corner.

Q. That would be the southwest corner. And anyone else?

A. No.

Q. Okay. Return to your seat, please.

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#### SCANLAN - CROSS

Q. Now, Mr. Scanlan, you've had an opportunity to review those two statements, have you not?

A. Yes, sir.

Q. Now, those two statements are indeed your statements that you gave to the police; is that right?

A. That's correct.

Q. The first statement being on December 9, 1981; is that correct?

A. Yes.

Q. The second statement being on December 12th, 1981; is that correct?

A. I'm not sure of the exact date, but --

Q. Well, for the purpose of the record, would you look at it, so that we're certain, the hand-written statement.

A. December 11th.

Q. December 11th, fine. Now, at the time that you gave those statements to the police, you gave those statements because you believed what you said to be true; is that correct?

A. That's correct.

Q. And would it be fair to say that your recollection of the facts were

fresher at that time than they are today?

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SCANLAN - CROSS

A. Yes.

Q. So that as an example, you told the police then that there were people on the corner, and today you said you didn't remember, so that we can assume that your recollection was indeed fresher than it is today?

A. Yes, sir.

Q. Do you also remember testifying in another related matter on March 29, 1982, before the Honorable Meyer Rose?

A. Yes, sir.

MR. JACKSON: And I refer you to Page 119, of the notes of testimony, Mr. McGill.

Q. See if this refreshes your recollection, middle of the page: "Is it your testimony that the first time the officer was on the sidewalk was when he fell as a result of being struck by that first bullet?"

A. "Answer: Yes, sir."

Do you remember giving that testimony?

A. Yes, sir, I do.

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SCANLAN - CROSS

Q. So that the officer -- you testified earlier this year, that the officer fell after the first bullet? Is that correct?

A. That's correct.

Q. So would it be fair to say, with refreshing your recollection with that statement, that the officer did indeed fall after the first bullet, after the first shot?

A. He didn't fall immediately down on the sidewalk. It was a few seconds.

There was confusion when all three of them were in front of the car. He didn't fall directly down, as a result of the first shot.

Q. Well, maybe you can explain that. Let me read this again to you, sir.

"Question: Is it your testimony that the first time the officer was on the sidewalk was when he fell as a result of being struck by that first bullet?"

"Answer: Yes, sir."

Explain that to me, sir. If you're saying he didn't fall all the way on the sidewalk, I don't understand.

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A. I just mean he didn't fall immediately after that first shot. There was a couple seconds, that's all.

Q. Okay.

A. That's all I'm trying to say.

Q. But there was not another shot fired before he hit the ground, though?

A. There could have been. I really don't know.

Q. So your best recollection is that he fell after the first shot?

A. Yes, sir.

Q. And again, you just heard that first shot; is that correct?

A. Yes, sir.

Q. And you saw no flash that first time?

A. No.

Q. And it was only those subsequent shots that you saw flashes; is that correct?

A. That's correct.

Q. And by the way, do you know whether it was the driver or whether it

was the man who ran from the parking lot who fired the shots?

A. It was the man that ran from the parking lot.

Q. Do you remember telling the police -- and you can refer to your statement, sir. Could I see it, and I could point it out to you?

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Page 7 of the hand-written statement. Please read out loud, the first question and answer.

A. "Did you see this male shoot the officer?"

"No, all I saw was the flash from the gun. I didn't follow the flash back to the gun, but when I saw the guy running across the lot towards the cop, I knew he was going to help the guy that was getting hit from the billy club."

Q. Okay. So would it be fair to say based on the fact that you gave that statement on December 11, 1981, when you were asked specifically did you see who fired the shot, you said no?

A. Well, what I meant, I couldn't identify them. I was worried about identifying the person. As of now, I still can't identify them, only through clothing.

Q. You were asked earlier in that interview, as well as the interview on December 9th, if you could identify anybody and you told them no, right?

A. Right.

Q. That question specifically asked, "Did you see who fired," not if you could describe, not if you could identify. It said, "Did you see who fired the shot."

A. Well, I saw --

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MR. MCGILL: Objection, your Honor.

THE COURT: Okay.

A. I saw the firer of the shot, because I saw the right hand extended, and I saw two flashes, and the officer's body jerk.

Q. All right. Let me have the statement back again.

Now, when the shooting took place, the first shot, when you heard the first shot the officer was in the street, everybody, the participants were in the street; is that right?

A. That's correct.

Q. And after you heard the first shot, the officer, I take it, stumbled onto the sidewalk?

A. Yes, sir.

Q. And the man who was in the Volkswagen, the driver of the Volkswagen, where was he exactly?

A. He was standing on the curb, right next to the sidewalk.

Q. When the shooting took place?

A. Yes, sir.

Q. Now, explain to me -- and I'm not being critical-- I thought it was your testimony that the man had his feet in the street, spread-eagle, over the top of the police car, and after the police officer struck him a

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few times, that's when the man came over with the gun?

A. Yes, sir.

Q. How did the man get from -- and I know you said that he started to go down, his knees buckled. At what point did he move from that point and get over to the curb?

A. When the officer fell back onto the sidewalk, that's when he stood up in an erect position and was standing on the curb.

Q. He followed the officer?

A. No, he didn't follow him, but he wasn't up on the sidewalk.

Q. It's probably me, Mr. Scanlan. The officer was shot and he staggered towards the sidewalk. That would have blocked the driver of the Volkswagen from going to the sidewalk, would it not?

A. No.

Q. Well, could you -- I really don't know how it happened. Could you explain how it -- the dynamics of all that.

Q. When the guy came running out of the parking lot, came across, shot the officer, there was some confusion. Next thing I remember is the policeman --

Q. When you say --

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MR. MCGILL: Objection, may he finish his answer.

MR. JACKSON: I wanted him to explain "confusion."

MR. MCGILL: Let him finish.

Q. Go ahead.

A. The three of them were still there, and then the officer fell down and the man walked over and stood at his feet, and fired, twice, two or three times.

Q. Okay. Now, did you see what was in the hand of the driver of the Volkswagen?

A. No, I wasn't looking at him.

Q. Did you see him motion his hand?

A. No.

Q. You didn't see it?

A. My attention was focused on the officer.

Q. So, you're saying that you don't know what the driver of the Volkswagen was doing?

A. Only that he was standing there.

Q. How close to the officer was he?

A. Six or eight feet.

Q. Six or eight feet?

A. Yes, sir.

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Q. The man that you said ran from the parking lot, how close was he to the officer?

MR. MCGILL: Objection. At what time? When he was on the sidewalk?

MR. JACKSON: Same time.

MR. MCGILL: On the sidewalk?

MR. JACKSON: Yes.

THE WITNESS: Less than a foot away.

BY MR. JACKSON:

Q. The relative positions of the three people, you had -- as far as going from, I guess, south, north -- we will do it this way: The driver of the Volkswagen was right near the sidewalk?

A. Yes, sir.

Q. The officer, immediately after the shooting was on the sidewalk?

A. Laying down, sir.

Q. Laying down. And the shooter was where?

A. At his feet.

Q. At his feet. So the shooter and the driver of the Volkswagen were relatively close to one another?

A. Yes, sir.

Q. How close, sir?

A. Five or six feet.

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Q. The three people, would they have formed a triangle in terms of where their positions were? Would that be accurate that they formed pretty much of a triangle?

A. I don't know if it was a triangle, but all three of them were there on the sidewalk.

Q. Okay. The man who ran across from the parking lot, can you describe him to us, sir?

A. He had on a -- I think a red-and-blue striped coat or sweater.

Q. Now, who told you red and blue?

A. No one.

MR. MCGILL: Objection.

Q. You never told -- you gave the police a different description.

A. Well, I just remember multi-colored and stripes, big stripes.

Q. You're saying to us now, nobody told you red and blue?

A. No, sir.

Q. You remember the statement you gave to the police? You never said red and blue, did you?

A. I think I said red and black, or yellow and black.

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MR. MCGILL: Page 2, first statement.

MR. JACKSON: Pardon me?

MR. MCGILL: Page 2, first statement.

MR. JACKSON: Indulge us for one moment, sir.

Q. See if you remember this question and answer, sir, back on Page 6 of the statement that you gave on 12-12-81: "Question: Describe the second male that ran toward the officer."

"I really only saw him from the side, negro male, about five-ten, maybe a hundred and eighty pounds. I couldn't say if he had a beard. I saw he had long, wide, sideburns, dark skin, wearing a black knit cap, like over the back of his head, holding the hair in. He had a long-sleeved sweater on. I think it was red and black, or yellow and black. I don't remember what the color of his shoes and pants were."

Do you recall that statement, sir?

A. Yes, I do.

Q. So no matter what he had on, you're saying he had a sweater on; is that right?

A. A sweater or jacket. I can't be sure.

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Q. So, now it's either a sweater or a jacket?

MR. MCGILL: Objection, sir, argumentative.

THE COURT: Sustained.

Q. Did you tell the police it was a sweater or jacket?

A. I believe I said sweater.

Q. But now you remember it?

A. No, I just said it was either a sweater or a jacket. I can't be sure.

Q. Okay. Let me go over a few other things as well, sir.

So that I'm also clear, Mr. Scanlan, when you heard the first shot, did you see the hands of either the driver of the Volkswagen or the man who was running across the street?

A. I saw the hands of the man running across the street.

Q. And I believe you indicated in response to Mr. McGill's questioning, that you saw it raised as if to fire a weapon.

A. Yes, sir.

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Q. But you did not see the flash at that time?

A. No, I didn't.

Q. You were in a position to see it, if there was a flash; is that correct?

MR. MCGILL: Objection.

THE COURT: Sustained.

Q. You were in a position to see his hands?

A. I saw the hand come up, yes.

Q. And when the hand stopped coming up, you saw the hands, did you not?

A. I wasn't looking at the hands then.

Q. What were you looking at?

A. I didn't know what was about to happen.

Q. No. Well, what were you looking at then?

A. I was looking at the three gentlemen standing there.

Q. When you saw his hands come up, you stopped looking at his hands all of a sudden for no reason?

A. Well, I didn't know that a gunshot was about to go off.

Q. I understand.

A. No, I don't remember looking at his hands.

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Q. But you never took your face away -- you never took your eyes away from the three of them?

A. No.

Q. And when you say him raise his hand, this man who was running across the lot, how close was he to the officer when you saw him raising his hand?

A. Three or four feet.

Q. So, you could see the officer, the man who ran across the street, as well as the driver, at the same time, could you not?

A. That's correct.

Q. And you only heard a shot?

A. Yes.

Q. And it came from the direction of those three people?

A. Yes, sir.

Q. You're certain of that, sir?

A. Yes.

Q. Okay. Now, the hairstyle of the man who ran across from the parking lot, could you tell us what that was? Did you notice his hairstyle?

A. Just the black cap that he had on.

Q. Pardon me?

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A. Just the black knit cap holding his hair.

Q. Do you recall telling the police that the man had an Afro haircut?

A. Yes.

Q. So that's what he had, an Afro haircut; is that right?

A. Yes, sir.

Q. And the man who the police stopped, he had dreadlocks; is that right?

A. Yes, sir.

Q. And you remember that very clearly?

A. Yes, sir.

Q. And do you recall seeing, looking to see if there was anyone in the police car?

A. No.

Q. Did you see anyone in the Volkswagen?

A. No.

Q. After the shooting, did you see anyone run from the scene?

A. No. That's why I took a left-turn, to look for the police.

Q. And you went for the police immediately?

A. Yes, sir.

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Q. And when you returned, someone pointed someone out in a van; is that

right? -- to you?

A. Yes, sir.

Q. And the man that you saw in the van, was he handcuffed?

A. I believe so, yes.

Q. Was he laying on his back?

A. He was kind of crouched up in a ball.

Q. In a ball. And you told the police that as far as you knew, that was the man who was driving the Volkswagen; is that right?

A. I can't say for sure.

Q. But that's what you told the police: isn't it?

A. Yes.

Q. You told the police that was the man, as far as you could tell, who was driving the Volkswagen?

A. Yes.

Q. Did you see the other man, the man whom you said ran across the street?

A. No, I wasn't sure what happened to either one of those --

Q. No one -- strike that.

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By the way, at any time did you see the officer fire his weapon?

A. No, sir.

Q. Pardon me?

A. No, I don't remember that.

Q. You don't remember?

A. No, I didn't see him fire it.

Q. But you pretty much had the officer in sight during this entire incident, didn't you?

A. Yes, sir.

Q. Now, you indicated that after the -- you heard the first shot, and then after you saw a man stand over top of the officer and fire two or three times. The officer was down on the ground?

A. That's correct.

Q. And after the man fired two or three times, what did that man do?

A. That's when I left.

Q. Okay. Did you see if he walked away, ran away?

A. I didn't see.

Q. You have no idea at all?

A. No idea.

Q. Now, before you left the scene, and you said in response to Mr. McGill's questions that you know

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that the man was shooting the officer because you saw his body jerk.

A. That's right.

Q. Did you see the officer pull any weapon, do anything at all?

A. No, sir.

Q. The instrument that you saw the police officer hitting the driver of the Volkswagen with, whether it was a blackjack or flashlight, could you estimate for us the length?

A. I guess about this long.

MR. JACKSON: Would it be fair to say that's about 18 inches, Mr. McGill?

MR. MCGILL: 14, 18 inches, probably.

MR. JACKSON: Fine.

Q. He used one hand to wield that weapon, that instrument with?

A. Yes, sir.

Q. Did you ever see what happened to it?

A. No.

Q. Did you notice whether in fact the officer dropped it after you heard the first shot or --

A. No.

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Q. --- or whether he was staggering --

A. No, I don't.

Q. No recollection. Fine.

Mr. Scanlan, do you remember the driver of the Volkswagen -- again, you recall his knees buckling, right? You knew when he was being struck?

A. Yes, sir.

Q. Do you recall when or if he stood erect?

A. Just when he was talking to the policeman.

Q. Okay. But that was before he was hit, though; is that right?

A. Right.

Q. So after that you never saw this man stand up again. When you said he was on the car and the officer struck and his knees buckled, he never stood erect again, did he?

A. Well, he did when the officer was shot.

Q. Pardon me?

A. He did when the officer was shot. The two of them were standing on the street -- on the curb.

Q. This was after the man had shot two or three times at the officer?

A. Yes, sir.

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Q. He did stand up then?

A. He was standing then, yes.

Q. Fine.

Now, do you recall telling the police back on 12-12-81 -- and I'm reading a portion of the statement, Mr. McGill, Page 5 --

MR. MCGILL: Yes, sir.

Q. -- "The next thing I know, I saw the Officer laying there, then one of the males was standing over the officer. I don't know which one it was. Then I saw two or three flashes, and heard the shots." Do you remember telling the police that?

A. Yes, sir.

Q. So why is it today you know who it was that fired, but you didn't tell them then?

A. What I meant was I couldn't identify them, I couldn't tell which of the two it was.

Q. You couldn't tell whether it was the driver?

A. Even today, I couldn't identify anybody at that point. And that's the way I meant it. I couldn't identify anybody. The only description -- the one running out of the parking lot --

Q. You can describe one as the runner, and one as the driver, or something

like that.

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A. Yes. Now -- in those terms, it was the driver -- I mean the runner, the one who ran out of the parking lot.

Q. Weren't you asked specifically to describe him, and you described him, and you indicated that you couldn't identify anyone, but you're saying now that when you said you didn't know which one, you meant you couldn't identify them?

MR. MCGILL: I would have to object. First of all, he's answered that question.

THE COURT: Let him answer one more time.

A. I mean, from reading the papers and all that, I couldn't say the two names -- which of the two names it was.

Q. From reading the paper, But we're not asking you --

A. I guess I was confused when they were asking the questions, and that's why I said I didn't know which of the two it was.

Q. What paper are you talking about reading? The newspapers?

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A. Yes, sir.

Q. But you were there, weren't you?

A. Yes.

Q. You didn't get your facts from the newspaper, did you?

A. No.

Q. When you said again in the statement, "But I don't know which male had the gun" --

MR. MCGILL: I would object. So that he's aware, there were two statements.

MR. JACKSON: I'm sorry.

MR. MCGILL: I'm not asking you to do that. This is the second statement?

MR. JACKSON: Yes.

MR. MCGILL: So he knows what order they were.

MR. JACKSON: 12-12, I'm sorry, December 12th.

A. Yes.

Q. You gave a statement to another detective -- sorry, I don't know the name.

You said, again, "I saw the gun in one of the males' hand, but I don't know which male had the gun."

You're saying that you only meant that you couldn't identify them?

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A. Yes. I couldn't give either of the two names.

Q. Anyone ask you for names?

A. No. The night of the shooting when I gave my statement I believe I said that the guy who ran across the parking lot. But then a few days later after it being all in the papers and the T.V. I couldn't give the name, I couldn't identify anybody and still can't. That's why I said that's why I wasn't sure which --

Q. Did the police ever ask you for a name?

A. No.

Q. What made you think they wanted you to identify them by name?

A. I guess so that I could identify that particular person. See, I could only identify them as to clothing.

Q. By the way, so that we have the relative heights of the individuals, the driver of the Volkswagen, was he taller or shorter than the police officer?

A. He was taller.

Q. The man who ran across the street -- we can call him the runner or the shooter -- was he taller or shorter than the police officer?

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A. I can't say for sure.

Q. So, you couldn't say whether he was taller or shorter than the driver of the Volkswagen either, I take it.

A. Right.

Q. Now let me also refer you to 12-12-81, Statement Page 5, last question and answer.

"Describe the first male that the officer stopped in the Volkswagen."

"Negro male, about five-ten or a little taller, because he was never fully erect."

Do you remember saying that?

A. Yes, sir.

Q. But today, you're saying that's incorrect, that he really was fully erect at some point?

A. Yes, right at the end of the shooting.

Q. So when you told the police that, that wasn't quite right?

A. Well, I was thinking when the officer brought him over, and he was spread-eagle, he was never really standing fully --

Q. The driver of the Volkswagen, did he have a hat on?

A. No, sir.

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Q. You're certain of that, aren't you?

A. Yes, sir.

Q. And the man who ran across the street from the parking lot had a black cap on?

A. Yes, sir.

Q. And you're certain of the color and you're certain that he had a cap on?

A. It was definitely a cap on.

Q. By the way, do you remember -- and I don't mean to be ridiculous -- how long it took him to get from the parking lot to where the officer was? Half-second, or second, or longer?

A. Two seconds.

Q. Was he walking or running?

A. Picked up from a walk into a run.

Q. Okay. At what point did you see him go from a walk to a run? I mean, you must have seen him walking at some point and go some distance, and then you saw him run.

A. I saw when he reached the street, he picked up to a run. He ran across --

Q. And you saw him walking in the parking lot; is that right?

A. Yes, walking in the parking lot.

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Q. And there was a light in there which you could see into the parking lot?

A. Yes, there was a street light. I'm not sure where it was.

Q. Now, let me remind you of this, again -- Page 6, the same statement given on December 12, 1981 -- "Describe the second male that ran toward the officer."

"Answer: I really only saw him from the side."

I read this just to remind you -- "I really only saw him from the side; negro male about five-ten, maybe a hundred and eighty pounds." The other male that you've already indicated and we understand you've indicated that he was five-ten. So you're saying that as far as you could tell, they're both about the same height?

A. Yes.

Q. But you're also certain that the man who fired, the weapon the shooter, had an Afro hair style and the man who drove the Volkswagen had dread locks?

A. That's correct.

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Q. You never actually saw the gun, right?

A. No, sir.

Q. When you left the scene, you know, you made your left on 13th Street, and I think you went to Juniper and Walnut, or something like that to get the police, do you recall if anyone ran to the scene? When I say the scene, right where those cars were, did you see anyone move in that direction?

A. No, sir.

Q. Do you recall seeing anyone walking on Locust Street on either side, either the north side or the south side of the street?

A. No, sir.

Q. I assume because you went to look for the police, but I'm going to ask you a ridiculous question anyway: Did you see any police on that street other than the one officer?

A. No, sir.

Q. Do you recall, possibly, what the number of that police car was?

A. No, I have no idea.

Q. Do you recall whether or not the police car or the Volkswagen was running, the motor was running?

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A. No, I couldn't say for sure.

Q. And you're certain there were no cops on the street, behind the police car --

MR. MCGILL: Objection, your Honor. He did not say certain.

MR. JACKSON: Sir, could you tell us?

MR. MCGILL: He did not focus his attention on it.

Q. Could you tell us?

A. I don't remember. I'm pretty sure it was the police car that was the first car on the curb.

Q. Because you could see so clearly?

A. Yes, sir.

Q. And you don't recall seeing anyone, I guess, that would be on the southeast corner of 13th and Locust; is that right?

A. That's correct.

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

REDIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Scanlan, you've been asked many questions about descriptions, time, facial parts, people on the

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street. Approximately how much time did you have this scene in view at

the very most?

A. I would say about 30 seconds, half-a-minute.

Q. Perhaps even less?

A. Perhaps.

Q. Were you particularly interested in focusing your attention as to who was on the street --

MR. JACKSON: Objection.

Q. -- or what cars were there?

MR. JACKSON: Objection, as to his interest.

THE COURT: Overruled.

Q. You may answer.

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

Q. Were you particularly interested in focusing your attention of who was on the street, or what cars were parked other than where the incident was?

A. Yes, sir.

Q. You were or you weren't?

A. No, I was directing my attention right at the police car. I'm sorry.

Q. You don't know whether or not there were people on these other corners: is that correct, sir?

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MR. JACKSON: Objection.

THE COURT: Overruled.

MR. JACKSON: Fine.

A. I do remember a few people, but I really wasn't paying attention.

Q. Mr. Scanlan, you did say a few things which I wanted to clarify, at least in my mind. You kept mentioning three people. Remember that? Three people?

A. Yes, sir.

Q. Now, when you say three people, what are you talking about?

A. The police officer, the driver of the Volkswagen, and the man who ran out of the parking lot.

Q. Okay. Now, you did have read to you several parts of the second statement you gave. Do you recall --

MR. MC GILL: May I approach the witness, your Honor? I ask that this be marked C-57. I have the one copy. Your Honor, may I approach the witness?

THE COURT: Go ahead.

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(Statement marked for purposes of  
identification as Commonwealth's Exhibit 57.)

Q. Mr. Scanlan, I'm showing you what has been marked C-57, which has been referred to as your first statement. When was that given?

A. I guess about a half-hour or after -- December 9.

Q. 1981?

A. Yes, sir.

Q. You said a half-hour, what?

A. About a half-hour after the incident.

Q. Half-hour after the incident. Now, do you recall -- I'm referring to the first page, Mr. Jackson, of the first statement.

MR. JACKSON: Fine.

MR. MCGILL: The last eight or nine lines.

Q. Do you recall, "Then the guy running across the street" -- can you see that?

A. Yes, sir.

Q. "Then the guy running across the street, pulled out a pistol and started shooting at the officer. He had the gun pointed at the officer. He fired, while he was running, at the officer, and the officer fell

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down. Then he stood over the officer and fired three or four more shots, point blank at the officer."

Is that what that says?

A. Yes, sir.

Q. And you said that one-half hour after the incident?

A. That's correct.

Q. You mentioned a red and black, or red and blue, or something -- a sweater or a coat. Do you recall that? You didn't say coat, you said jacket. Sweater or jacket.

A. Yes.

MR. MCGILL: Would you show the witness C-34, the jacket in there, C-34. I'm sorry, C-54. There's a jacket in there.

Q. I'm showing you that jacket. Does that look at all familiar?

MR. JACKSON: Objection as to familiar, your Honor.

THE COURT: Overruled.

A. Yes, sir. I remember the stripes, the big stripes.

Q. Where did you see that before?

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A. From the man who came running out of the parking lot.

Q. Could you place that back in the bag.

MR. MCGILL: Referring to the proceeding for Mr. William Cook for punching the officer, Page 99.

MR. JACKSON: Fine.

Q. Do you recall this question and answer?

"Go on, and what did this other man do?

"Answer: This other man, next thing I heard was a crack, what sort of sounded like a crack. I don't know what it was. Then the officer fell down on the sidewalk and was laying there, when the gentleman walked over with the pistol, and fired two times, striking the officer. I noticed he hit the officer with the" --"I noticed the bullet hit the officer because his body jerked.

"Question: The same man who ran over and had his finger pointed forward, was standing over him shooting?

"Answer: Yes.

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"Will you please tell me where the officer was struck, what part of his body was struck by the other person.

"Answer: In the face."

Do you recall those questions and answers at that trial?

A. Yes, I do.

Q. Now, you stated that after the man who ran across the street shot the officer and before he fell there were a few seconds. Is that what you said?

A. Yes, sir.

Q. During the course of that time, did you have the officer's hands in view?

A. No, sir.

Q. As a matter of fact, did you really have the officer's hands in view, really, at any time during the time after the first shot to the time that you drove away?

A. No, sir.

Q. So would it also be fair to say that you're actually unable to tell whether or not the officer fired back?

MR. JACKSON: Objection.

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THE COURT: Overruled.

MR. MCGILL: Nothing further. Thank you.

RE-CROSS-EXAMINATION

BY MR. JACKSON:

Q. A few more questions, if you don't mind, Mr. Scanlan.

Q. You indicated that you kept all three individuals in view; is that right?

A. Yes, sir.

Q. You were very careful to point out to us what you saw the person who ran across the street do. Now, even though you told the police one-half hour after this incident that you saw this man run across the street and pull a gun out, you were just assuming he pulled out the gun; isn't that a fact? You didn't actually see the gun, did you?

A. No, I didn't see the gun.

Q. So it was an assumption on your part: is that right?

A. I would imagine so.

Q. Fine. No one is penalizing you for it, sir.

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MR. MCGILL: Objection to the comments.

THE COURT: No comments.

MR. JACKSON: Sorry.

Q. So even though the statement was given one -- half hour after the incident, it's still an assumption even then; is that right?

A. Well, I heard the gunshot, so --

Q. Okay.

A. Okay.

Q. No question about hearing the gunshot.

A. Right.

Q. Now, back to, again, what really happened.

MR. MCGILL: Objection, comments.

MR. JACKSON: I'm talking about the shooting, that's what I mean.

Q. The shooting itself, you indicated that when the shooting happened the driver of the Volkswagen was on the police car?

A. After the shooting?

Q. Or at any time?

A. They were all right in front of the police car, yes.

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Q. The police car.

MR. JACKSON: May I have one moment, please?

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Q. Let me refer you to Page 107, and perhaps you can --

MR. JACKSON: I'm sorry, the notes of testimony, March 29, 1982, Mr. McGill, Page 107.

MR. MCGILL: Yes, thank you.

Q. "Question: Now when you said" -- strike that.

I'll start a little further.

"Question: When you first saw the man, other than the officer, this man you said later struck the officer, what was this man doing?

"Answer: When I reached the intersection" -- your answer was, "When I reached the intersection?

"Question: Yes, sir.

"Answer: He was talking to the police officer in front of the Volkswagen.

"Question: Now, when you said in front of the Volkswagen, you would have been seated in your car and you have an intersection at 13th and Locust,

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you have the police vehicle, and then you have the Volkswagen, and they were standing in front of the Volkswagen; is that right?

"That's correct."

Now, I just want to be certain. Did they ever move from in front of the Volkswagen and go to the police car?

A. No. I think it all took place in front of the police car. I just remember the Volkswagen specifically, because of the appearance of the car. I think that's why I said in front of the Volkswagen.

Q. This was a mistake?

A. Just the appearance of the Volkswagen, the front and the back. I believe this day, it was in front of the police car.

Q. When you said it was in front of the Volkswagen on two occasions, you were wrong?

A. I could have been mistaken.

Q. Okay. I just wanted to get that straight. Again, with regard to the hands of the police officer, you said that you weren't focusing on his hands, right?

A. Right.

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Q. You weren't focusing on the hands of the driver of the Volkswagen either?

A. No.

Q. And you weren't focusing on the hands of the shooter either, because you're saying that you saw his hands go up, and then you didn't focus on it. So you didn't see anybody's hands?

A. I saw the hand when it came up. I just don't remember seeing the gun.

Q. I know. But you never saw it stop. That's what you said earlier.

MR. MCGILL: Objection, your Honor.

Q. Correct me if I'm wrong. What do you mean you never saw it stop? You said that you saw the shooter, his hand was coming up.

A. Yes. By that point, he was already on top of the --

Q. And you heard a shot?

A. That's correct.

Q. So what I'm saying is, although you saw this one hand start to go up, you only heard a shot and you don't know where the hand was pointed, or where it stopped; isn't that what you said?

A. That's correct.

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Q. So it's fair to say at the time of the shooting you weren't looking at anybody's hands?

A. Just the one that came up.

MR. MCGILL: I have to object. What shooting?

MR. JACKSON: The first shot. I repeated it three times. That's what we're talking about.

A. I just saw the hand come up, and I never saw the gun until he was shot.

Q. And after that, sir, did you see anyone else's hands before you left the scene?

A. Just the one that was holding the gun in his right hand, and fired at the officer.

Q. You could see the officer's hands, couldn't you? I mean, you could see the entire body of the officer when he was on the ground?

A. I could see from his head to his toes, yes.

Q. And you saw him as he fell, did you not?

A. Yes, sir.

Q. Did you see his hands grab on to anything?

A. No, I don't remember.

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#### SCANLAN - RECROSS

Q. And you didn't notice anything in his hands either, did you?

A. No, I didn't.

Q. The driver of the Volkswagen, you could see him this entire time as well, couldn't you?

A. I wasn't really focusing my attention on him, just the officer.

Q. I appreciate the fact that you weren't focusing on him, but you could see him?

A. Yes.

MR. MCGILL: Objection, your Honor. It's quite relevant if he wasn't focusing on his hands.

MR. JACKSON: The question is whether he could see him.

A. Well, I know he was still there. I wasn't looking at his hands.

Q. Fine. Thank you, sir, I understand that. Now, Mr. McGill indicates that you weren't interested in anybody else who was at the scene and I can appreciate your interest. Nevertheless, on December 12th, when you talked to a detective, whose name I really can't distinguish --

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MR. MCGILL: It really doesn't matter.

MR. JACKSON: Yes.

Q. In fact, you gave them a description, a diagram, placing individuals who were at the scene, did you not?

A. That's correct.

Q. Even though you didn't focus in on anyone, you put a person standing at the -- I guess that would be the southwest corner -- you put two people standing at the northwest corner, you put -- this is the second man that you saw standing at the parking lot. Was he standing at some point in time, just standing without running or without walking?

A. I don't know. I didn't see him. I just saw him from running out of the parking lot.

MR. JACKSON: Your Honor, may I approach the witness for a moment?

Q. So that I'm clear sir, this is an indication here that there is a second, N-M., I suppose, negro male, standing -- whose indication of that standing is that?

A. That's mine. That's the man that came running

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out of the parking lot.

Q. Was he standing there?

A. No.

Q. He was never standing?

A. No.

Q. Okay. But in any event, then you did have some idea of who was at the scene in that general area on December the 12th?

A. I know there was other people besides myself.

Q. And all that you meant was that you didn't focus on them. It wasn't that you didn't see them, just that you weren't focusing on them.

A. Right.

Q. That's what I thought you meant. Thank you.

MR. JACKSON: Nothing further.

BY MR. MCGILL:

Q. Mr. Scanlan, on your first statement, C-51, at the bottom of Page 1, where you said you observed the man running across the street, and shoot the officer in the back, and he fell down. When that man was over the officer, did you see the gun and flashes at that time?

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A. I saw the flashes, there.

Q. Fine. And it was coming from his hands?

A. Yes.

Q. Where he was pointing?

A. Yes, sir.

MR. MCGILL: Thank you very much.

MR. JACKSON: I have nothing further, your Honor.

(Witness excused.)

THE COURT: Let's take a short recess.

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(Recess)

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(Whereupon the jury entered the courtroom and the following took place:)

MR. MCGILL: May I proceed, your Honor?

THE COURT: Yes.

MR. MCGILL: Mr. Albert Magilton.

(Discussion off the record)

ALBERT MAGILTON, after having been duly sworn, was examined and testified as follows:

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MR. MCGILL: May I proceed, your Honor.

THE COURT: Yes, please.

DIRECT EXAMINATION

BY MR. MCGILL:

Q. Mr. Magilton: I'm directing your attention to December the 9th, 1981.

A. Yes, sir.

Q. And particularly some short time before 4:00 a.m. on that morning, did you have occasion to be in the area of 13th and Locust Streets?

A. Yes, I was.

Q. All right, sir. What did you observe?

A. I observed the gentleman -- well, the police officer pulled over a blue Volkswagen at the corner of 13th and Locust.

Q. And what did you then observe?

A. Well, the officer was on the microphone, and then he pulled the car over. The driver got out and the officer got out, and they proceeded to the pavement. And then after that there, I proceeded to cross Locust Street, which I noticed the gentleman coming from the parking lot.

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#### MAGILTON - DIRECT

Q. And what was this man doing, or this person doing, when he was coming from the parking lot?

A. He was sort of like moving across the -- across the street fast, and he had his hands back behind his back.

Q. Would you stand up, please.

MR. MCGILL: With the Court's permission.

Q. You don't have to come down here. Just indicate to the jury what you mean by his hands behind his back.

A. He had his hands back like that there.

Q. Indicating his --

A. His right arm.

Q. -- right arm.

A. Towards the back, such like that.

Q. Sort of cupped?

A. Yes.

Q. Behind, on his right side in the direction of his back, more on his back than on his side?

A. Yes, sir.

Q. And what did you observe this man doing?

A. He was moving across the street towards where the officer had stopped the Volkswagen. And --

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Q. And did you have occasion to lose sight of him?

A. Yes, sir. About half-way across the street, I had turned to proceed crossing the street.

Q. Then when you went across the street, what happened?

A. I heard some shots and I looked over and I didn't see the officer there no more.

Q. All right. And then what did you do?

A. Well, I proceeded back across the street to see what had happened to the officer. And then as I was moving across the street, you know, I was moving slowly across the street, I looked. When I got to the pavement, I had looked down and I had seen the officer laying there, and I didn't see the other gentleman until I -- until I moved up closer and he was like sitting on the curb.

Q. And where was he sitting on the curb?

A. By the front of the Volkswagen.

Q. And what did you see happen to him?

A. Well, he -- as soon as the police arrived, there was a scuffle as they was looking for the weapon.

MR. JACKSON: Objection. Move to strike, your Honor,

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MAGILTON - DIRECT

Q. All right, Mr. Magilton --

THE COURT: Strike that last part.

Q. Okay. There was a struggle and what did they do to that man?

A. They handcuffed him and put him in the wagon.

Q. Now, did you have occasion to be asked to do anything?

A. Yes.

Q. In reference to the wagon.

A. Yes, The officer took me over to the wagon and asked me if this was the gentleman I seen coming across the street.

Q. What did you say?

A. I said, "Yes, that's the man."

Q. And where was the wagon?

A. It was parked by the -- towards the front of the police car.

Q. In what direction?

A. Heading towards -- facing towards 12th Street.

Q. Now, did you have occasion to -- or can you identify that particular man that ran across the street?

A. Yes, I can.

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#### MAGILTON - DIRECT

Q. Did you have occasion to identify him at a pre-trial hearing a few weeks ago?

A. Yes, I did.

Q. And at that point, where was he seated?

A. He was sitting next to that gentleman there. While I was -- I believe he was sitting in that chair where that gentleman is sitting.

Q. And this gentleman was sitting where?

A. He was sitting next to him on his right.

MR. JACKSON: There's a stipulation.

MR. MC GILL: Your Honor, there's a stipulation. The same stipulation that if the defendant were here, Mr. Magilton would identify him as the man he saw running across the street.

THE COURT: Once again, ladies and gentlemen, you remember that I told you that you can only consider that evidence which comes from this witness stand. Of course, to that rule there is an exception, the exception being that when both counsel stipulate to a fact, you can take that fact as if it had come from this witness stand. Do you understand? Go ahead.

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#### MAGILTON - DIRECT

Q. Now, when you went up there and you saw the defendant in front of the Volkswagen, did you see anyone else there? Any other civilian?

A. Yes, there was another gentleman there.

Q. Now, had you seen him before?

A. He was the driver of the Volkswagen.

Q. Other than the driver of the Volkswagen, as well as the man running across the street, did you see anyone else there at the time when you walked up?

A. Well, there was the police officers, and there were other people around. And when I looked there was a crowd of people and everything around.

Q. This is after the police came?

A. Yes.

Q. Now, Mr. Magilton, you said something about a microphone. What did you mean by that?

A. Well, the police radio.

Q. Oh.

A. You know, before the officer had gotten out of the car he was on the police radio.

Q. Had you seen that police officer in that car any other time earlier that day?

A. Well, I had seen him down the street, just before

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#### MAGILTON - DIRECT

he pulled away around Juniper and Locust.

Q. And after he pulled away, what did you see him do?

A. Well, I proceeded up towards 13th Street, and that's when he pulled the Volkswagen over.

MR. MCGILL: Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Mr. Magilton, so that I'm clear, you were walking, first of all; is that right?

A. Yes, sir.

Q. When you saw the police car at Juniper and Locust, where were you?

A. Well, I was there looking at this here car.

Q. Where, sir?

A. Right on the corner of Juniper and Locust.

Q. You were at Juniper and Locust?

A. Yes, sir.

Q. And you -- and when you first saw the police car, was it moving or was it standing still?

A. It was moving.

Q. And traveling east on Locust Street?

A. Yes, sir.

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MAGILTON - CROSS

Q. Did you see the Volkswagen?

A. Not until the police officer pulled it over.

Q. Now, when you saw the police car, and it was moving, you were standing at Juniper and Locust?

A. Yes.

Q. Facing what direction, sir?

A. Well, I was looking at this car.

Q. Whose car?

A. I don't know whose car it was. I was looking inside the car.

Q. Just looking at a car?

A. Yes. And the officer stopped me, you know, and asked me what I was doing. I told him. Then he asked me my name. He said I looked familiar.

Q. So the police officer -- Officer Faulkner, the one who was shot?

A. Yes.

Q. He stopped you at Juniper and Locust?

A. Yes.

Q. And asked you what you were doing. You said looking at the car?

A. Yes.

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MAGILTON - CROSS

Q. Why were you looking at the car at 4 o'clock in the morning?

A. Well, it was a big limousine, and it had stuff in the back of it.

Q. Fine.

A. And I was just curious.

Q. Okay. So after you satisfied the officer with what you were doing, he took off east on Locust Street, and then you started walking east up Locust Street?

A. Yes, sir.

Q. And at what point did you first see the Volkswagen?

A. When the officer put his lights on to signal him to pull over.

Q. So, did you ever see the Volkswagen -- I guess it would be west of 13th Street?

A. Not -- not that I can say.

Q. So when you first saw the lights of the police vehicle he was already across 13th Street?

A. No, they were sitting at the light, and when he put his lights on, the light changed and the car pulled over.

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#### MAGILTON - CROSS

Q. So they were right there at 13th and Locust waiting for the light?

A. Yes.

Q. And the police car lights -- then the driver of the Volkswagen pulled over and he got --

A. Yes, sir.

Q. Now, you proceeded east on Locust Street, right?

A. Yes, sir.

Q. On the south side of Locust Street?

A. Yes, sir.

Q. And you went to the corner of 13th and Locust. Did you cross 13th Street?

A. Well, I stood there and watched for a while as the officer pulled the car over.

Q. Okay. Now, at that point, when the officer pulled him over, you were at the corner. Did you see if there were any other cars on the street then?

A. There was a couple cars in front of the Volkswagen.

Q. There were a couple of cars in front of the Volkswagen?

A. Well, there was a Ford I noticed in front of the Volkswagen.

Q. Right. How about moving, people driving cars on Locust?

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A. Yes, there was traffic moving around.

Q. On both streets?

A. Yes, sir.

Q. 13th and Locust, did you see people standing?

A. There was a few people walking by.

Q. But did you see anyone standing?

A. There were some people over by the church or whatever it is on 13th Street, on -- on Locust Street there is a church or whatever it is there.

MR. JACKSON: If he could place it on the diagram, just so that we'll know where the place is that he's talking about. That one, please.

Q. Mr. Magilton, if you possibly can, maybe you can come down, please. So that you know, this is Locust Street, this is 13th Street.

A. Over here there is a building.

Q. You have to speak up and stand back.

A. Right here on the corner there is an old church, or old movie house, or something.

Q. Let me interrupt you just a moment. That would be the southwest --

A. Southwest corner.

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Q. Go on.

A. Well, there was someone standing over by the steps there.

Q. Right. What about the southeast corner?

A. Well, there was people moving around there.

Q. Did you see anyone standing at the southeast corner?

A. No. I noticed a gentleman come from through here, and he started moving across the street, and that was Mr. Jamal.

Q. All right. But you never say anyone right here on the southeast corner?

A. Not to my knowledge.

Q. How about a taxicab?

A. There was cabs moving all around.

Q. But did you see one parked?

A. There was one up here parked.

Q. And did you see any other cab that was parked?

A. No.

Q. Okay. Before returning to your seat, could you diagram or show us your path after you got to 13th and Locust, because you indicated you walked a

distance and then came back?

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A. Yes, I started walking across here, and I was about there, when I heard the shots. Well, I was here when I noticed Jamal coming out of the parking lot.

Q. You were where when you noticed him?

A. Right about here.

Q. Okay.

A. And then I noticed a gentleman coming through the parking lot, walking across here, and I lost him about half-way. Then I got right about the corner, that's when I heard the shots and I looked back.

Q. Were you on the sidewalk? Did you reach the sidewalk?

A. I was in the street.

Q. Okay.

A. I was just about to walk up on the sidewalk.

Q. Fine. Please return to your seat, sir. Now, you were just about to mount the sidewalk when you heard noise, shots?

A. Yes.

Q. Did you hear one shot, two shots, in rapid succession? As best as you can recall, what did you hear, sir?

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A. Pow, POW, POW, and then Pow, Pow.

Q. POW, POW, POW, and then Pow, Pow?

A. Yes.

Q. Okay. So it's fair to say that you did not hear one shot and a pause, and then a few more shots?

A. Yes, I guess so.

Q. Pardon me?

A. I guess so.

Q. It's fair to say that?

A. Yes.

Q. Okay. In fact after hearing the shots, you immediately turned around; is that right?

A. Yes, sir.

Q. And you didn't see the police officer?

A. No, sir.

Q. And in fact, you didn't see the man who you said was walking across the street?

A. No, I didn't.

Q. In fact, you didn't see this man go to the police officer, did you?

A. No, sir, like I said, I lost him about half-way across the street.

Q. And you don't know who fired the shot at him, do you?

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A. I never said I did, no.

Q. I understand that. I understand that. You never saw a gun, either?

A. No, sir.

Q. When you were crossing Locust Street -- let me back up a little bit. When you saw the officer stop the driver of the Volkswagen, did you see him get out of the car?

A. Yes, I did.

Q. What did they do when they got out of the car?

A. Well, they proceeded to walk in between the cars, and they were going up on the curb.

Q. They walked between the Volkswagen and the police car?

A. Yes, sir.

Q. And they got up on the curb?

A. Yes, sir.

Q. And what happened? I mean, tell us what happened, what you saw.

A. Well, after that there I turned around, I was waiting for the light to change to come across.

Q. Okay.

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Did you see anything happen in the street?

A. No, I didn't.

Q. Did you see the driver of the Volkswagen strike the police officer?

A. No, I didn't.

Q. Did you see the police officer strike the driver?

A. No, sir.

Q. Did you see anything in the police officer's hand?

A. Not that I know of, no, sir.

Q. Did you see anything in the driver's hand?

A. No.

Q. You say no, you didn't see it, or no, there was nothing?

A. No, I didn't see it.

Q. Fine. As best as you can estimate for us, how much time did it take for those shots to go off?

A. A few seconds, I guess.

Q. And you were walking when you heard the shots?

A. Right. Yes, sir.

Q. And you were walking casually, I suppose.

A. Yes.

Q. So you took no more than one or two steps?

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Q. When you turned and looked, you heard the shots from the direction of the police officer and the Volkswagen: is that right?

A. Yes, sir.

Q. When you looked over there, as soon as you looked, what did you see?

A. Well, there was a gentleman standing there, but it wasn't -- I believe it was the driver of the car.

Q. You believe?

A. Yes.

Q. But you're not certain?

A. Well, I'm pretty sure it was the driver of the car. He had the same -- same hat on, like the driver of the car had.

Q. Now, the driver of the Volkswagen had a hat on?

A. Well, whatever you call them. It was like a--

Q. Hat?

A. Beret or something.

Q. What color was it?

A. Black.

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Q. You're certain of that?

A. Yes, I am.

Q. The man who ran across from the parking lot -- you didn't see him run -  
- let me correct that. The man you saw walking from the parking lot, did  
he have a hat on?

A. No, he didn't.

Q. You're certain of that?

A. Yes sir.

Q. Did he have a cap on of any sort?

A. No, sir.

Q. Did you see his hair?

A. Yes, sir.

Q. And it was long dread locks?

A. Yes, sir.

Q. Nothing covering his hair at all?

A. Not that I know of, sir.

Q. The man who you say was the driver of the Volkswagen who had a cap  
or tam -- I don't know what they call it, either -- I think it's a tam, but in  
any event, did you see his hair?

A. No, sir.

Q. The hat completely covered his head?

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A. Yes, sir.

Q. Would you be able to identify that man, the driver of the Volkswagen?

A. Yes, sir.

Q. You're certain of that?

A. I believe I could.

Q. Have you been asked to identify him by the police or the District Attorney's Office?

A. Well, I identified him when they brought him into the police station that night.

Q. And you told them --

A. That was the driver of the car.

Q. Do you recall how he was dressed?

A. He had a black coat, black hat, about five-seven, normal weight.

Q. A black coat?

A. Yes, sir.

Q. How long was the coat, or how short was it? Well, describe the coat.

A. My guess it was about down to his legs, I guess.

Q. It did not go below his knees, say like mid-calf or something like that, right here?

A. Yes.

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Q. You see his hair?

A. No, sir, I didn't.

Q. So you don't know what style hair he had?

A. No, sir. He had a goatee.

Q. That was the only person that you saw standing when you first looked?

A. Yes, sir.

MR. MC GILL: Objection. I have to -- is this after all the shots?

Q. Yes, when he first looked, he looked after he heard all the shots; is that right?

A. Yes.

Q. You did not look after you heard the first shot or the second. It's like whatever number of shots there were, you looked after all of them sounded?

A. Well, I looked when I had first heard the first, burst.

Q. First burst?

A. Yes.

Q. And the first burst was one shot, or several shots?

A. Several shots.

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Q. And --

A. And then the other ones went off and like I said, I didn't see the officer there.

Q. Okay. Then, you can correct me then, because I think I'm confused a little bit. You heard the first burst, and you turned. After turning you still

heard some more shots?

A. Yes.

Q. And you looked over in that direction where the police officer was?

A. Yes.

Q. You didn't see the police officer. You didn't see the man who was coming from the parking lot, did you?

A. No, sir.

Q. The only person that you saw was the driver of that Volkswagen?

A. Yes, sir.

Q. What was in his hands?

A. Nothing that I could see.

Q. Did you see his hands?

A. No, sir.

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Q. Was his back to you?

A. I saw his like side profile.

Q. So you would have seen his left profile?

A. His right profile.

Q. You saw his right profile. So, then he would have been facing south; is that right?

A. Yes, sir, I guess.

Q. See anyone else? After you heard the shots, see anyone else?

A. No, sir.

Q. Did you see anyone moving from the scene?

A. No, sir, I didn't.

Q. Did you see anyone moving toward the scene?

A. Yes, sir, there was a bunch of people moving towards the scene.

Q. Do you know -- can you describe "bunch of people"? I mean who it was, how many?

A. No, it was just, you know, just people that were moving around; I guess they were curious.

Q. Fine. Were police also part of the people moving towards the scene, then?

A. Yes, sir.

Q. So the police actually got there before you got there, didn't they?

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A. Well, I was moving across slowly, because I didn't, you know, know what was going on. I didn't want to get shot.

Q. I don't blame you. I don't blame you. So you cautiously moved up?

A. Yes, sir.

Q. And about the same time that these other people started moving towards the scene, the police arrived?

A. Yes, sir.

Q. So that would it be fair to say that you didn't stop, you just walked slowly towards --

A. Yes, sir, and as I approached the corner, that's when I moved around and I seen the officer laying on the pavement.

Q. Okay. When you saw the officer laying on the pavement were police already there?

A. They were just moving up into -- they were pulling up when I seen the officer.

Q. And you saw the police come up Locust Street, right?

A. Yes, sir. They were coming from all directions up Locust, down Locust, up 13th, down --

Q. So you felt --

A. All the way.

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Q. So you felt secure enough to move forward?

A. Yes, sir.

Q. Okay. By the way, the driver of the Volkswagen, was -- you know, when you heard the shots, you saw him -- you saw the right profile, he was in the street, in between the cars, on the side, where was he?

A. He was on the sidewalk.

Q. He was on the sidewalk. In relationship to the curb and the wall, was he closer to the curb or closer to the wall?

A. He was closer to the wall.

Q. Could you see his full body?

A. When I got up to the pavement, I did.

Q. No. I mean when you first saw him, when you first turned around and saw him?

A. No, sir.

Q. Now, after you turned around and you saw him, you never lost sight of him, did you?

A. No.

Q. What was he doing?

A. He was just standing there. He had a shocked expression on his face.

Q. Did you see if he was injured?

A. No, I didn't.

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Q. Did you see anyone strike him?

A. No.

Q. Did you see him strike anyone?

A. No, I didn't.

Q. Now, I understand that you lost sight of -- strike that. As you approached, you didn't see the officer at first; is that right?

A. Yes.

Q. At what point was it that you saw the officer?

A. When I got up to the pavement.

Q. That would have been on the same pavement where the officer was?

A. Yes, sir, southwest corner.

Q. Fine. At what point did you see Mr. Jamal?

A. Well, as the police were arriving and they got to the scene that's when I moved up against the wall, and I seen him sitting -- he was like in front of the Volkswagen on the curb.

Q. In front of the Volkswagen. That would have been --

A. Well, towards the front fender of the Volkswagen.

Q. And that -- okay. And there was a Ford parked in front of the Volkswagen; is that right?

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A. Yes.

Q. Did you see anything in Mr. Jamal's hand?

A. No, I didn't.

Q. Indeed, you never saw anything in Mr. Jamal's hand; is that correct?

A. Yes, sir.

Q. Never saw anything in the police officer's hand?

A. No, I didn't.

Q. And you never saw anything in the hand of the driver of the Volkswagen?

A. No, sir.

Q. And in fact you never saw the man actually cross the street when he came from the parking lot. You just saw him enter the street; is that right?

A. Oh, I had seen him half-way across the street.

Q. But you didn't see him --

A. But like in the middle of the street when I lost sight of him.

Q. Now, you were about 15 to 80 feet away when you saw the man crossing; is that right?

A. Yes, sir.

Q. So that I enjoy the same wavelength, can you estimate from where you are someplace in this courtroom

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where that would have been 75 to 80 feet away. Maybe a wall, a person in the courtroom, or something like that. So we have something.

A. I guess from here to that door back there.

Q. That door back there?

A. Yes, sir, maybe a little farther -- I don't know.

Q. The driver of the Volkswagen, did you see handcuffs on him?

A. After the police arrived he was handcuffed.

Q. You saw them handcuff him?

A. Well, I didn't actually see them handcuff him, but after I looked up he was handcuffed.

Q. After you looked up from where?

A. Well, after I had seen the officer, you know, I sort of shocked myself. I was sort of shocked myself.

Q. Do you know whether he was handcuffed before the other officers arrived?

A. I couldn't actually say. I don't know.

Q. Do you know if Mr. Jamal was handcuffed before the police officers arrived?

A. No, he wasn't.

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MR. JACKSON: Your Honor, would you indulge me one moment.

(Discussion off the record)

Q. Excuse me one moment, Mr. Magilton.

A. Yes, sir.

Q. By the way, how many shots did you hear all together?

A. Five.

Q. And you're certain there were five shots; is that right?

A. Yes, sir.

Q. Couldn't have been four? Couldn't have been six? It was five?

A. It was five. I'm not exactly sure in what succession they were but I know it was five, because I was cautious about going back on the pavement.

Q. It may have been more?

A. Yes, sir.

Q. Mr. Magilton, do you frequent that area?

A. No, not necessarily, no. I might pass through there sometimes, but I'm not a regular customer, I guess, down there.

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Q. I didn't mean to intimate anything. Let me do it this way: How often would you go -- I don't mean necessarily to do anything -- how often are you in that area?

A. Say a couple times -- I go to a go-go bar down there.

Q. So you say a couple times a week, maybe?

A. Well, I wouldn't say a week. Not very often.

Q. Do you know some of the ladies of the night down there?

MR. MC GILL: Objection, your Honor.

THE COURT: I will sustain the objection.

Q. Do you know Cynthia White?

MR. MC GILL: Objection, your Honor.

A. No, I don't.

Q. By the way, when the officer stopped you, he said that he thought that he knew you.

A. He said I looked familiar.

Q. Did he know you or anything like that?

A. No, he didn't.

MR. JACKSON: Thank you, Mr. Magilton. I have no further questions at this time.

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REDIRECT EXAMINATION

BY MR. MC GILL:

Q. Mr. Magilton --

A. Yes, sir.

Q. -- after you heard the shots, when you heard the last shot, where were you at that time?

A. Like I say, I was just about -- about three-quarters of the way across the street.

Q. You did not then make the sidewalk before the last shot was --

A. No.

Q. You said you turned around and at that point in time, you were -- were you able to see the officer, then?

A. After the last shot, no, I wasn't.

Q. Were you able to see the man you've identified as the defendant in this case that you identified previously, the one who ran across the street? Were you able to see him there?

A. No, no, I didn't see him.

Q. You were able to see the other person; is that correct?

A. Yes, sir.

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Q. When you went over to the south side of Locust Street, is that the first time you saw the officer?

A. Yes, sir.

Q. And where was he then?

A. He was laying on the pavement.

Q. And were you then able to see the defendant, or did you have to go up closer?

A. Well, I moved up to the wall, that is when I noticed the defendant up in front of the car.

Q. Okay. Is it accurate to say that from where you were, that is three-quarters of the way across Locust Street going north, when the last shot was fired, when you turned around, that you were unable to see the defendant if he were seated in that spot where you eventually saw him? Would that be fair to say?

A. Yes, sir.

Q. Just as you were unable to see the police officer?

A. Yes, sir.

Q. And when you did see the other person who you referred to as the driver he was closer to the wall? Is that what you said?

A. Yes, sir.

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MR. MC GILL: The photograph of -- I forget the numbers. Let me see the photographs.

Q. Can you identify this photograph, C-21?

A. That's the driver of the car.

MR. MC GILL: Thank you. Nothing further.

MR. JACKSON: Just a couple more, if you don't mind, sir.

MR. MC GILL: I do have one other question, if I may? Just one.

MR. JACKSON: You have my permission, sir. Thank you.

MR. MC GILL: Is it all right with the Court?

THE COURT: Yes.

BY MR. MC GILL:

Q. You indicated --- or did you indicate he was walking across the street, this defendant, or how was he moving from the parking lot to the -- when you first saw him, the first portion of his route?

A. He was moving pretty fast, but I wouldn't say he was running, no. It was like, you know, a fast walk.

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MAGILTON - REDIRECT

Q. Okay.

A. He was moving fast, but I wouldn't say he was running.

Q. Thank you. He has some more questions.

MR. JACKSON: I ask you hand the witness C-15, please.

RE CROSS-EXAMINATION

BY MR. JACKSON:

Q. See if you can identify that.

THE COURT: C-15?

MR. JACKSON: That's the tam.

MR. MC GILL: That's the hat.

Q. Mr. Magilton, have you ever seen that before, sir?

A. Looks like the type hat the driver was wearing.

Q. Looks like the type of hat?

A. Yes, sir.

Q. You indicated that you were certain it was a black cap. That, of course, is not.

A. Well, it looked black.

Q. Okay.

A. Well, it was a dark color.

Q. Fine.

A. Sorry.

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#### MAGILTON - RECROSS

Q. So are you saying -- well, what are you saying?

A. Well, I said it was a black cap.

Q. Right.

A. Yes, sir.

Q. And that one is what?

A. Dark green.

Q. Okay. Are you saying --

A. Well, at nighttime, it would look black.

Q. So, you're saying possibly it's the same hat?

A. Yes.

Q. When you went up to the police officer, you saw, the police officer. Did you look at his holster?

A. No, I didn't. I was -- well, when I first seen him, I had seen his face laying there, and his face was all bloody. Like I said, I was shocked after seeing that.

Q. Did you see any guns on the pavement?

A. I wasn't looking for any.

Q. I understand that.

A. No, sir.

Q. You didn't see anything?

A. Well, I couldn't say, I couldn't look around.

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#### MAGILTON - RECROSS

As I said, I seen the officer's face, and I was kind of shook up.

Q. Okay. When the police arrived, and I know you said there was a bunch of them --

A. Yes.

Q. -- did you see any of them kick any weapons?

A. Not that I know of.

Q. Did you see any of them pick up any weapons?

A. No, sir.

Q. You remained there the entire time, didn't you?

A. Well, not the entire time. Until after they started gathering witnesses. Then after they put Mr. Jamal in the wagon, we were escorted down to the Round House.

Q. Fine. But until at least the time that Mr. Jamal was placed in the wagon, you remained right where you were, wherever that was?

A. Yes, sir.

Q. And exactly where was that? You took a stationary position at some point, didn't you?

A. Yes, sir.

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A. Yes, sir. I was about say towards the front door of the patrol car.

Q. Toward the front door of the patrol car?

A. Well, the front fender. But I was up against the wall after the police arrived.

Q. So then, would it be fair to say you were about a car length away from the officer, about a car length or so away from Mr. Jamal, as well?

A. Yes, sir.

Q. And you didn't see the officers kick any weapons, you didn't see them pick up any weapons?

A. No, sir.

Q. You didn't see them pick up any?

A. Well, as I said, you know, all I could see was the officer, and that's all I was looking at.

Q. You did look at the other officers when they came on the scene, didn't you?

A. Yes, sir.

Q. And -- I mean, you knew that they were moving around, doing different things?

A. Yes, sir. But my main attention was focused on the officer, because I had never seen nothing like that before.

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Q. I understand that. The question is, while these other officers were moving around, did you ever see any officer with two guns in one hand?

A. The only time I see that, was when we were in the police station.

Q. But other than that, you never saw that at the scene?

A. No, sir.

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

BY MR. MC GILL:

Q. Mr. Magilton, you saw a police officer with two guns at the police station?

A. Yes, sir.

Q. When you -- strike that. Where were you when the police officers first arrived?

A. As I said, I was up against the wall moving towards the scene.

Q. When you say against the wall, where do you mean?

A. Southwest corner of 13th and Locust.

Q. Southwest or southeast? East would be closer to 12th.

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#### MAGILTON

A. Southeast, heading towards 12th.

Q. Did you immediately go to the scene, or did you wait for a while, until the police --

A. I waited until I was safe.

Q. Right. Would it be fair to say that you're not really aware of what the police officers did once they arrived, at least?

A. As I said, once I seen the police officer's face, I was sort of in shock myself.

Q. I understand that. Believe me, Mr. Magilton, what I'm suggesting is that when you were moving gradually towards the east area, towards 12th Street, would it be fair to say that you were not paying attention to all of what the police officers themselves were doing at the scene?

A. Yes, sir.

Q. Thank you.

THE COURT: This is a good time to break for lunch.

(Witness excused.)

THE COURT: We'll recess for lunch until 2:30.

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(Whereupon the jury left the courtroom and the following took place:)

MR. MC GILL: Judge, I'm still a little bit bothered about this identification business. I think what I'm going to have to do is -- and I recognize that Mr. Jackson has suggested a stipulation, rather than the potential prejudice that may arise if the defendant acts up in front of the jury, just for the purposes of an identification by a witness. But I'm still concerned about the --the vital element of an identification as part of the case for purposes of appeal.

Now, he has stated that he observed this man sitting in the chair during the pre-trial hearing, and that was Mr. Jamal, and that was the defendant. And it was stipulated to, and Mr. Jackson has stated that the man sitting there was in fact the defendant in this case.

I'm still not sure whether that's enough, but I wanted to make sure that I at least represented to Mr. Jackson, or represented on the record, what Mr. Jackson said, why he

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wanted a stipulation rather than the man coming out.

MR. JACKSON: Sure, that --

MR. MC GILL: What I will do is get a picture of -- a photograph of Mr. Jamal, from the newspaper, and I will bring it in. And would you stipulate that that particular picture in the newspaper is the picture that he identified? I don't have a photograph. That's the problem, Judge, unless I can get a photograph -- a photograph that I want to present. I don't want to

put the one with him in the hospital.

THE COURT: Why don't you wait until you get the photograph, and let him look at it, and make a decision.

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(Luncheon Recess)

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#### AFTERNOON SESSION

(A conference was held in chambers and recorded as follows:)

THE COURT: What is the problem? Let's get right to the crux.

MR. MC GILL: We mentioned before, you Honor, this is not admissible for two reasons. We're talking about a document which is -- amounts to an investigative log that is signed.

MR. JACKSON: I don't think you've identified it for the record. What are you talking about?

MR. MC GILL: This is a document which purports to be an investigation log, 55-X-835 Form. Now, this investigation log is a piece of paper with the date, 12-9-81, 9:00 A.M. It is signed with the initials of someone who is an investigator for the Medical Examiner's Office. The top of the document says, "Per Sergeant Westerman, Homicide Division," and then goes into a text, and it is initialed by the investigator.

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A portion of the text deals with the alleged circumstances surrounding the injury of the defendant and is about the center portion of the context of the text.

It is the Commonwealth's position, as I mentioned earlier this morning, it is inadmissible, number one, as a business record, business record exceptions. It's also inadmissible on the basis of relevancy on the cross-examination of this witness because he at no time used any information in relation to the injury of the defendant to determine the cause of death of the deceased.

But putting relevancy aside, it is not admissible on the basis of the hearsay exception for business records, because the text of the remarks allegedly by Sergeant Westerman himself, if even accurate, is hearsay from Sergeant Westerman. Sergeant Westerman heard it from other people; it's not accurate to begin with, but even if it were accurate, it would have been heard from other peoples, either one or more, since he is a desk man, and not involved in the direct investigation

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of the incident.

Secondly, the man who wrote it down himself, who was the investigator, is only reporting what Sergeant Westerman said to him, what he, Sergeant Westerman, had said to him.

So, one of the primary concerns with business records exceptions is the fact that the text of the business record, beside it being in the ordinary course of business and besides it being done at or about the time that it was noted down, and information received, but aside from that, it is clearly hearsay, because the text must be a primary source.

In this particular case, it is not only failing the element of being a primary source, it is about double or triple hearsay, and on that basis alone, besides relevance, it would be inadmissible on this record.

Okay. Shoot.

MR. JACKSON: Your Honor, I have perhaps a two-fold response to the argument and the first divided in this matter.

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I would, number one, move for a mistrial at this point, based on my prior request through the Omnibus Motion for discovery information, and I would think that in this case the merit or the truth or the lack of truth with regard to the statement I was not provided this information by the District Attorney or the Police Department with respect to possible and potential exculpatory evidence.

Assuming for the moment that even if your Honor were to assume and determine that knowledge was hearsay information, of course one of the ways we could cure the hearsay information is to pursue it to its source. I have not been given that opportunity through the District Attorney's Office to do so.

And for that reason, I move for a mistrial.

Secondly, your Honor, with regard to business records exceptions, and Mr. McGill talked upon the hearsay -- upon hearsay, and I cite, your Honor, Commonwealth versus Kelly,

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245 PA., Superior Court 351, it's a 1976 case. One of the holdings of the Court is that a person called for the purpose of qualifying business records needs not have any personal knowledge of the facts which are reported in the particular records. Your Honor, I'm sure is well versed in the business records that a person or an organization or corporation or agency may have, and Mr. McGill spoke to some of them; that is, that the information was recorded at or about the time of its occurrence; that there is a requirement that it be done--that it is done in the regular course of business.

I'm assuming that the Medical Examiner is in effect, aside from being the Medical Examiner, the Custodian of records. As such, these records are contained within the Medical Examiner's Office and I don't think that Mr. McGill is suggesting that he's not the Custodian of Records.

MR. MC GILL: Let me see that.

MR. JACKSON: But assuming that he is not, we still have the same issue, I'm sure.

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THE COURT: Don't worry about that. Let's get to the crux of the thing.

MR. JACKSON: That the Custodian of Records need not have any personal knowledge of the information that is in the business record, and I think to deny that -- and I think with regard to the business record exceptions, I think that we've satisfied that. It's something that's done in the regular course of business, it was recorded at or about the time of the occurrence.

THE COURT: Yes, but just because it's business records, doesn't make it admissible. Even assuming that --

MR. MC GILL: Can I answer that?

Two areas: In reference to not receiving them, I would respectfully disagree, with Mr. Jackson. I have before me a copy of a log which I shall

make a part of the record, which states that on January 27, 1982, approximately 11:40 A.M., a copy of the complete case was sent to Anthony E. Jackson, Esquire, Suite 911, Western Savings

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Bank Building, Broad and Chestnut, Philadelphia, Pa., 19107.

This is signed by Aquillard, January 27, 1982; in response to or following this up, and speaking to this woman, a complete case means just that. The complete case. This complete case, including all of this material, the investigative log, as well as this very entry itself, was sent to me on April the 5th, 1982, when I had found out within about a couple days before, or maybe a week before or so, that the document which stated that -- or inaccurately stated the circumstances of the defendant's injury was circulated to the newspapers. I didn't even know it existed. Circulated to the newspapers, and they called me about it, and I immediately called him about it, alerting him that the newspapers called me about it. And telling him if it did exist, which I didn't know at the time, that document would be hearsay upon hearsay, and it's typical things that were said in the course of things, and incorrectly written down by someone.

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That's where that was left. But there is a statement here, that was sent to him.

That's the first portion.

In terms of this case, Commonwealth versus Kelly, this deals with the fact that the Custodian himself, Custodian himself need not have personal knowledge of the contents of the records. I agree with that. That however, does not go to the issue here. We are not questioning whether the Custodian in this matter, or this doctor, knows, has personal knowledge of this particular incident, but whether or not the contents of the document itself, but whether they themselves are the personal, primary knowledge of the individual reporting. Not the Custodian, but the individual reporting it. It is not personal knowledge of either the investigator nor the Homicide Sergeant. So no one has personal knowledge of that. It's strictly hearsay, and that's the reason why it's unreliable. That's the basic reason.

MR. JACKSON: Judge, I'm not going to delay the issue. Again, my feeling is

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with regard to counsel's argument, that there be some primary purpose to what the Medical Examiner's Office is doing. I would think again whether for counsel to say it's not within the personal knowledge of the investigator, it's not within the personal knowledge of the Sergeant, or anyone else, because he assumes that, it's not true. I think that's just a representation of counsel and --

THE COURT: I think the Court can take judicial notice of the fact that the investigator who was working at the Medical Examiner's Office, certainly it was not within his personal knowledge, because he says he's taking down what someone allegedly tells him over the phone.

MR. MC GILL: It's not the personal knowledge of Sergeant Westerman, and I will bring him in tomorrow and put that on the record. To move things on, he, of course, will say he didn't say that -- of course, it's not his personal knowledge, he's a desk man.

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MR. JACKSON: Your Honor, again, perhaps in getting back to the earlier motion, if Sergeant Westerman -- let's assume it's not within his personal knowledge, and somebody told him, and somebody told that person, the problem I have, of course, is how am I able to track the people down, if I can't get to them?

THE COURT: Well --

MR. JACKSON: If your Honor pleases --

THE COURT: I'm not going to argue this point. Let's wait until tomorrow, until the Sergeant comes in, and let him tell his story in-camera. He's not going to tell it in front of the jury. We'll have an in-camera for you. But as far as I'm concerned, it's not admissible. Whatever other purpose you think you can use it for --

MR. MC GILL: It's irrelevant and inadmissible. And I was going to give Commonwealth versus Greiver, 461 Pa. 131, and the Kelly case is 245 Pa., Superior Court 351.

Put this down, Commonwealth versus McNaughton, 252, Pa., Superior 302, it's a '77 case. You can put down Commonwealth versus

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Well, that's prior inconsistent statement in refreshing recollection: it's also not appropriate for that.

Commonwealth versus Proctor, 253, Pa. Superior Court 369, and I also make a part of the record -- I think it's C-37, the investigative log indicating the copy of the complete case was sent January 27, 1982. And I ask that this be marked.

MR. JACKSON: Judge, I just want to point out the very thing that Mr. McGill says is unreliable is the very same document that's he's relying on to tell this Court --

THE COURT: I'm not worried about that.

MR. MC GILL: I would like to explain the difference there.

MR. JACKSON: Let me explain something.

THE COURT: The jury is waiting. The motion is denied. you have all the time this afternoon, after we're finished. I don't

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want to hold up the jury any more. It's quarter of 3:00. Let's finish this case I and let them go.

MR. MC GILL: But your Honor has ruled that he can't use it.

THE COURT: Yes, I have ruled on that.

(End of conference in chambers.)

(Whereupon the jury entered the courtroom and the following took place:)

MR. MC GILL: I would like to re-call Mr. Magilton, as to one question. It's due to the --

MR. JACKSON: I object.

THE COURT: Can I see you over here at side bar, please.

(Side-bar conference, on the record)

MR. MC GILL: Judge, only for this purpose. Your Honor, because identification is such an important issue primarily brought up by the defendant in this case. In other words, to be absolutely positive for record purposes, I believe the -- I believe a photograph of some sort should be shown to Mr. Magilton

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and that he would identify that photograph as the man that he identified as the man running across. That's the only thing I'm going to do. I will have it marked, shown to him, marked C-59 and shown to him and say, "The person that you testified about this morning that ran from the parking lot, the person that you identified at the other hearing, I'm showing you a photograph. Can you identify that?"

And he will say, "Yes, that's the same person."

"Fine." Then I'll have to put in Detective Thomas later and say that he's the exact same person that's been in the room. Only the identification is the stipulation. The problem is sometimes with stipulations, if you deal with that legally, if you don't have the colloquy with the defendant on a stipulation, you have a problem. So this is the round about way we have to do it, because of his absence.

MR. JACKSON: Your Honor, once stipulations are made by and between counsel,

**PLEASE NOTE: Pages 128 and 129 are missing. We will try to locate these pages.**

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THE COURT: You should have had the photograph yesterday.

MR. JACKSON: He has photographs of himself. I don't know if you can take them from --

MR. MC GILL: Photographs of himself?

MR. JACKSON: Yes.

MR. MC GILL: No.

THE COURT: He wouldn't give you the records. What's wrong with that?

MR. MC GILL: Nothing.

MR. JACKSON: It's a newspaper.

MR. MC GILL: It's the way he looks, most like this today. Now, for the record, I'm going to have this marked C-59.

THE COURT: You have to do that.

MR. MC GILL: I wanted to let the record indicate I'm taking a photograph from the newspaper, which is very close, I think you will agree, as to how he appears today.

MR. JACKSON: Why would that have to be done in front of the jury? It seems to me the only concern is technical concern.

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We've already stipulated in front of the jury. It would seem to me that for Mr. McGill to -- to get around that, we could do that outside of the jury. To pile it on again, I think, is --

MR. MC GILL: The reason it has to be done before the jury, is because it's their decision as to identification. It's not a legal question, it's a factual --

MR. JACKSON: I will stipulate.

MR. MC GILL: It has to be stipulated by the defendant on such an essential element of the case.

THE COURT: I see no harm in just looking at the picture.

MR. MC GILL: In fact, I'll bring it up myself, and show it to him. I'd rather not do it, but I have to because of Mr. Jamal's absence.

MR. JACKSON: The only problem I see is who do you have to authenticate the photograph. I'm not being facetious. If the photograph looks like Jamal, and we all say --

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THE COURT: He can identify it himself.

MR. JACKSON: He can say that's the picture.

THE COURT: "That's the picture of the man that I saw."

MR. JACKSON: You then have to get into -- the jury then needs to see the photograph. That's what I want to avoid doing.

MR. MC GILL: They will not see the photograph.

MR. JACKSON: That's the point.

MR. MC GILL: They will not see the photograph. The way I'll do it is with any photograph. I will say, "Can you identify this photograph?"

Answer: "Yes, that is the man I saw."

"Fine."

The last person in this case that I present will be Detective Thomas, or someone else who has seen and been looking at this defendant for the last six or seven months.

"Can you identify what C-59 is?"

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"That is a picture of the defendant in this case."

MR. JACKSON: Judge, I'm saying that we can't do that, as you do with any other photograph, without authenticating the photograph.

THE COURT: Why?

MR. JACKSON: Who's going to say that is Mumia Abu-Jamal.

THE COURT: These people are. The jury has the right to decide whether or not what he's saying is true.

MR. JACKSON: That's what I'm saying.

THE COURT: You can't show that.

MR. JACKSON: From a newspaper photograph.

THE COURT: You can't tell that it's from a newspaper.

MR. JACKSON: Judge, come on.

MR. MC GILL: You don't have to.

THE COURT: Suppose they ask for it?

MR. JACKSON: That's the point. Because it's a newspaper photograph, it's going

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to tend to reaffirm and bring up all the notions from what they have heard and read in the newspaper.

THE COURT: That's not necessarily true.

MR. JACKSON: Not necessarily, but -- but I think it would tend to do that.

THE COURT: Let me see that. How can you tell where it came from?

MR. JACKSON: Judge, I don't think it would take any genius to see that's from the newspapers. I'm saying, if that's true, whatever else I read in the newspaper --

MR. MC GILL: I don't see how that would --

THE COURT: Well --

MR. MC GILL: Wait a minute. They know he's been written about.

THE COURT: Everybody here has read about him.

MR. MC GILL: Everybody has seen the photograph, so really there's no premise at all. However, the way to eliminate --

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we've already stipulated. We know what that is, and you've said it's accurate. That's fine. What we're going to do now is for purposes of the record, in case there is a problem on appeal, if there would be an appeal, is that we have to tie it in.

You can authenticate a record or photograph in two ways, by an individual who took it, or secondly, by someone who can look at it, and say that it is accurate and a fair representation of what that person looks like. That is clear under the law.

THE COURT: Can't you take the photos from the newspapers? They will blow one up and give it to you.

MR. JACKSON: They have a photograph, Judge. It's just that he doesn't want to use that photograph.

THE COURT: He is laying on the ground.

MR. JACKSON: That is what I'm saying.

MR. MC GILL: That's what you want?

MR. JACKSON: No, no.

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THE COURT: I just want a photograph of the person's face.

MR. JACKSON: Judge, they have a photograph.

THE COURT: Even the one that the guy's on the ground. Can you get a photograph just of his face out of that?

MR. MC GILL: No, Judge, he's laying there and he's got blood coming out of his nose.

THE COURT: Let me see. Temporarily put this aside. Let's get the Medical Examiner in here.

MR. MC GILL: Judge, we've got to do it now, and Magilton is here. He's not going to come back.

MR. JACKSON: I'll object.

MR. MC GILL: I don't care whether you object.

THE COURT: Let's go. I have to make a decision.

(End of side-bar conference)

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....ALBERT CHARLES MAGILTON,

after having been re-called, was examined and testified as follows:

MR. MC GILL: All right. I ask that this be marked C-59. Leave it like that, folded over.

(Photograph marked for identification as Commonwealth's Exhibit C-59.)

MR. MC GILL: May I approach the witness, your Honor?

THE COURT OFFICER: Does counsel wish to see this?

MR. JACKSON: No.

MR. MC GILL: May I approach the witness, your Honor.

BY MR. MC GILL:

Q. Mr. Magilton, you have testified this morning about an individual who ran across the street.

A. Yes, sir.

Q. That you saw in a wagon, and you say the police placed in a wagon. Do you recall that?

A. Yes, sir.

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MAGILTON

Q. And you've also identified him in your testimony this morning as the individual that you identified at the previous hearing and sat in a particular chair. Do you recall?

A. Yes.

Q. I pointed to that chair?

A. Yes, sir.

Q. Now, I'm asking you to take a look at C-59, and just let me hold it here for you. Can you identify what C-59 is?

A. Yes, that's the gentleman I seen coming across the street, Mr. Jamal.

MR. MC GILL: Recross on that point, your Honor.

MR. JACKSON: No questions.

(Witness excused.)

THE COURT: Your Honor, Doctor Hoyer.

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PAUL J. HOYER, (Assistant Medical Examiner for the City of Philadelphia), having been duly sworn, was examined and testified as follows:

BY MR. MC GILL:

Q. Dr. Hoyer, where are you currently employed?

A. I am currently employed by the City of Philadelphia.

Q. In what capacity, Doctor?

A. As an Assistant Medical Examiner.

Q. What is your title? What is your specialty?

A. My specialty is Forensic Pathology.

Q. Would you please tell the jury, as well as the Court, Mr. Jackson, what your qualifications are for that position and that specialty?

A. Okay. I'm a certified physician in the State of Pennsylvania and I went to Jefferson Medical College in this city. I took a four-year training in anatomic and clinical pathology at Jefferson Hospital which I completed in 1980 and that year I took board examinations in anatomic and clinical pathology.

I am currently Board eligible in Forensic

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Pathology and took both examinations May 30 of this year. I don't know the results yet.

Q. How long have you been a physician?

A. I've been a physician, licensed physician, since July 1, 1978.

Q. How long have you been directly involved with Forensic Pathology both in study, as well as training, as well as on the job?

A. Since June 1, 1981.

Q. Is that how long you have been with this particular office, the Philadelphia Medical Examiner's Office?

A Yes, it is.

Q. Approximately how often have you conducted post-mortem examinations?

A. Approximately every three or four days.

Q. Since that particular date; is that correct?

A. Yes, that's correct.

Q. Is part of your function as an Assistant Medical Examiner and in conducting post-mortem examinations to determine causes of death?

A. Yes, it is.

Q. In how many cases have you done that? I don't

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mean trials now, I mean actual cases where you've made that determination what the cause of death is?

A. Approximately 1,200.

MR. MC GILL: Cross-examination on qualifications.

BY MR. JACKSON:

Q. Dr. Hoyer, you indicate or you have indicated that you are Board eligible?

A. Yes, that is correct.

Q. Meaning that you have not as yet received your eligibility.

A. No, that is not correct, sir.

Q. Okay. Explain it to me since it is my understanding that you took the test. I'm a novice in this.

A. I'm sort of in an indeterminate period. I took the exam, I was eligible for the examination and I took the examination on May 30th of this year. The results of that examination will be available on July 1st. So I have or have not passed the examination but I don't know the results yet.

Q. And that examination is for what, sir?

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A. Forensic Pathology.

Q. You've performed these previous examinations or made these prior determinations of death without being a forensic -- well, without your certification; is that correct?

A. Certification in Forensic Pathology; that is correct.

Q. And this certification is required, is it not, sir? Or tell me what purpose does a certification provide.

A. Certification in Forensic Pathology provides evidence of qualification in Forensic Pathology. It is not the only way of being qualified but it is accepted as evidence, prima facie evidence, as being qualified.

Q. Have you attempted to qualify in any other way other than this exam, sir?

A. Yes.

Q. What other ways have you attempted to qualify?

A. I've attempted to qualify by watching other people in my office who are well qualified in Forensic Pathology, learning from their example and their precepts and I have been personally supervised by the

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other professional members of the staff of the Medical Examiner's Office to help me learn Forensic Pathology.

Q. Are you saying then, sir, that you can be certified without taking the exam?

A. No, but I can be qualified without taking the examination.

Q. Qualified by whose standard, sir?

A. The standard of the Court.

Q. The standard of the Court will qualify you based on your in-service training? Is that essentially what you are saying?

MR. MC GILL: I would object, your Honor, on that question.

MR. JACKSON: I am summarizing his services under a precept.

THE COURT: He knows what you're saying.

BY MR. JACKSON:

Q. That's what you're saying, right?

A. I'm sorry?

Q. You're saying, essentially, that you would be certified somehow by some action of the Court based on your in-service training.

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A. No. I said qualified as an expert witness.

Q. Qualified as an expert witness --

A. By a Court based on one's prior training and experience.

Q. Okay. But that's still not certified, that's just qualified as an expert.

A. That is correct.

Q. How many Assistant Medical Examiners are there in Philadelphia?

A. There are three.

Q. How many of them are certified?

A. One is certified.

Q. You and another doctor are not certified?

A. That is correct.

Q. Is this your first time taking the test, sir?

A. Yes.

Q. Now, you were licensed as a physician on July 1st of the year '78; is that correct?

A. Yes, sir.

Q. Now, between July of '78 and June of '81, what were you doing, sir?

A. I was a resident in pathology -- two things.

First of all, I was a resident in pathology at Jefferson

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Hospital from June of 1976, until June of 1980, and from June of 1980 through May of 1981 I was attending pathologist at Albert Einstein Medical Center in Philadelphia.

Q. And in June 1 of '81 you became an Assistant Medical Examiner?

A. Yes, that is correct.

Q. Was that as a result of a test?

A. Yes.

Q. Written test?

A. No. It's an oral examination given by the City, Civil Service Administration in Forensic Pathology.

Q. Have you written articles, sir, medical journals, medical magazines for publications of any sort?

A. Yes, I have.

Q. How many, sir, and in what subjects?

A. One on a technical subject involving histologic, a new histologic clearing agent.

Q. When was that published?

A. I'm sorry?

Q. When was that published?

A. I believe that was published in 1978 or '79. I

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don't remember exactly.

Q. Any others, sir?

A. That's the only article.

Q. And where was it published?

A. That was published in The Pathologist.

Q. Now, the length of training that you received in Forensic Pathology, so that I am clear, began or did it begin when you became an Assistant Medical Examiner?

A. Yes, that is correct.

Q. So that prior to that time although you were a resident in pathology, you had not received the formal training in Forensic Pathology until June of '81, a year ago?

A. Yes, that is correct.

Q. And since June of 1981, you have indicated that you've, perhaps, made determinations of death in about 1,233 cases, did you say?

A. Yes, that is correct.

Q. How many times have you testified in court?

A. Approximately ten times.

Q. When was the first time? Do you recall, sir, approximately?

A. Approximately six months ago.

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Q. So that that would have meant six months of training in the Medical Examiner's office and you were testifying as an expert in Forensic Pathology?

A. Yes, that is correct.

Q. Could you tell us generally, so that I and the jury will know, Forensic Pathology as distinguished from just pathology? What specific types and forms of training did you receive in the Medical Examiner's Office?

A. Surely. Forensic Pathology is concerned most often with the affects of injuries on bodies. I received specific training in terms of looking at gunshot wounds to determine if they're far, or if the gun is near, to help decide whether the gun is large or small, whether it's a hand gun, a rifle, a shotgun; to look at knife wounds and to be able to determine the

approximate size of the knife, the type of knife; to look at blunt injuries, in other words, by a blunt instrument such as a bat or a bar; to decide the nature of the implement and further what kind of injuries one would expect to find as a result of use of these implements. I also spend quite a lot of time looking at

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the results of motor vehicle accidents. We also spend a considerable time evaluating toxicology results. Many people take drugs, some legal some illegal and often it is important to decide if a person is impaired at the time of their death as a result of taking drugs.

Q. Dr. Hoyer, when you perform or when you make these determinations of death do you do that alone, or I mean, do you make the determination alone when you conduct the examination?

A. At the present time I do, yes.

Q. How long have you been doing them alone, sir?

A. In most cases I have been doing them alone for approximately eight months. In cases where there are particular problems I still consult with other members of the department and they with me.

Q. Now specifically with regard to your training in Forensic Pathology, pertaining to the subject matter of gunshot wounds, you've indicated that you've received some training of gunshot wounds. So that I and the jury would understand the nature of that training, so that you could be able to make certain determinations, would it be the blood splatter? Would you tell us specifically what it is that you were taught so that

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you could make certain determinations with regard to the distance of the weapon and things of that sort?

A. Surely. Okay. Gunshot wounds are caused by a bullet being fired from a gun and the other things that come out of a gun, the hot gases, unburned powder, wadding, foreign material. So when a person or if you believe a person might have been shot by a gun, you then look at the wound and the surrounding skin. A distant gunshot wound where the gun is far away will only show evidence of a bullet perforation. It's important to decide whether the bullet is going in or coming out.

A bullet that's going in makes a hole, starts pushing in and will create an

abrasion, a little ring, about the hole on the way in. A bullet that's going out goes through the skin and frequently just sort of pops through the skin so that frequently what exists is usually a slit-like opening and you don't see this abrasion.

When a gun is fired you lose a lot of smoke and burning particles accompany the discharge of the weapon. If the gun is close enough at the time it's fired to the skin, you will then see evidence of this close-range

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fire on the skin; specifically you can see soot, black or grey material on the skin from the burning powder. You usually see soot for wounds that are not pressed hard to the skin but are within four or five, six, eight inches.

In addition, the individual burning powder particles can hit the skin, burn the skin, and stick to the skin. This is called powder stiple. Powder stiple can occur up to approximately two feet from the end of the gun. It depends a great deal on the particular gun and the particular ammunition.

I'm speaking here primarily of hand guns, rifle injuries. Shotgun injuries are a little different but I think that's probably not what we're most interested in today.

Q. That is correct, sir. You would also make determinations of, you call it powder stiple?

A. Yes, powder stiple.

Q. And lead primer from the pistol?

MR. MC GILL: Your Honor, I would object. This is quite proper cross-examination, but the qualifications is where we are now.

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MR. JACKSON: I'm trying to get into how he was trained, and the doctor has been good enough to tell us the difference. But I really was asking his training to make these determinations.

BY MR. JACKSON:

Q. And doctor, if you could limit your testimony at this point to your training to making these determinations, as opposed to the explanation of the process itself, okay?

A. Okay.

Q. Let me -- go on. I'm sorry.

A. The other pathologists, Forensic Pathologists, at the Office of the Medical Examiner have spent time with me showing me many people, several hundred people, that have been wounded with gunshot injuries to discuss the elements that I have mentioned to you, to discuss the powder stipling and soot, abrasion cuffs, exit wounds, to discuss these elements with me to help me learn and make my own determinations as to the type of injuries.

Q. And doctor, you have in the past been able to make determinations as to the distance from the decedent

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that the weapon was placed or used?

A. Yes.

Q. Just generally, you have received training as well with regard to the presence or non-presence of nitrates and lead primer and things of that sort, as well.

A. It's not lead primer but yes, it is primer product.

Q. You have been trained in the detection, first of all, of both of those nitrates and primers, as well?

A. I have been trained in how to collect specimens to make those determinations.

Q. You don't make those determinations yourself?

A. That is correct.

Q. Who would make it? Do you know? I know it's beyond your scope but I am just curious.

A. It depends on the particular test. Dermal nitrates, the so-called parafin test, it's not widely used at the present time. It's believed not very accurate and there are a lot of other substances that give a positive nitrate test. The test would probably be performed in the police laboratory or could be performed, again, by the toxicologist in our laboratory.

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Q. Okay. Go on. I'm sorry.

A. The primer test that you were talking about, a bullet has a primer that you start out with, it hits, the hammer hits, the primer starts an explosion. This primer contains heavy metals. At the present time particularly the metals don't really matter very much. These materials start a fire, start an explosion which then ignites the remainder of the powder, and then this whole mixture propels the bullet from the gun. These heavy metals that are part of the smoke cloud that come out of a gun will deposit on anything in the near vicinity of the barrel of the gun when it's discharged. It means heavy metal residues can be detected usually by absorption analysis microscopically or by a number of different ways. But the important thing is if something is near the barrel of the gun when the gun is fired then you will get these heavy metal residues and you can state to a certainty that a gun was fired near this object.

Q. Sir, have you been trained in the process of collecting evidence for the neutron activation test, as well?

PLEASE NOTE: Page 154 is missing, however the content is continuous. The stenographer appears to have made a mistake while numbering the pages.

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A. Yes.

MR. MC GILL: Objection as irrelevant to this particular testimony.

MR. JACKSON: It's not, your Honor.

MR. MC GILL: It's not relevant to the cause of death. He's not involved with this.

THE COURT: I sustain the objection. He's on for a limited purpose.

MR. JACKSON: I appreciate that but it simply goes to the expertise of the Medical Examiner.

MR. MC GILL: It's irrelevant.

THE COURT: He can be a nuclear expert and that's not important.

MR. JACKSON: Your Honor, may we see you at side bar for a brief

moment?

(A side bar conference was held on the record as follows:)

THE COURT: He's putting him on for one purpose only.

MR. JACKSON: I understand that, your Honor, but in order for him to make that determination

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in terms of his expertise he has to know whether or not the neutron activation test, whether there's been a fire, or he committed suicide.

THE COURT: I don't know. What are you putting him on for?

MR. MC GILL: Cause of death.

THE COURT: That's all?

MR. MC GILL: And also the injuries, to describe the injuries.

THE COURT: All right.

MR. JACKSON: But in order to make that determination, he also has to be --

THE COURT: No he doesn't.

MR. JACKSON: --he has to be able to exclude certain things.

THE COURT: No, he doesn't. Exclude what? That he was hit with a bomb or something?

MR. JACKSON: No. No.

THE COURT: He's putting him on for one purpose only. That's all I'm interested in. If you want to call him as your witness

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and put him on, go ahead.

MR. JACKSON: Judge, that is part of the expertise of the pathologist.

THE COURT: Not necessarily. Not all pathologists are expert in all fields.

MR. JACKSON: This is in his field, Judge.

THE COURT: He is going to put him on --

MR. JACKSON: I want to find out if he's been trained to collect it.

THE COURT: I don't care if he's trained --

MR. MC GILL: It's irrelevant.

THE COURT: I'm only concerned for what he's putting him on for, that's all I am interested in.

MR. JACKSON: How can he rule out suicide if he doesn't know whether or not the person shot the weapon?

THE COURT: That's another thing. You ask him that.

MR. JACKSON: I'll ask if he has the --

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THE COURT: No. No.

MR. JACKSON: --the qualifications to do that.

THE COURT: That has nothing to do with the qualifications. You can bring that out in cross-examination. Let's go. Come on.

(Side bar conference ended.)

THE COURT: Any other questions?

MR. JACKSON: Yes, sir.

BY MR. JACKSON:

Q. Dr. Hoyer, does your job as Assistant Medical Examiner include collecting of materials for the neutron activation test?

MR. MC GILL: Objection.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Does your job as Assistant Medical Examiner include duties with respect to the trace metal activation test?

MR. MC GILL: Objection.

THE COURT: Sustained.

MR. JACKSON: No further questions.

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BY MR. MC GILL:

Q. Doctor, in reference to your function as, or your job, as attending pathologist there at Jefferson, was that, or Einstein?

A. Albert Einstein.

Q. How long was that?

A. That was eleven months.

Q. And what were your duties as a pathologist there?

A. I had a number of duties there. I had duties in examination of tissue specimens, microscopic growths, surgical specimens from people who had operations; I had responsibilities for supervising residents who performed autopsies on people who died in the hospital.

Q. Was there also training that you received in Forensic Pathology, actual formal training; that is, book training, so to speak, in connection with your medical education?

A. There are certain elements of my formal training program which overlap between Forensic Pathology and general pathology.

Q. Doctor, your 1,200 post-mortem examinations, over what period of time were they conducted?

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A. Those were conducted from June 1st of 1981 to the present date.

Q. Now, did you say that during the course of several of those you were supervised by other staff members?

A. Yes, I did.

Q. And who were they?

A. They were Dr. Marvin Aronson, the Deputy Medical Examiner, Dr. Robert Segal, Assistant Medical Examiner and Dr. Dr. Halbert Eillinger, Assistant Medical Examiner.

Q. And I take it these same individuals were those people you consulted with in your testimony in reference to instructions and bullet entrance, etc., which you mentioned before?

A. Yes, that's correct.

Q. Are you familiar with the amount of post-mortem examinations that Dr. Eillinger has done?

MR. JACKSON: Objection.

THE COURT: I will sustain that objection.

BY MR. MC GILL:

Q. On those trials that you have testified before

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were you, in fact, determined that you were qualified to testify?

A. Yes.

Q. Were they in the Common Pleas Court of Philadelphia?

A. Some, yes.

Q. Where were the others?

A. In Delaware County Common Pleas.

MR. McGILL: Nothing further.

MR. JACKSON: I have something further on that.

BY MR. JACKSON

Q. Dr. Hoyer, I believe you've indicated that six months after going with

the City is when you began to testify in court as an expert; is that correct?

A. Approximately, yes.

Q. Now, would that have been in December?

A. Six months would be in December, but I don't remember the exact date when I first testified.

Q. Would you recall whether or not you testified as an expert before or after December 9th?

A. No, I wouldn't.

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Q. Is there some way we could find that out, sir?

MR. MCGILL: I would object as irrelevant. The question is whether he's testified he is qualified today.

MR. JACKSON: Fine. I have no further questions as to his qualifications.

MR. MCGILL: Thank you, Doctor.

THE COURT: The Court deems Dr. Hoyer as an expert in Forensic Pathology.

MR. MCGILL: Yes, sir.

#### DIRECT EXAMINATION

BY MR. MCGILL:

Q. Did you have occasion, Dr. Hoyer, to -- you've really answered a number of the general questions of what your function is, but give us one idea, please, or at least one expression of what Forensic Pathology is. What is Forensic Pathology? What are we talking about?

A. Forensic Pathology is the examination of information of bodies, tissues, body fluids and to some extent clothing evidence with the objective of figuring

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out why people died, how they died, and what was responsible for their death; more specifically, to look at someone and say they died of natural diseases, natural death, or they died as a result of being crushed, they died being crushed in a car accident, this was an accidental death, or they died because they were shot, or this would be a homicidal death.

Q. As part of your duties you already mentioned a post-mortem examination; is that correct?

A. Yes.

Q. What is a post-mortem examination?

A. It consists of three parts, post-mortem examinations consist of three parts. First we perform an investigation to find out the setting in which the body is found.

Q. Just as to your actual autopsy itself of the subject.

A. Second, we perform an external examination. We look at the clothing, tears, burns, cuts. We then examine the outside of the body for evidence of the same trauma as well as natural disease.

Finally, we perform an internal examination to

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look for evidence of injuries or natural disease.

Q. Doctor, on December the 9th, 1981, did you conduct a post-mortem examination on the deceased in this case? Officer Faulkner.

A. Yes, I did.

Q. When and where did you do that?

A. This examination was done at 9:00 o'clock in the morning on the 9th of December, 1981, at the Office of the Medical Examiner, and that's 321 University Avenue.

Q. In connection with what you have referred to as your external examination, in reference to the post-mortem examination did you determine whether there were any remarkable findings in reference to injuries, external evidence of injury?

A. Yes, I did.

Q. Would you indicate to the jury, please, what they were?

A. The most important injury was that I found two gunshot wounds, one on the face which did not exit and one in the back that did --

Q. You are referring to something. I assume that that is your report.

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A. Yes, it is.

Q. Is that, sir, also in line with your duties as an Assistant Medical Examiner? Did you prepare such a report?

A. Yes.

Q. Is that what you have in your possession now?

A. This is a copy of that report.

Q. Go on in terms of the external evidence of injury.

A. External evidence of injury, on the face, five inches below the top of the head and quarter inch to the left of the midline there is a gunshot wound of entrance, five/sixteen inch high and wide. So there is a gunshot wound of entrance here on the side of the nose. There is a 5-1/2 inch wide, 8 inch high area of focal thermal burns and mechanical injuries from unburned and partially burned powder particles centered about the entrance wound. This is powder stiple. I told you this is evidence of a gun being within about 23 inches of the target. There was no soot observed. The upper and lower eyelids on both the right and left side show blue-purple swelling and discoloration. Bloody fluid is issuing from the mouth and tracheostomy

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tube.

Q. Now you've indicated, I think, already that the muzzle of the gun and the target which in this case would have been the injury, you indicated was

within 23 inches, was that?

A. Yes, that's correct.

Q. Now sir, that would be approximately about that much?

A. Yes, and less than that, yes.

Q. The muzzle of the weapon to the target; is that right?

A. Yes.

Q. Let's take a look at number two there, external evidence of injury of the second wound.

A. Okay. In the left side of the upper back, 11 1/2 inches below the top of the head and 1 inch to the left of the midline --

THE COURT: Now if you could --

BY MR. MCGILL:

Q. Perhaps, doctor, I'll make it easier. Doctor, if I may, why don't we use this. This will be a little easier, I think.

A. Okay.

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MR. MCGILL: I'd ask that this be marked C-60.

MR. JACKSON: All right.

THE WITNESS: Okay. On the upper back, 11-1/2 inches below the top of the head and 1 inch to the left of the midline is a 3/8 by 3/8 inch gunshot wound of entrance having a 1/16 to 3/16 inch wide pink abrasion cuff. So that would be here, almost at the base of the neck a little to the side.

BY MR. MCGILL:

Q. Would you indicate or would you show also Mr. Jackson.

MR. JACKSON: That's fine.

BY MR. MCGILL:

Q. And that is how many inches from the top? Eleven and a half?

A. Yes.

Q. Can I, Judge?

So, 11 inches -- of course it's difficult on this kind of a chart -- 11 inches from the top of what?

A. The head.

Q. Okay.

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A. Eleven and a half inches from the top of the head and one inch to the left of the midline --

Q. Go on, please.

A. This entrance has an abrasion cuff about it. That's a part of how we know it's an entrance wound. A hemorrhagic tract begins with the entrance wound and proceeds with the soft tissue of the upper back and neck. So it goes through here, in the anterior left side of the neck, 11 inches below the top of the head and 2 inches to the left of the midline is a 3/8 by 1/8 inch gunshot wound of exit.

So now we are going to go over to the front view on the left side. There is an exit wound somewhere like here --

Q. I'm going to interrupt you, Doctor. I believe you may have used the word, "entrance" in reference to that wound?

A. I'm sorry. That's an exit wound.

Q. Exit wound?

A. Yes, exit wound.

Q. Okay.

A. Then there is a tract from the entrance onto the exit wound. This tract is

back to front, right to

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left at approximately 15 degrees. So it's back to front --

Q. Would it be easier to use me.

A. Okay. It's entering over here, going back to front, right to left, at approximately 15 degrees and down to up at approximately 33 degrees. So it's going approximately like this. So we know then that the gun at the time it's fired has to be approximately here. We don't know the absolute position of the body, but, we know the relative position of the gun to the body must be, as we said, no more than this far away.

Q. By "this far away" would you hold that right there, please, without moving. Would you measure that?

A. Nineteen inches is what I have.

Q. Would you also mark on that chart the location of the first, the wound, number one wound there?

A. Okay. The other entrance wound just to the left of the midline, just in the nose.

Q. By the way, in reviewing the slides of the body did you note any other exit wounds around the area of the exit wounds around the neck, and if so,

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what were they a result of?

MR. JACKSON: Your Honor, I am going to object. I think he said, "in reviewing the slides." If that's so, I object.

THE COURT: Could I see you?

MR McGILL: Judge --

THE COURT: Rephrase your question.

MR MCGILL: I can end it right here. The slides of the body --

THE WITNESS: Yes, I have taken photographs of the body.

BY MR. MCGILL:

Q. And those you review from time to time in reference to your testimony?

A. Yes, we do.

Q. Have you reviewed it in reference to this testimony today?

A. Yes.

MR. JACKSON: I would object, your Honor, unless he took the slides. I don't know what he is talking about.

BY MR. MCGILL:

Q. Do you recognize the slides of being the slides

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of the body of the deceased on whom you conducted your post-mortem examination?

A. Yes.

MR. JACKSON: I would still object. He examined the body. Why not the body rather than slides?

BY MR. MCGILL:

Q. Well, in your entire review of the report and of your findings in reference to the post-mortem examination, did you find any other exit wounds around the neck area, and if so where?

A. Okay. In reviewing the slides, the Kodachrome slides of this case, there's a second smaller exit wound on the anterior surface of the neck a little above and a little closer to the midline from the major exit wound.

MR. JACKSON: Your Honor, I object. May we see you at side bar, please?

MR. MCGILL: I would object going to sidebar, Judge. I think on the face it's admissible.

THE COURT: Well, I don't know what he wants to talk about.

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(A side bar conference was held on the record as follows:)

MR. JACKSON: It's not in here. It's not in here.

MR. MCGILL: Of course its not.

MR. JACKSON: He's not going to testify if it's not in here. Judge, he is going to testify from slides that somebody else took from some other time that I don't know about.

THE COURT: Where are you going?

MR. JACKSON: He can't do that. It's not in here.

MR. MCGILL: What's the problem?

THE COURT: I don't know. That's what I'm trying to find out from you.

MR. MC GILL: Where am I going?

THE COURT: Yes.

MR. MCGILL: It's a part of the body --

THE COURT: Did he see this?

MR. MC GILL: On the slides.

THE COURT: Who took the slides?

MR. MC GILL: He has the slides.

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THE COURT: Who took the slides? Did he?

MR. MC GILL: No, he didn't take them. Maybe he did. He doesn't take them but, however, he observed the slides.

MR. JACKSON: No.

MR. MCGILL: He had reviewed the injuries on the body, on the body that he examined himself, and he recognized that as the body he examined, and he knows that those slides are taken as part of the normal course of things.

MR. JACKSON: Can we examine this man outside the hearing of the jury?

MR. MC GILL: I don't understand this.

MR. JACKSON: If you listen to me, if you listen, I'll tell you.

MR. MCGILL: There's no other additional entrance.

THE COURT: What's your objection?

MR. JACKSON: I have a copy of what purports to be a Medical Examiner's report. I'm hearing something for the very first time in terms of bullet wounds. He's looking at slides

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somebody else took at some undetermined time. How can he do that?

MR. MC GILL: Why don't we go through this? I can't handle this anymore. It's irrelevant and improper. I don't want to delay any longer.

MR. JACKSON: Fine.

(Side bar conference ended.)

BY MR. MCGILL:

Q. Doctor, I'll withdraw that last portion. In reference to your internal -- you did an internal examination, did you, also?

A. Yes, I did.

Q. Now, as part of your evidence of injury did you note anything there?

A. Yes.

Q. Any remarkable findings?

Q. Yes.

Q. Would you indicate what that was?

A. Okay. A hemorrhagic tract begins with the gunshot entrance going into the nose, proceeds through the bones of the face and into the skull. The skull has multiple, that is, multiple interlacing fracture

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involving the right and left orbital plate. That is the bones below the eyes -  
- above the eyes. I'm sorry, above the eyes.

Q. I'm going to stop you there and ask what significance is that? Calvarium -- is that the word? "The calvarium has multiple ramifying fractures," what significance is that?

A. It means there was a great deal of force and engineering in the skull when that bullet entered, enough force so the skull is broken from the shot of the bullet entering.

Q. Would that be consistent with high velocity ammunition?

MR. JACKSON: Objection. You haven't qualified him.

THE COURT: I'll let him answer.

THE WITNESS: Yes, it's consistent with relatively high velocity hand gun ammunition.

BY MR. MCGILL:

Q. You say, "relatively high velocity?"

A. Yes.

Q. Would you include within that group being plus P ammunition?

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MR. JACKSON: Objection. He hasn't been qualified, your Honor.

THE COURT: Can you lay the foundation?

BY MR. MC GILL:

Q. Have you had an opportunity, sir, to, in your past, review, in reference to your post-mortem examinations, reviewing both your own as well as others, have you had an opportunity to see the damage and injury caused by various types of bullets and projectiles?

A. Yes, I have.

Q. Included within those projectiles are the Plus P type of bullets?

A. Yes.

Q. Do you know what a Plus P is?

A. Yes.

Q. Approximately how often would you have reviewed and observed any kind of examination whether yourself or with others where a plus P bullet was involved?

A. Approximately ten times in the last year.

Q. And over that course of time have you observed the amount of damage that that particular injury or that particular projectile would cause?

A. Yes.

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Q. Is this type of damage consistent with the Plus P velocity?

A Yes.

Q. Now Doctor, would you go on with the other evidence of internal injury?

A. Okay. There are also multiple fractures of the right and left parietal

bones, that is, the bones in the back of the head up here, and multiple fractures of the occi bone, right in the middle of the back of the head.

The hemorrhagic tract begins at the entrance of the gunshot wound in the tract, received through the nasal sinuses, along the orbital surface of the left front lobe. It goes through the left bone of the face, enters the cranial cavity where the brain is, and starts travelling along the surface of the brain. There's extensive --

Q. Before you go on to that, would you tell the jury what a hemorrhagic tract is.

A. That means that there is a hole, a tract, where the bullet went through, that there's been bleeding into.

Q. Go on.

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A. There's extensive pulpification of the base of the cerebrum. That is the bullet caused destruction and softening of the brain tissue surrounding the tract as it passes through; turns the brain from a fairly normal consistency to something fairly soft like oatmeal. Sort of like a mushy material. The track continues through the right parietal and occipital lobes, travels all the way through the brain, and a generally round, beveled out, slightly displaced fracture is identified in the right occipital bone. That is back here we see a little round traction of the bone where the bullet hit the brain, made a fracture but did not go through. Nearby a deformed lead projectile is recovered.

Q. Go on.

A. It's washed and dried. It measures 10 millimeters across the base and is 12 millimeters high. It is markedly deformed. So we have a projectile about this high and about this wide.

Q. Now, the extensive pulpification that you mentioned, where there is sufficient velocity in the projectile that causes the damage and there is sufficient entrance wound in terms of diameter, will this at

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Hoyer - Direct

times cause any kind of effect in the head as a result of the entrance of the projectile?

A. Well, the wound or the bullet in this case causes totally complete incapacitation. It causes a momentary swelling of the skull as it pauses, and that's what these fractures that we described are, are a reflection of momentary increasing pressure of the bullet going in. You may see some of the tissue being blown back out through the hole.

Q. All right. Now, Doctor, let me ask you, in reference to the debilitating effect of that, how would you describe that, that shot?

A. Well, this shot goes through the major portion of the brain with great velocity, extensive tissue destruction and, therefore, causes complete instantaneous disability and death.

Q. Let me ask you, in reference to the other wound now, that's your back wound that you have indicated, number two wound on external evidence of injury --

A. Yes?

Q. -- you have gone into some detail in reference to that. What kind of effect would that have to the system in terms of immobilization or debilitation?

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Hoyer - Direct

A. Well, it would cause pain and there will probably be a shock associated with the blow of being hit of the bullet. But it did not hit any vital structures and, therefore, it would not be any significant debilitation. The person would be able to do almost anything they were able to do before.

Q. That would include walking or moving their arms or hands?

A. Yes, that's correct. There might be sane pain associated with moving the arm on that side, as I recall, the left side.

Q. I was going right and left.

A. No, there might be some pain with moving the left arm but the left arm would be functional and the right arm would not be affected at all.

Q. All right. Doctor, you stated there was a projectile or at least a portion

of a projectile that you referred to as a deformed lead projectile recovered. What did you do with that?

A. Okay. The projectile was placed in an envelope labeled "Bullet, head" and then this envelope was given to a member of the Philadelphia Police Department.

Q. Do you have the name of the person that you gave

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Hoyer - Direct

it to there and could I have --

A. It was given to Police Officer Deyne-1606.

Q. May I have C-39, please? All right. I ask you to take a look at C-39, please.

A. Yes.

Q. All right. Can you identify C-39?

A. Yes. This is the bullet and envelope that I previously described.

Q. Thank you. You can put that away, then. Doctor, looking again at your report, would you take a look at external evidence of injury number 7. What is that?

A. There's a 1 and 1/4 inch wide, 3/4 inch high superficial red-brown skin denudation in the bottom center of the left knee. That is there is a scrape at the bottom of the left knee, right in here, an inch and a quarter high and three-quarters of an inch high.

Q. Is that kind of injury consistent with a fall to the left knee?

A. Very much consistent.

Q. Doctor, do you have an opinion based on reasonable medical certainty to the cause of death of Officer Faulkner?

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A. Yes, I do.

Q. And what is that opinion?

A. That Officer Faulkner died as a result of gunshot wounds to the back and head.

Q. And on what is that opinion based?

A. That opinion is based on my examination of the body and the internal evidence and external evidence of injury that I described to you.

Q. And also your experience; is that correct?

A. Yes.

MR. MCGILL: Cross-examine.

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Doctor, you indicate that the cause of death is as a result of gunshot wounds; is that correct?

A. Yes, that's correct.

Q. Correct me if I am wrong, when you testified with regard to the back injury you indicated that that wound would not cause any interference with a person's regular functions?

A. That's correct.

Q. But should we assume that at some point it would,

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#### Hoyer - Cross

assuming, for one moment, we don't have the facial injury, just the back injury?

A. Yes.

Q. That would have no debilitating effect whatsoever?

A. It would have a small debilitating effect, indeed it would.

Q. When you say small, in the minds of us novices, what's a small debilitating effect? Is it like a toothache, earache?

A. It would hurt enough that you would want to get it treated, that you'd have some interference with the use of your left hand and left arm but you could use it.

Q. Now, you're certain of that, right, doctor? I mean, I just want to know that it hit no vital parts of the body.

A. That's correct, yes.

Q. So then the person would want to get it treated but it would not interfere with them walking, talking or doing anything?

A. Not to a significant degree, no.

Q. Now, when you indicate that your finding of

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#### Hoyer - Cross

death is gunshot wounds, it's really just the facial wound, isn't it true?

A. There is a small contribution from the back wound, it would not be a large contribution but there is a small finite contribution from the back wound.

Q. Well, if you could venture some estimation in terms of percentage, would 99 percent of the death be caused by the facial wound? Would that be fair to say?

A. I tend not to put percentage -- I don't think these things are well suited to put percentages on.

Q. Okay. Forgive me, then. Well, let me try it this way, sir: Would the cause of death, the contributing nature of the background, be a result of loss of blood only?

A. That would be a major component of it.

Q. Now, based on your experience, can you tell us which wound entered first?

A. Not from the wound alone, no.

Q. Can you tell us from anything that you've examined, and not what you may or may not have heard, but based on your examination.

MR. MC GILL: Objection. He's just

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Hoyer - Cross

answered that he could not on his examination alone.

BY MR. JACKSON:

Q. Any suggestion that you would make with regard to the sequence would be based on some information that someone else provided you with; is that correct?

A. And general information that I have.

Q. But that other information would be necessary for you to make that determination.

A. In other words, I know a lot about wounding patterns in general, not specific to this case that I can use in this case that I believe might be helpful.

Q. Well, can you say within some degree of medical certainty with respect to this case? First of all, can you give that testimony?

A. Not with a degree of medical certainty, no. But I have a suggestion.

Q. Well unfortunately, doctor, the suggestion by you in this instance was no better than mine.

MC GILL: Objection to comments, your Honor.

THE COURT: Please. Just ask the questions.

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Hoyer - Cross

MR. JACKSON: Yes, sir.

BY MR. JACKSON:

Q. Now Doctor, aside from determining the cause of death, did you also perform various and other tests of Officer Faulkner?

A. Yes, I did.

Q. Can you tell us what tests you performed, sir? Go on. I'm sorry.

A. I submitted specimens for toxicologic studies, specifically submitted blood, stomach content, bile, liver, and urine. And I submitted blood for cerelogic examination.

Q. And all of that is normal -- is that correct, sir? Normal procedure?

A. Yes, it is.

Q. Did you attempt to collect any primer or any nitrates?

A. No, I didn't.

Q. Is that normally a function of your office, sir?

MR. MCGILL: Objection, your Honor.

THE COURT: Sustained.

BY MR. JACKSON:

Q. You have the entire Medical Examiner's folder

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Hoyer - Cross

there, sir, file with you?

A. No, I don't.

Q. You have only the portion which you prepared?

A. I have my report which includes several reports that were sent back to me.

Q. Dr. Hoyer, when you performed your examinations to make your determinations are they made solely and exclusively as a result of what

you see and feel and touch or --

A. No.

Q. You do receive oral information.

A. Oral and written information.

Q. From various other sources?

A. Yes.

Q. And you use that information in conjunction with whatever kind of empirical information that's available?

A. Yes.

MR. MCGILL: I would have to object, your Honor. Is he talking about solely about the post-mortem examination?

MR. JACKSON: Yes, I am.

MR. MC GILL: On the deceased?

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#### Hoyer - Cross

MR. JACKSON: Yes, I am.

MR. MC GILL: Okay.

MR. JACKSON: Your Honor, may I have just a moment, please?

BY MR. JACKSON:

Q. Dr. Hoyer, your examinations, the post-mortems that you conduct, they are pretty much assigned on a regular kind of basis; is that correct?

A. Yes.

Q. And you perform those tests that you prove are appropriate in order to determine the cause of death?

A. I order quite a variety of tests, some of which are done routinely and some of which are ordered specifically where there's an indication.

Q. Where there is an indication. And that indication would be determined by you, what additional tests will be ordered; is that right?

A. Yes, that's correct.

Q. Are there times when someone other than yourself would make a specific request for tests? Maybe a police officer, assigned detective, I don't know, supervisor or something like that.

MR. MC GILL: Objection. I would

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object if it's anything outside this case it would be irrelevant to his examination.

MR. JACKSON: Your Honor, I assure you, it's not outside this case.

MR. MCGILL: I would object.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. Were any additional tests conducted in this case?

A. No.

Q. Not by you?

A. That's correct.

Q. Did anyone make a request to you to perform any additional tests?

MR. MCGILL: Objection.

THE WITNESS: That were made?

MR. JACKSON: I want to know if any were requested.

THE COURT: He said that were made.

THE WITNESS: I don't know if they were or not.

BY MR. JACKSON:

Q. Did you request any additional tests?

A. I'm sorry, sir?

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Hoyer - Cross

Q. Did you request any additional tests at all with regard to Officer Faulkner?

A. Beyond the tests that I described to you?

Q. Yes, sir.

A. No, I did not.

MR. JACKSON: Your Honor, I have no further questions of this witness at this moment, but I reserve the right to call him as my witness at a later point.

MR. MC GILL: Your Honor, I will certainly make him available consistent with the Doctor's schedule, of course, at the Court's convenience.

Thank you, Doctor.

Do you have any questions, your Honor?

THE COURT: No.

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(Witness excused.)

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(A side bar conference was held off the record.)

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THE COURT: All right. We are going to adjourn court until 9:30 tomorrow morning.

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(Court adjourned at 4:30 o'clock until Saturday, June 26, 1982, 9:30  
o'clock.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

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Room 253, City Hall  
Philadelphia, Pa.

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June 26, 1982

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Before: HONORABLE ALBERT F. SABO, J.

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APPEARANCES:

- JOSEPH J. MCGILL, ESQUIRE  
Assistant District Attorney  
Council for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Counsel for the Defendant

----

Theresa M. Carroll, R. P. R.

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(At this point, there was a side bar conference with the Court, Mr. McGill, Mr. Jackson, and the defendant, which proceeded as follows:)

THE COURT: Mr. Jamal, before the Court opens for today's session, I would like to know whether you have changed your mind and whether you will behave and be quiet during the proceedings and not disrupt the Court in the ordinary process of these proceedings.

THE DEFENDANT: Before the Court opened its session, I instructed your messenger to inform you that I wanted to confer with counsel of my choice, John Africa, Teresa Africa, or Janette Africa.

THE COURT: They are not here.

THE DEFENDANT: I will wait until they arrive.

THE COURT: Then, in other words, you are willing to sit in there until they arrive and then make your decision?

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THE DEFENDANT: Indeed, I have no problem with that.

MR. MCGILL: As I understand it, what the defendant is saying is that he wishes to confer with them when they arrive. I don't know whether he means that he does not want to sit here in court --

THE COURT: Until they arrive.

MR. MCGILL: Does the defendant want to sit here and listen to the trial and just confer with them when they arrive?

THE DEFENDANT: I don't want to sit out here and listen to the trial. I would like to confer with my counsel, John Africa, Teresa Africa, and --

THE COURT: And you want to confer with them before you come out to court?

THE DEFENDANT: Exactly.

THE COURT: Is that clear enough for you?

MR. MCGILL: Well, Your Honor, perhaps the Court could again instruct the

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defendant of the importance of his being present at his own trial so that he can hear evidence and advise Mr. Jackson or provide information and it might help him in his defense in his case. Mr. Jamal is very close to me and has to be able to hear what I am saying, but, Your Honor, it is important, naturally, that a defendant charged with such a serious crime be, in fact, present for his own sake. Of course, if he wishes not to be present, he does not have to be. The reason for his being present, listening to all the evidence and advising his counsel -- he would know more about the case than anyone. He certainly would be in a position to assist Mr. Jackson in asking questions and developing his defense. I think it is important that the defendant be made aware that, again, he recognizes that by not being in the courtroom that he literally is waiving or giving up that opportunity.

THE COURT: Did you hear what the

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District Attorney said?

THE DEFENDANT: I think I made my position clear.

THE COURT: Regardless of what he just said, your position is that --

THE DEFENDANT: Unless the District Attorney is now functioning as my defense counsel, and I am sure that he is not, my wish is to confer with my family, my counsel, John, Teresa and Janette Africa, before I come into the courtroom.

THE COURT: I think that what the District Attorney is saying is that he wants you to realize that you are giving up certain important rights, your right to be present, to hear the evidence that is being presented against you, and to advise Mr. Jackson of whatever you think might be important in order for him to properly defend you. That is what he is saying.

THE DEFENDANT: My proper defense can be achieved by John Africa. That is my

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position.

THE COURT: In the meantime, regardless of what he is telling you, you are going to be missing your rights; your choice is not to be present in this courtroom until you have had an opportunity to talk to the representatives - - what are their names?

MR. MCGILL: John Africa is one.

THE COURT: Well, he is not speaking to John Africa directly, but --

MR. JACKSON: He indicated that he would like to speak to Janette Africa or Teresa Africa first before he makes a decision as to whether or not he wants to be in the courtroom. That is what he is saying.

THE COURT: And all I'm saying is that they are not here and I don't know if they are going to be here today. So --

MR. MCGILL: Well, Your Honor, I would have no objection. Of course, I understand that the Court has to move this case forward. It has been close to a month

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now, maybe three and a half weeks and there have just been constant delays. So, I can appreciate why the Court would want to start right now since it is now 10:20 on a Saturday.

However, what I would like to say to the Court is that the Commonwealth would have no objection that if, as soon as these people that he has mentioned arrive, their presence would be made known to Mr. Jackson. I would have no objection if at that moment we would have a recess and they would have an opportunity to confer with the defendant and then perhaps that would change his mind about coming out and being present at his trial.

THE COURT: That is perfectly alright, as long as somebody lets me know when they come in. Is there anything else?

MR. MCGILL: Yes, for the record, I have already mentioned several times that John Africa and the other people, Janette

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Africa and Teresa Africa, are not members of the Bar. They are not attorneys for the Commonwealth of Pennsylvania.

THE COURT: They are his relatives, that's all, or his intermediary between himself and supposedly --

MR. MCGILL: That's right, isn't it, Mr. Jackson; they are not attorneys?

MR. JACKSON: I don't know that for sure.

THE COURT: I am pretty sure that they are not.

MR. MCGILL: Are they attorneys?

THE DEFENDANT: I think you should ask them that.

MR. MCGILL: We are not getting information from it; so, I can assume that they are not. However, I do know from my own knowledge, having been in contact with our office, that both people, Teresa Africa and Janette Africa, both women have been in this room often through the jury selection,

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Motion to Suppress, as well as the trial. If they are the same people that he is talking about, they are not licensed attorneys, members of the Bar of the

Commonwealth of Pennsylvania.

THE COURT: Alright.

(Conclusion of side bar conference.)

(Court is session at 10:20 a.m.)

MR. MCGILL: Doctor Tumosa is my next witness.

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CHARLES TUMOSA, having duly been sworn, was examined and testified as follows:

THE CRIER: State your name and title for the record, and spell your last name.

THE WITNESS: Charles Steven Tumosa.

T-U-M-O-S-A. My position is criminalist for the City of Philadelphia.

THE CRIER: Please be seated.

THE WITNESS: Thank you.

MR. MCGILL: May I proceed, Your

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Honor?

THE COURT: Proceed.

(DIRECT EXAMINATION ON QUALIFICATIONS)

BY MR. MCGILL:

Q. Doctor Tumosa, you indicated your title. What is that title, again?

A. Criminalist.

Q. Would you state what your qualifications are for that position, please, Doctor?

A. Basically a criminalist is someone who examines, analyzes, and

evaluates trace evidence. Trace evidence can be anything, any physical object which has a relevance in a legal context. It differs from a criminologist in that criminology studies the sociological or psychological aspects of an event. The criminalist studies physical objects themselves.

I have a Bachelor's Degree in chemistry from Saint Joseph's College, now university, here in Philadelphia; a doctorate in chemistry, Ph.D., from Polytech Institute. My brain is in years of physical science, chemistry, biology, physics, mathematics and so forth.

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Tumosa - Direct

I have been with the City of Philadelphia since November of 1971, first as a chemist and then later as supervisor in the Criminalist Unit.

My function has been to examine trace evidence in that period. I have had supplementary training in forensic serology, the study of body fluids, at Georgetown University. I belong to a series of professional organizations: American Chemical Association; Northeastern Association of Forensic Sciences, and a number of others. I have taught and lectured regarding criminalistics, different aspects of it, at Community College of Philadelphia, Temple University, and Lehigh Valley Community College, and other places.

Q. Approximately how many cases have you actually worked on both as a chemist and as a supervisor in relation to analyzing trace evidence?

A. Thousands.

Q. Approximately how many cases have you worked on in determining the presence of primer lead on clothing.

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Tumosa - Direct

A. Hundreds.

Q. How about the test for nitrates?

A. Hundreds.

Q. How about determining and analyzing bloods and blood types?

A. Thousands.

MR. MCGILL: Cross examine on qualifications.

MR. JACKSON: If it please the Court, I have no questions.

THE COURT: Proceed.

(DIRECT EXAMINATION)

BY MR. MCGILL:

Q. Did you have occasion to analyze any of the evidence in relation to this case, the case involving the death of Officer Daniel Faulkner?

A. Yes.

Q. Do you have a report present with you which you can refer to showing the results of your examinations?

A. Yes.

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Tumosa - Direct

MR. MCGILL: Mr. Jackson, do you have that?

MR. JACKSON: I believe I do. Yes, I do.

BY MR. MCGILL:

Q. Doctor I referring to your report, and this would be referring specifically to C-24 and C-25, property receipt number, on page one, 854917. Do you have that on your report?

A. Yes, sir.

Q. Specifically, the patrol jacket and the sweater. Would you take a look at exhibit C-24 and C-25?

A. Yes, sir.

Q. Can you identify those items?

A. These are the items that I described in city property receipt number

854917, a waist length Philadelphia police patrol jacket and a police uniform sweater.

Q. Let's take the first, if we can.

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Tumosa - Direct

Take a look at C-24, and that would be the jacket, item number one in your report.

Would you indicate, please, first of all, and perhaps the Doctor could have the jacket with him when he reviews his findings, would you tell the jury, please, exactly what you had determined about that particular item, the police jacket?

A. I will read directly from the report. It is a description of the item and the results of our findings.

"Item number one is a dark blue waist length Philadelphia police patrol jacket with the zipper up front, stained with human blood. There are several holes present in the following locations: a, the center back of the jacket, nineteen centimeters down from the collar seam. Tests for nitrates, combustion products of emission, were negative. Tests for lead indicated the presence of primer lead."

Q. Would you take a look at the jacket and show us where that hole was?

A. There is a hole, the evidence of which is

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in the center of this cross cut pattern in the back of the jacket. That cross cut was made by the laboratory in the analysis of the jacket and at the center of that hole, the center of those cuts, was a hole. There still is a hole.

Q. Now, you stated that the test for lead indicated the presence of primer lead. Would you tell me what you mean by that?

A. Lead can come from a discharge of a firearm. Lead can come from primarily two sources.

One, the projectile itself, the coding of projectiles, bullets, if you will, are

made of lead, some lead base. So, when going through a particular item, lead will be wiped off and lead will be present on a garment. It would be much like a pencil on a particular piece of fabric or paper.

The second source of lead which may come about comes from the primer of the cartridge. When the firing pin of a weapon strikes this primer, the primer explodes, sets off the powder inside the cartridge. The cartridge then propels the projectile.

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The compound which sets off this explosion is a lead compound. It is an organic lead compound which is sensitive. So, at close distance, or a distance, the primer lead actually is blown out through the barrel of a particular weapon much like -- you can think of it in terms of a hose. If you hold a hose level, a projectory of water will come out and hit the ground at a particular point. Well, the same will occur when the weapon is discharged. You have powder in the barrel. You have graphites. You have unburned ammunition. You also have this primer lead coming out much the same way water would come out of a hose held level and falls off at a particular distance.

Q. Did you make any kind of findings in relation to any comparison of the primer lead around that particular hole?

A. Yes.

Q. What were your results in reference to those?

A. We determined that the weapon must have been twelve inches or less when discharged.

Q. How can you determine that? Tell me what you

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do.

A. This is just as I described. If you hold a hose out, water from the hose will come and at particular points will hit the ground. The water itself won't go on forever. The same thing is true with the products of combustion. When a firearm is discharged, when a cartridge is discharged

from the weapon, at a particular distance, you will not find this particular material any more. Usually, it is around nine to twelve inches where this falls off so that when we detect it, when we know it is there, we know that the distance must have been less than that distance, twelve inches.

Q. We have a ruler here. Would you hold that up? Would that be twelve inches?

A. Well, one foot, twelve inches, or less.

Q. Or less?

A. Or less.

Q. Twelve inches is the outside figure?

A. Yes, it is the outside estimate.

Q. Would you, again, take a look at your report

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and in reference to the jacket, would you describe what it says as to b and c on your report?

A. "b, the upper right back collar area through the collar and fabric of the jacket, but not completely through the garment. Tests for nitrates, negative. Tests for lead were positive.

c. right front shoulder area through the collar and fabric of the jacket, but not completely through the garment. Tests for nitrates were negative. Tests for lead were positive."

Q. I am going to ask you to take a look at "b". I want to make sure you read that correctly. The tests for lead on "b" were --

A. They were negative.

Q. Alright. You said positive. So, the tests for nitrates and the tests for lead on "b" were negative. On "c," the tests for nitrates were negative and the tests for lead were positive.

A. That is correct.

Q. Would you show, again, on that jacket, would you know where the holes are, what the significance of

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the labels b and c are and whether or not you are able to tell whether they were entrances or exits?

A. Well, this is hole "b." You can see the fabric is tufted outward. We have hole "c" here at the front collar.

Q. If I gave you a pencil, would you be able to put that through that?

A. (Witness demonstrating.)

Q. What about "b"?

A. You can see the tuft lining popping through the back.

Q. Can you possibly go with that pen and indicate the route of that particular hole?

A. One could not make an accurate estimate of the projectory in this case.

Q. Explain why you could not do that.

A. Well, clothing is very loose on the body, whether you think it is tight or not, and it moves around so that necessarily the correspondence of holes in clothing -- the clothes may be doubled over, may be

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completely tufted, raised, lowered, any one of a number of different configurations so that clothing is usually not a very good way of determining the projectory of a projectile.

Q. Now, you have indicated "b" and "c." Did you make a determination as to whether "b" or "c" was an entrance or an exit and how?

A. When we examined for lead, which is indicative of the passing of projectiles, like I said like a pencil, we found lead in hole "c," which is the entrance hole. We also cut open the jacket and on the inside found a trace

of lead in a straight line much as if you had taken a pencil and drawn a line which indicates the path of the projectory through the clothing. Of course, the back is a classic exit hole in which materials are propelled outward by the movement of the projectile. A projectile is not neat. It tends to take up the material as it is going along nearby it so that when it moves, it pushes things with it and in this case you see the fabric being pushed outward.

Q. From your experience, Doctor, so I can really

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get it down to fundamental language, could you tell me the route of the projectile was on that side of the coat?

A. Well, hole "c" was an entrance. It went in and out of the fabric of the jacket and exited at the back.

Q. In your testimony as to the fact that clothes are sometimes jumbled up, particularly I assume you are jostling around a bit, your clothes are moving around, is that what you indicated, instead of being straight like this all the way; is that what you are saying?

A. Yes. Any movement -- as I sit here, my collar is higher than the back of my neck. Any movement, any change of position will certainly move your clothing, particularly the collar area.

Q. So, would that kind of hole, in your experience, since lead was present at the front meaning that it was an entrance there, in the back meaning that it was an exit, considering the condition of the clothing or the position of the clothing in relation to the body, is that consistent, those holes, with the

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projectile going through the front and coming out the back without making direct contact with the body?

A. Yes, it would be consistent with that.

Q. Would you take a look at item two on that property receipt. That would be the sweater. What were your findings in relation to that garment?

A. Again, I will read directly from the report.

"Item number two, blue police uniform sweater stained with human blood. There is one hole present in this item, upper center back, six centimeters down from the collar edge. Tests for nitrates negative. Tests for lead were positive."

Q. Would it be fair to say that that particular sweater, the hole there, would be consistent with the hole in the back of the jacket?

A. Yes, it would be consistent with that.

Q. Doctor, in relation to that, and I am now going back to the hole which would be letter "c" in the coat, your indications there, your findings from the tests for lead were positive, but there were not

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tests, or at least I do not see the presence of primer lead, at that point. Could you explain whether or not the absence of primer lead on that particular part of the coat area, the police coat, would in any way be inconsistent with a close range gunshot wound or a close range gunshot?

A. We are talking about the patrol jacket rather than the sweater?

Q. That is correct.

A. The absence of primer lead indicates to us that it was beyond one foot, twelve inches, whatever distance. Close is a relative term.

Q. So, it would be beyond the twelve inches; on its face, it would appear to be that.

Let me ask you this.

If on that part of the police jacket, we are talking about the police jacket and we are talking about this area here, assume for the answer of this question at any rate that an individual had taken that jacket off, the deceased, at an earlier time, obviously before you received it, shortly after the

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shot had occurred, and that his hands were around that general area, would that have any effect on the absence of primer lead?

A. It would be very hard to wipe off primer lead from that particular area, very hard to wipe off primer lead at all because it is like a fog. It's not little pieces of lead. In fact, it is much like a fog that is propelled on to the fabric. It would be difficult to remove it.

Q. Is it possible, Doctor, that the existence of lead, you said outside of twelve inches, I think, would it be consistent, in your experience, with a weapon being, say, somewhere between twelve and twenty inches from that jacket and having the results of lead deposit that you observed?

A. Yes, it would be consistent, anything beyond twelve inches.

Q. So, between twelve inches and twenty inches, you could have lead even though you had no primer lead?

A. That is correct.

Q. However, there is no question of the fact

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that it is twelve or less; it's that close?

A. Yes.

Q. Let's move on, Doctor, to page two of your report. I will ask for the police shirt, C-27. This is on property receipt number 854915. That is on page two at the beginning. Do you have that property receipt?

A. Yes.

Q. From whom is that receipt received?

A. The notation being that it was received from Patrolman Daniel Faulkner, number 4699.

Q. I mean who is the detective?

A. Detective Margerum (ph), number 969.

Q. What were the findings in relation to item number one?

A. Again, I will read from the report.

"Item number one, blue police uniform shirt. There is a hole present in the upper center back. There is also a hole along side the top button hole and through the shirt collar of this area. Tests for nitrates and lead were negative at this area."

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Q. Let's refer, if we can, to the shirt in reference to the hole along side the top buttonhole and through the shirt collar area.

A. Yes.

Q. What side is that?

A. It is on the left side.

Q. How many holes were there, just one hole?

A. Well, it is a hole. It is essentially one hole, yes.

Q. Were you able to tell whether that was an entrance or an exit hole based on the absence or presence of lead?

A. We cannot reach any conclusion just on that basis.

Q. There was no lead there: would that be correct?

A. That is correct.

Q. I will ask you to take a look at C-14, which is the top on that same property receipt. Excuse me, it is on a different property receipt number, the same property receipt. You may refer to page three, if you

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would, property receipt number 850628, item number three: do you have

that?

A. Yes, sir. It is labeled C-14.

Q. Item number three on your report, does that refer to that?

A. Yes, sir.

Q. Can you identify that as the item?

A. Yes, it is the item described on property receipt number 850628.

Q. What were your findings in reference to that tie?

A. Again, I will read from the report.

"Item number three, it is a slip on black necktie stained with human type "0" blood. Tests for lead were positive on the back of the tie at the knot."

Q. What do you mean by "back of the tie at the knot"?

A. Well, right here where the clip is, the metal clip.

Q. You found human type "0" blood there?

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A. That is correct.

Q. In reference to the police shirt, which you also have in front of you --

A. Yes.

Q. -- and the hole in that particular shirt, would that be consistent with the projectile, in your experience, going through that hole and making contact with the tie?

A. Yes.

Q. Refer to your report on page two. Do you have other things on that property receipt that you analyzed?

A. Property receipt number 854 --

Q. Property receipt number 854915.

A. Yes, sir.

Q. Look at item two.

A. Yes.

Q. I won't ask you to take a look at it physically, but just in the paper there, what were your findings in relation to that item?

A. Item two is a white tee shirt stained with

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human type "0" blood.

Q. That is on the same property receipt as the police uniform shirt?

A. That is correct.

Q. Doctor, would you take a look at page four of your report. I will ask if you will also be shown C-15 which is the beret or tam. This is property receipt number 850628. This would be on page four -- page three.

A. Yes.

Q. At the top. Would you take a look at item number two on your report and take a look at C-15; can you identify it?

A. Yes, sir. It is the item describe on property receipt number 850628.

Q. What were your findings in relation to that?

A. "Item number two, green beret, stained with human type "A" blood."

Q. Also, you had, I believe, swabs that you received on that particular property receipt?

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A. Yes. sir.

Q. Item four and five; what were the findings in reference to those two items, four and five?

A. Item four is two saline swabs stained with human type "O" blood. Item five is two saline swabs stained with human type "A" blood.

Q. Both those swabs, as well as the necktie and the green beret that we have talked about, are all part of property receipt number 850628?

A. That is correct.

Q. They were received by your department from what police officer?

A. Officer Land, number 9894, the Mobile Crime Detection Unit.

Q. Now, I will ask you to take a look at C-54, just the jacket. I am now referring, Doctor, to page three of your report.

A. Yes, sir.

Q. This would be property receipt number 854920.

A. That is correct.

Q. Item number one, would you take a look at

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that and see if you can identify C-54?

A. The jacket I have been handed is the item described as item number one on that property receipt.

Q. From whom was that received?

A. From Detective Sobeleski (ph), number 4748, of Central Detective Division.

Q. Would you state for the jury what the findings were in reference to item number one?

A. "Item number one is a red and blue quilt waist length jacket with a

zipper up the front stained with human blood. There is a hole at the right chest area above the right pocket. Tests for nitrates were negative. Tests for lead indicated the presence of primer lead. Comparisons of this primer lead pattern with patterns from the test firing of Patrolman Faulkner's firearm identified a muzzle-to-jacket distance of approximately twelve inches."

Q. Again, would you explain what you mean by that very briefly. You already stated it before, but state it briefly, again.

A. Again, the primer lead is a device on the

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cartridge which, when the firing pin strikes it, sets off an explosion and ignites the powder in the cartridge sending the projectile out. The primer lead, this compound, this organic compound, is blown out of the barrel of the firearm for about one foot so that if the firearm is discharged at a distance of usually less than one foot we can detect the presence of lead, a large concentration of lead.

Q. So, again, that evidence, the primer lead on that jacket that you analyzed, indicated in those comparison tests from Officer Faulkner's gun that this weapon was fired within twelve inches of the jacket?

A. Yes, sir.

Q. You have another item on that same property receipt number, sir. Would you read two, three and four, the results of that?

A. Item number two is a pair of tan suede boots stained with human blood. Item number three is a pair of red, white and blue sweat socks stained with human type "A" blood. Item number four is a blue polo shirt stained with human type "A" blood.

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Q. Now, turning on to the next page, on page four, I will also ask you to take a look at C-56, which is the holster.

A. Yes, sir.

Q. I also refer you to item number seven on your report on page four. Can you identify C-56?

A. This is the item described as item number seven on property receipt number 854920.

Q. What is it?

A. Item number seven is a black leather shoulder holster for a right-handed person using a cross draw from the right-hand to the left side. The item is stained with human blood.

Q. On page four, also, did you receive an item on property receipt number 854922?

A. Yes, sir.

Q. What was that?

A. Two vials of human type "A" blood serum. No alcohol was detected in the serum. The two vials were taken from Mumia Abu-Jamal.

Q. Also on property receipt 850635, which is the

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next property receipt, there was a test made. You just received the results. What were the results on that?

MR. JACKSON: Excuse me. Could you repeat that, again?

MR. MCGILL: Property receipt number 850635. This will be on page four.

MR. JACKSON: Thank you.

BY MR. MCGILL:

Q. Do you have that?

A. Yes, sir.

Q. What were the results of that?

A. The notation is that the items were removed from the wall of 1234 Locust Street.

Item number one is lead residue wipe, which is a test, and item number two is lead residue wipe, which is a control. Tests for lead were positive on item number one, the tested area.

A control is an area near the area where we are interested in testing to test to make sure there is nothing to interfere or obscure the test we are performing on a particular area.

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Q. That was received from what police officer?

A. This was received from Officer Land, number 9894, the Mobile Crime Detection Unit.

Q. Number 854972 is the last property receipt number of that; do you have that?

A. Yes.

Q. What findings were made in reference to that?

A. The item is a flashlight seventeen inches long, serial number 50025682. The bulb is broken. No blood was detected on the item.

MR. MCGILL: Would Your Honor bear with me for just one second?

THE COURT: Yes.

MR. MCGILL: I have nothing further. Thank you very much, Doctor.

THE COURT: May I see you at side bar?

MR. MCGILL: Yes, sir.

(At this point, there was a side bar conference with the Court, Mr. McGill and Mr. Jackson which proceeded as follows:)

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THE COURT: Mr. Jackson, I received a note from the court crier that Janette Africa is here. Do you want to take it from there?

MR. JACKSON: Yes.

(Whereupon there was a recess at 11:05 a.m.)

(In Chambers.)

THE COURT: Let the record indicate that it is 11:15 back in Chambers and Mr. Jackson has something to state for the record.

MR. JACKSON: Yes. I have just consulted with Janette Africa who has advised me to tell Mr. Jamal that he should come into court and not say anything, not interrupt the order and the process of trial. Mr. Jamal has indicated to me that he plans to act consistent with the advice of Janette Africa in that he will remain in court and not interrupt and will be quiet.

THE COURT: He is in court now?

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MR. JACKSON: Yes, he is.

MR. MCGILL: While we are here, I haven't had a chance to talk to him.

THE COURT: Let's go off the record.

(Discussion off the record.)

(Whereupon court reconvened at 11:20 a.m.)

MR. JACKSON: May I proceed, Your Honor?

THE COURT: Yes.

(CROSS EXAMINATION)

BY MR. JACKSON:

Q. Doctor, so that I am clear, you indicated relevant to the property receipt

number 854917 that hole "b" has no nitrates or lead; is that correct?

A. Correct.

Q. Nevertheless, you feel reasonably certain that it is, indeed, a bullet hole?

A. Yes, sir.

Q. Doctor, it was my understanding that whenever you had lead present you should also have the nitrates present.

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A. You may or may not. It depends upon the circumstances, obviously.

Q. Well, let me do it this way.

It is my understanding, and let me see if I am right about this in terms of substances that may be associated with a bullet on the firing of a weapon, that you would have the lead wipe; you would also have the primer lead; you would also have the nitrates; is that correct?

A. Depending on which distance you are talking about.

Q. That is what I want you to do for us, to tell me, assuming that we have all of those substances and elements present, at what distances would we expect to find them.

A. If we think of a firearm, take a revolver, for example, when the firing pin hits the primer, as I mentioned earlier, the primer essentially explodes. It sets off the powder which is present inside the cartridge. This also burns very rapidly. This burning then pushes the projectile down the barrel of the

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firearm and, of course, out the barrel. It is all backing up now because the projectile in the front is acting like a plug. The majority of the material is behind it when the projectile leaves the barrel of the weapon. We now have all sorts of material coming out the muzzle, the end of the barrel. You have large things coming out such as the nitrates, the partially burned ammunition coming out of the barrel. These are, if you think of them as

very large objects, being blown out. You then have a fog, a very fine mist of oil, of little bits of carbon, and also of lead from the primer and a number of other particular items and elements coming out. The larger items will hit an object and essentially stay at the surface. These are the nitrates. The nitrates will last from almost on contact from the muzzle of a firearm out to a distance of about three feet, usually, at the outside. The fine mist that you have is dispersed more rapidly and this will last about a foot, give or take a bit.

Does that clarify the situation?

Q. Yes, it does.

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If the nitrates, as I understand what you are saying, would be present from the muzzle of a weapon up to perhaps three feet away, and since you have indicated that you found lead present, wouldn't you expect to find nitrates too if the weapon was fired within three feet?

A. Normally I would expect to see it; that is correct.

Q. Even though you would normally expect to find that, I don't believe that you found nitrates in any of the tests that you conducted?

A. No, we didn't. That is correct. We did not.

Q. At no time were nitrates found on either the garments of Officer Faulkner or the garments of Mr. Jamal?

A. That is correct.

Q. Again, normally, if the weapon was fired within three feet of those garments, you would expect to find nitrates?

A. We usually find them. That is correct.

Q. But they are not here?

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A. That is correct.

Q. You conducted a comparison of the suspect firearm?

A. Yes, sir.

Q. To determine a muzzle-to-jacket distance?

A. Yes, sir.

Q. Do you understand, sir, that the suspect firearm is just that, a suspect firearm?

A. Yes, sir.

Normally it really isn't even necessary to do a test firing. The rule of about one foot is a very large distance. It is true virtually that any hand held firearm, anything that you are capable of holding in your hand and firing, normally does this as a matter of routine.

Q. So, when there is a comparison of primer lead from the suspect firearm, whether it is the suspect firearm or a firearm that I had, you get the same results?

A. Within twelve inches.

Q. So, there is nothing spectacular about the

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results that the suspect firearm would provide lead wipes and all that other stuff within twelve inches?

A. That is correct, but what it does show is that there is nothing unusual about the firearm.

Q. Doctor, could you tell us a little bit more about what a lead wipe is?

A. Basically, I believe you are referring to the description of the items submitted by Officer Land.

Q. That is correct.

A. That was city property receipt number 850635.

Basically it is a way for us of looking at something and determining whether a lead object had hit something or had come, for all intents and purposes, in very close proximity to it. What it is, essentially, is a little round piece of paper, absorbent paper. It is called filter paper. It really is much like a compressed paper towel. It is round. It is about so wide in diameter. We take this and we add solution to it, wet it, and we press it against a particular area. If this area contains lead, when we add another chemical to it, it will turn bright red.

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If it does not contain lead, no color will develop. This is used to determine whether a lead projectile had struck something or not.

Q. However, you can't determine any distances simply on the presence of that lead; is that right?

A. That's correct.

Q. Doctor Tumosa, I am going to now refer you to the jacket that was supposedly Officer Faulkner's jacket. I believe you indicated that without any question the muzzle-to-jacket distance was within twelve inches; is that correct?

A. That is correct.

Q. Could it have been two and a half feet away?

A. No, sir.

Q. What about six feet away?

A. No, sir.

Q. You are certain of that?

A. Yes, sir. The hole in the back is less than one foot, probably closer to nine to six inches.

Q. Closer to nine to six inches?

A. Yes. Twelve inches is the estimate at the

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outside.

Q. So that I am clear and the jury is clear, too, that means that whoever was holding that weapon and wherever the weapon was, it was, in your view, six to nine inches away from the Officer's back?

A. About so far, that is correct.

Q. With regard to the jacket that was allegedly taken from Mr. Jamal, you looked at that and you indicated that, in fact, there is a bullet hole in the chest area?

A. Yes, sir, above the pocket.

Q. When did you receive that, sir, that jacket?

A. I received it from Detective Sobeleski (ph), number 4748, Central Detective Division, on 12/9/81, at 12:30 p.m.

Q. How is it that you know that that jacket is the same jacket that you examined?

A. It was placed on a property receipt. It has the hole in the same location. It is the item as described on the same property receipt.

Q. So, you are saying that there is no question

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in your mind that that is, indeed, the same jacket?

A. That is the jacket that I received, yes.

Q. Again, with regard to the hole in that jacket, I believe your testimony, again, based on the presence of certain elements, is that you estimate that the firing had to occur within twenty inches, I think you said, correct me if I am wrong?

A. Twelve inches.

Q. Within twelve inches?

A. That is correct.

Q. So, again, whoever or wherever the gun was held with respect to that jacket, it had to be within twelve inches away like this?

A. The muzzle of the firearm had to be within twelve inches, yes.

Q. So that, number one, if the person was found on the ground or if the weapon was found on the ground and the person was standing up and a gun fired upward, it is more than twelve inches away; is that true?

MR. MCGILL: I have to object. It just depends on the individuals involved.

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It depends on where the gun was.

MR. JACKSON: Let's find out, if you don't mind.

THE WITNESS: Well, I would like to point out, of course, that the firearm we are talking about, the muzzle of the firearm -- I have a reach from my armpit to my hand. A firearm with a four inch barrel and another two inches for the cylinder weapon could very easily --

BY MR. JACKSON:

Q. I understand.

A. It accounts for that.

Q. However, that assumes that the weapon is in someone's hand.

A. I can only assume the muzzle to target distance.

Q. The muzzle to target distance?

A. The muzzle of the firearm was within one foot or less when discharged.

Q. There is no question at all in your mind

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about that?

A. None whatsoever, sir.

Q. Again, C-15, which is the green beret, you indicated that there was blood found on that; is that correct?

A. Yes, sir.

Q. And the blood type was "A"?

A. That is correct.

Q. You received other items of clothing from Mr. Jamal; is that correct, that were supposedly taken from Mr. Jamal?

A. Yes.

Q. The blood type on those clothing items was what type, sir?

A. On the red, white and blue sweat socks, the blood type was "A". On the blue polo shirt, the blood type was also type "A".

Q. The same or similar to the same blood that was found on that cap?

A. The same general blood group, that is correct.

Q. Did you take a look at that tam; did you look

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at C-15, sir, or could it be shown to him?

(At this point, Mr. Jackson took the tam out of the plastic bag and handed it to the witness.)

BY MR. JACKSON:

Q. Does that appear to be the tam that you examined?

A. Yes, sir.

Q. You found blood type "A" on that; is that correct?

A. Yes, sir.

We cut a more or less square hole out of it and that was the particular area where the blood stain was found.

Q. The same blood that was on the other clothing that was allegedly taken from Mr. Jamal; is that correct?

A. The same type, that is correct.

Q. Now, referring to the flashlight, if we could, sir, I guess that is, again, on property receipt 854972?

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A. That is correct.

Q. Before we get to the actual flashlight, could you explain something to me?

On all of the other property receipts relevant to your receiving information, you indicated receiving from police officers so and so; with regard to property receipt 854972, you indicate that the item was received from Detective Thomas, but item was taken from Police Officer Chin?

A. Yes.

Q. Why do you say that it was taken from?

A. Because I don't know what -- this is the information that was relayed to me through the property receipt and the evidence.

Q. Who prepared this little statement, this narrative?

A. Mr. McBride and myself.

Q. But the other --

A. The information given to us through Detective Thomas was that that was the case. Since we don't collect the evidence, we don't go to the scenes, we

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rely on the information of the people submitting it to us. That was the information given to us and we reflect that information.

Q. He told you that it was taken from Officer Chin?

A. That is correct.

Q. You received this on December 16th?

A. That is correct.

Q. You received the other items at or about the time of the shooting, December 9th, December 10th and December 11th; is that right?

A. That is correct, sir.

Q. Was there any explanation as to why that item, the flashlight, was received so much longer after this incident?

A. I have no idea. You would have to ask Detective Thomas.

Q. I will, sir. Were you told to examine or analyze this flashlight for anything in particular?

A. We were looking for the material that you

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would normally expect to find, blood, hair, any type of trace evidence that might be relevant to the investigation.

Q. Any fingerprints?

A. No, sir.

Q. Who makes the determination as to what you would evaluate this

evidence for?

A. I do.

Q. If a suggestion was made to you by Detective Thomas or someone, would you test it for that?

A. Sometimes.

Q. And sometimes you would ignore their request?

A. That is correct.

Q. Because it might be foolish or something like that?

MR. MCGILL: Objection, Your Honor.

BY MR. JACKSON:

Q. Well, why would you not follow their suggestions?

A. It might be, one, impossible; two, unproductive; or three, there might be some difference

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of opinion as to the value of a particular piece of evidence. We are trained to look for trace evidence, physical evidence. Detectives do not have extensive training.

Q. So, if I understand what you are saying, you can, in effect, overrule the suggestions of the assigned detective and make your own examinations or your own analyses or your own searches for evidence?

A. In most cases, that is correct.

Q. Does your unit collect trace evidence relevant to the neutron activation tests?

A. No, sir. That is the function of the Mobile Crime Detection Unit.

Q. That is their function to do that?

A. Yes. The detective division may ask for it through the Mobile Crime

Unit. We will often advise them as to whether or not that should or should not be done.

Q. In this case, sir, did you advise them as to whether or not that should or should not be done?

A. I wasn't asked.

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Q. No one asked you?

A. That is correct.

Q. Now, although the collection is done by -- the Mobile Crime Lab, who actually does their test? Is it done in Philadelphia?

A. No. sir. They usually give the kits to us and they forward them to the Federal Bureau of Investigation.

Q. As far as you know, no kit was given to you?

A. That is correct, sir.

Q. By the way, for the benefit of the jury, could you tell us what the neutron activation test is?

A. Basically, it is a way of looking for the residues of the discharge of a firearm. If an individual fires a handgun or a rifle, whatever, a certain amount of residue from the primer which we mentioned earlier also deposits itself upon the hand of the individual firing the weapon. There is a way, using a nuclear reactor, to make a determination as to whether or not what was present on the hand of the individual is consistent with the discharge of the

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firearm by that individual.

Q. How is this trace evidence collected?

A. Basically, it looks like a cotton swab and a five percent nitric acid

solution is placed on it, and it is wiped over the hands of the individual.

Q. How long would you expect that trace evidence to be present assuming a weapon had been fired by that individual?

A. In a living individual?

Q. Yes.

A. In a living individual who is not active, up to about four hours.

Q. What about an individual who is not living?

A. Depending upon whether or not any moisture is at the scene, it may last for many hours.

Q. When you say, "many hours," would that be in excess of ten hours?

A. That's possible.

Q. In excess of twenty hours?

A. Possibly a day would be more like it.

Q. Twenty-four hours?

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A. That is a good round number, twenty-four hours.

Q. Now, one other thing. Would your unit be responsible for trace metal detection?

A. What kind, sir?

Q. For whatever type of trace metal detection test would be conducted.

A. We did a trace metal detection test for lead.

Q. Forgive my ignorance, assuming that you want to determine whether or not, in fact, an individual held a weapon, it is my understanding that you can conduct what is called a trace metal detection test is that correct?

A. One can do that. There are many difficulties with the test, primarily in

that it is not very useful.

Q. Well, you are saying that it is not very useful.

A. No, I am saying that it doesn't give reliable results, uniformly reliable results. Many procedures are published in literature which work very well in the laboratory, but when you take them into the field, they

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don't work. That is one of the particular tests.

The problem with it is that once somebody has touched something, they don't walk around with their hands in the air or protected. The instant someone touches their trousers, wipes their hands, or starts to sweat, bleed, rubs their hands in their hair, immediately the test becomes invalid because of contamination. So, in cases where you have individuals who are active, in which you have a series of events which are fast moving, fast paced, the test becomes, for all intents and purposes, invalid. There is no way you can interpret any results that you get.

Q. Suppose a person is alleged to have a weapon in his hand and he is then inactive, unconscious?

A. Laying nowhere with no one around?

Q. No, just say that he is not going to wipe his hand; he is not going to move his hand; he is not active. He is not doing anything.

MR. MCGILL: I object to that.

THE COURT: I thought he explained it to you just a second ago.

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MR. JACKSON: He told me with regard to people who are active. I am asking him now about an inactive person.

THE COURT: He said if you hold your hands so that nothing touches them --

THE WITNESS: What do you mean by "inactive"?

BY MR. JACKSON:

Q. A person who is doing absolutely nothing with his hands at all.

THE COURT: Answer that.

THE WITNESS: Well, if a person was lying somewhere doing nothing with his hands protected from the environment in some fashion or another, there might be some residue there, yes.

BY MR. JACKSON:

Q. Have you conducted these trace metal detection tests on people's hands?

A. Not to any great extent.

Q. How many times have you done it?

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A. Three or four.

Q. When was the last time you did it, sir?

A. Several years ago.

Q. When was the last time you used or reviewed the trace metal detection test kit?

A. Several years ago.

Q. Have you been kept abreast, sir, of the new developments in the trace metal detection test within the last two years by Sirchie Manufacturing Company?

MR. MCGILL: I object to this. This is beyond the scope of the immediate testimony.

THE COURT: I will let him answer if he can.

MR. MCGILL: Yes, sir.

THE WITNESS: I am aware of the basic test. I am not aware, you know, of whether or not anything has basically changed. The test is inherently not a very good one and whether or not you profit on it doesn't change the inherent instability of the test,

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in my opinion. It doesn't work if you grab a piece of metal like this or put your hand on a car or touch a firearm or touch a person who has touched a firearm or if you put your hand on the clean city streets or whatever. The inherent concept behind the idea is very good if you are dealing in a laboratory situation or the classical locked room mystery where the body is found in a locked room with a firearm in its hand. The real world is much more complex. I would not like to do the test and have the fate of any individual depend upon the results of that test.

BY MR. JACKSON:

Q. Well, I will get back to that, whether or not you would want the fate of an individual to depend on it. Assuming we have the suitable conditions that you talked about, would it be able to determine if someone held a gun in his hand?

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Q. If a trace metal detection test is conducted upon a person who has held a gun in his hand, assuming that the person has not, for the moment at least, has not touched anybody, has not washed his hands, has not done any of those things that you previously described, would, in fact, the trace metal detection test give us a result showing that, indeed, the person had some metal, some weapon, some object, in his hand?

MR. MCGILL: I object to that. That is assuming facts which not only are not in evidence, but are almost impossible.

THE COURT: May I see you?

(At this point, there was a side bar conference with the Court, Mr. McGill and Mr. Jackson, which proceeded as follows:)

THE COURT: The reason I am concerned about this is because the factual

situation in this case is evidently that he did touch a lot of things.

MR. JACKSON: I am talking about

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Officer Faulkner.

MR. MCGILL: Even with the treatment that he had over there; they tried to save his life.

THE COURT: We don't know what they did in the hospital. They could have wiped him down before they operated. They could have done a lot of things.

MR. JACKSON: Your Honor, I understand that, but what my argument would be is that there are or may be a number of tests that could have been conducted to confirm one circumstance or another and they were not doing it.

THE COURT: However, the fact is that they did not do it and in his opinion he doesn't give much credence to it.

MR. JACKSON: I am going to get into that because he is wrong.

THE COURT: That is your opinion. He is giving his opinion.

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MR. JACKSON: I understand that. That is the reason for it. I wasn't talking about Mr. Jamal. I think I want to --

THE COURT: Even with the police officer, we don't know what happened. We know that people picked him up. We don't know whether they touched his hands or all of these things.

MR. JACKSON: I can bring in experts as well as literature --

THE COURT: However, the fact still remains that nobody took that test of this police officer.

MR. JACKSON: That is basically what I want to show.

THE COURT: It is admitted.

MR. JACKSON: Your Honor, the problem I have and the reason I asked Mr. McGill about it is because I am also trying to find out who is responsible for taking the test and the reason I wanted to

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ask him about it is because he has the expertise to explain what the trace metal detection test --

MR. MCGILL: That is true. He is the most expert of anybody.

THE COURT: And he has done that.

MR. JACKSON: However, he would not be the one, apparently, to conduct the test, obviously. It would be the Mobile Crime Lab or the assigned detective.

MR. MCGILL: No. The Mobile Crime Lab gets the swab.

MR. JACKSON: That's the neutron activation test.

THE COURT: You have to understand; here is a police officer shot. They rush him to the hospital. Do you think they are concerned about some kind of test to find out whether he fired a gun or not? They are trying to save his life, get him into the operating room. He dies. They take him

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to the morgue. He is over at the morgue. They are performing an autopsy. Nobody is thinking about taking a test about his hands because they just don't think about it.

MR. JACKSON: Your Honor, in all due respect, I understand that, but that is not my interest. In all due respect, in terms of how it relates to --

THE COURT: Mr. Jackson, the fact still remains that they took no such test. It doesn't make any difference. They did not take it in this case. So, what difference does it make? Do you want to argue to the jury that they

should have done it? Fine.

MR. JACKSON: Yes, I do want to argue about that and I want to lay the basis for it.

THE COURT: The fact remains that they didn't do it.

MR. JACKSON: And I want to call it sloppy police work and it is sloppy because

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he is accused of shooting a policeman.

MR. MCGILL: How much longer will you be?

MR. JACKSON: I'm almost done.

MR. MCGILL: If it is only a couple more questions, I won't object. On redirect, I will ask a couple of questions to clarify it. He was going to call him as his own witness for this so, in essence, I am trying to move the trial along. So, allow it in cross examination as long as it doesn't go for another --

MR. JACKSON: No.

(Conclusion of side bar conference.)

BY MR. JACKSON:

Q. If you had an individual touch a gun right now, I pick up a gun and I hold it for a few seconds or so, and you conduct a trace metal detection test, it would show that I held a metal object or gun or weapon: is that right?

A. Not necessarily.

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Q. Why not, sir?

A. It would depend upon the metal present in the frame of the weapon,

whether or not there was oil on the weapon. It would depend on the condition of your hands to start with.

Q. Are you familiar with the Sirchie (ph) Metal Detection Test Kit?

A. Not the way you described it, no, sir.

Q. The trace metal detection kit that is manufactured, I guess, or produced or something -- I know that Sirchie Incorporated (ph) is one, the name of a manufacturer.

A. Yes, sir.

Q. Are you familiar with the kit that they put out?

A. No. I am familiar with some of the older things that were done. I'm not sure that I am familiar with their new kit.

Q. So, when you test --

A. I have not seen their catalog recently.

Q. So, when you are testifying with regard to

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your understanding of the reliability of the test, you are basing it primarily on, number one, your three experiences of conducting it in the past, the last time being one year, as well as the general information that you know; is that correct, sir?

A. Well, I am basing my opinion upon the nature of the test itself. It is very nice to market a kit to do anything. The tests, I believe, are meant to be presumptive tests and my understanding of the Sirchie Company (ph) is that the test kits they sell are meant to be presumptive tests. They are not meant to be all inclusive or to be certain tests. They are meant to be investigative aids or an indication of something.

Q. They would confirm --

A. No, sir, it would be an investigative aid. It would be an indication of something. That is a bit different than talking about something scientific or practically certain.

Q. It would be an indication of what, sir?

A. If it was a positive test, it would be an indication that the individual held a metal object of

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a particular characteristic.

Q. Since you are saying that that is the nature of the test, could you tell us what the Sirchie (ph) test that you are unfamiliar with would produce? How is it that you can tell us what this Sirchie (ph) kit will produce without being familiar with the kit itself? I am not criticizing you. I just don't know.

A. The philosophy behind it, according to an L.E.A.A. publication, is to show whether or not an individual held a particular metal object in his hand. The problem is that metal is a very common part of our life and the more common something becomes, the less valuable it becomes as evidence or at least valuable as an indication of evidence.

The philosophy behind it -- I can't speak for the philosophy of the Sirchie Company, but I can understand, I can speak of what appears to me to be the philosophy behind it, which is that it is an investigative aid. If you have a given set of circumstances, for example, a person sweating over a bar, trying to open a window, then there is maybe a

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good chance that after two or three minutes of hard physical contact that there will be some metal residue present on an individual's hand to describe or to help describe whether or not that individual had opened a window. To me, it seems that if the individual was working that hard in that particular set of circumstances that there would be other types of evidence which would be more unequivocal to prove that set of events. To me, the detection of metal and residues on the hand does not lead to any useful information, whether or not it is positive or negative.

Q. To you?

A. Well, I perform the tests, sir; so, I have to use my basis.

Q. However, you are not responsible for the investigation; in other words, you are saying that it would not be useful to you, as an example in this case, whether or not Officer Faulkner had a gun, would it?

MR. MCGILL: Objection. That is not what he said.

MR. JACKSON: I don't think so.

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He is testifying --

THE COURT: Don't argue.

MR. JACKSON: Fine.

THE WITNESS: To answer your question --

MR. MCGILL: I would object, Your Honor, and I ask for a ruling.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. You are saying, if I understand you correctly, sir, that you are not interested in the value of the test. Tell me what you said because --

A. Okay. If I wanted to determine whether or not Officer Faulkner had a gun, there would be other ways to do that.

Q. Such as?

MR. MCGILL: I would object to that, sir. I think it is definitely beyond what we immediately got involved in and what was done or what wasn't done.

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MR. JACKSON: I can bring that back in at a later date. It is just whether he wants me to do it now or later.

THE COURT: Just ask the question.

BY MR. JACKSON:

Q. What other ways, sir?

A. If the question were to arise, we would have certain descriptions of his clothing. We would have, certainly, other investigative aids through the detective division to explain, since he was issued a firearm, where that firearm might be. We would then have an examination of the firearm, for example, to determine whether or not there was a presence of paint, for example, blue carbon, which is what the police vehicles are painted with. We would then check the revolver to see whether or not any of that was present on there which would indicate that it was in a police vehicle. We would then look at the firearm to check whether there were fibers present from his clothing, paint chips present from his home. There would be a number of other avenues of investigation which we would

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have used to determine that fact.

Q. Maybe you misunderstood me.

In order to determine whether Officer Faulkner held a gun on December the 9th, what I want to know is what test you would perform in order to make that determination.

A. There is no test nor could there ever be any test short of having a photograph, an eyewitness or some other event of recording visually, perhaps, what went on.

Q. So, you are saying that the trace metal detection test would not provide you with that information?

A. It would never provide it, whether it was positive or negative.

Q. The test resulted in a showing that, indeed, the officer held some metal object; would that not be some indication --

A. It would not prove unequivocally, which is what you are asking here.

Q. You are not letting me finish my question, sir.

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Would that not be some indication that he held some heavy metal object or some metal object?

A. Yes.

Q. So, you indicate that it would be an investigative aid; that would certainly provide us with some additional information in making the determination that we have to make; isn't that true?

A. It would provide information; whether it would be full information or not is another question.

Q. I understand that it is not useful to you. Now, isn't it a fact that under normal circumstances when one holds a metal object you could expect to receive or obtain the results up to thirty-six hours, normally?

A. It would depend.

Q. Well, you referred to this L.E.A.A. publication of trace metal detection tests and they have a series of tables and charts and graphs in there. It is my understanding, and you can correct me if I am wrong, but there was an indication that this trace

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metal detection test could be taken up to as long as three days, but the average is thirty-six hours that you could take this test and get results.

A. Under laboratory conditions, yes. You could probably go longer than that under laboratory conditions.

Q. Well, they were obviously not laboratory conditions in that there was a range of time that the trace metal detection test could be used. If they were all under laboratory conditions, I would assume touching the same object, they would all come out to the same time.

A. That is a big assumption, sir.

Q. I realize that. Why would you assume that it is under laboratory

conditions?

MR. MCGILL: I object to anything further. It is very much beyond.

BY MR. JACKSON:

Q. Do you know if it was under laboratory conditions, then?

A. I don't know if it wasn't. I would have to

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be certain of my results. I can't sit here and make assumptions about that.

Q. I understand that. I am just trying to clarify it so that we fundamentally understand the value or, in your view, the lack of value of the trace metal detection test.

Moving along, sir, you indicate that if, in fact, someone had a metal object and he rubbed it on his hand, that would have an impact on the test?

A. It might, yes.

Q. What do you mean when you say, "It might"?

A. You don't know. The problem with this type of evidence that you are describing is that there is no control over what happened. If I were to rub a metal object and place my hand here, the amount of time-- that detection might go on for quite some time. If I shook hands with another individual, it may or may not, depending upon the porosity of the other person's hand, whether he was sweating, whether I was sweating, anyone of a variety of circumstances, it may or may not be

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transferred. There are too many variables. The purpose of science is to remove as many variables as possible to make a certain "judgment" or opinion. When you have a phenomena, when there are so many variables, none of which can be controlled, you have to be very selective and very sure of what you are doing in order to be able to draw a valid conclusion from the results.

Q. Doctor Tumosa, again, you can correct me if I am wrong, I just tried to read up on this book, I guess, for the second or third time, the same L.E.A.A. publication you have talked about and they gave various examples of what impact certain activities would have on this test. One of the indications was that an individual who held a gun or a weapon or a heavy metal object that, indeed, even if that individual washed his hands, it would have no appreciable impact on the test. You are telling me that if you shook somebody's hand that that would have an appreciable impact on it.

A. It may or may not.

Q. It may or may not?

A. You don't know. I don't think anyone knows.

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Q. So, you are saying, in effect, that what this publication suggests, and I am not going to say they said it explicitly, I don't remember the words, but when they suggested that washing the hands has no substantial or appreciable impact on the results of the test, you are saying that they don't really know?

MR. MCGILL: I have to object. First of all, we don't have a copy of this thing.

MR. JACKSON: I can get a copy.

THE COURT: If he understands, let him answer.

BY MR. JACKSON:

Q. Do you understand my question, sir?

A. I think I can make a statement that at least will clarify my position.

Q. If you could, answer my question. Unfortunately, you are not permitted to just make statements. You have to answer my question.

A. I know, counselor.

Q. Answer my question.

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A. I think the statement will answer your question which is that there is a difference between a laboratory study and a publication, a publication and the real world. The events which occurred that night which we are trying to shed light on is a real world event. A laboratory study financed by L.E.A.A. is not the real world.

Q. I understand that.

A. So, the statements in the L.E.A.A. publication are not reflective of the real world. They are reflective of a study from that study, the implication then being that there may be at some time some impact upon the real world.

Q. So that I can address your suggestion, the results were not the results taken from a number of F.B.I. cases, were they?

MR. MCGILL: I object to anything further.

MR. JACKSON: Your Honor, he is saying that it is just laboratory work and I want to show that it wasn't, that they were

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all actual cases.

MR. MCGILL: Objection.

THE COURT: I will see counsel at side bar.

(At this point, there was a side bar conference with the Court, Mr. McGill and Mr. Jackson which proceeded as follows:)

THE COURT: Mr. Jackson, I feel that I let you go far enough. This is going into an argument section here. You have to be practical.

MR. JACKSON: I know.

THE COURT: This officer held a flashlight in his hand, evidently, maybe even used it. I don't know what he did. He might have touched his gun numerous times that night. So, even if they had taken it, it probably would

have come out positive, but it wouldn't be proof, as he says, it would not be conclusive proof that he had the gun that shot the defendant.

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MR. JACKSON: However, Your Honor if it came out negative -- also, he is wrong with regard to this trace metal detection test, but --

THE COURT: You are going to have to get somebody else in here. You get your expert.

MR. JACKSON: Alright.

THE COURT: Whether he is right or wrong isn't going to resolve this case at all because the simple fact is that nobody made this test. So, what difference does it make? We are just going to stand here and argue all day about this and we are not really getting anyplace.

MR. JACKSON: Fine, sir.

THE COURT: It doesn't mean anything in this case.

MR. MCGILL: I have some questions on redirect since it has been brought out to a certain degree and I haven't touched upon it.

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MR. JACKSON: Maybe it shouldn't be continued at all.

MR. MCGILL: No, not at all. You are not going to drop fifteen minutes of questioning without responses.

THE COURT: This is stupid. It has nothing to do with this case.

MR. JACKSON: I understand your position.

THE COURT: My position is that it wasn't done. Whether it was somebody's fault or not, it has nothing to do with this case.

MR. JACKSON: I am not so sure.

THE COURT: It is strictly conjecture as to what the outcome would be.

MR. JACKSON: That may be conjecture--

THE COURT: There is so much other evidence in the case.

MR. JACKSON: I understand that and it is the evidence that is not here which seems to be beneficial to the defendant and

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that is what I am pursuing.

THE COURT: There isn't any. The only evidence is the three people there, Mr. Cook, his brother, the defendant, and the police officer. Let's not argue at this time.

MR. JACKSON: Alright.

(Conclusion of side bar conference.)

BY MR. JACKSON:

Q. Doctor Tumosa, we are going to leave the trace metal detection test until a later time, perhaps. Let me just finish up with just one other matter, sir. Referring to page four of your report and property receipt number 850640, could you read that to us, sir?

A. Property receipt number 850640, the notation being that items were removed from a 1966 Volkswagen. PA11675T: item number one, two saline swabs stained with human blood, type which could not be determined. Item two, a piece of blue seat cover from the driver's side. Item three, piece of blue seat cover from the passenger's

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side. Item four, sweepings from the left side floor. Item five, sweepings from the right side floor. No blood was detected on items two through five.

MR. JACKSON: Your Honor, there would be a stipulation at this time by and between counsel that Sergeant Cameron, if he were called to testify, would indicate that item number one containing the blood was found on

the right front fender of the Volkswagen five inches from the hood and one foot, eleven inches from the front right door of the 1966 Volkswagen.

THE COURT: Once again, ladies and gentlemen, I told you that you could only take as evidence that which we hear from this witness stand. When there is a stipulation between the attorneys, you can take that as a fact.

BY MR. JACKSON:

Q. You did test these other items, numbers two through five, for blood: is that right?

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A. That is correct.

Q. You found none?

A. Right.

Q. Again, were you specifically asked to test for blood or did you simply make the decision to check for blood?

MR. MCGILL: Objection.

THE COURT: Go ahead.

THE WITNESS: I don't recall, Your Honor, to be honest.

MR. JACKSON: I have no further questions at this time.

(REDIRECT EXAMINATION)

BY MR. MCGILL:

Q. Doctor, in reference to primer lead and nitrates, when there are primer lead deposit residues on a garment as you have indicated in your report through your examinations, and no nitrates are present, what would be the reason for that?

A. Well, there would be a number of reasons. Usually when we find that to occur, we find that some

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kind of agitation occurred to the items that we had looked at. I mentioned earlier -- you can think of the nitrates as being rather large objects. When they hit something, they sort of set on the surface. They are not small. They don't defuse into the fabric. They are sitting on the surface. So, if one agitated the item, one could remove them. They could fall off or brush off while the primer lead, because it is a fine mist, is actually embedded very much into the fibers of the item.

Q. Whether it be the hand brushing or the clothing falling down or maybe somebody brushing it or pulling it off, would that remove nitrates?

A. They could wash off with blood, or be brushed off in some fashion or another. It could be shaken off. If it is very generally held on to the surface, it could be shaken off.

Q. However, when there is the presence of primer lead, you said that it is not easily shaken off?

A. No. You have to do something to the fabric to remove that.

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Q. There is no question in your mind that where there is presence of primer lead there is an indication of a close range type of gunshot that you have determined is within twelve inches?

A. That is correct.

Q. Also, would you tend to have the existence of lead more on an entrance hole rather than an exit hole?

A. Normally you see it more on entrances holes than exits.

Q. You have discussed at some length questions with Mr. Jackson in reference to those two tests. I am going to ask you a few questions in relation to the neutron activation test and the trace metal detection test. You have already mentioned what would easily contaminate the surface for the trace metal detection test. What would contaminate the surface for the neutron activation test?

A. Again, it is a surface phenomena. Anything on the surface of one's hand can easily be removed. At least a majority of the time it can be removed.

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Tumosa - Cross

Q. You are saying, for example, that the surface of one's hand can be easily removed by holding his hands and putting them against blood, a portion of his own body, feeling around to where blood is or something would that have some effect?

A. Any activity, the wiping of one's hands on any item, would tend to remove the gun powder residues. If the item was wet, it would aid it more.

Q. I am talking about external, if I could use the word, stimuli that even beyond the fact of what is normally present in the individual's hand, did you not say also that if the hand didn't touch anything at all, the fact that there might be perspiration or a concentration in the hand also may not be good for testing purposes?

MR. JACKSON: Objection. Which test is he talking about. The Doctor specifically responded to the trace metal detection test at that time, sir.

MR. MCGILL: Well, he talked about

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Tumosa - Cross

both tests on cross examination. I am referring to either test.

MR. JACKSON: Fine.

THE WITNESS: The common sense approach -- if you dilute something with water, whether it be sweat or blood or whatever, obviously the chances of finding what you want become less.

BY MR. MCGILL:

Q. So, if you start with perspiration or if you start with some kind of reaction or phenomena in your hands, if you add on to that touching a blooded area, a bleeding area, that would affect the results?

MR. JACKSON: Objection. That is a hypothetical, Your Honor.

MR. MCGILL: Those are facts in evidence, sir. Those are in evidence.

THE COURT: I will take it. Go ahead.

THE WITNESS: Yes. That would certainly tend to decrease the probability of

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Tumosa - Cross

finding something.

BY MR. MCGILL:

Q. What if you have physical contact with an individual, whether it be moving around or flashing your arms so that your hands are hitting things, hitting parts of your own self, the ground, the Volkswagen fender, the street, anything at all, would this also have an effect on you?

A. Any contact with any other object will dilute the possibility of finding what you are looking for.

Q. What about if your hands are behind you and your hands may be together and may be touching parts of your clothing as you are walking to the hospital for treatment, would this have an effect?

A. It could have.

Q. How about if you are in the hospital itself and you are being treated, being cleaned and washed off by the nurses or medical aides?

MR. JACKSON: Objection, Your Honor.

BY MR. MCGILL:

Q. What about that?

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Tumosa - Cross

MR. JACKSON: Objection.

THE COURT: I think he has already answered your hypothetical. Go

ahead.

THE WITNESS: Yes. It would have some effect, obviously.

BY MR. MCGILL:

Q. That would be true, would it not, also, sir, for whether an individual dies or whether an individual is still living; any kind of treatment that would be done, any kind of action that would be performed for the purposes of treatment may well in some way affect the results of that?

A. Any contact of any kind would, short of coming in contact with other firearm residues, would decrease the chance of finding the residue.

Q. If you combined all of those and they were just four or five things that I mentioned to you, if you combined all of those as actual instances that had occurred, would that not make highly unlikely any kind of results of that test as being accurate?

MR.JACKSON: Objection.

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THE COURT: Let him answer.

THE WITNESS: Yes, it would.

BY MR. MCGILL:

Q. As a matter of fact, you were asked by Mr. Jackson specifically about laboratory conditions where you have a gun in the hand and the gun is taken away from the hand and perhaps some kind of test is performed at that point; however, what if you are not that interested in determining whether somebody has something on his hand, if the men are either dying or seriously injured and you want to take both of them to the hospital for treatment, are you concerned at that point --

MR. JACKSON: Objection, Your Honor.

THE COURT: I sustain the objection.

MR MCGILL: I have nothing further.

(RE-CROSS EXAMINATION)

BY MR. JACKSON:

Q. Doctor, notwithstanding all of those factors that may affect the test, you can't say that they would eliminate the detection, would you?

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Tumosa - Cross

A. Well, the purpose of doing a test is to have a reasonable expectation that you will get information from doing the test. The tests are not something one can do without some discomfort to the individual involved. If you had, hypothetically, two individuals in an emergency room, to take the hands of the individuals while they are being treated for gunshot wounds and display their hands with chemical agents and put ultraviolet light on them, I think this would be disruptive to emergency room procedures.

Q. However, would you answer my question now that you told us that, sir.

A. I thought I answered your question.

Q. The question was, notwithstanding all of those circumstances, the rubbing of the hands, and anything else you might imagine, could you say that that would eliminate the possibility of detecting whether or not, in fact, a person had held a weapon?

A. Given those circumstances, the best of circumstances which you just described in your question, sir, given those, I would not perform the test. I would

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Tumosa - Cross

not think that there would be any reasonable or practical certainty to the information given.

Q. We can understand why you wouldn't conduct the test.

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. What about with regard to the neutron activation test?

MR. MCGILL: I object.

BY MR. JACKSON:

Q. I talked about the trace metal detection test in the last question. This is the neutron activation test that I am talking about.

A. I do not think there would be a reasonable chance for finding any information.

Q. Why is that, sir, if you don't know what happened?

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Do you know for certain whether the hands of Mr. Jamal, the hands of Officer Faulkner were washed?

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Tumosa - Cross

MR. MCGILL: I object. It is a hypothetical fact.

MR. JACKSON: I withdraw the questions, Your Honor.

BY MR. JACKSON:

Q. Before Doctor Tumosa leaves the stand, I would like to refer him to the first page of the lab report, receipt number 854919 and ask him to read that, please.

A. 8549191

Q. Yes, sir.

A. The notation being that "Items were removed from William Cook: Item number one, blue long sleeved sweatshirt, human blood present at collar area. Item number two is a dark navy blue three-quarter length navy sail coat with silver colored buttons with human blood on the left shoulder area and upper left arm area. Item number three, multi-colored long sleeved shirt stained with human type "A" blood at the collar area."

Q. Doctor, just a couple of questions with regard to the shirt, item number one.

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Tumosa - Cross

Was there any determination as to the blood type?

A. No, sir.

Q. Was a test conducted and they just could not determine it, or just what do you know?

A. I don't believe it was tested for blood types, sir.

Q. Would that be the same for item number two?

A. That is correct.

MR. JACKSON: I have no further questions.

MR. MCGILL: Thank you, Doctor. Does the Court have any questions?

THE COURT: No. Doctor, you may step down. Do you want to break for lunch until a quarter to two?

MR. MCGILL: That would be fine.

MR. JACKSON: Yes.

(Whereupon a luncheon break was taken at 12:20 p.m. . .)

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(Whereupon court reconvened at 2:05 p.m.)

MR. MCGILL: May I proceed?

THE COURT: Yes.

MR. MCGILL: I recall Police Officer James Forbes.

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JAMES FORBES, having been duly sworn, was examined and testified as

follows:

THE CRIER: State your full name and badge number for the record, please, and spell your last name.

THE WITNESS: James Forbes, F-O-R-B-E-S, badge number 9881.

(DIRECT EXAMINATION)

BY MR. MCGILL:

Q. You are still under oath, sir. I recalled you for a specific purpose. Regarding the date of December 9, 1981, do you recall testifying about that?

A. Yes, sir, I do.

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Forbes - Direct

Q. In reference to that, after you arrived at the scene, did you have occasion to observe, other than the two weapons, any other piece of evidence or any other thing at that time, whether or not you thought it was evidence, did you observe any other --

A. Yes, I did.

Q. What was that?

A. It was a flashlight.

MR. MCGILL: May I approach with this, Your Honor?

THE COURT: Yes.

BY MR. MCGILL:

Q. Where did you see this other item, the flashlight, as you said?

A. The flashlight was laying in the street just off the curb about a foot west of where I picked up Officer Faulkner's gun.

Q. Maybe we can use this, C-3.

(Mr. McGill showing the item to the witness.)

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Forbes - Direct

BY MR. MCGILL:

Q. I am showing you a black marker here. Would you indicate where the flashlight was? Just put a big "F.L." where the flashlight was.

A. (Witness marking picture.)

Q. Would you also circle that, please?

A. (Witness marking photograph.)

(At this time, Mr. McGill showed the photograph to the jurors.)

BY MR. MCGILL:

Q. Did you tell the police that in a statement?

A. Yes, I did.

Q. Were you asked later to identify the flashlight anywhere?

A. Yes, I believe I was asked on the 16th at 8th and Race.

MR. MCGILL: Let me mark this, then, as exhibit C-61. Mark that and show that to Defense counsel and the Judge.

(At this point, the flashlight was marked as exhibit C-61 and was shown to Defense counsel and the Judge.)

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Forbes - Direct

BY MR. MCGILL:

Q. Would you take a look at C-61?

A. Yes.

(Witness examining flashlight.)

BY MR. MCGILL:

Q. You have seen that before?

A. Yes.

Q. Could you identify C-61?

A. I can identify it as being the one or like the one that was laying on the street.

Q. Did you do anything with it or just leave it there?

A. I left it there.

MR. MCGILL: Cross examine.

(CROSS EXAMINATION)

BY MR. JACKSON:

Q. Officer Forbes, you gave a statement to the police about this flashlight?

A. That is correct.

Q. When did you give a statement with regard to

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Forbes - Cross

this?

A. I believe it was on the 16th of December.

Q. Do you know to whom it was that you gave a statement?

A. I'm not sure. I believe it was Detective Thomas.

Q. You originally gave a statement to a detective on December 9th; is that right?

A. That's right.

Q. In that statement, you never mentioned the flashlight, did you?

A. No, I did not.

Q. When you saw the flashlight after December 9th, assuming that it is the same one for a moment, after you saw the flashlight on December the 9th, when was the very next time you saw the flashlight?

A. I believe it was the 16th of December.

Q. Who had the flashlight at that time?

A. I don't know whose possession it was in. It was up in the Chem Lab.

Q. You were asked to go and take a look at it?

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Forbes - Cross

A. Yes.

Q. Did they tell you how long they had it?

A. No.

Q. Did they tell you from whom they received it?

A. No.

MR. MCGILL: Objection. It is all hearsay.

BY MR.JACKSON:

Q. By the way, is there any way that you can determine that, indeed, that is the very same flashlight you saw that night?

A. Not the very same, but it is like it in its length and color.

Q. Did you examine that flashlight on the 9th?

A. No. I didn't.

Q. Based on your previous indications of where the guns were found, it was closest to what gun?

A. Officer Faulkner's.

Q. In fact, how close was it?

A. Approximately a foot west of where the gun was laying.

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Forbes - Cross

Q. Officer Faulkner's gun was in the street, too?

A. That's correct.

Q. It was along side the Volkswagen or something within the length of the Volkswagen, but near the curb; is that right?

A. That's correct.

Q. How long did you estimate the length of that flashlight to be?

A. When?

Q. Right now. Well, is it about the same length as it was on the 9th?

A. That's correct.

Q. Although we have seen it, could you estimate the length for us for the record?

A. Approximately eighteen inches.

Q. Had you ever seen that flashlight before December 9th?

A. No, I hadn't.

Q. By the way, did you see a camera that night?

A. No. I did not.

Q. Officer Forbes, if I can just take you to

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Forbes - Cross

another incident regarding when you arrived, when you arrived along with your partner, I believe there was another man at the scene other than the people who have been identified as Mr. Jamal and Mr. Cook and Officer Faulkner; is that correct?

A. That is correct.

MR. MCGILL: Objection as to who was at the scene at what point. I mean, everybody started walking over afterwards.

MR. JACKSON: Let me get into it this way.

BY MR. JACKSON:

Q. After you arrived, I am not going to take you through the testimony you have already given, at some point in time, upon your arrival, you saw a white male very near the scene or at the scene; is that correct?

A. He was approaching the scene, yes.

Q. When you say that he was approaching it, wasn't he, in fact, on the same sidewalk where Officer Faulkner was?

A. Yes.

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Forbes - Cross

Q. How close did you see this man to Officer Faulkner?

A. Well, I was there. He came down from the corner of 13th Street and he got, I would say, three to five feet away from the Officer's feet. That is when I turned around and sent him back to the corner.

Q. Did you know, in fact, where he came from?

A. He came in the direction of 13th Street.

Q. So, you don't know if, in fact, he came from 13th Street or anywhere else, just from that general direction; is that right?

A. From just about the corner; I know he wasn't very close to us.

Q. You watched him come from the corner?

A. I did not watch him. I could see him out of the corner of my eye. He was approaching.

Q. At the time he was approaching as you indicated, what were you doing at that time?

A. That is when I had my eyes trained on William Cook.

Q. You had your eyes trained on William Cook?

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Forbes - Cross

A. Yes.

Q. Did you then have the two weapons in your hand?

A. No.

Q. So, you were close to William Cook at that point as well?

A. I was about at the curb line. I was approaching William Cook.

Q. So, that was before you even went over to him and came back and got the gun? Let me put it this way. It was almost immediately upon your arrival at the scene?

A. Yes.

Q. No one else had come that close to Officer Faulkner while you were there; is that right, other than police officers?

A. And Mr. Cook.

Q. And Mr. Cook? No one else?

A. No.

Q. No other bystanders that you saw?

A. No one came that close, no.

Q. Could you describe this man for us?

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Forbes - Cross

A. I would say he was in his late fifties. He appeared to be over six feet tall. He was extremely intoxicated and he was wearing a white or a tan trench coat. I believe he was balding, also.

Q. He had no hat on, then, right?

A. No.

Q. You say that he was extremely intoxicated. How could you tell that, sir?

A. He was staggering down the sidewalk.

Q. How would you know that that was a result of intoxication as --

A. He spoke incoherently.

Q. What did he say?

A. I couldn't understand it.

Q. How do you know that it was incoherent?

MR. MCGILL: Objection. That is the definition of incoherent.

THE COURT: Sustained.

BY MR. JACKSON:

Q. You didn't understand what he said; is that right?

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Forbes - Cross

A. That is true.

Q. How close did you get to him?

A. About a foot.

Q. You came within one foot of him and he came within three feet, I

believe you said, of Officer Faulkner; is that correct?

A. Yes.

Q. How close did he ever get to Mr. Jamal?

A. Around six to eight feet.

Q. And you never saw him again, did you?

A. No, I did not.

Q. You did not get his name or address or anything of that sort?

A. No. I did not.

Q. As far as you know, did any of your fellow officers get his name or address?

A. No, as far as I know.

Q. As far as you know, did anyone interview him?

A. No.

Q. Have you ever seen a statement from him?

A. No.

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Forbes - Cross

Q. He had something with him, did he not?

A. Yes.

Q. I believe you indicated at some point that he had a beer with him; is that right?

A. He had a brown paper bag that looked like there was a six pack in it.

Q. However, you don't know what was in the bag?

A. No.

Q. However, it was a weighty bag, was it not?

A. Yes.

Q. However, you did not ask to examine the bag, did you?

A. No.

Q. Do you know if anyone ever obtained that bag?

A. No.

Q. Do you know if anyone ever examined the bag?

A. No.

MR.JACKSON: I have no further questions.

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Forbes - Redirect

(REDIRECT EXAMINATION)

BY MR. MCGILL:

Q. Officer, you also told the police that in your statement?

A. Yes.

Q. Let me see if I can get the description straight. What was the description?

A. He was somewhere over six feet, a white male, in his middle to late fifties, balding, and he had a white or a tan trench coat on.

Q. He was intoxicated?

A. Extremely.

Q. The witnesses that have been called for the Commonwealth for this trial, Robert Shelbert (ph), Albert Majilton (ph), Michael Scallion (ph), you have seen them?

A. Yes, I have.

Q. They are not that person, are they?

A. No, they are not.

MR. MCGILL: Let me ask that this

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Forbes - Redirect

be marked as exhibit C-62. This is the statement of December 16th of Officer Forbes.

(At this point, the statement was marked as exhibit C-62.)

MR. MCGILL: May I approach the witness, Your Honor?

THE COURT: Go ahead.

BY MR. MCGILL:

Q. Is this your statement?

A. Yes, it is.

Q. I am going to refer you to page four. Does that essentially make any statement in relation to the flashlight?

A. Yes.

Q. And page seven, read that to yourself. Does that essentially reflect the information regarding the man, the older man?

A. Yes, it does.

Q. You got him out of the way because he was in the way?

A. Yes, he was --

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Forbes - Redirect

MR. JACKSON: Objection. I withdraw the objection.

THE WITNESS: He was approaching the crime scene and I still had my

eyes trained on Mr. Cook. So, I didn't know who was approaching from my right side.

BY MR. MCGILL:

Q. You didn't mention anything about the flashlight on the first day. Why didn't you say anything about the flashlight the first time you saw it?

MR. JACKSON: Objection.

THE COURT: Go ahead.

THE WITNESS: I didn't know it was missing.

BY MR. MCGILL:

Q. Excuse me?

A. I didn't know that the flashlight was missing.

Q. What do you mean "missing"? I don't understand. The question was why you mentioned it on December 16th and why you didn't mention it on December 9th.

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Forbes - Redirect

A. As far as I knew, the flashlight was left there as part of the evidence of the crime scene.

Q. That is what you meant by "missing." I understand.

Thank you.

By the way, is that standard issue, that type of flashlight?

A. No, but most officers purchase it on their own.

Q. Do you know whether Officer Faulkner carried one or if you don't know --

A. I don't really know.

MR. MCGILL: I have nothing further, Your Honor.

MR. JACKSON: I have just a couple of questions.

(RE-CROSS EXAMINATION)

BY MR. JACKSON:

Q. You didn't know the flashlight was missing; is that right?

A. That is correct.

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Forbes - Recross

Q. Who told you that it was, in fact, missing?

MR. MCGILL: Objection. It is hearsay. It is irrelevant or inadmissible.

MR. JACKSON: He is the one who said it was missing.

THE COURT: I see that you are misinterpreting something.

As I understood, he explained what he meant by missing. He thought it was left there because it was part of the crime scene. In other words, he didn't pick it up. So --

MR. JACKSON: I understand.

THE COURT: However, now he is saying that it was missing. That is what he said he meant by missing when he answered his question. He said he thought it remained there because it was a part of the crime scene and somebody would pick it up, not him.

MR. JACKSON: However, there is no indication that anyone --

THE COURT: You can call that

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Forbes - Recross

Officer Chin or whatever her name is.

MR. MCGILL: I will make her available. That is no problem.

THE COURT: That is the one to ask. He said that he assumed it was part

of the crime scene and that somebody was going to take care of it.

MR. JACKSON: Alright.

BY MR. JACKSON:

Q. Officer Forbes, other than the flashlight, were there other items that you saw at the scene?

A. There was a green hat. I saw a green hat at the scene. It was laying near a utility pole, I believe.

Q. Is there anything else that you can recall?

A. Not that I can recall.

Q. It is my understanding that the only reason you picked up the guns is because, well, you just picked up the guns; you didn't touch any of the other evidence is that right?

A. That is correct.

MR. JACKSON: I have no further

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questions.

MR. MCGILL: Does the Court have any questions?

THE COURT: No.

MR. MCGILL: Thank you, Officer Forbes. I will now call Detective Thomas.

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WILLIAM THOMAS, having duly been sworn, was examined and testified as follows:

THE CRIER: State your name and division and spell your last name, please.

THE WITNESS: Detective William Thomas, badge number 744, Homicide Division; T-H-O-M-A-S.

(DIRECT EXAMINATION)

BY MR. MCGILL:

Q. Detective, you are the assigned detective in this case?

A. Yes, sir.

MR. MCGILL: May I approach witness?

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Thomas - Direct

THE COURT: Yes.

BY MR. MCGILL:

Q. I am showing you what has been marked, and I am really limiting my areas to two specific areas, Your Honor, I am showing you what has been marked as C-59. Would you take a look at C-59?

A. Yes.

Q. Can you identify what C-59 is or who C-59 represents?

A. Yes. That is a photo of Mumia Abu-Jamal.

Q. Is he in this courtroom?

A. Yes, he is, the gentleman sitting next to Mr. Anthony Jackson.

Q. He has been sitting in this courtroom as part of these proceedings for the last three weeks?

A. Yes, sir.

Q. In approximately the same spot and approximately the same chair?

A. That is correct.

Q. Detective, did you have occasion on December 9, 1981, to arrange to have photographs taken of William

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Thomas - Direct

Cook?

A. Yes, sir, I did.

Q. I am showing you what has been marked as exhibit D-11 and exhibit C-21, C-31, C-32, C-33 and C-34. Will you take a look at those items, please?

A. (Witness examining the photographs.)

Q. Have you reviewed those exhibits?

A. Yes, sir.

Q. Can you identify them?

A. Yes, sir. These are the photographs taken of Mr. William Cook on December 9, 1981.

Q. Do they show any injuries of Mr. Cook?

A. Yes. They show a cut behind the left ear.

Q. You also observed Mr. Cook, didn't you, at close range?

A. Yes, sir, I did.

Q. Did you observe, other than that cut, any other injuries?

A. No, sir, I didn't.

Q. Did Mr. Cook make any complaints about any other injuries?

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Thomas - Direct

MR. JACKSON: Objection.

BY MR. MCGILL:

Q. To you.

MR. JACKSON: Objection.

THE COURT: Overruled.

THE WITNESS: No, sir, he didn't.

BY MR. MCGILL:

Q. As a matter of fact, did he ever make a complaint regarding that injury?

A. No, sir. I asked him did he want to be treated for it and he said no.

MR. MCGILL: May I see Your Honor at side bar very briefly with Mr. Jackson? We may not need the stenographer.

(At this point, there was a side bar conference with the Court, Mr. McGill and Mr. Jackson after which the proceedings continued as follows:)

MR. MCGILL: Cross examine.

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Thomas - Cross

(CROSS EXAMINATION)

BY MR. JACKSON:

Q. Detective Thomas, you, actually saw William Cook on December 9th, didn't you?

A. Yes, sir, I did.

Q. Approximately how tall was he?

A. From my recollection, counsel, I believe William Cook was about five feet nine, five ten, five foot nine or five foot ten.

Q. What was his weight, approximately?

A. I would say, maybe, 160.

Q. When you saw him, he was already in the Homicide Division?

A. Yes. sir.

Q. I note that the photographs were taken with no clothing from the waist up. Did you see the removal of his clothing? Did you see him before his clothing was removed?

A. I believe when I first observed him, I believe his jacket may have been behind him on the chair, that he was sitting on, but I am not sure. But he had his

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Thomas - Cross

clothes on when I first observed him.

Q. Did he have a hat on?

A. Yes.

Q. What color?

A. I don't recall the color, to be honest with you. It was a dark colored hat. It was, like, a beret. It covered most of his hair.

MR. JACKSON: May I see the photographs, please?

(Mr. Jackson examining the photographs.)

MR. JACKSON: Show him C-15, please.

BY MR. JACKSON:

Q. Could you just take a look at that, Detective Thomas. That is not the same hat that William Cook had on, is it?

A. (No response.)

Q. Do you want to look at the photograph, again? Is it?

A. They are basically similar. I would call both

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Thomas - Cross

of them berets or tams.

Q. However, the question is, that is not the same hat that is in this photograph, is it?

A. I really could not say whether this is the same -- this particular hat was not the hat that was in the photograph, no.

Q. That is all I wanted to know. Your Honor, I would also like to reserve the right to call Detective Thomas as my witness.

MR. MCGILL: Your Honor, the Detective will be available at any time, as all the police officers will be for Mr. Jackson's defense. Does Your Honor have any questions?

THE COURT: No.

MR. MCGILL: Thank you, Detective Thomas.

At this point, the Commonwealth will move to introduce all of the exhibits, C-1 through C-62.

At this point, Your Honor, the

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Commonwealth rests.

THE COURT: May I see you In-Chambers?

(At this point, there was a discussion In-Chambers with the Court, Mr. McGill and Mr. Jackson, after which the proceedings continued as follows:)

THE COURT: C-1 A and B is a cap of the police officer's and the shield. Is there any objection to that?

MR. JACKSON: No.

THE COURT: C-2 is a strand of hair and that was admitted. C-3 to C-13 are photos of the area, the scene. I think I have already admitted them into evidence because they were shown to the jury.

MR. JACKSON: I don't think C-8 was, Your Honor.

THE COURT: Yes, all of them.

MR. JACKSON: C-8 was admitted?

THE COURT: Yes, C-3 through C-13, inclusive.

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MR. JACKSON: It was admitted?

THE COURT: Wait a minute. You are right. That part we didn't.

MR. MCGILL: I only ask for the scene.

MR. JACKSON: I object to that.

THE COURT: C-8 is admitted into evidence for whatever value it may have. It doesn't necessarily mean that it will be shown to the jury.

C-14 was the black tie of the Officer. That is admitted into evidence.

C-15 was the green beret that we just looked at now. That is admitted into evidence. C-16 was admitted into evidence. That would be a photo of 1234 Locust Street, the south side. It was shown to the jury.

C-17 --

MR. JACKSON: The actual police log --

THE COURT: A photostat of the log,

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that's admitted into evidence. D-1 was a photo of the jacket on the sidewalk.

MR. MCGILL: D-1?

MR. JACKSON: The bullet jacket.

THE COURT: Yes.

MR. MCGILL: He is moving to introduce --

MR. JACKSON: I would like to have them introduced at this point as well.

MR. MCGILL: Alright.

THE COURT: D-2 to D-9 were photos of the scene, but they have already been admitted into evidence and shown to the jury.

C-18 is the bullet sample that we used for demonstration purposes. That would be admitted into evidence for its value, but it won't go out with the jury.

MR. JACKSON: Fine.

THE COURT: C-19 was the cassette of the radio transmission. That is admitted into evidence.

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C-20 was the transcript of that, the typed transcript of that.

MR. JACKSON: Fine.

THE COURT: That is admitted into evidence.

MR. JACKSON: I would just bring Your Honor's attention, and I know it is another matter as to whether it goes out with the jury, but it has other information.

THE COURT: Yes, that's right.

C-21 is a photo of William Cook. That is admitted into evidence.

C-22 and C-23 are two guns. They are admitted into evidence.

C-24 is Officer Faulkner's police jacket. That is admitted into evidence.

C-25 is Officer Faulkner's sweater. That is admitted in evidence.

C-26 is the property receipt for those items. That is admitted.

C-27 is Officer Faulkner's shirt. That is admitted.

**PLEASE NOTE: Pages 127 and 128 are missing. We will try to locate them.**

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C-36 was the tape of the interview of Cynthia White. Was that played?

MR. JACKSON: No, it was never played.

THE COURT: But it is here, though.

MR. MCGILL: Yes.

THE COURT: However, it was never played to the jury.

MR. MCGILL: Right.

THE COURT: It is admitted into evidence. He may want to use it. I don't know. D-12 is a small sketch of the location which was made on 12/9/81. That is admitted.

C-37 was the bullet taken from the defendant from his lower right back. That is admitted.

C-38 was the property receipt for that exhibit, C-37, which was the bullet that was admitted.

C-39 was the bullet specimen from

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Doctor Hoyer, the assistant medical examiner.

C-40 is the receipt for that bullet, which was marked as C-39, given by Detective Daney, (ph).

C-41 is the property receipt for that bullet which was marked as C-39.

C-42 is an IBM card signed by Officer Faulkner for his service. That is admitted into evidence.

C-43 was a sample of a fingerprint, that large fingerprint. It was used for demonstration purposes. Since we used it for demonstration purposes, it is admitted for whatever it is worth.

C-44 is a bullet fragment. There were four envelopes; they are admitted.

D-13, well, it was the crime lab, I think, research and you took it back, but we used it for whatever purpose it served.

C-45 to C-51 are photos of the inside of the emergency room at the

hospital. They are admitted into evidence.

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C-52 was a sketch of the Jefferson Hospital Emergency Room. That is admitted.

D-14 was a statement of the witness, Priscilla Durham, to her supervisor on 12/10/81. That is admitted.

C-53 is a statement of Priscilla Durham to the Internal Affairs on February 9, 1982. That is admitted.

C-54 is the clothing of the defendant. That is admitted.

C-55 was the property receipt for the clothing of the defendant. That is admitted.

C-56 is the shoulder holster for a small gun. That is admitted into evidence.

C-57 is the first statement given by Michael Scallion (ph) on 12/9/81 about one-half hour after the incident. That is admitted.

C-58, that was Mr. McGill's notice of material that was eventually given to Defense counsel by the D.A. office. I think

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he wanted it put in for some purpose to show that he had given some sort of information to the defense attorney. That is admitted for whatever value it may have.

MR. MCGILL: Only because of the side bar conference that we had.

THE COURT: I know. C-59 is that newspaper clipping of the picture of the defendant which we just finished with. That is admitted into evidence.

C-60 is the sample of the body positions that Doctor Hoyer used in explaining to the jury the different wounds, the entering and exiting of the wounds. That is admitted into evidence.

C-61 is the one and a half foot flashlight that Officer Forbes said he saw and about which he gave a statement to Detective Thomas on 12/16/81. That is admitted into evidence.

C-62 is the actual statement of Officer Forbes on 12/16/81. That is admitted

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into evidence. I think that covers them all.

MR. MCGILL: I do have one thing to point out, although I have rested my case. I was going to make this request. I thought I knew the answer which is why I officially rested.

If Mr. Jackson would prefer, I will give him this option in terms of identifying the defendant when he was not present in court. I am referring now to the witnesses, Priscilla Durham and Gary Bell. Both of them identified, although Priscilla Durham used the word, "defendant."

THE COURT: She saw him because she was in the room. I had to put him out afterwards. She had seen him.

MR. MCGILL: She did see him.

THE COURT: So, I don't think there is any problem with her identification.

MR. MCGILL: Well, I am just going to offer this. If Mr. Jackson wants, I can

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recall both Priscilla Durham and Gary Bell to go through the same little ritual that I did with Albert Majilton (ph), which was with that photograph, that newspaper photograph, which is exhibit C --

THE COURT: I think he --

MR. MCGILL: I used it with Mr. Majilton (ph).

THE COURT: I think you used it with Mr. Bell.

MR. MCGILL: No, sir.

MR. JACKSON: No, just one.

MR. MCGILL: I used it with Mr. Majilton (ph) because the day before we did the stipulation. It was here. We were stipulating to it. However, if Mr. Jackson wants to, or unless he objects to it because he feels it is more

emphasis on the point, I could and I would be willing to bring them back for the sole purpose of identifying that photograph and saying that that photograph is a representation of the individual that

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"I saw who made that statement that I say was made." If he wants me to do that, I will.

MR. JACKSON: I appreciate counsel's offer, but most respectfully decline and I would further object if he requested it.

MR. MCGILL: It would be an over emphasis of it?

MR. JACKSON: Exactly.

THE COURT: I think there is no doubt. He knows they would identify him especially the Officer and, actually, Miss Durham actually saw him in the courtroom. She saw him. She already saw him here. As a matter of fact, he started to ask her questions and I told her not to answer. So, she was here.

MR. JACKSON: I suppose it would be time for me to make my opening statement?

MR. MCGILL: Whatever you want. Let me say this. Let's go off the record.

(Discussion off the record.)

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MR. MCGILL: You were saying something about your opening statement?

MR. JACKSON: Mr. Jamal is currently speaking with Janette Africa relevant to my question to him or my comment to him that I am now required to present an opening remark to the jury. In my opening remark, I indicated to him that only generally I am required to indicate to the jury what it is I intend to prove and generally the witnesses or the types of witnesses that I would intend to call. Mr. Jamal indicated that he wanted to speak to Janette Africa before commenting further with me. As far as I am concerned, I have an idea of what my opening remark would be to the jury and that would include, generally, a list of some witnesses, not necessarily their names, but types of witnesses as to what they would say as well as character witnesses. Of course, Mr. Jamal solely and exclusively knows the character witnesses but he would generally and normally call and I don't

know. I, of course,

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have some concern about telling the jury that I am going to present character witnesses when, in fact, he may later on decide that those character witnesses should not appear. I am suggesting that perhaps I shouldn't say it in the opening remark, but I know that training and experience suggests that this would be a good time to let the jury know that you have somebody who is going to come in And say that a person's reputation is generally good for veracity and things of that sort. It may be a somewhat premature concern, but I just wanted the record to reflect that I have a strategic problem with regard to what I say in my opening remark and it may be compromised somewhat by the defendant at a later point.

MR. MCGILL: I was wondering, Your Honor, didn't we understand that I was going to get the names of some or at least I requested that I have the names of the witnesses. He did give me names of witnesses

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today and I think that is fair.

MR. JACKSON: For the record, I have no names. I still don't have any.

THE COURT: You mean for character?

MR. JACKSON: For character witnesses I still don't have any.

THE COURT: If worse comes to worse, you may very well have to leave that out of the opening statement and later on, if he wants to call them, as long as you give it to the D.A. in advance, check it out, I don't see any problem. I don't know what else you can do because I realize your problem with Mr. Jamal.

MR. MCGILL: From the very beginning of the case, from the very beginning of the trial, Mr. Jackson has assumed the position that he will represent this defendant the best that he can pursuant to Judge McDermott's order as well as Your Honor's, irrespective of the impediments presented by his client. So, Mr. Jackson, of course, has the option which has been really consistent with what he

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has been doing so far and that is running the case the way he feels is in the best interest of his client with or without his help. I am sure that he has had

some help, but may not as much as he would like to have, but he has at least been conferring to some degree. So, keeping the consistency there, I would think that you should run the case the way you feel is best for him.

THE COURT: Maybe they are anticipating unnecessary problems. Let's wait and see until Mr. Jackson has a chance to talk to him.

MR. JACKSON: I would also point out, Your Honor, that today I indicated to Mr. McGill perhaps some addition of witnesses that I didn't indicate before. I don't think any of the witnesses are unknown witnesses in terms of who I may call. One of the difficulties that I have in determining what witnesses to call is that I have to reflect and think and search my notes as to the

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statements of witnesses since I no longer have a copy of the statements. Mr. Jamal has copies of statements. I think that I indicated -- I showed you all of the names.

MR. MCGILL: That's right, and I gave you the address of Miss Jones, the address and phone number.

MR. JACKSON: Veronica Jones; I don't have it. I never contacted her at all because she would be a key witness in our defense and I think there may be one or two detectives and police people. I don't think there are any other civilians that I haven't mentioned to Mr. McGill. I just want you to know the civilians that I haven't mentioned already.

MR. MCGILL: Well, I will point out one other thing, too. I am glad I remembered this. Mr. Jackson was kind enough to give me the names pursuant to discovery rules, but he mentioned two names; one was an investigator

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and the other was Sergeant Westerman. This has to do with that same issue yesterday, about the investigative log and as far as the order and the ruling was concerned, it is inadmissible testimony. Whether it be on cross examination of the medical examiner or whether Sergeant Westerman, who was one of the witnesses you mentioned, was called himself or even if the investigator was called himself, it is still, Your Honor, plainly and clearly inadmissible evidence because if Sergeant Westerman was even to think it was accurate and state that it was accurate, it is double hearsay there.

MR. JACKSON: Let me interrupt. I am not trying to introduce the statements, if that is what you are talking about. I am not going to try to introduce the statements.

MR. MCGILL: I mean even the work itself, even the contents of the statements.

MR. JACKSON: Let me just suggest that it is generally my intent with regard to the medical examiner and Sergeant Westerman

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to, number one, determine what their duties are. If their duties are to investigate, to follow up leads, hearsay leads, whatever the leads are, then this would, of course, be in the regular course of their business. Did they have reason to know that Mr. Jamal was shot by someone else, a police officer, whoever it was. If so, what did they do and, I think, Your Honor, that would be appropriate to find out.

THE COURT: No, it is still not --

MR. MCGILL: We won't even have the Judge at this point decide that. Just rather than delay any further, I just want to make clear that this is not mentioned in his opening to the jury.

THE COURT: Well, naturally, that is strictly hearsay as far as I am concerned.

MR. JACKSON: Your Honor --

THE COURT: Even if the detective got on the stand and started testifying as to hearsay testimony, you would object right away

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and rightfully so, unless the Commonwealth made some exception.

MR. JACKSON: If a police officer testified as a result of information I received, I am not saying how he received it, as a result of information I received, did you determine if, in fact, Mr. Jamal was shot by anyone else or something like that --

THE COURT: No, that still wouldn't be admissible. You can ask him what he did as a result of that, but any information he got -- if he went out and started to investigate something and what he actually saw on his own, that

is a different story.

MR. MCGILL: If Sergeant Westerman was asked, "What did you do in connection with this investigation," and he said, "I did" this or this or this, that is alright, but in his opening statement to bring up any kind of comments --

THE COURT: No, I am not talking about that.

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MR. MCGILL: I am talking about the opening statement.

THE COURT: I am talking about what is admissible later on.

MR. JACKSON: That is another question and I am saying that just as you have a police officer who responds to a radio call as a result of information he received from the radio call, "I went to such and such a house" --

THE COURT: Okay.

MR. JACKSON: "AS a result of information I received from the medical examiner's officer, I determined that Mr. Jamal wasn't shot by" --

THE COURT: He can't make that determination.

MR. JACKSON: Why?

THE COURT: No, he can't.

MR. JACKSON: Why?

THE COURT: What did he do?

MR. JACKSON: That is what I want

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to ask.

THE COURT: You had better talk to him first and then tell me what he is telling you and I will let you know whether or not you can admit that.

MR. JACKSON: Your Honor, I think I would like to talk to him.

THE COURT: You had better talk to him.

MR. JACKSON: And to the investigator before I give the opening statement.

MR. MCGILL: Bring him in on Monday. We have Monday morning free.

MR. JACKSON: I didn't want to waste this afternoon.

MR. MCGILL: Why not start it and just not include that in the opening?

MR. JACKSON: Because I want to put that in the opening.

MR. MCGILL: Anyway, it is going to be cut, Your Honor. Even if it was accurate, which it is not, it is strictly hearsay. We

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are really talking about something--

THE COURT: What do I care about his conclusion? His conclusion doesn't mean anything to me.

MR. JACKSON: I am not asking for his conclusion. I am not asking for anybody's conclusion.

THE COURT: Yes, you are.

MR. JACKSON: As a result of information received, number one, Your Honor, does the assigned detective or the medical examiner or the sergeant or somebody have an obligation or duty to pursue the leads that they receive, whatever the leads are. If they say yes, I can ask, "As a result of a lead that you received, did you pursue an investigation to determine how, why, and under what circumstances Mr. Jamal was shot" --

MR. MCGILL: Objection.

MR. JACKSON: Isn't that reasonable?

THE COURT: We don't even know what this guy did. Why don't you talk to him first.

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MR. JACKSON: However, Your Honor --

MR. MCGILL: That includes hearsay within the question.

THE COURT: You had better talk to him first.

MR. JACKSON: I don't understand and, seriously, if a police officer can say --

THE COURT: A police officer can't get on the stand and say, "As a result of my information, I concluded that he shot that police officer."

MR. JACKSON: I am not asking for any conclusion. I want to ask, "What did you do?"

THE COURT: What did he do?

MR. JACKSON: As an example, "As a result of a radio message, I responded and went to the scene."

THE COURT: Let's talk about what you want these people for.

MR. JACKSON: I am trying to show that this is the very same situation.

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THE COURT: I don't need examples. I understand very clearly. All I want to know is what do you intend to prove through these witnesses?

MR. JACKSON: That they didn't pursue the --

THE COURT: They didn't pursue it. They didn't do anything. What evidence is that?

MR. JACKSON: That is evidence of police collusion, bias, the whole bit.

THE COURT: You mean because the investigator and the medical examiner didn't do anything --

MR. JACKSON: The medical examiner or the police.

THE COURT: Wait a minute. You have to understand that it is his responsibility to prove your client guilty beyond a reasonable doubt.

MR. JACKSON: I understand that.

THE COURT: He couldn't do that by

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what they didn't do, only by what they did.

MR. JACKSON: My responsibility is to point out what they should have done and didn't do.

MR. MCGILL: All of this, first of all, is based on something that is supposed to have been said which, as a matter of fact, it was never said, but let's assume that it was; let's assume that it was said. Hearsay upon hearsay upon hearsay is absolutely inadmissible. "As a result of anything, what did you do? Did you continue an investigation? Did you pursue any investigation of the shooting of Officer Faulkner?" That is about the most he could say, or "What did you do in reference to this?" What did he do? "Well, I took reports." I did this, I did that. It is so completely out of the ballpark as being admissible testimony, Your Honor. It is so wrought with inadmissible problems and the whole reliability aspect of the hearsay is plainly evident in this type of attempt to

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get in some sort of conjecture, some sort of inference of something that they are supposed to have known. All in all, by the way, what you will hear from Sergeant Westerman is something which was incorrectly written down because it was never said. Now, that even makes it worse, but even if it was said, it is based not upon any personal observations. They were conclusions drawn by people and so it should not be mentioned.

THE COURT: That man, whoever he is; in the medical examiner's office, he has no responsibility to investigate this case. It is not his responsibility. It is not his responsibility at all.

MR. JACKSON: Well, Your Honor, I don't see any difference in this situation with the analogy I gave with regard to the radio call. Whether the information is hearsay true, incorrect, or not --

THE COURT: But I am telling you that the investigator has no responsibility.

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He is not here to investigate homicides.

MR. MCGILL: Even if he was, it is hearsay.

THE COURT: However, he is not.

MR. JACKSON: Your Honor, he has some job to do as an investigator.

THE COURT: I don't know what he has to do. All he has to do is work in the medical examiner's office.

MR. JACKSON: He goes out in the field.

THE COURT: He didn't go out.

MR. JACKSON: I don't know that.

MR. MCGILL: That usually goes to the circumstances surrounding the decedent's death so that if, --

THE COURT: He doesn't make a conclusion as to who shot him or didn't shoot him. That is not his responsibility.

MR. JACKSON: Your Honor, I still am not talking about conclusions. I am asking what his activities were, or his lack of

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activities.

THE COURT: Look, I think we are arguing and cluttering up this record unnecessarily. You are going to talk to these people between now and Monday at one o'clock. I can see that he is not going to be able to go forward today.

MR. MCGILL: I will have Sergeant Westerman subpoenaed to appear in my office and I will direct him to talk to Mr. Jackson.

THE COURT: Alright.

MR. JACKSON: And the medical examiner person because I don't know who it is. It is just an initial.

MR. MCGILL: Well, he will probably just say that either he or Sergeant Westerman made a call, or he forgets who made this call, and he wrote down what the caller said. He will say that his attention was focused on, obviously, the circumstances surrounding the decedent's death. He was not that much

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concerned about what the circumstances were surrounding the defendant's injury. He says that he may well have heard it wrong, but what he wrote down is what he thought he heard. That is what he will say.

Now, that is so completely irrelevant because that is hearsay on Sergeant Westerman, who happens to be here, and it is also inaccurate.

MR. JACKSON: I would still like to talk to both of them.

THE COURT: Let him talk to them so that we will have no problem. I think we ought to go out there and finish up. I will admit these things into evidence and you will, rest.

MR. MCGILL: I have rested.

THE COURT: Let me make a formal announcement and then he can ask that we recess until Monday.

MR. MCGILL: Alright.

THE COURT: What do I do with this

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demurrer? You can do that now if you want to.

MR. JACKSON: I could demur to the charges, particularly with regard to possession of an instrument of crime. I demur to that charge, Your Honor.

THE COURT: Well, that is denied. That is quite obvious.

MR. JACKSON: I will demur to the homicide, too.

THE COURT: That is denied. That is a question for the jury.

MR. MCGILL: Legally, I think there is sufficient evidence.

THE COURT: Yes, there is. The demur stays, but it is really for them to make that decision.

(Conclusion of In-Chambers discussion.)

MR. MCGILL: C-1 to C-62 is admitted into evidence. D-1 to D-14 is

admitted into evidence.

THE COURT: The Commonwealth rests?

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MR. MCGILL: Yes, Your Honor. With respect to the Court, the Commonwealth respectfully rests its case.

THE COURT: Mr. Jackson, do you have a request?

MR. JACKSON: Yes, Your Honor. I request, based on the fact that the Commonwealth has rested today, I respectfully request that we give our opening remark on Monday.

THE COURT: Alright. The court will adjourn until Monday at one o'clock p.m. in this courtroom.

MR. JACKSON: Your Honor, Mr. Jamal would like to address the Court. He specifically requests to address the Court outside of the hearing of the jury.

THE COURT: Alright.

(At this time, the jury left the courtroom.)

THE DEFENDANT: Judge, you have heard me say quite a few times that I do not

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want this lawyer to represent me and the reason is obvious, because he is going to get me convicted and he is going to get me sentenced and when that sentence comes, I want all of you, everyone in this courtroom, to know that I repeatedly told you that this lawyer could not represent me and that this lawyer is going to cause me to be sent back to prison. You have talked much about how much I need a legal trained lawyer. You have insisted that I have a legal trained lawyer. You have insisted that John Africa does not know the law. So, when I get sentenced, convicted, and found guilty of murder, I want everyone here, all of you, to understand that I was found guilty of murder using a legal trained lawyer and not John Africa, who you repeatedly have refused to let me use. According to you, John Africa doesn't know the law, but Tony Jackson, a legal trained lawyer, does know the law. What you are saying is that I must have an adequate defense and

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that John Africa cannot adequately defend me and that Tony Jackson can adequately defend me. So, according to that reason, with Tony Jackson, defending me, I should be acquitted because you are insisting that I can't get acquitted by using John Africa. I am insisting that I can. When you insist that I must use Tony Jackson, a legal trained lawyer, in order to protect myself from a death sentence or from prison, what you are saying is that he can get me acquitted and since I am at the mercy of you, the Court, this Judge, and him, Tony Jackson, a legal trained lawyer, I expect to be acquitted or else I want you, Judge Sabo, and Tony Jackson, a legal trained lawyer, I want you to tell me why, why you have imposed an inadequate, so-called defense on me and denied me John Africa, who is the defense my choice.

THE COURT: I have explained the law on that subject to you before. I do not guarantee what a jury is going to do and I

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don't think anyone can do that. They are the triers of the facts. They will hear all of the evidence and regardless of who defends you, even if it was F. Lee Bailey, nobody can guarantee you what a jury is going to decide.

THE DEFENDANT: However, you have decided --

THE COURT: They are the triers of the facts and they are the only ones who are going to make that decision.

THE DEFENDANT: You decided to assist me in my defense.

THE COURT: That is right, but Mr. Jackson nor can anyone else change the facts, whatever facts that the jury actually believe and they are the ones who try the facts. They are the ones that make the decision. There is nothing that anybody can do that is going to in any way influence them. It depends on what comes out in the trial. If what you are saying is true, then John Africa, whoever he defends, is going to be

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acquitted. He would be the best lawyer in the world.

THE DEFENDANT: I think he is.

THE COURT: You may think he is --

THE DEFENDANT: It is my life that is on trial, not yours.

THE COURT: There is no guarantee that he could do anything more or less than anybody else, but he is not trained in the law. He doesn't know what is necessary. I have watched Mr. Jackson, not on this case, but on other cases. He is a very able lawyer.

THE DEFENDANT: Well, if he is able --

THE COURT: That doesn't mean that he can guarantee you anything. Nobody can.

THE DEFENDANT: What is he able to do?

THE COURT: Exactly what he has been doing.

THE DEFENDANT: Which is?

THE COURT: Exactly what he has been doing.

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THE DEFENDANT: Following the orders of the Court.

THE COURT: No, he doesn't follow my orders.

THE DEFENDANT: Sure he does.

THE COURT: No, he doesn't. There is nothing else.

Gentlemen, we will adjourn today until Monday at one o'clock p.m.

THE CRIER: This court is adjourned until Monday at one o'clock p.m.

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(Court adjourned at 3:15 p.m.)

I hear by certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

TWENTY EIGHTH DAY  
IN THE COURT OF COMMON PLEAS  
IN AND AROUND PHILADELPHIA  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION

		January Sessions, 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

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Monday, June 28, 1982

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Room 253, City Hall  
Philadelphia, Pa.

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Before: HONORABLE ALBERT F. SABO, J., and a jury.

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APPEARANCES:

- JOSEPH J. MCGILL, ESQUIRE  
Assistant District Attorney  
For the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
For the Defendant
- MUMIA ABU-JAMAL,

In Propria Persona.

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(There was a conference in chambers, out of the hearing of the jury, and reported as follows):

MR. MC GILL: Judge, the reason for this sidebar is in reference to the investigative log and the reason why we delayed opening until today.

To a certain degree that has been neutralize (that seems to be a famous word of mine, neutralized), because Mr. Jackson has indicated that he will not mention in his opening anything at all about Sergeant Westerman or the police knowing that somebody else -- that a policeman shot Jamal, anything other than what the facts are, which with the inference clearly that Faulkner had shot him. This is as far as our evidence is concerned.

MR. JACKSON: I would object to that.

MR. MC GILL: I am saying he doesn't necessarily agree with that, but there is just no record anywhere of anything else, except for this inaccurate investigative log.

It was mentioned to me that he will say nothing about that in his opening. Now, that doesn't mean in his opening that if the defendant is going to take the stand and say that, you know, somebody else shot him, well, obviously, he can say that, because he

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is indicating what evidence is going to come off, but as far as anything which is not evidence, even an investigation into this, and kind of hearsay sort of thing, he has assured me he will not bring it up in his opening. Is that correct?

MR. JACKSON: That's correct; that's correct.

MR. MC GILL: All right. Now, in keeping with the Court's Order, what I have done is I have Sergeant Westerman present as well as Mr. Macauh, who is the "so called" -- I mean, strike "so-called" -- he is the investigator of the Medical Examiner.

They will say the following -- and, they are here, and they will say this to

the Court, if you wish --

MR. JACKSON: Could I interrupt? In terms of what they would say, I think, Your Honor, for the record, as well as for my protection, I think that I would need to examine them; whether it's here on sidebar or in open court, I think that I just have to examine them, and that's why I would object to what they would say. I have to examine them, Judge.

THE COURT: You have a right to talk to them.

MR. JACKSON: I mean on the record. For

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purposes of eliminating pre testimony conversation, I would just do it on the record, you know, take their testimony right on the record right away if that's what they are going to say.

THE COURT: We can do that later, can't we?

MR. JACKSON: Well, Judge --

MR. MC GILL: Whatever you want.

MR. JACKSON: Judge, if they are going to say something different --

THE COURT: You can bring them in later, if they are going to say something different. You see, from what I know now, what they are saying is hearsay, and it's hearsay upon hearsay, and I already ruled that is inadmissible.

MR. JACKSON: I understand.

THE COURT: If you want to talk to them later on and you think they can say something else or they can testify to something else, fine.

MR. JACKSON: The only reason I am saying that maybe we should do it before I open is that if, in fact, what their testimony is at variance with the representations of Counsel, then I would want to mention that in my opening.

MR. MCGILL: OK.

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THE COURT: No, I don't think you are allowed to mention that, because

as far as I am concerned, you are not allowed to mention anything that is in there.

I have said already it's hearsay upon hearsay, and is inadmissible.

MR. JACKSON: I am not talking about what is in there, Judge. If for one reason or another there is some difference or additional information.

THE COURT: If you want to talk to them before hand, go talk to them, but I am not going to stop now.

MR. JACKSON: But, Judge, I think that for me to simply accept the representations of, Counsel --

THE COURT: All I am saying is what is on that piece of paper there -- that is this piece of paper here -- it's hearsay upon hearsay, which is inadmissible. That's all I am saying.

MR. JACKSON: I am not arguing that point at all, Judge.

THE COURT: What that Sergeant did or didn't do or that other fellow did or didn't do, that is up to you.

If you want to go talk to them, and you think you have something you think would justify your calling

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them, come back and tell me.

But, I am not going to waste time now putting them under oath. It's twenty minutes to two. I said court would start at one.

MR. JACKSON: I understand, Judge, and I assure you I am not trying to delay these proceedings, but I think, Judge --

THE COURT: I think you ought to go out and talk to them first.

MR. MC GILL: No. May I make a suggestion?

There is a room there that I tried to empty so it would be available for Mr. Jackson, particularly for this point. The room outside in the corridor, right before you go out to the corridor -- is it the foyer? I guess not. He could use that room to speak with both individuals who I have outside.

They are here, and they will be willing especially if I tell them that the

Court will urge it, and I will urge it, that they talk to Mr. Jackson.

MR. JACKSON: Judge, my concern -- and, it may not be the same concern of the Court -- is that in the position that I have been placed by Mr. Jamal, that Mr. Jamal would be suspicious of any representations that I would make to him as to what they are saying, and

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that is the reason that I wanted to put it as a matter of record.

THE COURT: OK. We could do that later on. But, all I am asking you to do now is talk to them to see if they have anything.

I am not saying you can't put it on later on. You can put it on later on, and be made part of the record if you want, but all I am trying to do is not hold up the proceedings needlessly. So, why don't you go see them?

MR. JACKSON: I understand.

THE COURT: Go see them. If later on --

MR. MC GILL: I would like to be present.

MR. JACKSON: I do mind, Judge. If it is not going to be on the record, I don't understand why he has to be present. I am not present when he interviews his witnesses. I don't understand the reason. I would object.

THE COURT: You could take the Court Reporter back there with you if you want to. I don't care what you put on the record.

MR. MC GILL: Why don't we do this, then, Judge?

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THE COURT: Suppose --

MR. MCGILL: Why don't we have them come right in here, Judge, and question them in front of you right now very briefly?

THE COURT: How long will your questioning be?

MR. MC GILL: It should be a couple questions.

MR. JACKSON: Judge, if I am going to question them on the record, I

would not want to do that out of the presence of Mr. Jamal.

THE COURT: I don't care about Mr. Jamal.

MR. JACKSON: I understand that, Your Honor. Your Honor, I am representing him.

THE COURT: I don't do this in front of the general public for anything. I am not going to do it to please Mr. Jamal.

MR. JACKSON: It's not to please him, Your Honor.

MR. MC GILL: Your Honor said you didn't care about Mr. Jamal.

MR. JACKSON: But, you meant in reference to this particular issue.

THE COURT: This issue here, yes. It has nothing to do with Jamal nor the public or the press

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that is out there. I am not going to do it.

MR. JACKSON: Judge, I am not trying to do it.

THE COURT: You can bring them back here, and let's go get it over with.

MR. MC GILL: I have no objection to that, sir.

MR. JACKSON: You don't want me to question them in advance? Just question them on the record in the absence of Mr. Jamal?

THE COURT: Yes, question them on the record in the absence of Mr. Jamal. I am not going to go to open court with this.

MR. MC GILL: I can see that Judge, because it is totally unreliable.

THE COURT: There are court Reporters out there.

MR. JACKSON: Judge, it is not going to be in open court, but I am saying wherever it is that Mr. Jamal be present.

MR. Mc GILL: I have no objection to that, Judge.

THE COURT: Well --

MR. JACKSON: Whether we take everybody out

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there into that room or sidebar here, Judge, I just think that in my effort to represent him properly and effectively that he should be present for this, because this is some information in the defense.

THE COURT: All right, OK. I don't know if this is a good place. Maybe we ought to clear the courtroom then.

MR. MC GILL: That's too much effort. I think that will draw too much attention to this highly unreliable information -- as a matter of fact, inaccurate, because Sergeant Westerman will add that he --

THE COURT: I am saying it is hearsay on hearsay from what I can gather.

MR. JACKSON: May I check with Mr. Jamal? If he says he doesn't want to participate, then it's over with.

MR. MC GILL: Off the record.

(There was an off-record discussion.)

MR. JACKSON: Your Honor, if I could, for the record, I have just spoken to Mr. Jamal. Mr. Jamal indicates, No. 1, that he, indeed, would like to be present during the questioning of Mr. Macauh and Sergeant Westerman, and he further indicates that just as the Motions to suppress were conducted in a public

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arena, he wants their testimony taken in the public arena.

THE COURT: Well, you can report back to him that I said, "No, it will not be in the public arena."

MR. JACKSON: Your Honor, I wanted to finish.

THE COURT: I know that he wants it in the public arena, and I said he can't. If he wants to come back here, fine. If he doesn't want to come back here, that's too bad. I am not going to put up with his nonsense. I am getting tired of that. He is not going to tell me how to run the courtroom. OK?

Now, let's get him. If he wants to come in bring him in. If he doesn't want

to be here, that's all right with me, too.

(There was an off-record discussion.)

MR. JACKSON: He said again that he doesn't want to do it at sidebar. He doesn't want to argue the issue at sidebar. He says he wants you to do it out there. He doesn't care if you clear the courtroom.

MR. MC GILL: All right. Let's do it back here and leave him out there.

MR. JACKSON: Judge, so that it is clear, I

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want you to know that I am simply not questioning them on the document, but I am questioning them with regard to the information that is in this document as to what information they had if any other than that document regarding the shooting.

THE COURT: Fine. You want to know whether they could be witnesses for you.

MR. JACKSON: That's right.

THE COURT: That's all right. I am not objecting to that, and I say you can do that without this proceeding by going back and just talking to them but if you want to --

MR. MC GILL: That's true, Judge.

THE COURT: But, if you want to put it on the record, I will put it on the record for you, but I am going to do it back here in chambers.

MR. MC GILL: Judge, why don't we do that, because you are right. Why don't we just have Mr. Jackson go out, talk to the two men, particularly since, as you said, he is looking for them as being possible witnesses.

They will say in reference to this document exactly what I said. Now it appears that the interests Mr. Jackson has is beyond just this document.

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THE COURT: Fine.

MR. MC GILL: So, if that were the case, what I can do is I will have them in that room with Mr. Jackson. I will let him speak with them alone. I will

walk out of the room, and whatever else they have to say to him they can say to him.

THE COURT: OK.

MR. JACKSON: I assume what you are saying is that we can put their testimony, as brief as it may be, on the record.

THE COURT: If it's relevant, sure, and if it's admissible.

MR. JACKSON: Judge, I think, then, if they say what Mr. McGill has represented, I would still like to have that on the record out of the hearing of the jury. I think that it just has to be, Judge.

MR. MC GILL: Judge, I object to that, and the reason is that it takes too much time in two different areas. Let's do it now, and then we don't have to worry about the later time.

THE COURT: If you want to do it back here, we will bring them in here and put it on the record.

MR. MC GILL: Fine.

MR. JACKSON: Judge, I just stated it is

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patently unfair for me to interview a witness for the first time on the record when the District Attorney --

THE COURT: You asked for this in the first place.

MR. JACKSON: I am asking to talk to them first alone.

THE COURT: I am the guy that asked you to talk to them alone. You wanted it on the record.

MR. JACKSON: Sure. I want their testimony in open court. That's true, Judge.

THE COURT: Only if they are able to testify.

MR. JACKSON: Well, Judge, we have the whole issue of them telling me whatever it is that they want to tell me, and what I am simply saying is that assuming for a moment that they will testify essentially to what Mr. McGill has just repeated to the Court, I think for me to simply accept that -

-

THE COURT: No. You can ask them anything you want. I will put them under oath back here for you. You can ask them, anything you want, if you want to, because, if you are going to put it on the record, you might as well put it down there now.

I was just trying to cut it short, if it is unnecessary to go through all this. If you want it on

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the record, fine. Bring them back here, and put them under oath, and you can ask them whatever questions you want.

MR. JACKSON: Your Honor, I'd like to have one of the witnesses at a time, if you don't mind.

THE: COURT: All right. Which one do you want first?

MR. MC GILL: Mack, why don't you go out first and let Sergeant Westerman testify first.

THE COURT: Just sit out there.

MR JACKSON: Has this been marked as an Exhibit, yet?

MR. MC GILL: No.

MR. JACKSON: OK. Perhaps I should have it marked as an Exhibit.

MR. MCGILL: Right. What number are we up to?

THE CRIER: "D" Exhibit or "C" Exhibit?

MR. JACKSON: "D."

THE: CRIER: D-15.

MR. JACKSON: No. It would be D-17.

THE CRIER: Wait a minute.

MR. JACKSON: Yes, D-17.

THE CRIER: D-15.

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THE COURT: Well, did you take out the two that he took back?

THE CRIER: No. They are still on there.

MR. JACKSON: D-15 and 16. The 15 is the typed statement of Scanlon. The handwritten statement is D-16. But, you didn't mark them, remember, because it was Mr. McGill's original.

THE CRIER: C-57 is M. Scanlon's original Exhibit.

MR. JACKSON: Oh!

THE COURT: D-15.

THE CRIER: Yes.

THE COURT: OK. D-15.

(The above mentioned document was received  
and marked D-15 for identification.)

THE COURT: Go ahead. You can swear him in.

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SERGEANT FREDERICK WESTERMAN, Badge # 533, Homicide  
Division, sworn.

#### DIRECT EXAMINATION

BY MR. JACKSON:

Q. Sergeant Westerman, where were you assigned on December 9th? I  
assume, maybe, if I lead you, we can go through --

MR. MCGILL: Go ahead.

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Westerman - Direct

BY MR. JACKSON:

Q. You were assigned to the Homicide Unit on December the 9th, 1981, at or about the time of the shooting of Officer Faulkner?

A. Not at or about the time of it. I came on duty at 6:00 a.m. in the morning.

Q. When you arrived on duty at Homicide? Is that right?

A. Yes.

Q. What are your functions there at Homicide?

A. What are my functions? It is to supervise the squad that is assigned to me and my Lieutenant. That is my main function, whatever, from fires during the day. My function are many. They are unlimited, I guess, you know.

Q. Within your duties of supervising the squad that you work with, would it be your duties to assign to different investigators leads that you might have regarding a pending investigation or incident?

A. Yes, sir.

Q. And, did you somehow on that day or sometime after that day receive some information from someone with regard to Mr. Jamal being shot by other police, a police officer other than Officer Faulkner?

A. Did I receive that information?

Q. Yes.

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Westerman - Direct

A. By other than Officer Faulkner?

Q. Yes, sir.

A. No.

Q. Did you ever tell anyone specifically the investigator for the Medical Examiner's Office that Mr. Jamal was shot by reinforcing police officers,

or words to that effect?

A. No.

Q. Do you recall speaking to the investigator from the Medical Examiner's Office?

A. Yes.

Q. Do you recall when that was?

A. It was sometime that morning.

Q. And, do you remember the substance of that conversation?

A. When I answered the phone, he asked me if I could briefly fill him in on what transpired at that shooting. And, I turned around, and I believe Lieutenant Gaghan (sic) was there, Sergeant Gibson, and numerous people from his squad, because the place was a mad house, and the phones were ringing, and rather than tie them up, I turned around and said, "Yes, he is on the phone and wants to know what happened. Someone, give me the story."

And, as I recall the story being relayed to me from somebody -- and, I don't remember who, because there was so many people there -- they told me that Officer Faulkner

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Westerman - Direct

had stopped a car. He had a struggle with the operator of the car. A negro male ran from a lot which was across the street, ran up to the Officer and shot him. Then he was shot. That's what I told Macauh.

Q. Now, so that I am clear, you are absolutely certain that you did not tell the investigator that -- could I see the Exhibit?

Are you absolutely certain that you did not tell the investigator that the assailant himself was shot subsequently by arriving police reinforcements?

A. I am positive of that. That is terminology that I just don't use. I haven't used the word "reinforcement" in anything since I came out of the Marine Corps.

Q. Well, aside from the specific words, did you say anything that would

substantially represent the same meaning?

A. No.

Q. That someone other than Officer Faulkner shot Mr. Jama1?

A. No, no, sir.

Q. Did you speak to the M.E.'s Office or the investigator at any other time?

A. About this incident?

Q. Yes.

A. No.

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Westerman - Direct/Cross

Q. Is it customarily your duty to provide this information to the Medical Examiner's Office?

A. The M.E. calls up, I'd say, on almost every homicide that we have, and whoever answers the phone will give them the information.

There is nothing that is strictly the responsibility of the Sergeant or the Lieutenant, because it is usually a very brief thing.

Q. Have you heard or received any information subsequent to this date that would indicate that Mr. Jamal was shot by anyone other than Officer Faulkner?

A. No, never.

MR. JACKSON: OK.

MR. MC GILL: May I cross-examine?

THE COURT: Go ahead, if you want to.

CROSS-EXAMINATION

BY. MR. MC GILL:

Q. Sergeant, how many years have you been Sergeant in the Homicide

Division?

A. I have been assigned to the Homicide Division as a Sergeant since December of 1980.

Q. '80?

A. Yes, sir.

Q. And, how long have you been in the Police Department?

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Westerman - Cross

A. Eleven years, sir.

Q. And, is it my understanding that you never used the word "reinforcements" at all in reference to police arriving at that incident?

A. That's correct, Sir.

Q. Now, in reference to this particular incident, you were on tour of duty from eight o'clock until when?

A. 4:00 p.m.

Q. Were you involved in the case of Mumia Abu-Jamal, that is, the case involving the death of Officer Daniel Faulkner, at all?

A. My only involvement was my conversation with Mr. Macauh.

Q. And, as I understand what you said to Mr. Jackson is that you basically were just answering the phone, and it was your intention that rather than bother them to find out information and relay the information since they were involved in, I believe, what you called a madhouse? Is that correct?

A. Yes, sir.

Q. So, I also believe you stated that you didn't even know who you talked to? Is that correct?

A. I remember having a conversation with the Medical Examiner's Office.

Q. No, no, no. I don't mean that. From the police.

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Westerman - Cross

A. Who I got my information from?

Q. Yes.

A. I was sitting at my desk. I turned around and yelled, "Can somebody tell me what happened," and whoever from that squad replied to me is what I relayed to Mr. Macauh.

Q. OK. Not only, then, do you not have any idea who that is that gave you that information, but you don't know where they got the information that you received? Is that correct?

A. That's correct.

Q. It was not your job to go to the scene, was it, at the time?

A. No, sir.

Q. And, you became involved in other matters unrelated to Officer Faulkner after that particular phone call that you heard? Is that correct?

A. Yes, sir; yes, sir.

Q. As a matter of fact, isn't it possible, Sergeant, that the information that you received --

MR. JACKSON: Objection as to what could be possible.

THE COURT: Well, what's the difference?

MR. JACKSON: All right.

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Westerman - Cross

BY MR. MC GILL:

Q. Isn't it possible, Sergeant, that the information that you received may even have been bits and pieces from different people, rather than one person?

A. Yes, sir.

Q. And, needless to say, you don't really even know where their source of information -- those number of people that may have given you those partial informations? Would that be correct?

A. Yes, sir.

Q. And, it is a fact, is it not, that you have already said this, but you obviously have no personal knowledge of any of that? Is that correct?

A. That's correct.

Q. And, you have also stated already that what is written on this piece of paper you didn't even say? Is that correct?

A. That's correct.

Q. Meaning the reference to being shot by police reinforcements?

A. That's correct.

Q. And, what you did say, what you recall saying, is what you told Mr. Jackson? Is that correct?

A. Yes, sir.

Q. And, then, he was shot is what you said to Mr. Jackson

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Westerman - Cross/Redirect

That "he" refers to the defendant, I guess.

A. That's correct.

Q. So, Officer Faulkner was shot, and, then, he was shot, and that means Officer Faulkner was shot, and then the defendant was shot?

A. That's correct.

MR. MC GILL: Nothing further.

MR. JACKSON: Just one more question.

REDIRECT EXAMINATION

BY MR. JACKSON:

Q. Can you tell me the very first time you saw that statement?

A. A few weeks ago Mr McGill called me to the office. I had never seen it before. I wasn't even aware it existed.

MR. JACKSON: OK. I have nothing further.

THE COURT: I am going to ask you, Sergeant, to keep to yourself what was said back here.

THE WITNESS: Yes, sir.

THE COURT: Because, for the time being I am sealing this record.

THE WITNESS: Yes, sir.

THE COURT: OK. All right.

THE WITNESS: Am I excused for the day?

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MR. MC GILL: You better wait outside.

THE COURT: Off the record.

(There was an off-record discussion.)

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STEFAN MAKUCH, Medical Examiner's Investigator I, sworn.

DIRECT EXAMINATION

BY MR. JACKSON:

Q. Mr. Makuch, could you spell your name again for me, please?

A. Last name?

Q. Yes.

A. M-a-k-u-c-h.

MR. MC GILL: I was wrong.

BY MR. JACKSON:

Q. Now, sir, on December the 9th, 1981, you were assigned as an investigator for the Medical Examiner's office?

A. I believe I was working then, if that is the date.

Q. OK. And, do you work -- do you recall what time you arrived at work? Well, let me -- would you hand him D-15, please?

A. Yes. Thank you. No. This must have been my eight to four shift.

Q. Now, do you recall preparing that document? Is that

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Makuch - Direct

your handwriting, first of all?

A. That is my handwriting, yes, sir.

Q. Do you remember preparing that document?

A. This form?

Q. Yes, sir.

A. Yes, sir, I do.

Q. Do you recall talking to someone in receiving that information?

A. Yes, sir, I do.

Q. And, was it -- do you know Sergeant Westerman?

A. Well, I have met him in the line of my duty and his duty.

Q. So that you do --

A. Several times.

Q. You knew him before December the 9th?

A. I am not sure that I have seen him or met him personally before or around that day, because I deal with so many people I might not know them on sight. I deal with a lot of people on the phone in the line of my duty.

Q. Did you know Sergeant Westerman's voice?

A. (There was no response.)

Q. In other words, when you talked to him on December the 9th, did you know that, in fact, that was Sergeant Westerman?

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Makuch - Direct

A. Well, I can only accept it as him, because that's what he said he was on the phone.

Q. So, you have no independent means of determining -- in other words, if you talked to your wife or your mother or your brother, you would know their voice even if they told you they were Mickey Mouse?

A. Yes.

Q. But, did you know, in fact, this was Sergeant Westerman when you talked with him on the phone?

A. I was told that this was Sergeant Westerman by the person who answered the phone.

Q. OK. Now, you got some information that you placed on that investigative log. As best as you can recall, sir, is that information -- does that information -- does that investigative log accurately reflect the information that you received on the phone from whomever it was that you talked to?

A. Not necessarily verbatim, sir.

Q. I understand.

A. Not necessarily verbatim.

Q. But -- well, let me -- substantially the information that you received

from whoever it was that you talked to, the person who identified themselves as Sergeant Westerman, said, No. 1, that Officer Faulkner was shot by a man who ran across the parking lot, and then later that the assailant

Page 28.

Makuch - Direct

himself was shot by some other police officers. I mean, now, that is not verbatim, either, but is that the meaning of what you placed there?

A. Well, if that is what my notes say, I'll have to accept it as such, with the provision that what happens is when I talk to the men on the phone, and inasmuch as we do not record the conversation verbatim, I couldn't swear to it that each and every word that has been transcribed -- what it is in my duties as a Medical Examiner's investigator, I have to obtain -- in this particular case, my duty was to obtain the date, time, place, and the circumstances of the incident such as the shooting of the deceased.

Q. And, you do this in the regular course of your duties?

A. Yes, sir.

Q. On each and every case?

A. Yes, sir, on each and every case that I am assigned or being told to do it.

Q. And, it's normally your practice to telephone to get this information from the Homicide Unit?

A. Yes sir, yes.

Q. OK. Now, do you have any reason to believe that the information that you got recorded on that investigative log is incorrect?

A. I don't.

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Makuch - Direct

Q. Could you or would you have possibly spoken to anyone else relevant to that same information that is contained on D-15?

A. I couldn't swear --

MR. MCGILL: Excuse me. I just object. Are you referring to all the information or just the area involving the defendant?

MR. JACKSON: Yes, with regard to the shooting of Mr. Jamal.

BY MR JACKSON:

Q. Do you recall whether, in fact, you discussed it with anyone else?

A. I don't think I did.

Q. And, as a result of the information that you received, did you do anything other than record it?

A. No, sir.

Q. And, at about what time did you record the information that's on that sheet?

A. My note says nine o'clock in the morning on 12/9/91.

Q. OK. So that I'm clear, would you have made the notes contemporaneously at the same time that the information was given to you, or would you have done it at a later time?

A. Normally -- normally -- I would write out on a scratch sheet whatever I am taking on the phone, and, then, I would

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Makuch - Direct

transfer it to the log sheet which is part of the file.

Q. Right. Do you recall specifically if you did it in this instance?

A. I could not swear to it, sir, no. Sometimes when we are busy and we catch one or two calls in succession, I might put it aside for a few minutes, and then go back to it and transcribe it.

Q. And, I take it that if you had written on a scratch piece of paper, you would have destroyed it after rewriting it on that?

A. Normally, yes, yes, it's discarded. It's no longer needed, because it's

recorded on this here.

Q. At any time since the time that you had written this investigative log on December the 9th, have you been given any information, whether it is directly or by phone, other than the newspapers? Has anyone from the Police Department or the Medical Examiner's Office reasserted in any way that in fact, Mr. Jamal was shot by someone other than Officer Faulkner?

A. No, sir, I don't recall any such information.

Q. And, about how long have you been with the Medical Examiner's Office?

A. I have been with the Medical Examiner's Office since 1961.

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Makuch - Direct

Q. Twenty-two years?

A. I am in my twenty-second year, yes, sir.

Q. Did you know Officer Faulkner? Did you know Officer Faulkner?

A. I don't think I ever met him. I don't recall ever having known him personally.

Q. OK. Were you responsible -- other than what is contained on D-15, were you responsible for investigating or obtaining any other information regarding either the shooting death of Officer Faulkner or the shooting of the defendant?

MR. MC GILL: I would have to object to the relevancy to the Faulkner aspect of it. It would be relevant only to the defendant.

MR. JACKSON: Well, since this is the first time I have had the opportunity to talk to the witness I just wanted to find out if he has got some additional information.

BY MR. JACKSON:

Q. Are there any other investigations that you may have performed surrounding either the shooting death of Officer Faulkner or the defendant?

A. I do not recall any.

Q. If you had conducted any additional investigation, I would assume it would be recorded on the investigative log?

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Makuch - Direct - Cross

A. It is the accepted and the required practice that anything and everything -- all the flow of information -- is recorded on this type of document.

MR. JACKSON: I have no additional questions at this time.

MR. MCGILL: May I have the document, please and stay there if you would, Mr. Makuch. Just for the record, I don't really know the -- I am not familiar with the name Makuch.

BY MR. MCGILL:

Q. Are you a native of this country?

A. No, I am not.

Q. What country?

A. I am Ukrainian.

Q. Ukrainian? OK. Now, Mr. Makuch -- it's Makuch?

A. Makuch, right. That's pretty close.

Q. Mr. Makuch, your primary function, or, at least, the focus of your -- I am sorry. The focus of your attention is talking to the man from Homicide in reference to this matter is, I believe, from what you said, information for a death certificate? Is that correct?

A. That is correct.

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Makuch - Cross

Q. So, then, the information for the death certificate would actually be the death of the Police Officer Faulkner in this case?

A. That is correct, sir.

Q. That would be, for example, the date, the time, and the place and the circumstances of the Officer's death? Is that correct?

A. That is correct, sir.

Q. Would it be fair to say that there is little if any focus from your standpoint as part of your duties on any kind of injury that may or may not have occurred to the defendant or the alleged shooter of the deceased? Would that be correct?

A. That is correct, Sir. There is no specific focus.

Q. You don't fill out any kind of form for injury of the defendant, do you?

A. No, sir.

Q. Is it your practice, also, that after you would hear an answer from a Sergeant and you would make notes on a pad or whatever, before you would make the final notes on the document which we have here, which is the investigation log that you may change some of the words in order to phrase it the way that you felt it was said to you?

A. Yes. I believe it was mentioned already earlier that

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this is not a verbatim sworn statement type of record. It is the transcription of information that I received from another person.

Q. Now, of course, you have no idea where the caller -- that is, Sergeant Westerman -- received his information? Is that correct?

A. Well, no, I do not necessarily have that.

Q. And, you have no personal knowledge whatsoever about the particular facts in this note?

A. No personal knowledge; that is correct.

Q. Then, sir, in reference to what you said, the focus of your attention, the business of the time, and the information that you received, is it possible that that information regarding the circumstances surrounding the injury to

the defendant may be in error?

A. It could very well be. I couldn't swear to it, but it could very well be.

MR. MCGILL: Thank you. I have nothing further.

MR. JACKSON: I am just unclear.

#### REDIRECT EXAMINATION

BY MR. JACKSON:

Q. I just asked you earlier if you had any reason to suspect that the information you recorded is inaccurate or is

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different from what you heard.

A. (There was no response.)

Q. In other words, although the information may be inaccurate, it's reflected in D-15 the way that you essentially heard it? Is that not true? Do you understand what I am saying?

A. The second part of your question, sir?

Q. Sure.

A. The way I understand your question is whether I recorded to the best of my knowledge what I thought I heard.

Q. That's right.

A. I am sorry. Yes, yes.

Q. You did record to the best of your knowledge what it is that you heard?

A. Yes. I tried to.

Q. One other thing. Although your specific focus was on Officer Faulkner, is it not true when you have a multiple shooting where at least one of the persons is deceased that you may also get additional information of others who were shot because of the possibility they may also come to the

Medical Examiner's Officer?

A. Not necessarily, not beforehand, sir.

MR. JACKSON: OK. Fine. I have no further questions.

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THE COURT: I am going to ask you please not to discuss what you've told us back here, because I am temporarily sealing this record. I don't want it to get to the Press or out in the public. OK?

THE: WITNESS: Yes, Your Honor.

THE COURT: You may leave, Mr. Makuch.

MR. MC GILL: Off the record.

(There was an off-record discussion.)

MR. McGILL: Your Honor, I understand that your Order will stay in force, that any kind of information in relation to this document --

THE COURT: Yes. I don't want to see this in the paper.

MR. JACKSON: Judge, I think I should let you know that this isn't the first time that has come up. The Press already knows about it.

THE COURT: All right. They may, but --

MR. JACKSON: I was told about this before I even knew, and I'll tell you frankly before I knew it was in your file, when you told me was when I looked at it.

THE COURT: That, unfortunately, is the thing we are hoping to prevent. We don't want to try

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our case in the newspapers.

MR. JACKSON: I just wanted you to know that this isn't new information.

MR. MC GILL: I'd like to finish that, Judge, for a moment, because I think it is important. First of all, I have no reason to disbelieve anything Mr.

Jackson has said. He has always been an honorable man with me.

There is a lot of emotion in this particular case, and I believe that the Reporters and the assistants of Mr. Jackson may have gotten their hands on that file, or whatever.

However, what has happened is since this whole case file was sent to Mr. Jackson's office, a copy of this very document D-15 was mailed to several newspapers. That is how I, as a matter of fact, came into the knowledge of the existence of it.

I never knew there was one. A newspaper Reporter called me and asked me to explain it, which I was at quite a loss at the moment. I immediately spoke to Mr. Jackson. I think you will admit that.

MR. JACKSON: That's right.

MR. MC GILL: I immediately called Mr.

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Jackson and notified him of that and told him that if there is such a document, it is most likely one of these phone call hearsay upon hearsay upon hearsay in a madhouse homicide after a police shooting, which obviously, it turned out to be.

With that in mind, we left it there, so if there is any news that is out because of the contents of this document, it is because of that particular incident.

That's about it, Judge, so I would appreciate if the Court would impound this record and order all of us not to say anything to anyone.

THE COURT: I am asking us here (and, I mean just us) not to discuss it.

MR. JACKSON: I just didn't want you to think that somehow I leaked it. It is already out.

THE COURT: All right. OK. But, they don't have to know what went on back here.

MR. JACKSON: Fine. I won't.

(There was an off-record discussion.)

(The proceedings were resumed in open court, as follows)

MR. JACKSON: Good afternoon, Your Honor. May it please the Court, I would initially like to

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request that Mr. Jamal be permitted to provide and to give the opening remarks to the jury. As Your Honor well knows, we are at the point where the defense is now prepared to give its opening remarks to the jury, and I believe in the name of justice, Mr. Jamal has, of course, made numerous requests to Your Honor with respect to his right to self-representation, and subsequently asked Your Honor to permit his opening remarks to the jury, the possible examination of three witnesses of his choice, as well as the closing.

I understand that, Your Honor, with regard to the closing remarks, Your Honor has indicated that you are taking that matter under advisement. But, to the extent that Mr. Jamal might be permitted to give the closing remarks, I would ask that Your Honor also consider allowing Mr. Jamal to give the opening remarks.

I know that technically, Your Honor, that is not in the nature of his self-representation, but I think, indeed, Mr. Jamal is the best person to give that opening remark, and I would ask that Mr. Jamal be permitted to do that in my stead.

I feel that he could do it and not be disruptive as Your Honor has suggested, and I think it

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would be in the best interests of justice to allow Mr. Jamal to do that.

Secondly, Your Honor, I understand that we have had conversations in the camera hearing with regard to a matter that Your Honor has determined not to be presented in open court.

Mr. Jamal and I would ask Your Honor to make that a matter of public record, because Mr. Jamal believes that it is in his best interests to have this information presented here in open court, and again I say that in the name of justice.

I don't think that it presents any additional burden to the Commonwealth or to Your Honor, particularly since the jury has been sequestered. The jury has no opportunity to read the newspapers or to hear anything on the radio

or television.

For those reasons, I ask Your Honor to grant both of these requests.

THE COURT: Do you have anything to say?

MR. MC GILL: No, sir.

THE COURT: Well, the Court will deny those requests. I told you initially that when I appointed you as Counsel, once you became Counsel you were going to follow this thing all the way through.

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I think it's only fair that the continuity of your representation of this defendant include not only the opening remarks, since you are going to be the one that has to let the jury know what you intend to prove, and the closing remarks as to your arguments as to what you have proven, or as to what the evidence shows.

I am not going to -- the other matter that we had is not evidence. It was just merely a hearing, and I am not making that public at this time. It will be made available later on, but not at this time.

Your request to have Mr. Jamal make the opening and closing and to cross-examine some witnesses of his choice -- all those Motions are denied.

MR. JACKSON: Your Honor, may we have some indication as to when that information would be made public?

THE COURT: At the proper time.

MR. JACKSON: Your Honor, if you could suggest to us or indicate --

THE COURT: Well, whenever the notes are transcribed. I don't have them any more than you have them.

MR. JACKSON: I understand that. At least

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Your Honor has indicated that the record is sealed with regard to that matter, and Your Honor has advised and ordered that Mr. McGill and myself not speak of those issues, and Your Honor has indicated that at some later time it could be made public.

THE COURT: Once the notes are transcribed, they will be public. I don't have them either.

MR. JACKSON: I understand that. But, you are saying the subject matter of the discussion could be made available at some later time.

MR. MCGILL: Judge, I would object. The very import and meaning behind your Order is being violated now, so I object to this. It is obvious what is being done.

THE COURT: When he transcribes the notes, you will get them. All right?

MR. JACKSON: Your Honor, one last matter, sir.

(There was an off-record discussion between Mr. Jackson and Mr. Jamal.)

MR. JACKSON: Your Honor, notwithstanding Your Honor's indication and advice with regard to Mr. Jamal not addressing the Court, I believe that Mr. Jamal feels extremely interested in the proceeding

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that was in chambers as well as the other issue that that Your Honor has ruled on today.

For that reason, Your Honor, Mr. Jamal has said in the absence and outside the hearing of the jury, he would like a brief opportunity to speak to Your Honor, and I believe, Your Honor, there certainly is no intent from Mr. Jamal to delay this proceeding, but I think, again, because it is, indeed, his life that is at stake here --

THE COURT: Mr. Jamal was given the opportunity to come back in chambers with us at that time. He chose not to do so. As far as I am concerned, that closes the issue. I am not going to discuss it with him. Is there anything else you have?

MR. JAMAL: I chose not to go back in chambers for a very good reason. Because, in chambers, in camera as it is called, this matter of a very serious import was discussed.

MR. MCGILL: Your Honor, I object to this.

MR. JAMAL: It was discussed in secrecy.

MR. MC GILL: I object, Your Honor.

MR. JACKSON: What is the Court trying to hide, Judge Sabo?

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THE COURT: Mr. Jamal, the Court is not trying to hide anything.

MR. JAMAL: Why don't you discuss this investigative log from the M.E.'s Office, the Medical Examiner's Office?

MR. MCGILL: Again, I object. It is so obvious what he is doing.

MR. JAMAL: It is obvious I am bringing out information that they are trying to hide.

THE COURT: And, I am telling you, Mr. Jamal, unless you sit down and allow this Court to run the court --

MR. JAMAL: I will not allow the Court to railroad me. I will not allow this Court to hide evidence that it concedes --

THE COURT: Nothing is being hidden, and your attorney knows all about it.

MR. JAMAL: Well, bring it out in open court, Judge.

THE COURT: At the proper time.

MR. JAMAL: The proper time is now the defense is open.

MR. MC GILL: Would Your Honor make a ruling?

THE COURT: I have made a ruling.

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MR. JAMAL: I have said, Judge, what I said. This is not an outburst, Judge. I am angry because you are obviously hiding and trying to keep something secret. I want this report addressed in court, not in sidebar, right here.

THE COURT: May I see you here?

MR. JAMAL: I don't want to meet you there. I want you to meet me here in open court. I don't want you going over there.

He is again disobeying my orders. He is working for me, not for the Court.

(There was an unreported sidebar conference.)

MR. JAMAL: Judge, if it is your intention to remove me, then that is your intention. It will not be the first time. It will not be the fifth time. It wouldn't be the seventh time. That will be your Order.

I am telling you I am fighting for my life. If you want to hide evidence that you don't want to have submitted in this trial --

THE COURT: That is not evidence.

MR. JAMAL: Based on your determination. Were you on 13th and Locust?

THE COURT: No, but you were.

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MR. JAMAL: This Sergeant was here as well, which is evidence admitted into evidence.

THE COURT: Your attorney knows that that is not evidence.

MR. JAMAL: My Counsel is John Africa. My Counsel would be ordered not to hide anything.

THE COURT: Are you going to sit down?

MR. JAMAL: No, I am not.

THE COURT: You are going to become disruptive.

MR. JAMAL: No. I am pressing this point.

THE COURT: Are you going to do it in front of the jury?

MR. JAMAL: I will do it, right. I have no objection to them hearing the truth.

THE COURT: I am not going to allow you to do that in front of the jury. I think it is better I remove you beforehand.

MR. JAMAL: Judge, I think you know what is better for you to obtain a

conviction.

THE COURT: I want to know from you: Are you going, to be quiet?

MR. JAMAL: I want to know from you: Are you going to speak to this Medical Examiner's Report?

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MR. MC GILL: Your Honor, again I object to this obvious play. It is so completely obvious.

MR. JAMAL: I object to this obvious railroading. I object to this obvious attempt to silence and keep information secret in a trial for my life.

MR. MCGILL: Will Your Honor rule on whether he can continue this disruptive behavior?

MR. JAMAL: I am not.

MR. McGILL: I am convinced he doesn't think so. Your Honor, I would ask this Court to make a ruling.

THE COURT: I hate to bring the jury and have him act up in front of the jury again.

MR. JAMAL: Judge, this is not an act. I am not acting up. I want you to address that information. I have been rational. I have been articulate.

THE COURT: It has already been discussed.

MR. JAMAL: It has not been discussed with me, Judge. Here you have a man that goes back in sidebar with this man trying to kill me, this man that I don't want here, and you obviously trying to convict me, and you discuss pertinent information that comes from the Police Department to the Medical Examiner's

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Office about who shot me, and you don't want me to discuss it.

MR. MCGILL: He is completely inaccurate, Judge.

MR. JAMAL: I am not acting up, Judge.

THE COURT: You are disrupting this court.

MR. JAMAL: I am disrupting nothing.

THE COURT: Sheriff, take him out. Take him out.

MR. JAMAL: I am fighting for my life according to the strategy of John Africa.

I don't want you to participate. You are not working for me. I want you to get your ass up and go out of here.

THE COURT: Quiet in the courtroom. If there are any outbursts in the courtroom, you are going to be evicted.

MR. JAMAL: On MOVE!

(The Sheriffs removed the defendant from the courtroom.)

(The jury was then returned to the courtroom.)

THE COURT: Mr. Jackson?

MR. JACKSON: Your Honor, may I approach the

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jury?

THE COURT: Yes. Please.

MR. JACKSON: Good afternoon, ladies and gentlemen of the jury.

This, of course, is my first opportunity to talk to you as an assembled jury. You've sat through and listened to the prosecution present a host of witnesses purporting to tell you -- and, of course, the prosecution hopes to prove to you -- what happened on that fateful evening of December 9th, 1982.

Let me just suggest to you -- and, it should be obvious to you -- that on December the 9th, 1981, MR. Jamal was a victim himself. You've heard testimony of what did or may have happened to Officer Faulkner. You have heard very little of what happened to Mr. Jamal.

You know from the records, from the testimony that Mr. Jamal himself was, indeed, shot. Mr. Jamal himself was, indeed, beaten. You heard very

early at the outset of this case Judge Sabo indicating to you that the defense has no obligation whatsoever to prove anything.

Indeed, it is the choice of the defense to have the defendant say nothing at all. There is absolutely no requirement that we present anything to you

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at all, that, indeed, you could and would make a determination based on the prosecution's evidence alone that you have just heard; that is, the prosecution's case. You've heard the prosecution rest.

It is now our opportunity to present to you some information. We are not going to stand up here and say we are going to prove this and the other, but what we would like you to do is now have an opportunity to see all of the facts that happened on that evening, on that early morning hour.

What happened December 9th, 1981, at or about 4:00 a.m.? You must as jurors in listening to the proof, in listening to the testimony of both the prosecution and the defense make a determination of what happened, not just of some of the things that the prosecution wants you to hear, but of all the facts, because each and everyone of the facts, each and everyone of those persons who testified, their testimony is interrelated.

What do I mean by that? If I were to ask you: Does each and everyone of you see my hand? Members of the jury, now from that perspective I am sure you are saying, "Yes, we see your hand."

All that I am asking you to do is to reserve

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making an opinion like that, because what you see is just one side of my hand, just one side. At this point what we want to do is to turn the hand around so that you can see both sides of that hand, so that you know, in fact, what it is that you've seen, what it is that you've heard before making any decision whatsoever. For that I would ask you to listen and to listen closely, as to the cross-examination that has been conducted both of the prosecution's witnesses as well as the witnesses that are going to testify here.

The witnesses that you will hear are witnesses that have been available to the prosecution. You will see that the prosecution has interviewed these witnesses, that they have given statements to the prosecution. For one reason or another, the prosecution has decided not to present those

witnesses to you.

So, what we are going to do is to present those witnesses to you so that you have an opportunity of making a decision. You recall you have the power exclusively to decide what the facts are, what the facts were, on December the 9th, 1981, at about 4:00 a.m.

I ask you to do that in the name of justice. Thank you.

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THE COURT: May I see you at sidebar, please?

(There was a sidebar conference, out of the hearing of the jury, and reported as follows)

THE COURT: I just wanted to ask you if you wanted me to say anything about him not being here or whether you think this would just be calling it to their attention again. I have said it so many times.

MR. JACKSON: I thought that he was out.

THE COURT: He came back for a little while on Saturday. What do you want to do?

MR. JACKSON: I think at this point since we have started I would rather not.

THE COURT: You don't want to do it?

MR. JACKSON: No.

MR. MC GILL: I did indicate before Mr. Jackson opened, I went to him and I said, "Do you want that instruction?" and at that point he did say he did not. He indicated he did not want the instruction at the time, at which point I did not call sidebar, because I thought it would be further delay. Is that right?

MR. JACKSON: That's right. It was because and -- and, it was probably my fault. I thought he was out on Saturday.

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THE COURT: He was in for a little while. He was out for a little while, and, then, he came in.

MR. MC GILL: It wouldn't be any problem if you wanted to say it now, Judge.

THE COURT: Do you want me to say it again?

MR. JACKSON: I guess maybe I better.

THE COURT: OK.

(The proceedings were resumed in open court as follows):

THE COURT: Members of the jury, you are not to draw any adverse inferences from the absence of the defendant. You should further refrain from any sympathies, bias, or prejudice for or against the defendant.

Mr. Jackson?

MR. JACKSON: Yes, Your Honor. The defense would call Dr. Anthony Coletta.

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DEFENDANT'S EVIDENCE

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ANTHONY V. COLETTA, M.D., sworn.

DIRECT EXAMINATION

BY MR. JACKSON:

Q. Dr. Coletta, on December the 9th, 1981, where were you

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employed, sir?

A. Thomas Jefferson University.

Q. And, what was your position there, sir?

A. Third year surgical resident.

Q. Could you tell us what a third year surgical resident does and is, or is and does?

A. Well, three years ago I graduated medical school. For the last three years I have been in training to become a general surgeon employed at Jefferson.

Q. Now, on December the 9th, 1981, did you have reason to come in contact with Mumia Abu-Jamal?

A. I did.

Q. At about what time, sir?

A. I think it was around 4:00 a.m.

Q. And, where did you come in contact with him?

A. In the emergency room at Jefferson.

Q. Was it in the treatment room, sir?

A. When I initially came in contact with him, yes, it was in one of the treatment rooms.

Q. And, at the time that you first saw him, for what purpose did you come in contact with him?

A. Well, I was the surgical resident on call that evening, and sleeping in the hospital, and was called to the emergency room via trauma code that something had happened, and I

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was to go to the emergency room in the capacity to manage and resuscitate patients in the emergency room that had been injured.

Q. Could you tell us what the trauma code is?

A. We carry beepers, and a special -- I was a sleeper in the on-call room, and a special code came over the beepers indicating to me that there was a trauma code indicating that there were patients in the emergency that had been seriously injured that needed my attention as a surgeon.

Q. Would it be obvious that there is a trauma code when a life threatening situation exists?

A. Absolutely a life threatening situation.

Q. Fine. When you first came into contact with Mr. Jamal, what were your initial observations?

A. I observed that he was seriously injured. I could see that he had sustained a fair amount of blood loss from my own clinical judgment, and I could see that he was seriously injured.

Q. At the time of your initial observation, were you able to immediately determine the cause of that injury?

A. I was able to see that, yes. He had a gunshot wound to the right chest, and I felt that that was part of his injuries. I had my initial observations. I had -- you know, you have to complete the observation of the patient before you

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can make your final assessment.

Q. Did any medical personnel or police personnel prior to your examination, even if it was a cursory examination, did anyone tell you what had happened to him or what injuries he sustained?

MR. MCGILL: Objection, Your Honor, hearsay.

THE COURT: Sustained.

BY MR. JACKSON:

Q. You made your clinical determination based on your own observation then? Is that correct, sir?

A. That's right.

Q. And, as a result of your examination -- strike that. Could you tell me how you conducted that examination?

A. Well, you approach -- you have to approach it systematically. That's the way we are trained to approach the problem, and you begin by initial

cursory examination, head to toe, and take into account the patient's vital signs, which hopefully, by that time had been taken by the nurse, and then you go from head to toe and examine everything, every aspect of the patient's body, and make an evaluation as to what their injuries are.

Q. Doctor, was he fully clothed when you first saw him, sir?

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A. It's difficult -- it's difficult for me to remember the state of his clothing. As you can imagine, I think my attention was focused on other areas, so it's difficult for me to remember exactly what the state of his clothing was, because we were trained and the nurses in the emergency room are trained to remove all clothing at once.

Q. OK. Even though you don't recall whether he had his clothing on at the time, you have indicated that you made a cursory examination of his injuries, and I assume, No. 1, you have indicated that you knew that he had sustained a bullet wound? Is that correct, sir?

A. That's right.

Q. To the chest area?

A. That's right.

Q. Additionally, as a result of your cursory examination -- and, maybe you better tell us what a cursory examination means to doctors.

A. Well, it means a quick vital examination of everything that we deem to be very important. You see, the problem in dealing with a life and death matter, you don't normally --- physical examination can take up to a half hour. You don't have a half hour in trauma situations. You have several minutes, and you are trained to key in on those things that you deem most important to try and develop a picture of what

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has happened to the patient, so a cursory examination should not imply in any way a half-hearted examination.

Q. OK. Now, as a result of your cursory examination, were there any other

injuries that you observed and noted other than the gunshot wound of the chest?

A. Yes, there were.

Q. Could you tell us what they were, sir?

A. He had a laceration of his forehead of about four centimeters or so in length.

Q. Where on the forehead, again, please?

A. I believe in the left upper aspect of the forehead somewhere near the mid line of the head up near the hair line.

Q. Any others, sir?

A. He had swelling over the left eye, a laceration of his left lower lip, and there was soft tissue swelling on the right side of his neck and chin.

Q. Now, you noted that from a cursory examination, again? Is that right?

A. That's right. Again, not cursory to imply half-heart.

Q. So that there had been abrasions -- based on your medical background, sir, is it possible that there were other injuries that a cursory examination would not display or you would not discover?

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MR. MC GILL: Objection, Your Honor. Well, I withdraw the objection.

THE WITNESS: Let's say that there were -- it's possible that there were not other serious injuries in a life threatening nature. You know, I had a patient that was seriously wounded, and if I had seen an abrasion, I might have just gone over it, because I realized that it was not primary on the list of what I had to treat.

BY MR. JACKSON:

Q. And, you would not note it necessarily? Is that correct?

MR. MCGILL: I would object, Your Honor. We are talking about this

case.

MR. JACKSON: I am talking about this case.

THE COURT: Rephrase your question. Rephrase your question.

BY MR. JACKSON:

Q. Again, Dr. Coletta, if there were abrasions as you have indicated -- well, if there were abrasions on Mr. Jamal given the life threatening nature of his other injuries, should I assume from your testimony thus far that you may not have made a note of it?

A. I may not have. We are trained to keep very complete

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records, so if I had seen and if it had impressed me, I would have written it down.

Q. And, you don't recall, obviously, if there was an abrasion or some discoloration of a portion of the body?. Where there was clothing, you would not have seen it? Is that correct?

A. No. But, I think, Mr. Jackson, that we have to get something straight, and that is my cursory examination only takes place after all the clothing has been removed.

Q. And, did you do that?

A. Myself and the nurses. I don't recall exactly who it was that did it, but that's one of the initial steps.

Q. Now, when you first saw Mr. Jamal, was he coherent?

A. Yes, he was.

Q. And, doctor, the injury that you were most interested in was what, sir?

A. The gunshot wound to the chest.

Q. Now, before we get to that gunshot wound of the chest, sir, you have indicated that there was a laceration over the left eye, is that correct, or the

left forehead?

A. The left forehead; that's right.

Q. It was about how long, sir?

A. From my measurements, about four centimeters.

Q. Do you recall whether or not you sutured that?

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A. Eventually I did.

Q. Do you recall how many sutures you used?

A. No

Q. When you first saw him, was the -- was there blood on his face?

A. Yes, there was.

Q. How much blood?

A. There was some blood on his face. He was not hemorrhaging from his head.

Q. And, when you say "not hemorrhaging from the head --"

A. In other words, I didn't see active, ongoing bleeding from the lacerations. There was some oozing of blood, but there wasn't an extraordinary amount. There was not enough blood coming from his head to explain his clinical condition.

Q. Now, Doctor, that injury to his forehead -- based on your medical experience, what type of instrument or -- could you estimate in any way the nature of that injury, the source of that injury?

A. The only thing I can say to answer that question is that it's difficult to say. We refer to it as penetrating trauma as opposed to blunt trauma. It penetrates the skin, but it could have been caused by anything.

Q. Now, penetrating trauma -- is there some way --

A. Just that it penetrated the skin as opposed to blunt

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injury, but there is no way really that I could say where that or how that has occurred. It would take a significant amount of force of any means in order to do it, but, you know, it is the same way you get cut on the face.

Q. Now, you've spoken of penetrating trauma as opposed to blunt injury trauma, suggesting that if a blunt instrument or object was used to cause it that would not be the injury that you observed? Is that right?

A. It's difficult to say. The only way -- when you say penetrating trauma, it means there was penetration of the skin. That could be done in any number of ways.

Q. Was there any -- the laceration itself -- was there any way that you could determine whether it was an even or uneven laceration to suggest that an instrument might have been used?

A. OK. I can answer that. If -- say if someone takes a knife and he causes an injury to the skin with a sharp knife, obviously the laceration is a sharp, even laceration. Otherwise, a different object other than something very sharp might cause a more irregular type of laceration.

Q. Well, doctor, if a --- let's assume for a moment, again based on what you have testified thus far that there may

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have been a blunt instrument that caused this injury. Would there be some consequent swelling along the laceration itself?

MR. MC GILL: Your Honor, I would object to that; I think you should ask: would it be consistent?

MR. JACKSON:

Q. Would it be consistent?

A. Blunt injury would tend to cause -- I guess you could say that blunt injury would tend to cause more swelling. The problem is whenever you injure the body, the body responds to the injury.

Q. Was there significant swelling?

A. Yes, there was. Around the laceration?

Q. Yes.

A. There was some swelling.

Q. Would the swelling you noted be consistent with a blunt instrumentality?

MR. MC GILL: Objection. It's too speculative, Your Honor.

MR. JACKSON:

Q. Doctor, if I told you that the man -- if I told you that the man was hit in the head with a walkie-talkie, would the laceration be consistent with someone being struck by a walkie-talkie?

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A. I would be speculating, but, yes. As I said, there is no way for us to know exactly what the cause. Any firm object, anything hard, that is used with a good deal of force could do it.

Q. What if I had said: Would the injury be consistent with someone's head being accidentally ran into a pole?

A. Yes, it would be that as well.

Q. It would not be any -- that would not be a blunt injury trauma?

A. Yes, that would be blunt, but you should not mistake me when I say the difference between penetrating and blunt trauma is just the fact that the skin has been penetrated. Blunt instrument can cause penetrating trauma.

Q. OK. Let me ask you this: The laceration that you saw, if possible -- and, I know this may be difficult for you -- can you in any way estimate for us whether the injury you noted was more consistent to someone being struck by a walkie-talkie or is it more consistent with someone whose head was run into a pole?

A. I could not make that distinction.

Q. Fine. Now, let's move on, if we could, doctor, to the injury to the chest. Could you in some way demonstrate for us if you don't mind standing and perhaps showing the jury members

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where the bullet wound to the chest was?

A. The wound -- the entrance wound was right below his right nipple on the right chest, just below the nipple. We describe it in relationship to the clavicle. It was about the midaspect of the clavicle, if you draw a line right down.

Q. Doctor, while you are standing, first of all, did the bullet strike any bone that you could detect?

A. Not that I could detect initially, no. I mean, there was no way, really, to know.

Q. OK. Now, Doctor, the bullet, as I understand it, after entering the right below the nipple, below the right nipple, it ended up -- it came to rest somewhere near his back or in his back? Is that right?

A. That's right.

Q. Now, doctor, you observed where the bullet came to rest, is that not true, or you were able to determine where the bullet came to rest? Is that true?

A. Mumia told me where it came to rest.

Q. Because he could feel it?

A. Yes.

Q. And, he pointed to his lower back? Is that not true?

A. I asked him where else he hurt, and he indicated that that was the region where it hurt.

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Q. And --

A. Could I sit back?

Q. I am sorry. One other question before you sit down. That's the reason I didn't want you to think I was going to have you standing. The bullet came to rest in his back. Based on the entry wound just below the right nipple, was the bullet where it came to rest lower than where it entered?

A. Yes, it was. It was lower. Not a great deal lower, but I would say that it was lower.

Q. How much lower, sir?

A. Well, if I could for a minute just indicate. If you think of the vertebrae of the back, there are twelve of them, twelve thoracic vertebrae, and if we use those as guidelines, the bullet was lodged around the twelfth thoracic vertebra in his back, and this entrance wound would be somewhere, I guess, around the sixth or seventh thoracic vertebra, if you drew a line across.

Q. If you could somehow -- I know we used to see it in cartoons. When an arrow goes in, someone tells where the entry wound was, and where the bullet -- if you could do that.

A. The entrance wound was there (indicating), and the bullet was lodged approximately there (indicating). I say it is approximate.

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Q. Would it be fair to say it might have been four to five inches lower?

A. It would be difficult for me to say. I guess that would be a fair estimate, but it's just an estimate.

Q. Fine. Thank you. You may return to your seat, Doctor. Doctor, I realize you are not a pathologist but would it be fair to say from the entry wound and where the bullet came to rest that the bullet had a downward projectile?

A. Yes.

Q. And, there was nothing to interfere -- strike that. You have indicated from what you could determine the bullet never struck any bone or

anything else that would cause the bullet to unnecessarily be lowered in its trajectory? Is that right?

A. It's -- that's a difficult thing for me to determine. Those bullets can ricochet in any number of different ways, and I have to emphasize that I am not a ballistics expert, and, you know, for my initial -- when they tumble -- the bullets tumble, and so forth, it appeared to be somewhat in a straight line, but I mean, really, I don't think I could honestly say it was exactly in a straight line.

MR. MCGILL: I have to object to "appear," then, based on his statement of his qualifications.

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MR. JACKSON: Fine.

BY MR. JACKSON:

Q. Based on your medical experience, you have indicated it appeared to be a straight line from where the bullet entered to where it came to rest? Is that right?

A. For the most part.

Q. Doctor, can you tell us what Mr. Jamal's condition was when you first saw him in terms of his vital organs?

A. It was critical.

Q. And, by "critical," would you tell us what you mean by "critical"?

A. Meaning he had sustained a significant amount of blood loss, and in my estimation, you know, if something wasn't done, he would have died.

Q. How soon, sir?

A. That's difficult to say.

Q. What did you immediately do to stabilize his condition if anything?

A. Did general resuscitation, resuscitative measures we are taught to do on anybody who is struck in the chest. We pay particular attention to the secure airway, and that he was breathing properly, and put extra venous

lines in and began resuscitation with intravenous fluid. We drew blood work in order to get blood

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ready to give him if needed, and I placed a chest tube in the right side of his chest.

Q. Were there police in the immediate area while you were conducting -- while you were performing your tasks, sir?

A. Yes.

Q. And, what if anything were they doing?

A. They were standing at the side and observing.

Q. Was there any conversation between the police, any of the police, and Mr. Jamal?

A. None that I remember.

Q. Now, why is it you say none that you remember? Is it just because you don't remember?

A. Well, you have to understand that my attention was absolutely riveted on my patient.

Q. I understand that.

A. And, there was a good deal of things going on that night, and my attention was undivided from my patient, so a lot of things could have gone on that I was unaware of. I was only aware of two people in that emergency room.

Q. Now, you had some discussions or some words between Mr. Jamal and yourself? Is that right?

A. Yes, I did.

Q. And, by the way, in that chest area, were there any

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other injuries that you noted other than that caused by the bullet itself?

A. No.

Q. And, could you tell us what injuries the bullet itself caused, its path, the path of the bullet, what injuries it caused?

A. It went --

MR. MCGILL: I would object, Your Honor, as being irrelevant. Where it went and where it ended up may have some relevance, Your Honor, but the injuries don't.

MR. JACKSON: What he was able to do, what he was not able to do -- I want to find that out.

THE COURT: I'll allow it.

MR. MCGILL: The effects would be relevant as opposed to the injuries.

THE COURT: Well, he is going into that.

MR. JACKSON: Yes. I want to find out, first:

BY MR. JACKSON:

Q. Again, would you tell us the path of the bullet, what injuries it caused, and, then, I will have another question for you, to satisfy Mr. McGill.

A. In entering his right chest, it went through his right

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diaphragm, through his liver, and lodged in his back.

Q. And as a result of that, do you have some estimate or some suggestion as to whether or not it was a debilitating injury?

A. He was debilitated in what sense? I am not sure I understand.

Q. In any way. In other words, a person who sustained an injury like that --

would he be able to carry on his normal functions?

MR. MCGILL: Objection. At what time?

MR. JACKSON: After the injury.

THE COURT: Immediately?

MR. MCGILL: Immediately?

MR. JACKSON: I want to find out what he would be able to do immediately after the injury. Would he be able to carry on his normal body functions?

THE WITNESS: It's difficult to estimate. The bottom line, I think, depended on a few things. Did his lung collapse when the bullet went through? Sometimes it does, and sometimes it doesn't. How fast did he lose blood when the bullet entered his liver? If a major artery is cut, he could die instantly. In other words, it depends on the rate of

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blood loss. Primarily, it is two things: the breathing and circulation.

BY MR. JACKSON:

Q. At the time you first came in contact with Mr. Jamal, you said that you noted immediately that there was a substantial blood loss? Is that correct?

A. Yes.

Q. Suggesting, then, that the bullet wound was, indeed, a debilitating injury? Is that correct?

MR. MCGILL: Objection. That's not what he said.

THE COURT: Rephrase your question. Let him answer it.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. You indicated that there was substantial blood loss which you

immediately observed in Mr. Jamal? Is that correct?

A. Yes, in the sense that just by looking at him and seeing enough patients in that situation.

Q. A person is called anemic, or something like that?

A. That's right. The skin gets clammy and that sort of thing.

Q. As a result of your observations, your immediate observations, could you in any way estimate what his condition

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was at the time that he received the injuries?

A. There was no way I can estimate that. The only thing I can do is observe the condition that he was in when I saw him.

Q. OK. When you first saw him, what observable movement did you see?

MR. MCGILL: I would object.

MR. JACKSON: Let me --

MR. MCGILL: To the relevance at the time that he examined him. It's irrelevant.

MR. JACKSON: It's still relevant for the same reason.

THE COURT: Try to rephrase your question.

BY MR. JACKSON:

Q. Doctor, at the time that you first saw him, was Mr. Jamal debilitated? Was his ability to control and move his bodily organs and limbs intact? Could he do that?

MR. MCGILL: Objection. Irrelevant.

THE COURT: I will let him answer that.

THE WITNESS: He was weak. He could move, but he was weak. From the fact -- one of the things that we examined in the cursory examination

was: Can he move? Is the bullet in his spine? If the bullet was

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in the spine, he could not move his legs. But, he could move all four extremities.

Q. But, you say he was weak?

A. Yes, he was.

Q. Is there any way that you can suggest to us how weak he was as opposed to how one is normally? I know everyone is different, and all of that, but is there any way in terms of a five to fifty-five scale where he was in terms of weakness or strength?

MR. MC GILL: Objection, sir. Irrelevant at that point.

MR. JACKSON: Your Honor, it is, indeed, relevant.

THE COURT: May I see you gentlemen?

(There was a sidebar conference out of the hearing of the jury, and reported as follows):

THE COURT: Where are you going?

MR. JACKSON: The issue of what he was doing in the hospital when he was brought into the emergency ward, flailing his legs and his arms, and things of that sort. I am trying to find out whether or not at the time that the doctor examined him whether or not his examination would be consistent with one being able

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to do that.

MR. MC GILL: All right. That is relevant.

THE COURT: He has already said that, that he was.

MR. JACKSON: That he was able to move.

THE COURT: He said all four extremities.

MR. JACKSON: He said he was weak, and I am trying to find out how weak for that reason.

THE COURT: Sometimes people are weak, but if they are strong willed --

MR. JACKSON: That is beyond his expertise.

THE COURT: I know that.

(The proceedings were resumed in open court, as follows):

BY MR. JACKSON:

Q. Dr. Coletta, on a scale from 1 to 5 or 1 to 10 -- I understand this is unusual. But, lay people, the jury and myself, when you say he is weak, 1 being extremely weak, 10 being normal, could you somehow tell us where he was?

MR. MC GILL: I would object, Your Honor. I think it is beyond his expertise at this point.

THE COURT: Can you rephrase that? Rephrase your question. Be more specific.

BY MR. JACKSON:

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Q. Can you tell us in some way given the normal bodily function that one performs on a day-to-day basis -- I mean walking and talking and all of that. If you say, "Tony Jackson was weak," is there some way you can tell us in what way he was weak?

A. I would say you were on the verge of fainting.

Q. On the verge of fainting?

A. That sort of weak; in other words, if you tried to stand him up, he would not have been able to stand up.

Q. Could I possibly punch someone with any force at all?

MR. MC GILL: Objection, Your Honor, as being irrelevant.

MR. JACKSON: I withdraw that question, Your Honor.

MR. MC GILL: Wait a minute.

THE COURT: Just a minute. Don't get excited.

MR. JACKSON: I withdraw the question.

BY MR. JACKSON:

Q. Now, you said he was about to faint at the time that you saw him. Now, is that as a result of blood loss trauma or --

A. Blood loss.

Q. Blood loss? I suppose each person's body has a different

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amount of blood in it.

Is there any way that you could estimate for us how much blood he lost from his body?

A. I would say --

MR. MC GILL: Your Honor, I would object. It's irrelevant.

THE COURT: No. I will allow him, if he knows.

THE WITNESS: I would say you could approximate it. Now, from my memory when we put the chest tube in, we got about 500 ccs. or 700 ccs. of blood almost immediately, and there are 5000 ccs. of blood in the normal, healthy human being, so he had lost almost that plus what was in his abdomen, so about maybe one fifth of his blood volume, maybe a little bit more.

BY MR. JACKSON:

Q. One fifth of his blood volume had been missing when you first

checked?

A. Yes, but you have to remember that these are purely approximations.

Q. I understand, sir. Doctor, when you first saw Mr. Jamal, was he handcuffed?

A. Yes.

Q. Behind his back?

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A. I don't remember. It was either behind his back or to the stretcher, one or the other. I don't remember which one it was.

Q. At some point in time were the handcuffs removed?

A. Yes.

Q. At what point, sir?

A. At my request initially upon seeing the patient.

Q. And, were they immediately removed?

A. Within about fifteen seconds they were removed, within fifteen to thirty seconds.

Q. And, after the handcuffs were removed, did Mr. Jamal strike out at anyone?

A. No.

Q. And, what did you then do for him, sir? At some point in time you operated on him, did you not?

A. Later on in the day.

Q. OK. Well, why don't you finish telling us how you stabilized him?

MR. MC GILL: I would object. It's irrelevant, Judge.

MR. JACKSON: Your Honor --

THE COURT: Come here, again.

(There was a sidebar conference, out of the hearing of the jury, and reported as follows):

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THE COURT: State your objection, and I will let him answer it.

MR. MC GILL: Objection is to relevance. This is all done for sympathy for him at this point. We reached the point already as to whether he could move his hands at the time of this particular injury.

THE COURT: The doctor said --

MR. MC GILL: Anything beyond this, Judge, we are talking about things that happened, two, three, four, five six hours. He has gotten entirely too much as it is, and I object.

MR. JACKSON: Judge, what I need to know is at the time that he became stabilized what his condition was. I can leave it at that. But, Judge, it is going to also go to the fact that once Mr. Jamal was in the hospital, the police officers did something to him.

Now, that is not at all relevant to any statements or anything like that, but there are some things that happened to him in the hospital that are going to be relevant.

MR. MC GILL: Judge, that's irrelevant. Will you rule on it?

MR. JACKSON: Judge, what I am saying to you

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is I want to find out at what point in time -- I want to know when he was stabilized and what he did to stabilize him, and if there were any other medical treatments he gave him to treat any other injuries that he may have had.

MR. MC GILL: What is the relevance, Judge?

MR. JACKSON: So we can document -- well, the relevance is a number of witnesses have indicated that he wasn't injured. Some people said that he was. So, I need to find out from him. He is the doctor.

MR. MC GILL: He has found out, Judge. Anything more -- I will admit about sixty percent of what has been let in is irrelevant, as it is anything more about treatment, condition as the hours goes on, is absolutely irrelevant, and I object to it as merely seeking to get sympathy for the defendant.

MR. JACKSON: Judge, I heard him say he made a cursory examination, and I want to find out after he stabilized his condition what else happened, to find out if there were any other --

THE COURT: Wait a minute. What do all of these other injuries have to do with this case?

MR. JACKSON: That would corroborate the testimony of those witnesses who said that he was

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struck, and it would belie the testimony of those witnesses who said that he wasn't injured.

MR. MC GILL: I don't understand.

MR. JACKSON: If he had injuries, how did he get them?

THE COURT: Well, a lot of ways.

MR. MC GILL: Judge, he already testified to what he has observed, and the records are before Mr. Jackson.

MR. JACKSON: On a cursory examination.

THE COURT: Is there something else?

MR. JACKSON: I want to find out.

THE COURT: What is in this record?

MR. MC GILL: Judge, anything else, any further, is just an attempt to get more, and I would object to this as being irrelevant. Even if there were, which there weren't, it is irrelevant what happened afterwards.

MR. JACKSON: He is going to say it is irrelevant.

THE COURT: Wait awhile. What does that have to do with killing a police officer is what I want to know.

MR. MC GILL: That's what I have been saying.

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THE COURT: What has all this got to do --

MR. JACKSON: Judge, it may not be relevant to the sole issue.

THE COURT: Let's assume -- what does that have to do with this case? If he wants to bring a civil suit against somebody, fine. This is not the forum for that.

MR. JACKSON: Sure, and I have no problems with that, Judge.

THE COURT: Then where are you going?

MR. JACKSON: Judge, No. 1, there were alleged statements that were given to Inspector Giordano, and the question is whether or not he was beaten during the time. We have witnesses.

THE COURT: I have already ruled on that.

MR. MC GILL: Judge --

MR. JACKSON: I understand you ruled on that pretrial with regard to the legality of it, but, still the finders of the fact have to make a determination whether or not even if it was legal.

THE COURT: Yes, but the thing is this doctor doesn't know where these injuries come from. He tells you that.

Look! When he was trying to handcuff him,

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they said he was tussling at 13th and Locust. They could have banged his head on the ground. He could have hit is eyes. There are so many things that he could have done.

MR. JACKSON: I just want to know what the injuries were.

THE COURT: Fine.

MR. MC GILL: Judge --

THE COURT: He is not treating him for that.

MR. JACKSON: He treated him for everything.

THE COURT: What is the relevance? I don't care about that. It's relevant only to show that he was shot and he took this bullet out of there.

MR. JACKSON: For the same reason that he was shot, it was relevant to his injuries if Mr. Jamal says that he was beaten and that alleged statements were taken as a result of a beating, if he is saying he had injuries that are consistent.

THE COURT: This guy can't say that.

MR. MC GILL: Judge, let's just rule.

THE COURT: Look! I have ruled. You have gone too far now.

MR. JACKSON: But, Judge, if what this doctor says is different than what the witnesses have said,

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that is credibility.

THE COURT: He said what he did. He saw the eye, the cut over the forehead. That's it.

MR. JACKSON: That's from the cursory examination.

THE COURT: What are you telling me? You got the report.

MR. JACKSON: I am looking at it for the first time.

THE COURT: Have you talked to him?

MR. JACKSON: They wouldn't let me. That's just the point. There is his lawyer right there. He would not let me talk to him.

MR. MC GILL: Judge, he has reviewed and looked at the injuries. He has stated and the records reflect the injuries which were apparent.

THE COURT: Wait a while. If you think that doctor is going to remember anything that is not in that report --

MR. JACKSON: I don't want him to.

THE COURT: What is in that report that you haven't brought out?

MR. MC GILL: Nothing.

MR. JACKSON: Judge, what I am saying is he

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has testified thus far to the bullet wound and the cursory examination.

THE COURT: No. He said he stitched the forehead. He doesn't remember how many stitches. Do the records show?

MR. JACKSON: But, Judge, I am talking about -- and, he said that -- well, it's not a physical examination. The only way other than the cursory examination --

MR. MC GILL: Please rule.

MR. JACKSON: Do you mind?

THE COURT: You are not going to get anything from him other than what he has in the report.

MR. JACKSON: I understand. But, what I am saying: That is in the report.

THE COURT: What is in the report that you are asking?

MR. JACKSON: I want to find out the other injuries that he sustained.

THE COURT: What other injuries?

MR. JACKSON: I want to find out --

THE COURT: Wait a while. Is there anything in the report --

MR. JACKSON: I know there are other reports.

THE COURT: What is in the report that he has

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not already testified to?

MR. JACKSON: Judge, if you give me a moment to look -- I am only looking at the report for the first time -- strike that. It is not the first time.

THE COURT: Well, go get it. Bring it over here.

(There was an off-record discussion.)

MR. JACKSON: Judge, one of the problems I am having is reading the doctor's handwriting. Will you let me just ask: Were there any other injuries? and, then, I will leave it.

MR. MCGILL: It would be a narrative summary.

THE COURT: What does that have to do with the case? He is saying that the man was conscious. The man talked to him. He is able to talk, so he is able to say something.

The man is able to move his extremities, and whether or not he moved them before out in the hallway when he made this alleged statement or not, this doctor wouldn't know, because that he is not examining.

All he can tell you is he is coherent. He is awake and able to discuss things with him, and basically, that is it.

MR. JACKSON: I just want to know what injuries

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he had; that's all.

MR. MC GILL: This is the narrative summary, Judge.

THE COURT: He said he had the laceration over the forehead, the injury to the eye, to the chin, to the neck, and this gunshot wound.

MR. JACKSON: The question is: Were those the only injuries?

MR. MC GILL: It's in here. This is the narrative summary.

THE COURT: What does this say?

MR. MC GILL: 12/9 to 12/16/81. The physical examination. There it is. I am giving it to him. Now it is easy to read. It's typed.

MR. JACKSON: All right. Let me just ask: Were there any other injuries?

THE COURT: It's right here. He will not tell you anything that is not in this report.

MR. MC GILL: Could you ask him: Were there any other injuries?

MR. JACKSON: That's all I want to know. That's all I want to know.

MR. MC GILL: It's in there.

(The proceedings were resumed in open court,

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as follows):

BY MR. JACKSON:

Q. Dr. Coletta, approximately how long did it take you to stabilize Mr. Jamal?

MR. MC GILL: Objection.

THE COURT: Sustained. Come on!

BY MR. JACKSON:

Q. What other injuries did you note, if any, that Mr. Jamal sustained?

A. The ones I have already been through: the laceration of the forehead and the swelling over the left eye, the swelling of the right side of the neck and chin, and the laceration of his left lower lip.

Q. Any other injuries that you can recall?

A. No.

Q. Are you able to in any way whatsoever to indicate the cause of the swelling to his neck and cheek -- I believe chin?

A. It was to the right side of his neck and the right side of his face. There would be no way for me to say exactly what the mechanism was, except that it was probably caused by blunt trauma, and the tissue swelled in response.

Q. Doctor, were you the doctor who removed the bullet that

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was ultimately removed from Mr. Jamal?

A. Yes.

Q. At what time was that done?

A. I would have to look at the records to remember it. It was at the end of the operation. We operated on his abdomen later on that day, and at the end of the operation after we had finished operating on his abdomen, we turned him on his side and removed the bullet.

Q. The bullet was removed from his side?

A. The bullet was removed from his back, but we turned him on his side. It was removed from the skin.

Q. You gave that bullet to a police officer?

A. Yes.

MR. JACKSON: Thank you. I have no further questions at this time, sir.

MR. MC GILL: What is the next number?

THE CRIER: C-63.

MR. MC GILL: C-63, please.

(A document was received and marked C-63 for identification.)

MR. MC GILL: Does the Court want to look at this?

THE COURT: No, no.

MR. MC GILL: May I approach the witness?

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THE COURT: Surely.

MR. MC GILL: All right.

#### CROSS-EXAMINATION

BY MR. MC GILL:

Q. Doctor, C-63 -- will you take a look at these, just to use the word "cursory"? Just a quick look at these, please, C-63, and see if you can recall at least what they are.

A. Yes. It's obvious that they are his -- Mr. Jamal's -- hospital record.

Q. OK. In fact, I showed you once before at a prior hearing. Do you recall that?

A. Yes.

Q. OK. May I have them? I am going to refer to some of them, because, rather than referring to page numbers, I'll do it with the Court's permission.

First of all, let me understand what you said. When you saw the defendant, you were able to say that he was alert, right, alert, and you were able to understand what he was saying?

A. Right.

Q. How were you dressed at the time?

A. I was in a scrub suit, surgical scrub suit.

Q. Were you having constant conversation with him?

A. Yes.

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Q. As a matter of fact, you have had considerable training, haven't you, in trauma centers?

MR. JACKSON: Objection. His expertise is not at issue, Your Honor.

MR. MC GILL: He has made it at issue.

MR. JACKSON: I object, Your Honor.

MR. MC GILL: All right. You may answer.

THE COURT: Very well. I will allow him to answer.

THE WITNESS: As a surgical resident, we see a good deal of trauma, so that, you know, I have seen a considerable amount of trauma.

BY MR. MC GILL:

Q. And, have you been in your experience in your residency at all associated with an area that deals with a significant number of trauma cases?

MR. JACKSON: Objection, Your Honor. Again, this is not the expertise for which this witness was offered. If he wants to call him back at a later time, fine.

MR. MC GILL: If his testimony was inconsistent with that, then let's find out what it is.

THE COURT: You can answer it.

BY MR. MC GILL:

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Q. Haven't you been to a number of areas where they might be considered rather active trauma areas?

A. Yes.

Q. You have seen a lot of people beat up, haven't you?

A. Yes.

Q. A lot of traumatic injuries where you had to take care of swelling and cuts, didn't you?

A. Yes.

Q. Did this man look at all like he was pummeled or beaten up?

MR. JACKSON: Objection.

THE COURT: Overruled.

MR. MC GILL: Answer the question.

THE WITNESS: Pummeled? I would say, "No."

BY MR. MC GILL:

Q. Let me ask you this: Those injuries that you saw, and as I point this out, if I can, in C-63, I'm referring to the narrative summary which is two pages of which I showed Mr. Jackson, as well as the Court, on the side -- at sidebar --

MR. JACKSON: Objection.

THE COURT: Overruled. Go ahead.

MR. JACKSON: Your Honor, that is not his record. That's someone else's.

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MR. MC GILL: Doctor --

THE COURT: Let's find out. Go ahead.

BY MR. MC GILL:

Q. Doctor, who is your supervisor in this particular point?

A. Dr. --

THE COURT: Quiet in the courtroom, please. Go ahead.

THE WITNESS: Dr. Bruce Jarrell. Can I explain the chain of command?

MR. MC GILL: Please go ahead. Explain the chain of command.

THE WITNESS: I was the surgical resident on call at the hospital that evening, and I was asleep in the hospital. I stayed there overnight.

But, there are -- there is a chain of command on the trauma team. There is an attending physician who is the most senior on the team. Then there is the chief resident who is the most senior resident. They have the luxury of sleeping at home.

And, then, I was the surgical resident who was asleep in the hospital. Dr. Jarrell was the attending surgeon who was called from home

.

BY MR. MC GILL:

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Q. Now, the attending physician is essentially your supervisor? Would that be correct?

A. Correct.

Q. And, any information at all that you observed in terms of the injury you gave to him?

A. That's correct.

Q. And, then, he would as the supervisor place it in a report or narrative summary that you see in front of you now? Is that correct?

MR. JACKSON: Objection. He is asking him to tell what someone else did or may do.

MR. MCGILL: Judge, why doesn't he want me to bring it out?

THE COURT: Just a minute.

(There was a sidebar conference, out of the hearing of the jury, as follows):

MR. JACKSON: I just want him to be fair, Your Honor. That's all.

THE COURT: Look! Why don't you ask him if he knows, you know?

MR. MCGILL: What? He gave me information. He gave him the information.

THE COURT: Don't get excited. Why don't you ask him what he told the doctor, or what he said?

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Let's do it that way, so we are not looking at somebody else's writing. OK? You can get it out that way. He knows what he told the doctor.

(The proceedings were resumed in open court, as follows):

MR. MCGILL: May I approach the witness?

THE COURT: Certainly.

BY MR. MCGILL:

Q. Do you recall what you told the doctor in reference to the physical examination?

A. Yes. Everything that I observed, I told him.

Q. Let me show you the notes of the narrative summary.

MR. JACKSON: Objection.

MR. MC GILL: To see if this refreshes your recollection.

THE COURT: Overruled.

BY MR. MCGILL:

Q. To see what you had told the doctor.

THE COURT: He will read that to himself.

MR. MC GILL: Read that to yourself, sir.

THE WITNESS: OK.

BY MR. MCGILL:

Q. What did you tell the doctor?

A. I told him -- now, I told him and he also observed, as

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well, the same things I have already described primarily; the laceration of the forehead, the lip, the swelling over the left eye, the swelling of the neck and the wound to the chest.

Q. Was there any palpable fracture or deformity?

A. No. There was no way we could observe, no.

Q. Were there any injured teeth or other injuries?

A. No.

Q. The extremities revealed no other injuries, did it, doctor?

A. No, they did not.

Q. There was no neurological injury, either, was there, sir?

A. None that we could determine, no.

Q. And, using the words here, there was no other significant injury? Is that correct?

MR. JACKSON: Objection. Move to strike. Again, Counsel is reading from the doctor's report that Your Honor has instructed him not to read from, and he is doing it anyway.

MR. MC GILL: Let me explain one thing. This is not only what he told the doctor, but it is hospital records.

MR. JACKSON: Why doesn't Mr. McGill take the

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stand?

THE COURT: Rephrase your question.

MR. MC GILL: Maybe he doesn't want the hospital records to be known.

THE: COURT: Just rephrase the question. Let him answer.

BY MR. MC GILL:

Q. These are hospital records, are they not, sir?

A. Yes, they are. Let me explain something about the narrative summary, maybe to the Judge and the jury. The narrative summary is what the attending physician does when he dictates this. He takes the chart and reads from the chart. Essentially, it is a summary.

Q. You put what was in the record?

A. I did the initial history and examination, and the doctor would be quite likely -- much of what he dictated was taken from my history and physical examination.

Q. Whether or not you even authored that particular summary, it is still the hospital records, though?

A. That's right; it is. It's an attempt to try and synthesize in a page or two

exactly what happened to the patient while he was in the hospital.

Q. All right. Now, doctor, would it be fair to say that in the narrative summary or in the records in their totality

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and from the information that you gave to the doctor that there was no other injury noted at all than what you have mentioned? Would that be correct?

A. Right.

Q. Now, doctor, also, is it not accurate -- and, let me ask you this specifically: If, for example, given this hypothetical, you had a situation there --

MR. JACKSON: Your Honor, I am going to object to the hypothetical.

THE COURT: Well, I don't know what it is, yet.

MR. JACKSON: I would think that this witness has not been offered for that. He is simply a treating physician, Your Honor.

THE COURT: I think he has been offered for more than that. Go ahead. Let me hear the question, first.

BY MR. MC GILL:

Q. Doctor, if an individual -- this particular defendant -- during the course of the time when he was arrested and during the course of the struggle when he was arrested --

MR. JACKSON: Your Honor, not to object, since it is now not a hypothetical, he is talking about this defendant in this case.

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THE COURT: That's perfectly all right. Objection overruled. Go ahead. You better start again. OK?

BY MR. MC GILL:

Q. Now, if this defendant or an individual during the course of the time when he was arrested, there was a struggle, and during the course of that struggle in handcuffs his head hit the ground, after which period and during the course of the struggle he is then picked up and taken toward a wagon, and during the course of that time his head hits a pole at which point his head then goes down and his face hits the ground; also, before that happened, an individual comes up and kicks that defendant or that person on the right side of the area of the face and neck, are you with me so far?

A. Yes.

Q. Now, would the injuries and the only injuries on those records and the injuries that you yourself observed, would the injuries that I have just -- that you have seen been consistent with the action that I just told you?

A. Could be, yes.

Q. Now, sir, when you are talking about such blunt force instruments, if you were going to use, say, a night stick, one of those thick night sticks, or, for example, a black-

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jack, or something of that nature -- you know what a blackjack is. Do you have a night stick there, Officer.

This is a night stick (indicating). You've seen these. Touch that, that side.

And, you've also seen blackjacks. Is that correct?

A. (The witness nods his head in the affirmative.)

Q. Sir, if such instruments were used with force on an individual hitting or doing or hitting with a blackjack or doing such things of that nature, would you not expect more serious injuries than you saw?

MR. JACKSON: Objection.

THE COURT: Overruled. Go ahead.

THE WITNESS: Yes. I would expect that that would do more damage.

BY MR. MC GILL:

Q. And, as a matter of fact, in the area of the face, that is an area that could receive fractures? Is that correct?

A. Yes. The facial bones are fragile bones.

Q. And, there were no fractures? Is that correct?

A. There were none.

Q. Now, you've indicated that the defendant with you was talking and was at that point not screaming or cursing, or

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anything like that? Is that correct?

A. That's right.

MR. JACKSON: Objection. He didn't say "at this point." He just said he wasn't.

THE COURT: Rephrase in his presence, or something like that.

MR. MC GILL: Well, yes, in your presence at the time -- at the same time you testified for Mr. Jackson. OK?

MR. JACKSON: Your Honor, it is suggested that he was cursing at some other time, and there is no testimony to that effect.

THE COURT: Rephrase your question.

MR. MC GILL: I was in the same courtroom he was, Judge.

THE COURT: Rephrase your question, please.

BY MR. MC GILL:

Q. Doctor, the question is simply this: When you were talking to him, you were, were you not, telling him you were a doctor?

A. Yes, sir.

Q. You told him you were going to try to save his life?

A. Right.

Q. You told him what was needed to save his life?

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A. Yes, I did.

Q. And, you were going to do your best to do it?

A. Right.

Q. You have training to do that?

A. Yes.

Q. You attempted to calm him, the individual, to make him feel a certain amount of feeling toward you, trust?

A. Right.

Q. You were doing this very definitely with him?

A. Yes, intentionally, yes.

Q. And, he was responding to that?

A. To a certain extent, yes, he was.

Q. You had, by the way, no problem at all understanding anything he said? Is that correct?

A. No. I could understand pretty much everything that he said.

Q. And, he -- by the way, did he make any kind of complaints to you at all?

MR. JACKSON: Objection.

BY MR. MC GILL:

Q. Of being abused, beaten, or anything like that during the course of your conversation and your trusting communication with him?

Did he make any kind of complaints to you

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about being abused by police?

A. No, he did not.

Q. This was pretty early, wasn't it, doctor? You saw him after he was brought in? Of course, the time you didn't see him he was in the waiting room, but you saw him within a half hour of when he was brought in? Isn't that correct?

A. I guess. I don't know. I was with Officer Faulkner at the time.

Q. Well, let me take a look at this. On these records, these hospital records --

MR. JACKSON: Your Honor, may we see you at sidebar, please?

(There was a sidebar conference, out of the hearing of the jury, and reported as follows):

MR. JACKSON: I object; No. 1, we don't have the custodian of records to produce those records. They have not been authenticated, and I don't know what he is reading from, so I am not going to let him do it, because if he wants to do it, there is a proper way of doing it.

MR. MCGILL: Let me tell You this: Let's eliminate this objection by telling you, Judge, I will bring the custodian in.

These are records he has seen for a long

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while. He knows they are real records. He referred to them during his

examination.

MR. JACKSON: I am not saying this --

MR. MC GILL: Let me tell you this: I will bring in the custodian of records on rebuttal, Judge, but, rather than bring this doctor back, I will ask Your Honor to allow me to use that C-63.

THE COURT: As to times?

MR. MC GILL: Other things, too.

THE COURT: OK.

MR. MC GILL: Judge, You can --

THE COURT: I just want to know what you are using it for so I can rule on it now.

MR. MC GILL: Time, maybe some of the things that are stated in the record.

MR. JACKSON: And, he is going to determine that. I object.

MR. MC GILL: If you have an objection as to relevance, the Judge will rule on it.

THE COURT: You have redirect, so if he is

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bringing up something that you haven't already brought up, you can then bring it up.

Go ahead.

(The proceedings were resumed in open Court, as follows):

MR. MC GILL: May I approach the witness, Your Honor?

THE COURT: Surely.

MR. MC GILL: I have, by the way, shown the doctor this piece of paper

when we went over to sidebar.

BY MR. MC GILL:

Q. Does that not indicate -- first of all, are these your notes?

A. They are nurses' notes as to what went on in that room.

Q. At the time you were there?

A. That's right, a lot of things that she wrote down and I didn't.

Q. OK. There is the notation there of -- that could either be ten, or twenty, couldn't it?

A. Right, right.

Q. What is the time, if you would look at it, please?

A. Well, it looks like initially 4:20; then maybe a 1 was

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put there, 4:10.

Q. So, it is either 4:20 or 4:10?

A. Yes.

Q. That's a.m.?

A. Yes.

Q. That's also on that same day, December the 9th?

A. Right.

Q. There is an indication here, is there not, of another time?

A. Right.

Q. What is that time?

A. It looks like 4:15, I think.

Q. So, it would be accurate to say, would it not, doctor, that that was the time, roughly the time, say, between 4:10 -- let's say around 4:15 when you actually saw this defendant? Is that correct?

A. It was around that time, yes.

Q. Now, during the course of that time period, when you did see him, there was a time when he was brought in that you did not know? Is that correct?

A. That's right.

Q. So, it is true, then, is it not -- oh, by the way, do you know who brought him in?

A. (There was no response.)

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Q. I mean, they were brought in by the police, weren't they?

A. Yes. I saw him being brought into the room where he was treated with policemen on either side of him.

Q. And, it would be accurate that you actually saw him at least by 4:20 a.m. to assist him? Is that correct?

A. Yes, at least by then, yes.

Q. So, he was on a table, his life being saved, brought in by the police within -- well, you would say a half hour from 3:51 a.m., wouldn't you, sir?

A. Right.

MR. MC GILL: Again, Your Honor, I am referring to the records. If I walk up here, that's why I am doing it, with the Court's permission.

THE COURT: Go ahead.

BY MR. MC GILL:

Q. Does that record note to what police officer the bullet was given?

A. Could I take that, please?

Yes, it does.

Q. And, what is the name?

A. Dixon.

Q. Thank you, doctor. Doctor, if I can have the chart of the hospital.....

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Doctor, this is a sketch that has already been identified as a sketch of the area, the emergency room area, outside the waiting area.

In other words, you come in from the outside here (indicating), indicating what would be the center, and then, there would be the receiving desk on the left. Straight ahead toward the right here is a sliding door area.

A. OK.

Q. Now, back here is the treating facilities?

A. Right.

Q. Now, when you were treating the defendant, you were in one of those treating facilities? Is that correct?

A. Right.

Q. And, there was an amount of time before you actually saw the defendant when he was brought in and waiting for you?

A. Right.

Q. And you were aware of that?

A. Yes.

Q. As a matter of fact, the defendant that was brought in there stopped there (indicating), moved over here (indicating), and moved down in the waiting room area, and eventually came back to where you were? That's what basically it

Coletta - Cross

was?

A. Right.

Q. Now, sir, first of all, during the time that you were there, did you also have other duties?

A. During the time I was in the emergency room?

Q. Yes, before you were seeing the defendant. I think you said you were seeing two people. Who was the other person you saw?

A. It was Officer Faulkner.

Q. And you were also working on him?

A. Yes, I was.

Q. Would it be fair to say that you were so involved in what you were doing with him that you could not hear or see or anything at all of what was happening outside?

MR. JACKSON: Objection, Your Honor.

MR. MC GILL: There is an objection.

THE COURT: I will let him answer it.

BY MR. MC GILL:

Q. I am asking about him. Is that correct?

A. Yes. He had my undivided attention.

Q. And, how did he appear when you saw him?

MR. JACKSON: Objection. Relevance.

THE COURT: I will have to sustain the objection.

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MR. MC GILL: Yes, sir.

BY MR. MC GILL:

Q. Now, there was a statement to the effect of that particular -- at least the trajectory. You do not have forensic experience? Is that correct, doctor?

A. That's right.

Q. I am not going to get too much into that area. But, is it accurate to say, sir, that as far as that bullet is concerned, you have no idea of the position of the body of the defendant at the time that the gun was fired? Would that be correct?

A. I would not be qualified to speculate about that.

Q. So, whether or not it went over, bent over with the front forward and the back back a little bit, you would have no way of telling that at all? Would that be correct?

A. I wouldn't.

Q. You don't know what the facts were before then?

MR. JACKSON: Objection as to what someone else --

THE COURT: Yes. He said he is not qualified.

MR. MC GILL: OK.

BY MR. MC GILL:

Q. Even if you were qualified, sir --

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MR. JACKSON: Objection. He is not. Objection, Your Honor.

MR. MC GILL: OK. All right. I'll take back that question.

BY MR. MC GILL:

Q. All right, doctor. Now, in reference to the actual bullet itself, when it went into the body, you, I understand, at least from what you had said before, you are unaware whether there would be any kind of ricochet? Is that what you said?

A. Right.

Q. What do you call it? A drop? Sometimes it drops?

A. Well, it turns, and it's the -- it tumbles. It somersaults inside.

Q. OK. And, were you aware that later on after your particular type of your work, the work you had done yourself, that you -- that the defendant had occasion to refuse subsequent treatment?

MR. JACKSON: I'll object, Your Honor, and move for a mistrial.

May we see Your Honor at sidebar? He is telling lies, Your Honor.

(There was a sidebar conference, out of the hearing of the jury, and reported as follows):

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THE COURT: Mr. McGill?

MR. JACKSON: He knows he is wrong.

THE COURT: Where are you going?

MR. MC GILL: I would object, Your Honor, and ask for immediate instructions to the jury.

MR. JACKSON: Remove the jury, Judge.

THE COURT: Take a five-minute recess.

MR. MC GILL: He is not going to say this and get away with it.

THE COURT: Where are you going, anyway? What does all of this have to do with it? Why get yourself upset?

MR. JACKSON: Judge, that is terrible to say that.

THE COURT: Make an objection; that's all.

MR. MC GILL: Judge, I would object and ask for an instruction to the jury.

THE COURT: Where are you going?

MR. MC GILL: Let's deal with his comments.

THE COURT: I asked him not to make any comments. But, where are you going? What is the relevancy of all of this?

MR. MC GILL: He is saying that he was very calm and quiet as if he was unable to do things, and I

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Coletta - Cross

wanted to be sure it is clear that he was not that way.

THE COURT: What do you mean?

MR. MC GILL: First of all, I ask for an instruction. He used words like "this lies." Judge, I want an instruction to the jury. In the records it says that he refuses consent to surgery.

THE COURT: Wait a while. What is your objection to that?

MR. JACKSON: NO. 1, I renew my objection that these weren't the records. It wasn't that he refused consent. He wanted his sister to come and find out what they were doing. He had the surgery.

THE COURT: We know that.

MR. JACKSON: Why is he going to say he refused, because he didn't say it right away? That's a refusal? That's what it sounds like; he is refusing.

THE COURT: He may have refused, and then he may have changed his mind.

MR. JACKSON: It is not a refusal.

THE COURT: What do the records say? Why don't you ask him whether he refused?

MR. JACKSON: No, he didn't refuse him. That's the point.

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THE COURT: Then bring somebody else in to prove that.

MR. MC GILL: OK.

THE COURT: I don't think you should ask this doctor that if he doesn't know.

MR. MCGILL: All right, Judge. I won't go into it any further, but I am telling you --

THE COURT: I don't even see what the relevance of it is.

MR. MC GILL: What I am asking you, Judge, is this --

THE COURT: Where are you going?

MR. MC GILL: May I finish talking? There have been several spots in this particular area there. There was refusals to the surgery.

THE COURT: What does that mean?

MR. MC GILL: Arrogance.

THE COURT: Oh, no, not necessarily, not necessarily. It is not that important.

MR. MC GILL: OK, Judge. I will withdraw it, but I would like an instruction to make it very clear.

THE COURT: I will make an instruction to disregard the outbursts.

MR. JACKSON: By either attorney, because he

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has been doing it, too.

THE COURT: OK.

(The proceedings were resumed in open court, as follows):

THE COURT: Ladies and gentlemen of the jury, you will please disregard the emotional outbursts by both attorneys. As I told you before, I want you to consider only what comes from the witness stand. Their outbursts are not evidence. You are to disregard that. Go ahead, please, gentlemen.

MR. MC GILL: I apologize, Your Honor.

BY MR. MC GILL:

Q. Dr. Coletta, I am not going to keep you too much longer. The -- you did indicate that there may be a debilitating effect as a result of blood loss. Is that correct?

A. That's right.

Q. Now, it would be correct, of course, that a blood loss would naturally occur after a period of time from the initial injury? Wouldn't that be correct?

A. Right, a period of time.

Q. So, immediately at the time of injury, for example, there may well not be any kind of change in the one's ability to function immediately, that is?

A. That's right. It depends on the rate of the blood loss.

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That's the key.

Q. And, you saw the defendant some, as you mentioned -- well, let's say around about a half hour, maybe a little bit more, but a half hour afterwards, after, let's say, as I just mentioned, about 4:20?

I think that's the time we are talking about, 4:15 or 4:20?

A. That's right.

Q. And, it is also consistent, would it not be, doctor, for someone who has had blood loss -- I mean, it is not constant? Immediately because of the

blood loss or the fact of extensive blood loss that their action, their flexibility their ability to move their limbs would immediately be affected?

A. It just depends on the rate of the blood loss, as I said before. If they hit a major artery, they lose blood very rapidly, and they lose control very quickly. It depends on the rate that the patient loses blood.

Q. In connection with this, you mentioned that you actually saw him move his arms and legs?

A. He was moving all four extremities.

Q. And, doctor, you were present and you were asked by Counsel whether or not you saw police in the room. Is that correct?

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Coletta - Cross - Redirect

A. Yes, there were.

Q. And , you did see police?

A. Yes, I did.

Q. And, did you have occasion to see the police throughout the hospital during the course of your attempts to treat both Officer Faulkner as well as the defendant?

A. I did.

Q. And, I would ask you if you would tell the jury from your own personal observations, your own personal knowledge what you heard and what you saw, how you would from your personal experience characterize the behavior of the police that you saw?

A. From what I saw in the emergency room and throughout the time that I was involved in treating Mr. Jamal at the hospital, the police never once, never once, interfered with what I had to do to save his life, and in my mind, they were -- they acted as truly as professionals. I can say that.

MR. MC GILL: Thank you, sir.

THE COURT: Any further questions?

MR. JACKSON: Oh, fine.

REDIRECT EXAMINATION

BY MR. JACKSON:

Q. Dr. Coletta, can you tell me what is a palpable fracture?

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Coletta - Redirect

A. Well, a deformity, a palpable deformity, different from what the normal lines of the bone are.

Q. OK. Now, did you say that there were no palpable, fractures?

A. No palpable fractures, right.

Q. At all?

A. Right.

Q. And, was there anything significant about the upper extremities when you examined him?

A. None that I recall.

MR. JACKSON: May I see your report for a moment, please?

Your Honor, may I approach the witness?

THE COURT: You may.

BY MR. JACKSON:

Q. Doctor, there is some reference to upper extremity there. Could you explain to me what that is?

A. That is an angiotube. That's a catheter which is put into the big veins in the arm in order to give fluids, so it says No. 14 angio to each upper extremity.

Q. OK. Fine. I just wanted to know that.

Doctor, in your experience, is it possible for a person to receive injuries

that are not reflected in a palpable fracture of some sort?

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Coletta - Redirect - Recross

MR. MC GILL: Objection, Your Honor.

THE COURT: No. He may answer it.

BY MR. JACKSON:

Q. In other words, are there blows that someone would sustain that would not result in a palpable fracture?

Q. Yes.

A. Now, doctor, you've indicated that when Mr. McGill asked whether or not the injuries that Mr. Jamal had were consistent with the scenario that he gave you, you said, "Yes"?

A. Consistent with it, yes.

Q. Fine. And, it would be equally consistent that the injuries could have been sustained in some other way? Is that true?

A. Yes.

MR. JACKSON: No further questions. Thank you very much, doctor.

MR. MC GILL: One other question, doctor, if I may.

REXCROSS - EXAMINATION

BY MR. MC GILL:

Q. You said you usually treat someone with their clothing off.

MR. JACKSON: Objection. Beyond the scope,

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Your Honor.

MR. MC GILL: May I reopen just for that area Your Honor?

THE COURT: Well, just wait. I don't know where you are going.

MR. MC GILL: Just the clothing, sir, nothing more.

THE COURT: All right. He has already answered that, but go ahead.

MR. MC GILL: OK.

BY MR. MC GILL:

Q. Do you usually treat patients with their clothing on or off?

A. Off.

Q. Did you not know the state of the clothing as you entered the room? Is that what you are saying?

A. I paid no attention to it as I entered the room.

MR. MC GILL: OK. Thank you.

MR. JACKSON: I have nothing further.

MR. MC GILL: Thank you, doctor. Sorry to keep you this long.

MR. JACKSON: Defense calls Dessie Hightower.

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DESSIE HIGHTOWER, sworn.

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Hightower - Direct

DIRECT EXAMINATION

BY MR. JACKSON:

Q. Good afternoon, Mr. Hightower. Sir, let me direct your attention to December the 9th, 1981, at about 3:50 in the morning. Do you remember that day, sir?

A. Yes.

Q. Where were you at or about that time?

A. At or about that time? Is this in reference to where I was getting out of a car?

Q. Let me start it off, please: Do you recall being in area of 13th and Locust Street?

A. Yes.

Q. And, were you there with someone else?

A. Yes.

Q. Who was the other person?

A. Robert Pickford.

Q. And, for what purpose were you in the area of 13th and Locust?

A. We were going to pick someone up at the club, but by the time we got to the Whispers Club, which was on 13th and Locust, it was closed.

Q. OK. Now, when you got there, the Club was closed, and Mr. Pickford was walking with you?

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Hightower - Direct

A. Yes.

Q. OK. Did you hear some gunshots?

A. We heard gunshots on our way back to the car. We were in the parking lot, going into the car. I heard a series of three consecutive gunshots, then a pause, and one. All together, I guess it was five bullets.

Q. Five shots?

A. Yes, three consecutive and a pause between the last two.

Q. You are reasonably certain that's what it is you heard, sir?

A. Yes, reasonably certain, yes.

Q. After hearing the shots, what did you say or do?

A. Well, at first I told my friend -- I think I said, "I think it's firecrackers."

That's when the first two went off -- the third one. Before the fourth, I said, "That sounds like somebody shooting a gun."

OK? Then, the last -- after the fifth round went off, I looked around the corner to see what I could see to see if I seen anything happening.

At that time Mr. Pickford was -- I was coming out of the path of the side of the car. Mr. Pickford was already in the driver's side. I had to walk back around the

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car. I right at the wall, and I looked around the wall, and it seemed that there is a hotel there. I can't recall the name of the hotel.

Q. Can I interrupt you for just a moment so that we can get a diagram and maybe the jury can understand what you are talking about?

OK. This is Locust Street (indicating). This is 13th (indicating). This would be where Whispers is (indicating).

A. OK.

Q. Now, the parking lot that you are talking about would be this area (indicating).

A. Right, yes.

Q. I'm sorry. If you might use this pointer.

A. OK.

Q. Sir, we can't hear you.

THE COURT: Just a minute, sir. We can't hear you. Now, speak into that mike.

THE WITNESS: OK.

THE COURT: Go ahead.

THE WITNESS: The Whispers Club would be somewhere along here on 13th Street (indicating). OK? The parking lot is in back of the Whispers Club. OK? From the viewpoint where I was at, I would be

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able to clearly see across the street to where the incident happened.

BY MR. JACKSON:

Q. And, where did the incident happen from what you could see, sir?

A. It happened somewhere along here (indicating).

Q. No. This is Locust.

A. This is Locust Street? Excuse me.

Q. So you know, this is north, south, east, west (indicating). Ok?

A. OK.

Q. OK.

A. It would be around here (indicating).

Q. OK. Now, do you recall seeing any cars?

A. Any cars?

Q. Yes.

A. The only cars I recall seeing is when the police approached the first police officer came on the scene, but this is by seeing the officer pull up behind the Volkswagen.

Q. You did see that?

A. Yes, I did see that.

Q. And, it was sometime after that that you heard the gunshots?

A. Yes. I really didn't pay it much attention. I thought

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it was, like, a routine check, and I seen him get out and walk toward the Volkswagen door, like he was motioning to hold the door. I didn't pay it any attention, and, then, went back to the parking lot. That's when I heard the gunshots.

Q. After hearing the gunshots, you came back to, I guess, to what would be Locust Street facing east on Locust Street?

A. Yes, east on Locust at the corner of the Whispers Club.

Q. What did you see?

A. I seen the officer pull up, the first officer pull up. After that, the streets were pretty full with police officers.

Q. OK. Before the Police officers arrived, did you see anyone leaving the scene?

A. Going back to the hotel. To the best of my recollection at this point in time, it was three. I had seen somebody with a red and black sweater on. It was so -- it was a very brief -- I'd say I glanced for maybe a second or two. I didn't really pay it full attention.

The first was going in the opposite direction from where the incident happened at. It was apparently the friend had realized it could have been a female with the braids in her hair.

I really didn't pay that much attention. The person looked to be about the height of five nine, five

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ten, somewhere around there.

Q. In which direction did the person run, when you say the person ran in

the opposite direction?

A. Then they ran -- the car was parked here (indicating). They ran this way (indicating).

Q. Towards 12th Street?

A. Yes, towards 12th Street.

Q. Is the hotel on the same side of Locust Street or the opposite side?

A. The same side.

Q. Did you see the person enter the hotel?

A. No. They didn't go into the hotel. They ran by it. The only reason why I managed to see what they had on was there was a light there.

Q. And, what color did they have on?

A. Red and black sweater.

Q. Red and black sweater?

A. Right. I really could not see the pants or anything like that.

Q. OK. When you first looked, did you see anyone else move?

A. Is this after I seen the person?

Q. Yes, after you saw the person run away.

A. No, but about maybe ten seconds later, that's when the

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first officer came on the scene.

Q. How close did you -- after making that view -- by the way, when you made that observation, where were you?

A. I was in the parking lot. It's a big wall there at the parking lot, and I was looking around the wall.

Q. Kind of sneaking your head around?

A. Yes, yes.

Q. And, did you see anyone else standing at or near the person whom you saw run towards the hotel?

A. No, no. It was just one person I seen run down through the hotel light.

Q. Now, after that observation, you indicated that you then saw police arrive to the scene?

A. Yes.

Q. How close did you get to the officer who was shot?

A. I was by that time -- I was approaching the corner of the Whispers Club. At the time I seen the first officer arrive, because I didn't hear any more shots go off, so I thought there wouldn't be any more shooting. I was walking towards the corner of 13th and Locust.

Q. After those officers arrived, did you go closer to the scene?

A. Yes. I walked across the street. I was direct across the street from the Volkswagen.

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Q. And, did you enter Locust Street, or was it in the store on the sidewalk?

A. I was on the sidewalk.

Q. Now, did you have an opportunity to see officer Faulkner?

A. Only when the Officers brung him from the back of the car taking him to the van. I didn't see him prior. I seen him when he got out of the car and walked over, and that's it.

Q. Now, when the Officers were taking him to the van, you had an opportunity to see him?

A. Yes, I did.

Q. Did you then have an opportunity to look at his holster, sir?

A. Well, I could maybe look at Officer Faulkner's holster. He was slumping over, and one of the Officers grabbed him to hold him up. Yes, I did see his holster.

Q. Was the gun in his holster?

A. Yes.

Q. Another thing: Did you see Mr. Jamal? Did you see what if anything happened to Mr. Jamal? Let me strike that. When did you first see Mr. Jamal?

A. I first seen Mr. Jamal when they brung him from the back side of the Volkswagen. That's when I first caught

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sight of him. I seen his brother standing up, but I didn't see Jamal.

Q. Now you are telling me -- I am asking you about Jamal and you made reference to his brother. First of all, at the time that this happened did you know either of these individuals?

A. No.

Q. Did you know who it was?

A. At the time it happened?

Q. Yes.

A. No.

Q. So, now you are mentioning these names as a result of your being subpoenaed to court and the newspapers and thing of that sort?

A. Yes.

Q. OK. Now, when you saw Mr. Jamal being carried by the police, describe to us how they were carrying him and what was happening to him.

A. OK. Well, let me take that back one step to make the picture clear to everyone. At the time of the -- when the police officers were apprehending Jamal, to me the first officer came on the scene. He told everybody, "Get away. Get away," and, then, a lot of police came. OK?

I'd say approximately about eight or nine

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police officer apprehended Jamal. I thought they was rather rough apprehension.

Q. Explain that.

A. As far as rough, the attack that that word used. I seen that when they pulled Jamal from around the back side of the Volkswagen, there was clear evidence of enough space to pull Jamal through.

It was a no parking sign, a pole, there. And, it was enough space for them on the back side of the Volkswagen to that parking sign to get him through, but I don't know. Maybe it was just whatever he hit his head against the pole.

Q. Did you see the police officers strike him?

A. Yes, several times.

Q. How many police officers?

A. It was, I say it was, eight to nine officers, and they all was standing around. I can't say three or four were hitting him. I really can't say. I just seen them.

Q. What were they striking him with, sir?

A. Various things, clubs, feet. They had him by the dread locks.

Q. They were holding him by his hair?

A. Yes.

Q. You saw then kicking him, as well?

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A. Yes.

Q. Was that before or after they accidentally ran his head into the pole?

A. This was before. On the way to the van, when they put him in the van, that's when the incident with his head happened.

Q. Did you see Mr. Jamal in the van?

A. Yes. I think a Captain -- I don't remember. He had on a white shirt. I don't really know the way that goes. He opened the van as a couple of us was there and said, "Is this the one who shot the officer?"

And, I couldn't say, "Yes," because I didn't see the officer actually shot.

Q. Did you notice whether in fact Mr. Jamal had blood anywhere on him?

A. Yes. To the best of my recollection, again, Mr. Jamal had blood on his forehead. It looked like his chest area had blood on it, too. Really, I seen blood coming from his forehead and his chest.

Q. When you saw the blood coming from his forehead, did it in any way cover his face, or where actually on his face did you see the blood, to the best of your knowledge?

A. To the best of my knowledge, I can't say it was only one side or the other side. It was just on his face, trick-

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ling down from his forehead to his nose area. I really can't say where the blood was exactly, but it was all over his face.

Q. You gave a statement to the police, as well, didn't you?

A. Yes, several times.

Q. When was the first time you gave a statement to the Police?

A. It was the same morning.

Q. OK. And, within a half hour or so after leaving the scene?

A. I would say around there, a half hour, forty-five minutes.

Q. And, your testimony today -- is it consistent with the statement that you gave to the police?

A. Yes.

MR. MC Gill: Objection.

THE COURT: Sustained.

MR. JACKSON:

Q. By the way, how long after seeing Mr. Jamal in the van, in the wagon, did you remain at the scene?

A. Maybe five minutes, if that, maybe five minutes, if that, because, after we -- or, after the police officer opens the van, we went directly down to the roundhouse.

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Q. How did you get down to the roundhouse?

A. Police escort.

Q. Mr. Pickford drove his car?

A. No. Mr. Pickford's car remained at the parking lot.

Q. You went in a police vehicle?

A. Yes.

Q. OK. Now, Mr. Hightower, you've known of Mr. Jamal? Is that right?

A. Yes, yes.

Q. And, in fact, you had occasion to see him once before in your life?

A. Yes.

Q. Would you tell us when?

A. OK. In 1977 I was affiliated with the Philadelphia students here. We had a press conference at WDAS.

Q. That's a radio station?

A. A radio station.

Q. Go on.

A. And, I just -- well, I just seen him briefly, and I heard somebody call his name, and then after that, that was that. No words were exchanged, or anything like that.

That was the first and last time I have see him until the incident.

Q. So, between 1977 and 1981, you had no reason to see

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him?

A. No, none at all.

Q. And, you have never had a conversation with him?

A. No.

Q. And, at the night when this incident happened, did you know it was Jamal that they were putting in the wagon?

A. No. I answered that, "No."

Q. You didn't know that?

A. (The witness shakes his head in the negative.)

Q. Did you know the other individual, his brother?

A. His brother, no.

Q. Now, do you recall where his brother was when you first saw Mr. Jamal?

A. His brother was standing up against the wall when I first saw Mr. Jamal. I didn't see Mr. Jamal until they pulled him from the back side of the Volkswagen.

Q. Did you see his brother before you saw him?

A. Well, yes. His brother was standing over top of, I would believe it was, the police officer, and the look on his face was a look of shock. It was just like he was frozen.

MR. MC GILL: Objection, Your honor, to this characterization.

MR. JACKSON: All right. You can describe it

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to us.

THE WITNESS: I was just trying to.

MR. JACKSON: Without telling us what he might have --

THE WITNESS: He was standing over top of him, and he was just standing there.

BY MR. JACKSON:

Q. What was his body position? Can you tell us?

A. Somewhat stooped over, not quite all the way, just somewhat stooped.

Q. Could you stand up and show us, please?

A. Well, maybe like this (indicating).

Q. Did you have occasion to look at his hands, sir?

A. No, no.

Q. You have no idea at all what may have been in his hands?

A. No. I didn't even -- this was after the first Police Officer came. OK?

Q. OK. Now, did you have occasion to see any police -- did you have occasion to see any guns at all on the street or on the sidewalk anywhere?

A. No, I didn't see any weapons at all.

Q. Did you have occasion to see any officer holding two guns in his hands?

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A. No, no.

Q. Did you ever see two officers -- I am sorry. Did you ever see an officer with two guns in his hand?

A. Well, I seen a couple guns being brought into the roundhouse after.

Q. OK.

A. But, not on the scene of the crime, no.

A. How were these guns brought in?

Q. I think they had them holding them. They didn't have their hands on them. That's touch and go. I think they had hold of them by a pincers.

Q. You gave a statement on December the 9th? That was your statement? Is that right?

A. Yes.

Q. You gave another statement? Is that right?

A. Yes.

Q. When was that, sir?

A. Several statements, I think, maybe a week or two later. I don't know the exact date.

Q. Can you recall if there was anything you said in the statement that you

have not told us -- strike that.

Did you indicate to the police what you've testified here today?

A. Yes; everything I am saying now is in the statement.

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MR. MC GILL: Objection -- well, I withdraw the objection.

BY MR. JACKSON:

Q. Do you know how many statements you gave?

A. Three or four.

MR. JACKSON: I have no further questions at this time. Mr. McGill may cross-examine.

MR. MC GILL: Thank you, sir.

CROSS-EXAMINATION:

BY MR. MC GILL:

Q. Good afternoon, Mr. Hightower.

A. Good afternoon, sir.

MR. MC GILL: I am sorry, Your Honor, for the delay. I am just trying to get something.

All right. I'll ask that this be marked C-64 and C-65.

(Documents were received and marked C-64  
and C-65, respectively, for identification.)

MR. JACKSON: Could I ask one question before you proceed, just one question?

MR. MC GILL: Sure.

MR. JACKSON: The person that you saw running towards the hotel --

have you ever seen that person again?

THE WITNESS: I seen the back of their head.

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MR. JACKSON: OK. Thank you.

BY MR. MC GILL:

Q. What was your response? I am sorry. I didn't hear it.

A. I said I seen the back of their head. I didn't see the face or the features at all.

Q. Oh, OK.

May I approach the witness?

THE COURT: Surely.

BY MR. MC GILL:

Q. Now, Mr. Hightower, I am going to show you these two documents. One is C-64 and one is C-65.

Now, you might want to flip through those real quickly and see if you can recognize them as you are flipping through them in case I will be making reference to them.

A. Is this one the initial one (indicating)?

Q. Do you see the date on the top right hand. I will show you. This is the 9th. See? And, this is a longer one which includes -- let me take this one from you.

A. Do you have any specific areas which you would like me to read?

Q. I only wish, sir, if you would identify them. These are your statements, are they not? That's all.

A. Yes.

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Q. I will refer to the areas, and, then, you can look at them. This is so you have an opportunity to see them.

A. Oh, OK. Thank you.

MR. MC GILL: I ask that easel be set up, sir, also with the chart. It might be best to be right here I guess.

Can everybody see it?

MR. MC GILL:

Q. Now, Mr Hightower, you were with a Mr. Robert Pickford? Is that correct?

A. Yes.

Q. Now, had you been any place earlier that evening?

A. Yes.

Q. Had you been drinking at all that evening, sir?

A. No, I hadn't had any alcohol purchases that evening. I had one beer.

Q. One beer?

A. Yes, one beer.

Q. How long had you been out that evening socializing?

A. From the time -- maybe four, three, four hours.

Q. And, if you were there, say, when this occurred, if you would accept the fact that this occurred around 3:51, you mean you were out since eleven o'clock, maybe twelve o'clock?

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A. Around eleven o'clock, somewhere around there, around 11:30.

Q. You had been to a bar earlier, though, right?

A. Yes.

Q. What was the name of that?

A. 54th Street on City Line Avenue. I sat there with a couple of friends and had the beer, and, then, took a young lady home.

And, then, we decided to take a ride downtown, and we were going to pick somebody up at the Whispers, but they were closed when we got there.

Q. Where did you meet Mr. Pickford?

A. Initially when I first met him?

Q. That day.

A. I met him at the bar.

Q. The first bar or Whispers?

A. The first bar. We never went into Whispers. It was closed.

Q. OK. And, how long did you spend in the bar?

A. Oh, about an hour, maybe.

Q. And, I believe it was your testimony that you only had one beer? Is that correct?

A. I had one beer there, yes. We also went to another bar after that.

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Q. OK. Well, I want to make sure that I understand a little bit about -- of course, also, the jury -- where you were at the time this happened.

Now, I'm going to stand over here. You can stay right there, I think, and just talk in here so everyone can hear you. All right?

A. OK.

Q. Now, you've already been testifying about this being Locust Street, this street here (indicating)? Is that correct? This is Locust Street (indicating)?

A. Yes, sir.

Q. This is 13th Street (indicating), as far as the sketch is concerned? All right?

A. Yes.

Q. This is where the police car was (indicating)?

A. Approximately, yes.

Q. Right. Now, Whispers' doorway -- correct me if I am wrong on this -- is about right here (indicating)? Is that correct?

A. Yes, sir.

Q. Right on this corner, which would be the northwest corner of 13th and Locust, correct?

A. Correct, yes.

Q. All right. So, as I understand it, you and Mr. Pickford

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were knocking on this door, and it was closed, and, then, you left?

A. Yes.

Q. Correct? You had intended to leave to get in your car and go?

A. Yes.

Q. So, while you went, you went back here, and, then, I believe you said you saw a police car coming.

Do you recall where that police car was coming from, or do you remember that?

A. From which direction I really don't want to say. I can't really recall.

Q. OK. If I were to say that in one of your statements, Mr. Hightower, you had said that you saw the police car coming around the corner, but, then, "I didn't see anything else until the shot went off" --

A. Around the corner, but I can't say exactly which corner it came around.

Q. Watch me now. It might have come around either this corner, or it may have come around that corner?

A. Yes.

Q. I want you to watch where I am going now.

A. I am watching.

Q. You were here on 13th Street, right, so you are saying

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it may have come down here and come around this corner, or it may have gone up here indicating north on 13th Street?

A. And then turned.

Q. And, taken a right and around that corner? Would that be correct?

A. Yes.

Q. As a matter of fact, since we are talking about that, I want you to take a look at your second statement.

A. Go ahead. OK.

Q. And, I'll ask if you will turn to Page 2.

A. OK. The second page?

Q. Yes. This is your first statement that you had given to a Detective on December the 9th at -- well, it says there 5:10 a.m., but it was shortly after the incident, OK?

A. Yes.

Q. On the bottom of the page there, would you agree that the answer there, "I seen the Volkswagen" --

A. Is that a --

Q. Yes. See where it says at the line where it says, "I seen the Volkswagen"?

A. Yes.

Q. OK. "I seen the Volkswagen pull up, and I seen the officer come around the corner and get out, but, then, I didn't see anything else until the shots went off," so that was

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your first statement?

A. Yes.

Q. OK. So, as far as you were concerned, it was either around this corner or around that corner (indicating)?

MR. JACKSON: Objection. Asked and answered.

MR. Mc GILL: That the police officer came --

MR. JACKSON: Still objection, Your Honor.

THE COURT: Let's Go. Come on! Move along.

BY MR. MC GILL:

Q. Is that correct?

A. Yes.

Q. And, you did not see anything more after you turned the corner because you were interested -- until the shots came off?

A. Yes.

Q. Is that right?

A. Yes.

Q. Now, also, Mr. Hightower, going down in this direction which is what? A west direction on Locust Street? Is that correct?

A. Yes, that is west.

Q. There are a few places? Not only is there Whispers on the corner, but there is another bar next to it? Is that correct?

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A. Yes, yes.

Q. And, then, there is another building next to that?

A. Yes, there is.

Q. A building of some sort? Whatever it is, it's a building?

A. Yes.

Q. And, then, after that, sir, there is a parking lot? Is that correct?

A. Yes.

Q. Now, that parking lot goes back some distance, doesn't it?

A. Yes.

Q. It is not just two or three spaces, is it?

A. No. It goes back some distance.

Q. You were there at what time?

A. 3:50.

Q. Did you not park right on the corner?

A. We parked halfway up, I guess you would call it, up in the parking lot.

Q. OK. So, if the parking lot had somewhere near maybe ten or fifteen spaces back, you would be about half that distance where you were parked? Is that correct?

A. Yes. I would agree with that, yes.

Q. And, then, you with Mr. Pickford then walked in the

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direction of the vehicle?

A. Yes.

Q. Because, you were going to leave?

A. Right.

Q. You had no reason to stay?

A. No.

Q. Now, I'm going to also point out to you in your second statement at the end of the second statement, and I'm going to show you this. This will be the second diagram in the second statement.

A. OK.

Q. Does it not show you when the first shot went off that you were pretty well into that parking lot?

A. The first couple shots went off when I was pretty well into that parking lot, yes.

Q. And, then, after that, I think you said you heard a series of three shots. Is that what you said?

A. Yes.

Q. If you can recall, you weren't expecting shots?

A. No, no, but I would say it was a series of three with pause between the last two.

Q. Are you sure of that, or is that something that you are guessing on?

A. At this particular point in time, this is what I thought

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I heard when I was there. It has been a couple of months, but I did think that that's the way it happened.

Q. OK. So, after those first three came, you then heard two more? Is that correct?

A. Yes, with a slight pause in between.

Q. Now, would you have any disagreements with me if I were to say to you that from the corner of 13th and Locust to where the parking lot begins to where that wall is, that is approximately six car lengths? Would you have any reason to disagree with that?

A. It's possible.

Q. So, it would be, then, fair to say that not only were you six car lengths back here indicating west, but, also, a good way into the parking lot when you heard the shots, correct?

A. That is correct.

Q. Now, Mr. Hightower, when -- and, when you came back when you heard the shots, you were still covered, were you not, from the wall and in the parking lot when all the shots were fired?

A. Oh, yes.

Q. You were not outside at all?

A. No.

Q. As a matter of fact, in one of your statements you said,

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and you were understandably quoted as saying, and this is your last

statement to Counsel, "I wasn't going to peak my head around the corner, not knowing where the shots were coming from. I didn't want to catch a stray bullet."

Isn't that something you said?

A. Yes, yes.

Q. Now, in reference to this individual you say you saw running, the one I believe you said that you were unsure -- and, correct me if I am wrong from what your testimony was -- you are unsure whether or not that was a male, or it could even be a female? That's what you said?

A. Yes.

Q. All you saw was the back of the head, right?

A. Yes, and the sweater.

Q. OK. That's right. You said a sweater, also.

Now, also, I believe from in your testimony and your statements -- and, tell me if I am wrong on this -- that the first time you saw the individual, the individual was at least four car lengths east, which means towards 12th Street, in the direction of this way -- this is what I mean by 12th Street (indicating). 12th Street is here (indicating). This is Camac (indicating). 12th Street is down here.(indicating).

So, the first time you saw the individual was

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maybe -- this person, male or female, or whatever -- was four car lengths in this direction (indicating)? Would that be accurate?

A. Yes.

Q. And, also, do you recall saying in your statement that after the five shots were fired, you were specifically asked how long after the five shots were fired the last shot was fired did you observe this person running, and do you recall giving the statement -- and, I'm referring now to Page 9 of your second statement --

A. OK. OK. I have it. Now, that would be the Page 9 that is before the

diagrams.

Q. You are on the Page 9 before the diagrams?

A. Right there. I have it.

Q. When you came to the wall of the building and heard the last two shots, you then walked onto the pavement and looked up to see the male and the sweater.

How much time elapsed between the last shot and your seeing the running male, about fifteen seconds from the last time of the last shot, and when you first saw the individual, whoever it was, male or female, running about four car lengths from the police officer?

A. Yes, about thirteen seconds, maybe a little less.

Q. OK. Well, let me now, if I can -- I just want to make

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sure that we are straight. Now, assume at that point the last shot is heard. That, sir, is about fifteen seconds. Is that about the time, approximately?

A. Around there, maybe a little less. I don't remember.

Q. Keeping in mind, Mr. Hightower, at that point in time you were a little bit frightened, were you not?

A. Yes.

Q. And, as you said, you didn't want to get in any position where you might get hurt by one of the bullets?

A. Yes.

Q. Would it be fair to say that when you did finally look out from where the wall was, you did so cautiously?

A. Yes. I glanced. It was a glance.

Q. Just a glance?

A. Yes.

Q. After you glanced, did you put your head back?

A. I glanced a couple times.

Q. Do you mean you went out, glanced and came in?

A. I went out, glanced, and I came back, and I went out again.

Q. So, after you did come back and finally get to the wall and looked down, you glanced, and your head went back, and you glanced again, and then your head went back?

A. Yes, back of the wall.

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Q. Back of the wall?

A. Yes.

Q. Did you glance again, or what did you do?

A. No. By that time I had walked out. I had started to walk out, because I didn't hear any more rounds going off.

Q. So, it was after the second glance and your head went back that you started to go out?

A. A second glance, a short pause, and I started to proceed down.

Q. At that time was anybody with you walking?

A. Mr. Pickford was right in back of me.

Q. Did he see anything?

MR. JACKSON: Objection.

BY MR. MC GILL:

Q. Was he in back of you?

A. Yes. I was the first --

Q. You can't answer it. There was an objection, and you can't answer it.

MR. JACKSON: I am sorry. I withdraw the objection.

BY MR. MC GILL:

Q. Now, do you recall actually in the first statement -- and, I am now referring to the first statement Page 3.

A. Yes.

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Q. Do you see that answer there? Just read it to yourself.

A. OK.

Q. Did you read that just the first three paragraphs, the first three lines?

A. Oh, yes.

Q. OK. Now, in that particular statement there, when you say that you saw someone running, it is true that in that your first statement you didn't mention the term "dread locks? Is that correct?

A. OK.

Q. And, isn't it also true that actually the first time that you mentioned the word "dread locks" in reference to a description was in your second statement which you gave on December 15th, six days later?

A. Yes. That's the statement --

Q. Is that correct?

A. That's the statement that we went more into depth about.

Q. And, I believe that the usage of the word that you made in that statement, sir, was possible dread locks? Is that true?

A. Yes.

Q. So, you don't even know whether they were?

A. The way it looked, it looked like dread locks, but I

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Hightower - Cross

really wasn't focusing on that person.

Q. You were not thinking about that person in particular, and you did not focus on them?

A. Yes.

Q. So, it may very well not have been dread locks?

A. It could have been braids. It looked that way.

Q. Let's take a look at page 3 of your first statement.

A. OK.

Q. You mentioned that dark color pants, red and black sweater, and you say five eleven or six feet, but you don't say anything then about dread locks.

A. Well, it looked like the person. OK? I don't want to be redundant, or anything, but it was really a split second thing, and I really wasn't thinking to go into detail in the first statement.

You see, the second statement is a lot different than the first one.

Q. After you mentioned that you did not know the defendant, it was the defendant on that particular day, as a matter of fact?

A. Say that again, sir.

Q. Did you not know it was the defendant?

A. Jamal?

Q. Yes.

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Hightower - Cross

A. No, I did not.

Q. Now, back in one of your statements you indicated that you did not find out until later, until you heard it over the radio or read it in the newspaper - - you specifically heard it on the radio it was, that's when you realized that it was the defendant?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And, did you also hear it on -- well, is it at that point in time when you heard the name and realized who it was say the day afterwards that you yourself realized then that this is an individual that you saw or knew at one time in 1977?

A. Yes.

Q. And, would it not also be true to say that maybe in the media, in the radio, in the newspapers, that you may have heard or read about his having dread locks at that time? Do you recall that?

A. Well --

Q. He was wearing dread locks at that time?

A. I didn't hear anything, to be honest with you, until afterwards about Jamal wearing dread locks.

Q. After the incident you mean?

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Hightower - Cross

A. Yes. I didn't even know that.

Q. That's really what I thought you meant, and I am saying if I said it differently --

A. OK.

Q. -- I meant after the incident.

A. After the incident, yes.

Q. The next day, the following day, it was all over the news, wasn't it?

A. Right.

Q. And, did you realize this was the individual you had known before or had seen before?

A. Yes.

Q. So, I am saying after the incident and when all of this notoriety and so forth in reference to this day, do you recall hearing at that time after the incident that he had dread locks?

A. I seen him on the news.

Q. OK. And, it would be fair to say that after your first statement and before your second statement you had heard that the defendant had dread locks?

A. Yes. I seen it in the paper and on the news.

Q. Now, you stated that you saw the police officer with a gun in a holster. Is there any particular reason that you focused on this holster?

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#### Hightower - Cross

A. Because, one of the officers grabbed him by his holster -- by the belt I guess you would call it.

Q. I notice you are indicating your left side.

A. No special reason.

Q. Do you recall telling the police that the holster was on the left side? Do you recall telling them that?

A. I do believe it was on the left, yes. Yes, I do. I believe it was on the left side.

Q. As a matter of fact, you told the police that, too?

A. Yes, in my second statement.

Q. That would be on Page 3 of the bottom portion of your statement?

A. Is that the second statement?

Q. Yes.

A. I'll get it.

Q. MR. MC GILL: I would ask that this he marked as Exhibit C-66.

(The above mentioned document was received  
and marked C-66 for identification.)

MR. JACKSON: I am sorry. What Exhibit is this?

THE CRIER: C-66.

MR. MC GILL: C-66.

Would you open that up for the witness?

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#### Hightower - Cross

BY MR. MC GILL:

Q. Would you take a look at that? Does that look like the holster that you saw?

A. It looks like a holster. I can't say, "Yes" on that. I don't even know that. I can't say that is the same holster that the officer had.

Q. Would you take a look and see whether it is a right handed holster or a left handed holster?

MR. JACKSON: Objection, Your Honor. There has been no indication --

MR. MC GILL: I object to him telling the witness how to testify.

THE COURT: Don't get excited. Don't get excited. Let him look at the

holster.

BY MR. MCGILL:

Q. Is that a right handed holster or a left handed holster?

A. It looks to be right handed. I am left handed.

Q. You are left handed?

A. Yes.

Q. Then you would know a left handed holster if you saw it?

A. That's like I know a left handed smoke machine. I really can't say.

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#### Hightower - Cross

Q. Now, sir, I think you also mentioned, Mr. Hightower, that in the statement that you felt that the one who was running down the street was a Jamaican.

A. It looked to be, I mean, with the hair and all, you know. I don't want to be biased. It looked to be Jamaican. That's my impression.

Q. Well, I am not trying to get bias or anything. You did say that in one of your statements?

A. Yes, yes.

Q. All right. Now, if I can get the idea that you are telling us and this jury that your being back here about six car lengths, the individual who was running, the first time you saw that person some fifteen seconds after the last shot --

A. Approximately fifteen seconds, maybe a little less.

Q. And, the first time you saw that person was four car lengths past where the police car was?

A. Yes.

Q. And, if four car -- if I could, for purposes of just distance --

A. Sure.

Q. If you would say four car lengths from the police car, and you have approximately three, three and a half car lengths from the police car to this corner, sir --

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#### Hightower - Cross

A. OK.

Q. Are you with me?

A. Yes, I am with you so far.

Q. Now, if I were to say that you are adding three and a half plus four plus the width of the street plus six car lengths, that you during the course of one and two glances back and forth were able to see all that you saw in reference to the man or woman running down the street, is that what you are saying?

A. All that I saw, it wasn't that much, but, yes.

Q. And, not only were you able to tell where the individual was born, Jamaican, how he looked or she looked --

A. OK. As far as that, the nationality is concerned, I didn't know too many persons that have dread locks. They usually are Jamaican, and they are mostly Jamaicans, so that's why I said that. That's why I made that statement.

Q. But, you saw it from that distance?

A. Yes. I saw it briefly, yes.

Q. Did you see a gun in the hand?

A. No.

Q. All right. Now, sir, you mentioned that when you arrived as you finally did, did you come up, did you walk up, or what?

A. Yes. We walked up, up towards the sight.

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Hightower - Cross

Q. Yes, up towards the sight.

A. Oh, yes, yes, we walked.

Q. As a matter of fact, did you not tell the police, or, perhaps, the investigator for Mr. Jackson, that you actually, in as much as you were cautious as to the shots, that you actually walked from where you were with Mr. Pickford to the corner wall before you took a peak?

A. Yes. Mr. Pickford was in back of me, yes.

Q. I mean, but, you walked from where you were?

A. Yes, from the car door to the end of the wall I walked.

Q. OK. Now, I believe you said that there were some eight or nine people around Mr. Jamal, the defendant, when you saw him?

A. Approximately, sir, approximately. I don't want to be held to an exact figure, because that would be unfair. I don't know. Approximately eight to nine officers.

Q. And, there were a number of them hitting him? Is that what you are saying?

A. Yes, yes, over four.

Q. You, by the way, did not see him when he was on the other side of the car?

A. I did not see him while he was being apprehended. My first sight of Mr. Jamal is when he came from the back side of the Volkswagen.

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Hightower - Cross

Q. And, I think you indicated that they were hitting him with sticks, among other things?

A. Yes.

Q. I'm going to show you a stick here.

MR. JACKSON: Your Honor, I am going to object. There is no indication that anybody had that stick on --

MR. MC GILL: I object to him telling the witness how to testify. I object, Your Honor. I object.

MR. JACKSON: He is going to tell the witness how to testify.

MR. MC GILL: Again I object.

MR. JACKSON: I object, sir.

THE COURT: The objection is overruled. Come on! Let's move.

BY MR. MC GILL:

Q. This is the kind of stick you were talking about?

A. (There was no response.)

Q. I don't mean the exact same; the size.

A. Yes.

Q. You have seen nightsticks before?

A. Sure.

Q. This is what they used to hit him with?

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#### Hightower - Cross

A. Yes. OK. Yes, I would say that. I was across the street.

Q. Sure.

A. It was dark. I guess that's a nightstick. I guess that's what they were using.

Q. All right. Well, whatever it was, it was a stick?

A. Yes, it was a stick.

Q. OK?

A. OK.

Q. And, was there more than one person with a stick that was being used?

A. Yes, there was.

Q. You mentioned three or four, sir?

A. I said there were three or four.

Q. Were all three hitting him?

A. OK. When you first asked me the question, I said there were eight or nine officers apprehending him. For sure there were three or four beating him. The others were standing around. More than that could have been participating. I don't want to say one thing and say another. I am just trying to tell you what I seen.

Q. Sure. I just want to know what you observed. That's why I said three or four. You did say three or four?

A. Yes, I did.

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#### Hightower - Cross

Q. Did all three or four of them have sticks hitting him?

A. No. Maybe two had the sticks out, and I don't know the exact amount that were kicking him.

Q. And, you saw the hitting of him?

A. Yes. It was a flurry.

Q. Do you recall what part of his body was kicked?

A. I think I seen Mr. Jamal until he came from the back side of the Volkswagen, so while they were apprehending him, I didn't see any parts of the body where he was hit.

Q. Did you hear some sounds?

A. No, I didn't hear no sounds at all, not from Mr. Jamal.

Q. Well, did it appear at all like, you know, when a man could be using a stick against somebody, like this, a couple times?

A. That's basic motion.

Q. Like I am showing the jury? Is that correct?

A. Yes, sir; yes, sir.

Q. And, this was the time they were hitting the defendant?

A. Basically in that manner.

Q. They weren't waving a wand? They were hitting him?

A. Yes, sir.

Q. No doubt?

A. Yes.

THE COURT: Quiet in the court, please!

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#### Hightower - Cross

BY MR. MC GILL:

Q. And, there were two of them, is that correct, that were doing that?

A. Yes, approximately.

MR. JACKSON: Your Honor, I object. He asked the same question over and over again.

MR. MC GILL: Is Mr. Jackson telling me I am asking the same question?

MR. JACKSON: I object. The question was asked and answered.

THE COURT: Come on.

MR. MC GILL: All right.

BY MR. MC GILL:

Q. And, bodies that you did also see -- well, let me strike that.

There is no question that these two things were hitting somebody?

A. Yes, something.

Q. And, he was the only one back there? They weren't hitting anybody else, were they?

A. No, I don't think so.

Q. They were also hitting him with a blackjack? You know what a blackjack is?

A. The little thing.

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#### Hightower - Cross

Q. You didn't see that?

A. I didn't see that at all.

Q. But, you saw the foot motion kicking?

A. Yes, I did.

Q. Now, were more than three or four kicking or just one or two?

A. Oh, around three or so, three or so, maybe more. The situation was so, like, grab this and grab that. I can't approximately say how many were kicking him. I am just trying to be as honest as possible.

Q. OK. But, at least two were kicking him?

A. At least two had the sticks and at least two or three were kicking him, yes, sir.

Q. Now, when you said they dragged him around and you said his head hit a pole, right?

A. Yes.

Q. At that time, did you then see the hitting of the pole?

A. No.

Q. When he was being dragged to the wagon?

A. No.

Q. They stopped?

A. Yes.

Q. OK. When did you -- when were you aware from the time

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#### Hightower - Cross

that you walked after the shots to the end of the wall, when were you aware of the first police car arriving or wagon arriving?

A. Maybe ten seconds, fifteen. It was so very, very, prompt, very prompt.

Q. OK. Was it fifteen seconds after you saw --

A. I don't remember the exact time, because that would be unfair, again. It was very prompt, very prompt.

Q. Listen to my question before you answer, again.

A. OK.

Q. Were the fifteen seconds after you saw the man or woman running down toward the hotel, toward 12th Street?

A. OK. OK. I said approximately fifteen seconds, maybe a little less than that, about, maybe ten seconds after that the police officer came, yes.

Q. OK. Now, at that time when the police -- if it were ten seconds after you were glancing and you saw this person going down that way (indicating), did you wait until the police stopped and then went toward the area where the incident occurred before --

A. I waited until the police officers had the situation pretty well under

control.

Q. Before you went up?

A. Before I went up, yes, sir.

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Hightower - Cross

Q. You figured maybe somebody was there and there would be more shooting?

MR. JACKSON: Objection.

THE COURT: Sustained.

MR. MC GILL: I withdraw that.

BY MR. MC GILL:

Q. You were approaching, then, the scene cautious also? Would that be fair to say?

A. That would be fair to say.

Q. So, after the first police car arrived, do you remember when the first police car came, whether it be this way down 13th (indicating), up 13th, down Locust, up Locust?

A. I don't know which one of the streets are one way. I don't know if he came up Locust. I really don't recall now.

Q. OK.

A. OK?

Q. Did you wait before you proceeded forward to cautiously -- wait for my question.

A. OK.

Q. Did you wait before more than once police car or wagon arrived?

A. After the first one, after maybe after five seconds later another one

came, so they were very close together.

Q. All right. Now, my question, Mr. Hightower, was: Did

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Hightower - Cross

you wait before you cautiously moved up here, meaning up here toward the scene, until more than just one police car arrived?

A. I started to move when the first police car arrived.

Q. OK.

A. And, the other ones came so rapidly. Yes, I did keep proceeding.

Q. Would it be fair to say that the other cars and wagons arrived at the scene after the first car before you arrived at the corner of 13th Street?

A. That's a matter of steps. I don't know exactly what place the other cars came. Again, I don't recall exactly the place. Then I think I was approaching the corner of 13th Street. I would not say I was on the corner.

Q. OK. So, you had not yet -- you approached -- you had not yet reached the corner, and, certainly, you had not yet crossed the street to the other side?

A. No.

Q. Before more than one, maybe two, three, or four police cars arrived? Is that correct?

A. Yes.

Q. OK. So, you, I guess, did not observe what all those police officers did, or did you?

A. No.

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Q. You didn't observe what each one of them did?

A. Not each one of them, but I seen them when they got out of the car.

Q. They all went over to that area?

A. Yes.

Q. OK. Now, at that time when they did go over to the area -- and, I am indicating now where the defendant as well as the officer was -- all right? This is that area (indicating). I don't want to mislead you. This area here is where it happened (indicating), right?

A. Right. I understand that.

Q. So, you are here (indicating). So, as I understand what you are saying, you arrived close to that corner, 13th and Locust at the time when, perhaps, two or three or four cars or wagons arrived and police officers jumped out and ran toward that scene? Is that correct?

A. Yes; by that time I was on 13th Street crossing the street.

Q. Fine. And, then, did you also then walk across the street?

A. Directly, yes.

Q. And, then, you went down this direction (indicating)? Is that correct?

A. To about where the Volkswagen was, directly across from

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#### Hightower - Cross

where the Volkswagen was.

Q. OK. So, Mr. Hightower, would it be fair to say that you walked cautiously up to 13th Street?

MR. JACKSON: Your Honor, I am going to object. He is just repeating his testimony. That's all he is doing.

THE COURT: I don't know the answer.

MR. MC GILL: Judge, may I proceed? May I kindly object to Mr. Jackson's comments?

THE COURT: Go ahead.

MR. MC GILL: I was attempting to be kind on cross-examination.

THE: COURT: Go on.

BY MR. MC GILL:

Q. And, then, you continued to walk here, which would be right across the street? You at no time ran? You just walked?

A. Just walked.

Q. And, over here you were able to finally get directly across from what actually had occurred? Is that true?

A. Yes.

Q. And, even while you were there across the street, you were not able to see the defendant behind the car? Is that correct?

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#### Hightower - Cross

A. No, no. You are right.

Q. Obviously, you could not see anything else behind the car?

A. No. I was, like, I was on the blind side.

Q. OK.

A. OK.

Q. Did you stay over there until you were asked to go to the wagon?

A. Yes, I was basically right there.

Q. OK. Now, you also stated to defense Counsel that not only was -- well, not only was the holster on the left side of the police officer, but, also, you saw the gun in the holster? Is that correct?

A. Yes. I did, sir.

Q. Did you notice whether every other -- the police officers had guns in

their holsters?

A. I guess.

Q. "Yes" or "no"?

A. No.

Q. No? Now, that is also in your second statement, is it not, sir, that the gun was in the holster? Is that correct?

A. Yes. That is in my second statement.

Q. And, that statement was some six days after your first

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#### Hightower - Cross - Redirect

statement?

A. I think it was on the 15th or -- the exact date?

Q. December 9th was the first. December 15th was the second one.

A. Yes.

Q. So, the same day that you told the police that the person you saw running that distance away had dread locks on, that same day you said the police officer had a gun in his holster?

A. This is my second statement.

Q. I am completely snapped. Is that correct?

A. Yes, that's the way it looked to me.

Q. MR. MC GILL: Nothing further.

#### REDIRECT EXAMINATION

BY MR. JACKSON:

Q. Mr. Hightower, for those of us who don't know --

MR. MC GILL: Objection, Your Honor, to comments.

MR. JACKSON: Fine.

BY MR. JACKSON:

Q. You indicated in response to Counsel's question, you said you told the police that the person running had dread locks in the first statement. Is that right? I am sorry.

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#### Hightower - Redirect

A. In the second statement.

Q. You said that in the second statement?

A. Yes.

Q. I'd like for you to read for me aloud the very first question that was asked of you on December the 9th and the very first answer you gave on December the 9th.

A. It's not typed that well.

Q. Give it to me.

A. Oh, this portion is typed.

Q. OK. The very first question, the very first answer, the first time the cops ever asked you a formal question.

A. OK. "Mr. Hightower, will you go on in your own words and tell me what you know concerning the shooting of a police officer at the 1200 block of Locust Street a short while ago." This was December the 9th.

Q. Yes, sir.

A. OK. My answer was: "We, Robert Pickford and myself, were going to the Club Whispers to see if it was still open. It was closed when we got there around 3:35 a.m. I turned the corner on 13th Street and got to the parking lot entrance and heard four or five shots go off.

"I went back around and peaked around the corner. I seen a blue

Volkswagen with one black male sitting in it, possibly Jamaican."

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#### Hightower - Redirect

Q. Go on.

A. I seen the male run away wearing a red and black sweater. There was another male standing over the police officer, and he looked like he was in shock. I don't believe that the male who shot the officer could have stood there. When I heard the gunshots, I first ran. Then I looked back and I seen the cop on the ground after the officers got there. I did see the guy who ran, and he looked Jamaican, too.

"There were a guy in a blue Volkswagen, and when the police got there, they pulled him out and struck him and threw him in the wagon. The guy who is in here now -- he's the one who was standing over the cop after he was shot."

"When the other" -- this is a continuation of the answer -- "When the other police got there, the guy just backed off and stood against the wall. Then the police took custody of him, but I know he was not the guy who shot the cop."

Q. OK. Now, in that very first question that they asked you the very first time that you talked to the police, you say that the man who was driving the Volkswagen looked like a Jamaican?

A. Yes.

Q. Why did you say that?

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#### Hightower - Redirect

A. Because, when we went to the club, we did see somebody standing there. What focused my attention on the Volkswagen is when the officer pulled up behind him, the driver did look like he had dread locks.

Q. So, let me ask you this: Are you saying that someone having the characteristics of wearing dread locks is who you characterize as Jamaican?

A. Yes. That's my personal thing.

Q. OK. Fine. Again, in the very first answer you gave to the police, you indicated that the man who ran away looked like a Jamaican, too.

A. Yes.

Q. What did you mean by that?

A. As far as his hair was concerned.

Q. So, you said that to them the very first time you talked to them?

A. Yes.

MR. MC GILL: Objection. Talk about my being repetitious!

MR. JACKSON: Fine. I withdraw that question. I just wanted to get that clear. Fine.

I have a few more questions for you, sir.

BY MR. JACKSON:

Q. By the way, the holster that you saw Officer Faulkner

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#### Hightower - Redirect

wearing -- do you know if the holster was turned around or not?

A. I can't answer that. I don't know.

Q. You just happened to know the holster was on the left side?

A. Yes.

MR. MC GILL: Objection. Leading his own witness.

THE COURT: Please don't lead the witness.

BY MR. JACKSON:

Q. Now, Mr. Hightower, are you certain of the number of shots that you

heard? Were there five?

A. Approximately, approximately.

Q. Now, in your statement you have indicated to the police and your testimony here today that there were five.

A. Yes.

Q. Sir, let me see if this refreshes your recollection.

Page 2 of the statement given on 12/15/82.

MR. MC GILL: I would object. How is his recollection refreshed? This is redirect, Judge.

MR. JACKSON: A prior inconsistent statement; that's all.

THE COURT: You said '82.

MR. JACKSON: Page 2. I am sorry. Page 2.

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#### Hightower - Redirect

BY MR. JACKSON:

Q. "Q. The male you describe running down Locust Street -- did he pass in front of you?"

A. No. When I saw him, he was maybe four car lengths away from the police car and the Volkswagen."

Is that right?

A. Going into the direction of the hotel, yes.

Q. And, so, that again the direction of the hotel was towards 12th Street? Is that right?

A. Yes, yes.

Q. Good. Then on Page 3 the same date --

A. This is the second statement, isn't it?

Q. Yes, this is the second statement. OK?

"Q. In all, how many shots were fired, to the best of your recollection?

A. I believe 3-5, three to five, three to five, like three in rapid succession, and two more."

Do you remember that question and answer?

A. Yes, I do.

Q. Now, do you recall other than this statement -- well, let me ask you this question first: Question -- same page.

"Q. When you see Officer --" OK.

"Q. When you saw other police there on the scene, did you see any officer pick guns up?"

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#### Hightower - Redirect

"A. No."

"Q. When you see officers pick up Officer Faulkner up, could you see a gun on the ground?"

"A. No, but I could see his gun in his holster."

Do you recall those series of questions and answers.

A. Yes, I do.

Q. Did they ever ask you about Officer Faulkner's gun before?

A. Not until the second statement was being held.

Q. And, that's the question I just asked?

A. Yes, it is

Q. And, that's the first time they asked you about his gun?

A. Yes, sir.

Q. Did you initiate any -- let me strike that.

Did you tell them anything about his gun before they asked you?

MR. MCGILL: Objection. Leading his own witness.

BY MR. JACKSON:

Q. What if anything did you say to them with regard to his gun?

A. I don't really know. I don't know if I made the statement

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#### Hightower - Redirect - Recross

or I was asked the statement.

Q. OK. Did you make any statements that you can recall? Did you make any statements to the police?

A. Concerning Officer Faulkner's gun?

Q. Yes, sir.

A. No.

Q. Other than the statement right there.

A. Other than the statement right here, yes, sir.

MR. JACKSON: No further questions at this time. Thank you very much, Mr. Hightower.

#### REXCROSS-EXAMINATION

BY MR. MCGILL:

Q. Mr. Hightower, take those statements, if you would, just in front of you. You've told us, and you are very clear, are you not, as to where you were when the first shot went off?

A. In the parking lot.

Q. Yes. No question about it?

A. No, no question at all.

Q. Well, actually, in your -- take a look at Page 2.

MR. JACKSON: Your honor, I object. This is beyond the scope.

THE COURT: Overruled. Go ahead.

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#### Hightower - Recross

THE WITNESS: Is this the first statement or --

MR. MC GILL: The first statement is December the 9th. Now, back on Page 2, please, about the center.

BY MR. MC GILL:

Q. Did you see the officer pull out his own gun? Did you see that?

A. (There was no response.)

Q. Did you see that question?

A. (There was no response.)

Q. That will be about --

A. OK. Yes, sir.

Q. Did you see the officer pull out his own gun?

A. No. He didn't have time. It was, like, a blind side hit. Well, it had to be.

Q. It had to be?

A. Yes.

Q. But, you didn't see it, though?

A. No, but the way he was positioned on the ground.

Q. You were kind of imagining how it must have happened? Is that

correct?

A. OK. It wasn't actually -- I didn't actually see it, no.

Q. Well, you are here six car lengths up here going toward Robert Pickford's car, 7 car lengths, and you are telling

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#### Hightower - Recross

the police officer the first day it was a blind side hit.

How do you see through the buildings?

A. I made that statement on the way the officer was positioned on the ground.

Q. OK.

A. OK.

Q. In other words, the way the officer was on the ground you assumed it was a blind side hit. Is that what you are saying?

A. Yes, because he was on the passenger's side.

Q. Yet the question was: Did you see the officer pull out his own gun? No. He didn't have time. It was like a blind side hit.

A. This is what I figured it was. That is not actually seeing it.

Q. You imagined that must have been the way it was? Is that it?

A. Yes, I would say that.

Q. You said also on that first statement -- let's take a look at some of the other things you first said, since Counsel recited that portion. You talked about the police officer pulling somebody out of a car.

A. It looked that way, yes.

Q. Here you are. Did you see the police officer pull out

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Hightower - Recross

his own gun? No, I didn't have time. It was, like, a blind side hit. He was pulling this guy out of the car. That's the last thing I know. Evidently he was intent on this guy, and he didn't see the guy run up.

Is that what you told them?

A. That's the way I figured it.

Q. Again, that is the way you figured it, correct?

A. Yes.

Q. Again, sir, you are six car lengths down, and up in the parking lot going toward Robert Pickford's car, and you are telling me it was a blind side hit, and the officer was pulling somebody out of the car. He didn't have a chance, and you saw that through the buildings?

A. Excuse me. Can I make a statement here?

MR. JACKSON: Judge, may he answer?

THE COURT: He is.

MR. JACKSON: OK. I just wanted to make sure.

THE WITNESS: To clarify this to a point, OK? What I am saying is I seen the officer pull up in back of the car, the Volkswagen, walk up to the passenger's side, and motion to the fact that he was trying to get somebody out of the car. When I said about the blind side hit, it was

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Hightower - Recross

just speculation on how it happened. Actually, I didn't see what happened.

MR. MCGILL: OK.

THE WITNESS: It was just speculation.

BY MR. MCGILL:

Q. It was speculation? That's all we are trying to find out.

A. OK.

Q. This was a scary experience, wasn't it, sir?

A. Yes. This is the initial statement?

Q. Yes, down there, Page 2. Let's make it the second to the last question on that.

A. Page 2?

Q. Yes.

A. OK.

Q. Let's take a look at some of the other things you said. You at one point in this question said the guy that the officer was taking out of the car -- did you see him fighting with the officer at all?

"A. No. I just seen the officer indicating to him to get out of the car. That's when I thought this was a routine stop, and I was walking away."

That's what you meant, wasn't it, indicating --

A. Yes.

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#### Hightower - Recross

Q. -- no one was pulling anybody out of a car?

A. No, he wasn't actually pulling him out.

Q. He was indicating for him to get out?

A. Yes.

Q. You saw this happen, and, then, you turned right around?

A. Yes, sir.

Q. Now, take a look at the next question and answer. This is the bottom of that Page 2, and the beginning of 3. Do you know personally any of the males involved, either of the ones in the volkswagen, or the ones that did the shooting? No. I have never seen them in my life. I seen the

Volkswagen pull up, and I seen the officer come around the corner and get out, but then I didn't see anything else until the shots went off.

That's what you said, too, wasn't it?

A. That's what I said.

Q. And, this is what you said on really cross-examination the first time? You saw Volkswagen pull up, and you seen the officer come around the corner and get out, but that you didn't see anything until the shots went off after the officer got out of the car?

A. Well, I seen the officer walk to the Volkswagen.

Q. Well, I am just saying: Wouldn't you admit that there

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#### Hightower - Recross

is a little bit of difference in those statements?

A. Yes, there is. That was discussed at the second time when I made the second statement.

Q. Do you recall first of all in one of the statements, sir, saying that the man, the second man, who was standing around the cop, the man who was standing --

A. Over the cop.

Q. -- over the cop --

A. When I first got back --

Q. You said he was just, like, standing there in shock, right?

A. Yes.

Q. I think he had to be just walking by. Is that correct? Isn't that what you said the first time? I think he had to be just walking by?

A. Yes, that's the way it looked.

Q. OK. And, that was the fellow that you identified as William Cook, the

one that was down there, right?

A. Yes, after, yes.

Q. And, then, you later, sir -- correct me if I am wrong on this --

A. Sure.

Q. But, in your second statement you again, therefore, all of a sudden, identified the driver of the car with the

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#### Hightower - Recross

dread locks as William Cook, didn't you, sir?

I couldn't -- I don't know if I identified William Cook as being the driver, because I didn't really see his face.

Q. OK. But, are you saying, sir, that -- do you recall at any point identifying William Cook as the driver of the vehicle?

A. (There was no response.)

Q. Didn't you tell the police that he was the driver?

A. I think I did, because I think Mr. Cook had a peacoat, a Navy peacoat, yes.

Q. So, he was the driver of the vehicle, and you identified him, and you also identified --

A. I didn't identify him as being Mr. Cook.

Q. Oh, OK. Fine. At least so we understand, you identified the man who was driving the vehicle as well as the man who was standing over the cop at one time or another as William Cook, or the man that was brought down to the Police Administration Building?

A. Yes.

Q. OK. All right. And, do you also recall saying in this statement -- one of the statements -- I think the statement to Mr. Jackson's investigator, that as you walked from the Whispers, you only glanced for a moment at the

Volkswagen and the cop going around the corner?

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Hightower - Recross

A. Yes, yes, sir.

Q. You had no reason to focus your attention on it? You just left?

A. No real reason to stay there, no.

Q. Sir, isn't it true, Mr. Hightower -- and, I won't keep you much longer -- that because of all the events of that evening, that thing which you do recall specifically is the police officer rounding the corner, stopping the Volkswagen, a driver in there who later was the man standing over the cop, who was William Cook, you don't know how it happened, and you don't know how the shots happened, or anything about it? What you did know you heard the first shot when you were back in the parking lot in the distance that we had talked about before?

Isn't everything I said accurate, sir?

MR. JACKSON: Your Honor, I object. He has asked about five questions in that one question.

THE COURT: All right.

BY MR. MC GILL:

Q. Would you disagree with that?

A. Repeat the question, sir.

Q. Fine. Would you disagree with this set of facts?

What you really know is as you were leaving Whispers and were going to the parking lot, you glanced over and

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Hightower - Recross

saw a vehicle that was stopped, and a police car that was rounding the corner?

A. Yes.

Q. And, the policeman was starting to get out of his car and going toward the Volkswagen?

A. Yes, yes, the passenger's side, yes.

Q. And, the man that you saw, the driver, was on the passenger side? It wasn't even the driver's side?

A. That's the way it looked.

Q. OK. And, then, when you went -- and, he goes forward toward the car, indicating to get out; the driver of the car is the same man that you identified down at the Police Administration Building, as the man who later after the shots was standing over the cop? Is that correct?

A. Yes. Can I say something concerning that?

The reason why I made that statement was because of the Navy peacocked.

Q. OK. It was the same person and that was it? Is that correct?

A. Yes, that is.

MR. MCGILL: Thank you very much, Mr. Hightower.

THE WITNESS: Thank you.

MR. JACKSON: Just a couple more.

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Hightower

MR. MC GILL: I would object to any further redirect, Your Honor.

MR. JACKSON: How is he going to object? I haven't asked anything.

MR. MC GILL: We are going to go on and on and on.

THE COURT: Let me see what his question is, if it is something new.

MR. JACKSON: Thank you.

BY MR. JACKSON:

Q. You spoke to Mr. McGill before today, haven't you?

A. Once, yes.

Q. And, you went over your statement? Is that right?

A. Yes.

Q. When was the first time you talked to me?

MR. MC GILL: Objection. Redirect -- this is improper redirect.

MR. JACKSON: Fine. I just wanted to ask that. I have no further questions. Thank you, sir.

MR. MC GILL: Thank you, Mr. Hightower.

THE COURT: We will adjourn until tomorrow morning at 9:30.

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS PHILADELPHIA COUNTY

CRIMINAL TRIAL DIVISION

		January Sessions, 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	1359 Involuntary
WESLEY COOK	:	Manslaughter

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COURTROOM 253, CITY HALL  
PHILADELPHIA, PENNSYLVANIA

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TUESDAY, JUNE 29, 1982

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Before: HONORABLE ALBERT F. SABO, J.  
(AND A JURY)

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APPEARANCES:

- JOSEPH J. MCGILL, ESQUIRE  
Assistant District Attorney
- ANTHONY E. JACKSON, ESQUIRE  
Counsel for the Defendant

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JOSEPH MASCIANTONIO, R.P.R.

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(The following is a discussion in chambers with both counsel present.)

THE COURT: We are back in chambers with both counsel.

Mr. Jackson, I notice that Mr. Jamal has been talking to Jeanette Africa. He had a conference with her for quite sometime now. It is now ten minutes to 11:00 and she has had a long conference.

Is there any indication as to whether Jamal wishes to remain in the courtroom?

MR. JACKSON: I just consulted with him just before coming back to the conference room and he indicated that he did, in fact, want to remain in the courtroom. When I asked specifically whether he was going to behave himself he said "I am going to be here. If the judge wants to ask me any questions he may. I Intend to stay here today."

THE COURT: That is good enough for me. I would assume that he is going to stay in the courtroom.

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MR. MCGILL: I think Mr. Jackson also feels that it maybe in the best interest of the Defendant in maintaining the Defendant's presence.

At this point if nothing is said directly to the Defendant by the judge in reference to the question of whether or not he is going to behave if we just go forward I believe the feeling is he will behave because he won't be placed in a position of having to respond that he would behave.

MR. JACKSON: That is what I am saying.

MR. MCGILL: Judge, I would only ask this, and that is knowing the predictable behavior of the Defendant as soon as he stands up, Judge, at that point it maybe advisable to have the jury leave the room, because in spite of the court order and in spite of the attempts of this court and both attorneys to restrict the publications of the admissible evidence that was reviewed yesterday in camera it has come out in the

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paper this morning and he may use yet another platform to get the jury aware directly of this. So, as soon as he stands up I would ask the court to immediately ask the jury to leave, because I would think this maybe another tactic of his in order to get that message across.

THE COURT: Okay.

MR. MCGILL: Also, Your Honor, just for the record, there has been a discussion this morning between the Defendant and Mr. Jackson. I don't know what they were talking about, but there has been discussions and during the course of that time Mr. Jackson would come to see me and ask me for statements in reference to witnesses and I would give it to him and then he would go through them and then he would talk to Mr. Jamal.

Again, I don't know what they are talking about. However, I want the court to know and the record to reflect the continuing effort by Mr. Jackson to represent his client in the best way possible

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and at the same time have a continual communication between Mr. Jamal and Mr. Jackson without my knowing what it is all about, nonetheless efforts are being made.

So, If Mr. Jamal does not wish to assist in any way with Mr. Jackson he certainly has had the opportunity to speak to him and there were several efforts by Mr. Jackson to obtain his consent and cooperation in this defense.

MR. JACKSON: I would like to say for the record, Your Honor, that most of the communication has been one way in that aside from Mr. Jamal not wanting to cooperate with me I nevertheless at each instance that he has been brought into the courtroom I have tried to tell him what I intended to do, or when he is not in the courtroom either to tell him what has happened

or what I intend to do.

That has been essentially the extent of the conversation. Although today there was a question that I posed to him with

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regard to some information and he suggested a name and in which statement I could find the information.

MR. MCGILL: And did you find -- the information?

MR. JACKSON: Yes. Mr. McGill gave me the information.

MR. MCGILL: Okay. So, he asked you information about a witness that you may call and then you got the information and communicated to him what the information was?

MR. JACKSON: No. I gave him the information. He told me the name. That was with regard to his brother having blood on the hands. I think he said it was Shoemaker, but it was actually McGilton.

MR. MCGILL: There may have been others, too.

- - -

(At this time the discussion in chambers was concluded and the following is in open court.)

- - -

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(JURY PRESENT)

- - -

DESSIE HIGHTOWER, having been duly sworn, was examined and testified as follows:

DESSIE HIGHTOWER-CROSS-EXAMINATION

- - -

MR. MCGILL: Your Honor, just one or two questions.

BY MR. MCGILL:

Q. Mr. Hightower, in reference to your testimony yesterday, when you arrived at the scene of the crime when all the police were there --- do you recall that?

A. Yes.

Q. Did you wait there until the police wagon was --- excuse me. Until the wagon where the officer was placed in left?

A. Are you saying did the officer leave before I left?

Q. Yes.

A. Yes, he did.

Q. And do you know which way he went?

A. I can't be exactly sure.

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Cross-D. Hightower

Q. Now, at the time you --- you testified that there were five shots, is that correct?

A. Yes.

Q. And from the time that you left the parking lot area until the time that you went right across the street from where the scene was and waited and observed what you said you observed, until the time that you left, did you hear any other shots?

A. No, I didn't.

MR. MCGILL: Thank you, sir.

MR. JACKSON: I just have a couple of Mr. Hightower.

---

DESSIE HIGHTOWER-REDIRECT EXAMINATION

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BY MR. JACKSON:

Q. Were you present when Mr. Jamal was taken away from the scene?

A. I think I left before Mr. Jamal did.

Q. You don't know what happened after you left?

A. I have no idea.

MR. JACKSON: Thank you very much.

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Redirect-D. Hightower

No further questions.

---

DESSIE HIGHTOWER-RECROSS EXAMINATION

---

BY MR. MCGILL:

Q. You think you were there before he left or are you sure?

A. I am pretty sure I left before Mr. Jamal did.

Q. If I were to tell you that nowhere in any of your statements ---

MR. JACKSON: (Interposing) Objection.

THE COURT: Rephrase your question.

BY MR. MCGILL:

Q. Have you at anytime in any of your statements said that you left before the Defendant left?

A. I can't be exactly sure. I don't think so, though.

Q. When was the first time that you ever thought about whether or not you

left before the Defendant left or after the Defendant left?

A. I left before Mr. Jamal did.

Q. When was the first time that you realized or

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Recross-D. Hightower

you told anybody that you left before the Defendant left? Was it yesterday, today?

A. Possibly my second statement, but if not my second statement it would be today.

Q. If I were to tell you that it is not in the second statement it would be today, is that right?

A. Yes.

MR. MCGILL: Thank you. Nothing further.

MR. JACKSON: No further questions.

MR. MCGILL: Does the court have any questions?

THE COURT: None.

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(WITNESS EXCUSED)

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MR. JACKSON: The defense would call Doctor Regina Cudemo.

DOCTOR REGINA CUDEMO, M.D., having been duly sworn, was examined and testified as follows:

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Direct-Dr. Cudemo

DOCTOR CUDEMO-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Doctor Cudemo, on December 9th, 1981 would you tell us where you were employed?

A. Thomas Jefferson University Hospital.

Q. In what capacity?

A. As a psychiatric resident on call in the Crisis Center.

Q. Would you tell us what a psychiatric resident is and what a psychiatric resident does?

A. Well, It varies, but I am in a training residency program and we evaluate patients who come in for any kind of psychiatric problems. Any kind of consultation from the medical service that they feel and the patient agrees for us to be seen.

Q. Now, you are no longer at Thomas Jefferson, is that correct?

A. That is correct.

Q. Fine. Now, on December 9th at approximately 4:00 a.m. were you working?

A. Yes, I was.

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Direct-Dr. Cudemo

Q. Where were you working?

A. In the Crises Center.

Q. So that the jury and I will know could you tell us or describe to us the relationship to the lobby area of the emergency room where the Crises Center would be?

Let me do this. We have a sketch and that maybe of some assistance to you.

If this is --- I will be out of your way in one moment.

If this is the entrance from the street to the emergency room lobby and the electric doors, or the automatic doors, are over in this area, this is the receiving desk and this is another area over here, I assume that the treatment rooms are back here?

A. Yes.

Q. Could you tell this jury where approximately would be the area where you work?

A. It would be off the board up in that corner.

Q. Up in this corner here?

A. Yes.

Q. Back in here?

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Direct-Dr. Cudemo

A. (Indicating yes)

Q. Doctor, do you have reason to come into either the lobby area or the treatment rooms of the emergency ward?

A. On occasion.

Q. Specifically let me direct your attention to December 9th at approximately 4:00 a.m.

Did you have occasion to come in contact, or did you have occasion to observe Mr. Jamal?

A. At 4:00 a.m., no.

Q. At about what time?

A. (Pause) I am unclear about that.

Q. If you can approximate that would be fine?

A. Perhaps 4:20.

Q. Where did you come in contact with him? Where did you make your observation?

A. Actually at the time and at this time I cannot identify the person you say as Mr. Jamal.

Q. But you saw someone. Could you describe the person that you saw?

A. It was a black male.

Q. Could you describe his hair?

A. It seemed rather bushy. That is all I can say.

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Direct-Dr. Cudemo

Q. Would it be very similar to Mr. Jamal's in terms of the Dreadlock style?

A. I cannot be clear about that.

Q. Nevertheless, where did you make your observation --- when you made this observation where was this individual?

A. On the floor on what I call the treadles of the emergency room.

Q. Okay. That would be the floor leading to the treatment area --- I am sorry, the treadle leading to the treatment area?

A. Yes.

MR. JACKSON: Could I have the diagram, the sketch, again, please?

BY MR. JACKSON:

Q. Just so we are clear, are you talking about the treadles that would be over in this area leading to the treatment rooms? Again, this is the entryway.

A. Yes.

Q. He was on the treadle?

A. Right.

Q. And where were you?

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Direct-Dr. Cudemo

A. Could you identify that, please?

Q. I don't know if it has been identified at all. I know there is a doorway here and this is the reception desk along with the little cage of some sort.

A. That is all the lobby?

Q. This is just the lobby area.

MR. MCGILL: There are photographs if you wish?

MR. JACKSON: Let me check.

BY MR. JACKSON:

Q. I hand you some photographs that have been previously marked. Can you tell me first of all if this appears to be the treadle that you are talking about?

A. No.

Q. Would this be it?

A. No.

Q. Would you look at these photographs and see if either of these photographs display the treadle that you are talking about?

MR. JACKSON: For the record, those photographs being C45 through C51.

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Direct-Dr. Cudemo

A. No. None of these do.

BY MR. JACKSON:

Q. Okay. You can put them down for a moment. The doorway leading to the treatment area, is there a cigarette machine or candy machine next to it if you recall?

A. I don't. No. I don't recall.

Q. Let me again hand you C48 and ask you to look at that again If you don't mind?

A. Okay.

Q. Does that seem to be the door?

A. Yes, it is the door, but it is in the lobby.

Q. It is in the lobby?

A. Yes.

Q. Now, the door that you said you saw where the man was he was on the treadle in the lobby area?

A. No.

Q. Where was he, on the treatment side?

A. Yes.

Q. Again, could you estimate for us from the diagram where you were in relationship to him? You were not in the lobby area?

A. No.

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Direct-Dr. Cudemo

Q. Maybe that is the difficulty we are having. You were not in the lobby area?

A. That is correct.

Q. How far away were you from him?

A. Approximately eighteen to twenty feet.

Q. And were there police around the man?

A. Yes, there were.

Q. How many?

A. Approximately four to six.

Q. Four to six officers?

A. Yes.

Q. Now, where you made your observation, were you there before the police and the man arrived, or vice versa?

A. (No response)

Q. In other words, did you walk in on them, or did they come in and then you saw them?

A. When I became aware of them they were there.

Q. By the way, where was this man when you first saw him, the black man with the bushy hair?

A. On the floor.

Q. Do you know how he got on the floor?

A. No, I do not.

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Direct-Dr. Cudemo

Q. And the police when he was on the floor were in close proximity to him?

A. (Pause) Yes.

Q. Now, what portion of this man's body did you see?

A. His head. His arms. His right leg.

Q. You could not see his left leg?

A. Not that I remember.

Q. Could you tell us what, if anything, obstructed your view?

A. The counter.

Q. Now, when you talk about a counter --- I understand it is difficult to describe it, since probably none of us have been there, but as best as you can when you say "a counter obstructed your view" can you tell us in relationship to at least the man on the floor was it just his left leg that was obstructing your vision?

I am sorry. Was it the counter just hiding the left leg, because you saw the rest of his body, is that right?

A. I don't remember if I ever saw his back.

Q. Now, the counter is how high?.

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Direct-Dr. Cudemo

A. Approximately three feet.

Q. And there were four to six officers?

A. (Indicating yes)

Q. Could you see the officers' faces? Were they facing you or were there backs to you, or what?

A. Well, It varied. It would depend.

Q. Now, you indicated that you could see his hands. What, if anything, was he doing with his hands?

A. They were in handcuffs.

Q. Behind his back?

A. No. In front of him.

Q. They were in front of him?

A. (Indicating yes)

Q. Did you see him do anything with his hands even though they were in handcuffs?

A. Only raising them into my view.

Q. And when he was raising them could you demonstrate in what way that was done?

A. Like this.

Q. Okay. When he raised it was it done slowly, or forcefully? Can you describe to us how it was

Page 21.

Direct-Dr. Cudemo

done?

A. (Pause) Not really. Just raised.

Q. How many times did you see his hands raised?

A. Only once that I remember.

Q. Now, do you remember what the police officers, if anything, were doing to the man?

A. I only saw them standing around him.

Q. You just saw them standing?

A. (Indicating yes)

Q. Did you at anytime see an officer raise his foot?

A. I didn't see any feet of a policeman.

Q. You didn't see any feet of a police officer?

A. No, I didn't.

Q. Do you recall testifying in this matter once before?

A. Yes.

Q. At a hearing in this matter?

A. Yes.

Q. Now, I don't have the notes of testimony from that, but maybe you can tell me. Did you give some indication that you saw a police officer raise his foot and thrust it

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Direct-Dr. Cudemo

in the direction of Mr. Jamal?

MR. MCGILL: I would object to that, Your Honor.

BY MR. JACKSON:

Q. Or words to that effect?

MR. MCGILL: She can testify to what she observed and not an impression or suggestion.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. Could you tell us if you previously testified, or had given a statement that you saw a police officer or officers' foot raised?

A. I did not say anything about policemen's feet.

Q. What did you say then?

A. I saw a policeman raise his leg.

Q. And when you saw him raise his leg what did you then see him do?

A. I could not see below his knee. I don't know what he did.

Q. Because of the counter?

A. True.

Q. Did he keep his leg raised?

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Direct-Dr. Cudemo

A. I didn't notice.

Q. You don't know whether he ever put it down or not?

A. No. I don't know.

Q. Did you take your eyes away from him?

A. Yes, I did.

Q. Was there something that distracted you?

A. Yes.

Q. What was it?

A. I saw the black male raise his head, arms and right leg.

Q. You saw him raise his hands, arms and legs at about the same time the officer raised his leg or afterwards?

A. (Pause) They were very close together.

Q. You also heard a scream, did you not, or a yell, or moan or groan?

A. I believe I heard a moan.

Q. How long this this moan last?

A. (Pause) Not long.

Q. And this moan that you heard was after you saw the police officer raise his leg, is that right?

A. Yes.

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Direct-Dr. Cudemo

Q. And did you see that police officer or any other police officer raise their leg or foot or anything again?

A. No, I did not.

Q. Did you remain at your point of observation?

A. No, I did not.

Q. You are saying after you saw the police raise his leg and you heard the moan and you saw the Defendant hands go up you left?

MR. MCGILL: Objection. That was not the sequence.

MR. JACKSON: I am sorry.

BY MR. JACKSON:

Q. You can give me the sequence. I want to find out the sequence of events that you observed and heard before you left?

A. The policeman raised his leg, the black man raised his head, arms and right leg. There was a moan.

Q. Then what, if anything, did you do?

A. I then left.

Q. Immediately?

A. Within a minute or two.

Q. Within a minute or two?

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Direct-Dr. Cudemo

I just want to press this point a little bit.

After you heard and saw those observations that you just described, did you turn away or did you continue to look at the man and the police officers?

A. I did not continue to look at them. I did not.

Q. Did someone tell you to turn around or leave the area?

MR. MCGILL: Objection, Your Honor. Hearsay.

BY MR. JACKSON:

Q. Why did you not continue your observations?

A. I was asked to leave the area.

Q. By whom?

A. Another policeman.

MR. JACKSON: No further questions.

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DOCTOR CUDEMO-CROSS-EXAMINATION

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BY MR. MCGILL:

Q. Doctor, the sketch here ---

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Cross-Dr. Cudemo

MR. MCGILL: Your Honor, may I get the sketch?

BY MR. MCGILL:

Q. This is where we are. This photograph also is suppose to represent this area. It is an electric eye or some sort of other mechanism that opens up as you approach the doors, is that right?

A. Right.

Q. There are some treadles in there to open up the other doors, or what is the story?

A. What I called treadles were right here and they open the doors going

this way.

Q. The treadles are inside, but they open the doors. Okay. I should tell you that these photographs are about two months after December the 9th. These are February the 4th. So, I don't know what happened.

Now, as I understand your testimony you saw a black male who was there and you are not sure who that was?

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Cross-Dr. Cudemo

A. Right.

Q. However, you also indicated a number of police were around and then you observed at one point the individual raising his hands in some way, a moan and a leg raised of a police officer, is that correct?

A. (Indicating yes)

Q. Did you see anybody strike or hit or kick or punch that black male?

A. No, I did not.

Q. You are saying you didn't really get a good look at him and you don't know who he was?

A. Right.

Q. I would tell you that this Defendant was there at that time.

Now, Doctor, during the course of the time that you were talking or you made these observations you had other duties?

A. Yes.

Q. What were your primary duties at that time?

MR. JACKSON: Objection.

THE COURT: Overruled.

A. I was in consult for a patient in room B and at that time that was my primary duty, plus helping to

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Cross-Dr. Cudemo

helping to coordinate for medical care.

BY MR. MCGILL:

Q. Now, you were moving back and forth at a rather busy time, is that correct?

MR. JACKSON: Objection.

THE COURT: Rephrase your question.

BY MR. MCGILL:

Q. At the time you made this observation it was rather busy, wasn't it?

A. Yes.

Q. As a matter of fact, it would be fair to call it hectic at that time?

A. Yes.

Q. And you were moving around in various places performing a number of duties, isn't that correct?

A. Yes.

Q. As a matter of fact, as you were walking back and forth through various rooms that you had to walk to some of those rooms that you were walking in were as many as six or seven car lengths from where you eventually were when you made the observation you did?

MR. JACKSON: Objection, Your Honor. What difference does it make what she did

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Cross-Dr. Cudemo

earlier in the morning?

THE COURT: Concentrate and phrase your questions so it is to that

period.

BY MR. MCGILL:

Q. I am talking about the time period of where you were before you made that observation. Right before, if you can remember?

A. (Pause) I can't remember exactly. Somewhere in the emergency room Crisis Center or Trauma room. Something like that.

Q. Okay. Now, the Crisis Center and Trauma room isn't that some distance from where you were making that observation?

A. Yes.

Q. Was that one of your primary duties, to go back and forth in that area to make sure that area was covered or taken care of?

A. Yes.

Q. Were you doing that immediately before and after you made that observation?

A. Yes.

Q. And isn't it a fact that your primary duty at that time was not to be there, or be on guard, or

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Cross-Dr. Cudemo

be in anyway present in that particular area, the emergency room waiting area, isn't that true?

A. That is true.

Q. And basically, as I understand your testimony, you didn't really see anybody do anything, is that correct?

MR. JACKSON: Objection. She already described what she saw.

THE COURT: Overruled.

BY MR. MCGILL:

Q. Answer the question, please? Other than what you told us.

A. Repeat the question?

Q. You didn't see anybody kick, strike, beat, hit, yell at or do anything to that individual who was the Defendant at that particular moment, did you?

A. No, I did not.

Q. And you didn't see anything after that with that particular Defendant as far as observing anything at all?

A. No, I did not.

MR. MCGILL: Thank you very much.

MR. JACKSON: I have a few more.

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Redirect-Dr. Cudemo

- - -

DOCTOR CUDEMO-REDIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. You are an authorized psychiatric resident, or you were at that time, is that right?

A. That is right.

Q. So, you are not violating, or you were not violating any rules or regulations by being in the emergency room, would you?

A. No.

MR. MCGILL: Room or lobby waiting area.

MR. JACKSON: Either one of those areas.

THE WITNESS: No.

MR. JACKSON: Thank you very much.

- - -

DOCTOR CUDEMO-RE-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Doctor, did you see anything at all about what that individual was doing before you made that

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Recross-Dr. Cudemo

observation?

A. No, I did not.

Q. Do you know what he did after you made that observation?

A. No, I do not.

MR. MCGILL: Thank you.

MR. JACKSON: No further questions. Thank you.

- - -

(WITNESS EXCUSED)

- - -

MR. JACKSON: May I have a moment to see if the witness is outside, Your Honor?

THE COURT: Yes.

- - -

(At this time Mr. Jackson left the courtroom and returned.)

- - -

MR. JACKSON: Your Honor, the defense would call Detective William Thomas the assigned detective.

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Direct-Detective Thomas

DETECTIVE WILLIAM THOMAS, badge number 744, Homicide Division, having been duly sworn, was examined and testified as follows:

DETECTIVE THOMAS-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Detective, how long have you been employed by the Philadelphia Police Department?

A. Approximately fifteen years.

Q. How long have you been a detective, sir?

A. About four years.

Q. Detective, on 12/9/81 did you become the assigned detective to the homicide of Officer Daniel Faulkner?

A. Yes, sir, I did.

Q. Could you describe for the jury, generally speaking, what an assigned detective, or assigned officer does; what responsibilities that person has?

A. Basically the assigned detective is responsible for the complete investigation. However, I am supervised at all times by a sergeant and lieutenant. It is my particular duties in a case such as this to possibly be the hub of a wheel in

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Direct-Detective Thomas

that all the spokes must come to me and I must bring the wheel into fruition.

Q. Now, were you supervised in this case by another sergeant, lieutenant,

or some commanding officer?

A. During this Investigation I received assistance and supervision from numerous --- well, from my sergeant, Herbert Gibbons as well as several lieutenants and what have you from the Homicide Division.

Q. Would it be fair to say you had more assistance and supervision in this case than any you had in your experience?

A. No, sir.

Q. Now, Detective, as the assigned detective would it be your responsibility to determine what investigation should or should not take place?

A. In some course of the matter there will be some things that have to be done and some detectives who maybe present or a supervisor maybe present when I am not present at times and would have to make decisions without conferring with me.

MR. MCGILL: Your Honor, excuse me. May I make an objection and ask for a fast sidebar for an offer? I believe I know the

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Direct-Detective Thomas

offer, but I want to be sure.

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(The following is a sidebar discussion with both counsel present.)

MR. JACKSON: The offer is that he is the assigned detective and he had the responsibility for requesting or making any of those tests that I talked about before. The Trace Metal Detection Test and the Neutron Activation Test. If it was his responsibility to follow or coordinate all these tests and I also want to ask him what relationship, if any, Mr. McGilton had to the investigation in terms of whether he was a supervisor or assisting in things of that sort.

MR. MCGILL: I want to make sure that we don't get into the area that we determined yesterday in camera would not be gotten into.

MR. JACKSON: I am just talking about all leads. If he says that is a lead,

fine. I am talking about all leads. I am not asking any particular question.

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Direct-Detective Thomas

MR. MCGILL: Let me ask you again. What is the question that you are going to ask in reference to leads?

MR. JACKSON: Is it his responsibility for coordinating or pursuing leads, investigation or assigning someone, or whatever.

MR. MCGILL: You are not going to get into ---

MR. JACKSON: (Interposing) I have alleged previously that these various tests that were suppose to be performed weren't performed for whatever reason. I want to find out whose responsibility that is. I cannot tell you every question until I hear what is said.

MR. MCGILL: Well, if you get into the area of what we did yesterday, Your Honor already ordered that that cannot be gotten into.

MR. JACKSON: I am not going into that.

MR. MCGILL: Okay. That is enough.

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Direct-Detective Thomas

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(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. JACKSON:

Q. Detective Thomas, who was responsible, or whose responsibility would it be --- I know you have indicated that depending on who was working some responsibility might be assumed by other supervisors, or other brother officers who maybe present, but primarily as the assigned detective would it not be your responsibility to pursue or either delegate the responsibility to someone to pursue leads or information that is needed?

A. Yes, sir.

Q. And as such would you make those determinations independent of your supervisor?

A. Yes, I would make them. Yes.

Q. Now, when were you assigned this case?

A. In the Homicide Division we have what is considered a wheel. Each person takes a turn. You do not know --- well, you know when you come in who is up for the next job. On that particular date, December

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Direct-Detective Thomas

9th, I was up for the next job no matter what the job would have been. It turned out to be this particular job.

Q. What time did you receive this job?

A. We were notified by police radio immediately that the incident had occurred and I already knew I was up for the next job. So, I just got up to go.

Q. Did you go to the scene?

A. I started out to the scene and I put my coat on to go out on the scene and before I could get out of my office radio phoned back again and said they had been ---

MR. MCGILL: (Interposing) Objection, Your Honor, as to any hearsay. What he did would only be admissible.

BY MR. JACKSON:

Q. You did not go to the scene in other words?

A. No, sir.

Q. In fact, you remained at police headquarters?

A. Yes, sir.

Q. At the Homicide Unit?

A. (Pause) Not for the whole night. No, sir.

Q. Were there other detectives sent or dispatched

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Direct-Detective Thomas

to the scene?

A. Yes, sir, there were.

Q. How many?

A. I believe Detective James Morton and Detective William Cogan went to the scene. The division detective may have also went to the scene. I don't know.

Q. Now, you indicate that you are responsible for determining what investigations will take place pertaining to this case, is that right?

A. Yes.

Q. Now, some decisions maybe made by other people that you should do this and you should do that as well, I mean additional things, is that right?

A. That is correct.

Q. If you made the decision to pursue an investigation could you be countermanded by a supervising officer?

MR. MCGILL: Objection. Not relevant.

MR. JACKSON: I want to find out the chain of command, Your Honor.

THE COURT: Go-ahead.

BY MR. JACKSON:

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Q. Do you understand the question?

A. Repeat the question again?

Q. If you had determined to pursue an investigation or pursue a lead, could you be countermanded by your supervisor, or anyone else?

A. No, sir.

Q. Once you made a decision to do something it would be done?

A. Yes. Unless my supervisor could give me concrete grounds why not to do it.

Q. Now, were any of your requests for investigations denied?

MR. MCGILL: Objection, Your Honor.

THE COURT: Be more specific.

MR. JACKSON: I can't be any more specific. That is why I am asking.

MR. MCGILL: Objection. It is involving hearsay. What did he do and what he didn't do.

BY MR. JACKSON:

Q. Did you make a request at anytime during the investigation of this case for an investigation to be performed by someone, or by yourself, after which a

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Direct-Detective Thomas

supervisor, or someone, denied you permission or the authority to do it?

A. No, sir. I don't think I was denied anything during this investigation.

I was given most of the help I needed comparable to the man power and what have you, as much as a couple of other cases that I had that were on this scope. I think I was given fairly good cooperation.

You have to understand that even though this is a large case I still have to work on other cases that are important to those people, as well as this is important to these people.

Q. I understand. And you have been a homicide detective for how long?

A. I have been a homicide detective since roughly around December of 1980.

Q. So, at the time you were a homicide detective for approximately one year?

A. That is correct.

Q. And did you receive any special training when you came from one detective division to the Homicide Division? Did you receive any special training or

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Direct-Detective Thomas

instruction?

A. The Homicide Division does things in the minutest detail. Every bit of information in the investigation must be checked out. This is what makes homicide somewhat different than maybe your local divisions in that we cannot leave any stones unturned.

Q. That would be your responsibility to make sure that each stone is overturned, is that right?

A. It would be each and every member of our unit, or the Police Department to do that, sir.

Q. Well, the only way each and every member of the Police Department would know is if you as the assigned detective made it known?

I am sure the entire seventy-five hundred man police force didn't know what stones to overturn. I am not criticizing anyone, but do you understand what I am saying?

A. I understand what you are saying. That is true.

Q. Now, as far as you know was, in fact, every stone overturned in this case?

MR. MCGILL: Objection, Your Honor.

THE COURT: You have to me more

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Direct-Detective Thomas

specific.

BY MR. JACKSON:

Q. You indicated it is your responsibility, particularly in the Homicide Division, that the minutest details must be pursued and that is what you are to do in homicide, is that right?

A. As a detective I am suppose to find out what happened.

Q. Yes, sir.

A. And I try to do that the best I could.

Q. And did you do that in this case, sir?

A. I believe I did, sir.

Q. Detective Thomas, are you familiar with the Trace Metal Detection Test?

A. Somewhat. I am not an expert on it.

Q. I understand that. Did you request one, sir, in this case?

A. No, sir.

Q. Are you familiar with the Neutron Activation Test?

A. Yes, sir.

Q. Did you request that in this case?

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Direct-Detective Thomas

A. No, sir.

Q. Before going on, Detective, isn't it a fact that your decisions to request

or not request certain tests, or certain investigations, is based on the information that is given to you by brother officers, or from your own personal observations?

A. That is correct. Yes.

Q. So, would it be fair to say that you did not request the Trace Metal Detection Test of either the Defendant or his brother, or Officer Faulkner; thought it wasn't necessary; that you knew what happened?

A. No, sir.

Q. Why was it not done, sir?

A. In the case of Mr. Jamal here he was in Jefferson Hospital and all with his wounds and what have you. One of the first things I believe you do when you come in is to scrub them and, also, he was not conducive to cooperating to treatment. And ---

Q. (Interposing) Were you there, sir?

MR. MCGILL: Objection. May he answer?

MR. JACKSON: He is giving hearsay information.

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#### Direct-Detective Thomas

MR. MCGILL: He has asked hearsay in about half of his questions. When he gives an answer he doesn't like he interrupts.

THE COURT: Let him answer the question.

MR. JACKSON: I don't have any problems with that.

BY MR. JACKSON:

Q. Tell us what they usually do at Jefferson Hospital?

A. I was at Jefferson Hospital.

Q. Can you tell us what they usually do?

A. With his wounds and what have you, his life was in jeopardy and there is no test in the world I am going to take on anybody that may risk their

life.

Q. I understand that. Do you understand that the Trace Metal Detection Test is effective for thirty-six to forty-eight hours?

A. Counselor, as I said, I am not an expert on those matters. If I did not do it at first during the first course of the investigation before the Defendant

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was arraigned then I would not have had a chance to do it again.

Q. Why? You went off duty?

MR. MCGILL: Objection.

A. No, sir.

MR. MCGILL: I think this is very unfair about thirty-six hours, because circumstances obviously change.

THE COURT: I will let you go into that.

BY MR. JACKSON:

Q. Detective Thomas, Mr. Jamal was in custody, was he not?

A. Mr. Jamal was in custody In the ICU Unit of Jefferson Hospital.

Q. Now, you suggested that because Jefferson Hospital, and I suspect other hospitals as well, that they usually wash the patients' hands, is that right?

A. Normally in this particular case when I observed Mr. Jamal he was up in the ICU. I don't know what floor it is, counselor. When I observed him and all he did have one arm free and trying to hold onto his stomach and they were trying to get him to agree to

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treatment. He had not agreed to treatment and all. I could not get in the way of these doctors treating this man to do any type of test, it is just not

feasible that I am going to try to do a test and risk this man's life.

Q. I understand that. How long were they treating him, approximately?

A. Counselor, I can't say. I did not stay all night long at the hospital.

Q. When you left the hospital they were still treating him?

A. They were more like trying to get him to agree to treatment than treating him. There was certain things they wished to do that they needed his cooperation, or his signature to do, and this is what they were trying to do.

Q. But my question is --- I understand that you are saying at the time that you entered the hospital you did not attempt to have these tests conducted, because you were concerned about his life. I understand that.

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However, at some point in time his condition was stabilized and you were notified of that, is that right?

A. (Pause) I was made aware. I would check on his condition each day.

Q. Now, even though you believe they always wash their hands in the hospital isn't it a fact that there is a booklet, and I suppose you have more experience than I do, called "The Trace Metal Detection Technique In Law Enforcement" published by the National Institute of Law Enforcement and Criminal Justice, United States Department of Justice, Law Enforcement Assistance Administration, and it says, in fact, that even if your hands were washed the Trace Metal Detection Test would be effective thirty-six to forty-eight hours afterwards nevertheless?

MR. MCGILL: I would object.

THE COURT: If you are going to ask him that question you have to qualify him first. Rephrase your question.

MR. JACKSON: He doesn't have to qualify as an expert, Your Honor. He is

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a detective. He doesn't have to do the test.

THE COURT: Rephrase the question.

BY MR. JACKSON:

Q. Are you familiar with the fact that the Trace Metal Detection Test that is used by a number of police departments across the country, do you realize that the test could be performed even after washing your hands thirty-six to forty-eight hours and still be effective?

MR. MCGILL: I object.

THE COURT: I will let him answer.

A. No, sir, I was not.

BY MR. JACKSON:

Q. You weren't familiar with that?

A. No, sir.

Q. Now, do you know the Trace Metal Detection Test is used to determine whether, in fact, an individual may have held a weapon? Do you know that?

A. Yes.

Q. Nevertheless, did you request that of William Cook?

A. No, sir.

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Q. Was he injured?

A. Very slightly.

Q. He wasn't in the hospital, though?

A. No, sir.

Q. In fact, you had him down, or he was down to the Homicide Unit of the Police Department, was he not?

A. That is correct.

Q. And you didn't request that from Officer, Faulkner either, is that right?

A. (Pause) To the best of my knowledge, no, I did not.

Q. Now, let's move onto the Neutron Activation Test. That test is performed, and correct me If I am wrong, generally speaking to determine whether, in fact, someone recently fired a weapon, is that right?

A. That is correct.

Q. Now, as the assigned detective responsible for investigation every piece of information, did you request, did you perform a Neutron Activation Test, or did you collect the materials required for a Neutron

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Activation Test from Mr. Jamal?

A. No, sir, I did not.

Q. Did you collect the materials required for the Neutron Activation Test from William Cook?

A. No, sir, I did not.

Q. Did you collect the information or request the information or evidence for the Neutron Activation Test of Officer Daniel Faulkner?

A. No, sir, I did not.

Q. Was there any question in your mind as to whether or not Officer Faulkner fired his weapon?

A. (No response)

MR. MCGILL: Your Honor --- no objection.

THE WITNESS: Repeat the question?

BY MR. JACKSON:

Q. Was there any question in your mind as to whether or not Officer Faulkner fired his weapon?

A. There was always questions, counselor, in this particular case dealing with the Neutron Activation Test. I had spoke with one of the people from the Mobile Crime Detection Unit who would be responsible for doing this and at that juncture they did not have

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any of the kits.

Q. They just didn't have any kit?

A. No.

Q. Do you know how much the kits cost?

A. I am not aware of how much they cost, or what the Police Department spends on them. It is mostly handled by the Mobile Crime Detection Unit.

Q. You did request it?

A. I attempted to have it done.

Q. Was it done?

A. There was no way to have it done.

Q. Do you know who it was you spoke to?

A. No. I believe I mentioned it to someone from the Mobile Crime Unit.

Q. Could It have been Officer Ray Land?

A. Most of the time when you direct to get something done from the Mobile Crime Unit you talk to the supervisor.

Q. So, as an investigator you understand there is always a question about

everything that someone tells you, generally speaking?

A. Generally.

Q. And you requested this test and for the

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reasons that you have indicated it wasn't done?

A. That is correct.

Q. Was there some question in your mind as to whether or not Mr. Jamal had committed the shooting he is accused of?

MR. MCGILL: I object to this.

MR. JACKSON: He Is the investigator, Your Honor. Let me see you a minute, Your Honor.

(The following is a sidebar discussion with both counsel present.)

THE COURT: The only reason I am concerned is you are asking him for his opinion, whether he thinks Mr. Jamal was the one who shot the Officer. He may very well say yes. I don't think it is his opinion that is important. What he did or what he didn't do is important.

MR. MCGILL: We are going into highly inadmissible evidence. That is why I was objecting. That is so irrelevant. My God.

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MR. JACKSON: This is what is relevant, Your Honor.

MR. MCGILL: He said, "Did you have any question in your mind that Officer Faulkner fired his weapon?" He stops and he says there is always a question. He is trying to get into inadmissible evidence.

MR. JACKSON: What I am attempting to do, Your Honor, is the very thing he just admitted, that there were tests that could be performed and weren't for whatever reason.

THE COURT: So what good is it? They weren't done. That is it.

MR. JACKSON: To show if the police and the prosecution are on the same side.

THE COURT: Let me say this, it is the responsibility of the district attorney to convince the jury beyond a reasonable doubt that this Defendant committed the crime. Now, they do that by positive evidence and not by negative evidence. Not what they didn't do. The fact that they have done something that would hang your client is

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immaterial. They didn't do it. They have to rise or fall on what they actually did. Negative evidence is not really evidence. The fact somebody didn't do something and the fact they didn't put him on the ground and squeeze his arm and make him confess, whatever they didn't do, or didn't take these different tests, the fact remains they didn't do them and you can call that to their attention that they didn't do it, but still it is the responsibility of the Commonwealth to prove what they did.

MR. JACKSON: I just want to show what he did or didn't do.

THE COURT: He already told you.

MR. MCGILL: He is going into intent.

MR. JACKSON: I will rephrase the question.

MR. MCGILL: I would ask that we rule immediately? Particularly this area that he is going into. I will object and we can have a ruling.

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THE COURT: I am telling you now why he didn't do something is immaterial. He didn't do it and that is it.

MR. JACKSON: It seems to me there is a bias.

THE COURT: If you want to argue to the jury later on that they should have taken these steps that is fine. Who knows what those tests would have shown? It is highly speculative. They could have given the tests and the

tests could have come out positive and then so what?

MR. JACKSON: Or negative.

THE COURT: Or negative. That still doesn't mean that these witnesses that the Commonwealth is putting forward cannot be believed by the jury. It is up to the jury.

MR. MCGILL: I object to what was in his mind.

THE COURT: My ruling is that you can bring out they didn't take such a test, but why they didn't take it that is really

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immaterial. I don't know why he didn't. As I told you before it is the Commonwealth's responsibility to prove the guy guilty beyond a reasonable doubt. The defense doesn't have to do anything.

MR. JACKSON: I understand that.

THE COURT: You are arguing that they should have taken these things and maybe they should have. However, they didn't take them and we don't have the results. So, it is not relevant.

MR. MCGILL: Objection. It is irrelevant.

THE COURT: That is what I am saying.

MR. MCGILL: And inadmissible.

THE COURT: They didn't take the test. We don't know what the results would have been. It is highly speculative. You can argue that they should have taken the test and maybe they should have, but they didn't and that is all that counts.

MR. JACKSON: Judge, what I am trying to show, I think legitimately, is,

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to determine what responsibility he has as the assigned detective.

THE COURT: He told you. He told you that he didn't do these tests. Where are you going?

MR. JACKSON: There are only two tests I have to ask him about. We are at the end of that.

THE COURT: He said neither test was taken. He said one test wasn't taken because they didn't have the right kit or something. It was left at that. Okay. If that is sloppy police work then it is sloppy police work.

MR. JACKSON: That is all I wanted to show.

THE COURT: It is already here.

MR. MCGILL: You keep on ruling.

MR. JACKSON: You never let me finish my point. You are saying I am getting into opinions and feelings.

MR. MCGILL: That is right.

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MR. JACKSON: I am not trying to elicit that. No one pushes a button. He makes the decisions based on something.

MR. MCGILL: That is hearsay.

THE COURT: He made one decision not to do it. Whether it is the right decision or the wrong decision I don't care.

MR. JACKSON: Me either. That is all I wanted to get out.

THE COURT: He answered that already.

MR. JACKSON: That is all I am going to.

THE COURT: You are going into his explanation of why he did something.

MR. MCGILL: Reasons why.

MR. JACKSON: My questions may have suggested that. I don't want to do

that. I will rephrase the question. It is not what I wanted to do.

THE COURT: What is the question?

MR. JACKSON: I forgot what the last question was.

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MR. MCGILL: "Did you have any question in your mind that Mr. Jamal was the person that shot the gun?"

MR. JACKSON: I will withdraw the question. It is probably a bad question for me anyway.

THE COURT: If I was on that stand I would have said there was no doubt in my mind at all.

MR. JACKSON: The issue is whether there was a question in his mind. That might have been a wrong choice of words. I am not trying to get into his subconscious in terms of carrying out his responsibilities.

THE COURT: He already told you that. He said he decided that under the circumstances of this case he would not order that test. You asked him whether or not he knew something and he said, "No, I didn't know about thirty-six hours." He probably doesn't. The point is he didn't take certain tests for whatever reason. We don't know what the results of those tests would have been if they had been

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taken.

What value is it? It is not really relevant except to show that he should have done something that he didn't do. That doesn't lessen the responsibility of the district attorney. He still has to prove this Defendant guilty beyond a reasonable doubt regardless of what he didn't do.

MR. MCGILL: Let's go.

- - -

(At this time the sidebar discussion was

concluded and the following is in open court.)

BY MR. JACKSON:

Q. Detective Thomas, again, as the assigned detective you indicated something to the effect that you are the hub where all the other spokes converge, is that correct?

A. Yes, sir.

Q. It would be fair to say that you are familiar with the contents of all of the investigations, the statements and things of that sort?

A. Yes, sir.

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Q. Now, we have had testimony and there were statements indicating that there were persons other than Mr. Jamal and his brother at the scene.

MR. MCGILL: Objection.

THE COURT: I will sustain the objection. Why don't you ask a question?

BY MR. JACKSON:

Q. Did you pursue an investigation to locate and identify other persons who were at or near the scene of this incident on December the 9th, 1981?

A. Yes, sir, I did.

Q. And did you happen to locate any of them?

A. Yes. I believe I did.

Q. And you located other individuals?

A. Yes, sir.

Q. Have those names been provided to me, sir?

A. You have interviews.

Q. You have names of those persons? Have they been identified? Have

those persons been identified?

MR. MCGILL: Objection.

MR. JACKSON: I am hearing this for the first time, Judge.

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MR. MCGILL: It is actually inaccurate. Mr. Jackson, don't say that in front of the jury. He has every piece of paper we have.

BY MR. JACKSON:

Q. The individual that you spoke to, was that Dessie Hightower?

A. He was interviewed by one of the detectives from homicide.

Q. You know he indicated that a person ran from the scene?

MR. MCGILL: Objection. Judge, this is hearsay upon hearsay.

MR. JACKSON: Your Honor, this man is the investigator.

THE COURT: I will let him answer the question. Go ahead and ask the question. Be specific in your question, though.

BY MR. JACKSON:

Q. The man that Mr. Hightower said he saw running

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past the hotel on Locust Street, did you locate him?

MR. MCGILL: Objection. That assumes there is one.

THE COURT: All right. Let him answer the question, please?

BY MR. JACKSON:

Q. Did you locate him, sir?

A. I have been out to the scene, counselor, and I looked at that location. To the best of my knowledge the person he may have been describing would have been a female.

Q. Based on what, sir?

A. Based on what the person, when interviewed, related.

Q. He indicated on 12/9/81 that it was a man and we know from his statements here in court that he said it may have been a man or woman, but he did indicate the person was Jamaican because of the braids, or Rastafirian. The question is whether it is a man or woman.

MR. MCGILL: Objection. That is not what he said.

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Direct-Detective Thomas

MR. JACKSON: If I misquoted the witness I apologize.

MR. MCGILL: I object to the whole area as being irrelevant and inadmissible.

BY MR. JACKSON:

Q. Did you ever find the man or woman that Mr. Hightower indicated?

MR. MCGILL: Objection.

THE COURT: Come over here a sidebar.

(The following is a sidebar discussion with both counsel present.)

THE COURT: What is the basis of the objection?

MR. MCGILL: The basis of the objection sir, is that Mr. Jackson is bringing other individuals' testimony in by what they are suppose to have said at one time or another and asking him whether he located the person, which he is assuming there exists somebody. You are asking to get into his mind.

THE COURT: It is not into his mind.

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He asked him whether they ever found that person. He can answer yes or no.

MR. MCGILL: You open one big can of worms if you permit this to continue.

MR. JACKSON: He has given us what his responsibilities are. I am determining whether or not he fulfilled his responsibilities.

THE COURT: He tried to locate the person and he didn't.

MR. JACKSON: I understand that. I want to find out. It is not pursuant to his testimony. It is pursuant to the police statements. Mr. McGill may have a point with regard to bringing up the testimony and all of that, but I am saying as the assigned detective he knows about all the statements and he is responsible for pursuing all the leads, whatever they are, and he knows from those police statements what witnesses should be called and what not. If he would have said no in the beginning I wouldn't have been able to ask.

THE COURT: Let's go. Let's move

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forward.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. JACKSON:

Q. Now, again, Detective, the man or woman described by Mr. Hightower did you find that individual?

A. I can't say that I found anyone that was described to me by Mr. Hightower. I interviewed and I attempted to interview, with the help of other homicide detectives, each and every person that we could locate who may have been anywhere in that area either during the shooting or shortly thereafter.

Q. Now, Cynthia White indicates she was talking to a man she knows at or about the time of this incident and she further indicated in the report, as well as her testimony, that the man was talking to someone who she believed to be a homicide detective. I am sorry. A homicide officer. I think she said Highway Patrol officer. Did you locate that individual?

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Direct-Detective Thomas

A. I cannot say that I located that individual.

A. A Veronica Jones Indicated that there were two men ---

MR. MCGILL: Objection, sir.

THE COURT: Who?

MR. JACKSON: It is in the statement.

MR. MCGILL: He is going into a statement about something somebody was suppose to have said.

THE COURT: I will sustain the objection. That person hasn't even been here. I will sustain the objection.

MR. JACKSON: I will have to bring him back.

THE COURT: Then bring him back.

BY MR. JACKSON:

Q. Did you locate and find any other individuals who were reported to be at the scene other than Mr. Jamal and his brother?

A. (Pause) No, sir.

Q. You said that you used the assistance of your brother officers in attempting to locate various people and interview various people?

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A. That is correct.

Q. Although you haven't located those individuals do you have some leads, some information that would suggest where those individuals might be?

MR. MCGILL: Objection.

THE COURT: Let him answer. You can bring it out in cross.

BY MR. JACKSON:

Q. Do you understand the question?

A. I don't completely understand the question, counselor. I ask you to repeat it?

Q. Sure. The question is, although you have not located or interviewed any of these purported individuals that I have just asked you about, the question is do you have any information that would suggest where they might be?

MR. MCGILL: You are going to permit that?

THE COURT: If he can answer it, yes. Let's go.

A. I could not answer that, counselor, I could

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#### Direct-Detective Thomas

not say that I have or have not interviewed someone that someone else pointed to. I don't know whether I interviewed the particular person that maybe related to in somebody else's interview. I cannot say that. I can only say that we have interviewed each and every person who we could find that was anywhere in that vicinity when this thing occurred and shortly thereafter and I have tried to turn that matter over to you as quickly as I could.

BY MR. JACKSON:

Q. Turned it over to me as quickly as you could?

A. Counselor, I believe you have personal knowledge that I have been to your office about five times.

MR. JACKSON: You sure have. May I have one moment, Your Honor?

BY MR. JACKSON:

Q. Detective Thomas, as a trained investigator with fifteen years in the Philadelphia Police Department and given the responsibility that you have for this case, are you satisfied, or have you satisfied yourself that you pursued all of the leads that have been provided to you with regard to the investigation of this case?

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A. I believe honestly, counselor, I have done everything that was in my power that I could do in this case.

Q. Now, many of the interviews or investigations conducted in this case were performed by other officers, or other detectives?

A. That is correct.

Q. And, in fact, on December the 9th, did you, in fact, take a statement from anybody?

A. I believe I talked to Mr. William Cook.

Q. Just one statement then, one person?

A. That is about all I can recall.

Q. So, those other statements that we have gotten on December the 9th were taken by other people?

A. That is correct.

Q. You secured a search and seizure warrant, did you not?

A. That is correct.

Q. When did you obtain a search and seizure warrant?

A. That warrant was obtained early in the morning, I believe, of --- it was obtained during my last out tour the next night. I didn't serve it, until

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Direct-Detective Thomas

after daylight on the 10th, I believe.

Q. And the search and seizure warrant subject matter was the taxicab?

A. Yes.

Q. The taxicab was parked where? Where was it located initially?

A. It was located on 13th, 13th Street on the west side of the street just north of Locust.

Q. Who brought to your attention the location of the cab?

MR. MCGILL: Objection.

THE COURT: I will sustain the objection.

BY MR. JACKSON:

Q. You prepared an affidavit of probable cause for the search and seizure warrant?

A. Yes, I did.

Q. Based on information you received?

A. Yes, sir.

Q. Based on information that you received, when was the cab located at the location you just stated?

MR. MCGILL: Again objection.

THE COURT: I have to sustain the

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objection.

BY MR. JACKSON:

Q. Where did you first come in contact with the taxicab?

A. 13th and Locust.

Q. You physically saw it there?

A. Yes, sir.

Q. And at the time that you saw it was it in police custody? When I say police custody, were the police there?

A. At the time I saw the cab the owner of the cab was there and he had been talking with a police officer.

Q. Before you arrived?

A. That is correct.

Q. Did you ask the Mobile Crime Unit, or anyone else, to dust it for fingerprints, that is the taxicab?

A. I believe the only thing I may have asked was to have photos taken of the cab.

Q. Photos taken?

A. I may have asked to have photos taken of the cab, but that was never done. I am in Three Squad and I was working around the clock constantly and there was

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some type of communication problem in working with a different squad.

Q. So, photos of the cab were not taken?

A. No. Let me correct that and say that I had intended to have photos taken. I am not sure whether I ever called them or not to be honest with you, counselor.

Q. Did you ever intend to have the car dusted for fingerprints, either outside or inside?

A. No. Because the cab had not been under our complete control. So,

fingerprints would not have been necessary. We had enough --- I received enough information as to who was in possession or had ownership of the vehicle.

Q. Someone told you that they, in fact, saw who was in the cab?

A. I had the owner of the cab present and he had conveyed to me who he had let have the cab.

Q. How much earlier than this incident?

MR. MCGILL: I object. We are getting into hearsay upon hearsay. If he wishes to call witnesses to testify that is

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all hearsay.

THE COURT: At this time I may have to sustain the objection.

MR. JACKSON: I understand that, Your Honor.

BY MR. JACKSON:

Q. It is a fact that at or about 3:51 a.m. on December 9th, you and no one else in the Police Department, from the reports that have been submitted to you, know who was operating that cab, is that right?

A. At 3:51 a.m.?

Q. Approximately.

A. Yes.

Q. At about that time?

A. I think you would be correct.

Q. Nevertheless, no fingerprints were taken?

A. No.

Q. How about the contents of the cab, were any fingerprints taken there?

A. Off of the contents?

Q. Yes. Inside.

A. No, sir.

Q. But the contents inside indicated descriptions

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and materials belonging to Mumia Abu-Jamal, is that correct?

A. That is correct.

MR. JACKSON: No further questions at this time, Your Honor. Your Honor, may we see you at sidebar for a moment?

(At this time there was a sidebar discussion  
with both counsel present off of the record.)

MR. JACKSON: May I just ask one more question, Your Honor?

BY MR. JACKSON:

Q. Detective Thomas, did you ever locate or identify a Highway Patrol officer who was at the scene of this shooting on the night it happened?

A. I have a Highway Patrol officer that arrived on that scene and he was interviewed and I believe the interview was turned over to you.

Q. Did that interview --- I don't know who the officer was, sir, but did that officer indicate that,

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Direct-Detective Thomas

in fact, he talked to the man in Cynthia White's statement?

MR. MCGILL: I am sorry. Could you repeat the question?

BY MR. JACKSON:

Q. The question is, the Highway Patrol officer that you interviewed did he

indicate whether, in fact, he talked to the man that Cynthia White said she was talking to?

A. I did not interview this Highway Patrol officer. I can't answer that, because I didn't interview him and, also, to the best of my knowledge he came on the scene, from his interview, well after all the parties had been removed to the hospital. He was assigned to the Expressway all the way up on I-95 somewhere.

Q. As a result of the interview did you locate and identify the man that was described by Cynthia White?

MR. MCGILL: Objection.

THE COURT: I think he answered that.

MR. MCGILL: He didn't know the name or the contents of what was said.

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BY MR. JACKSON:

Q. Let me do it this way. You received or had the opportunity to review each and everyone of those interviews, didn't you?

A. Yes, sir.

Q. So that you did see the interview of this Highway Patrol officer?

A. Yes, sir.

Q. And what I am asking is, as a result of that statement of that Highway Patrol officer did you pursue or investigate, or locate or identify, or anyone of those things, any man as described by Cynthia White as to who she was talking to?

MR. MCGILL: I would have to object.

THE COURT: I will sustain the objection. Let me see you over here, counsel.

(The following is a sidebar discussion with both counsel present.)

THE COURT: The reason I sustained the objection is because you are

presupposing certain things. Now, what you can do is ask

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him for the names of any stakeout officer --- was it a stakeout officer?  
Who was it?

MR. JACKSON: Maybe you can tell, us.

MR. MCGILL: I don't even know myself.

MR. JACKSON: I don't know.

MR. MCGILL: You can call him back later. Getting this in front of the jury it looks like I am hiding something.

THE COURT: It is not fair.

MR. MCGILL: That is the point. He is saying we don't know what the interview was and what was said and whether he said anything about a witness.

THE COURT: He can't go through all that.

MR. MCGILL: He may have to go through it now to find out who it is. I am objecting because it places me --- well, we are dealing with hearsay and speculation.

THE COURT: What you should do is before the man goes on to find out if there were any Highway Patrol officers, get their

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Direct-Detective Thomas

names and you can interview them and find out if they talked to somebody. How is he going to know whether somebody talked to somebody?

MR. JACKSON: The only reason I asked him was because ---

THE COURT: (Interposing) The only reason it is wrong is because don't forget Cynthia White never told this to anybody before the time she took

the stand.

MR. JACKSON: Yes she did.

THE COURT: You were surprised.

MR. MCGILL: She is going to be the witness coming in next.

THE COURT: She already testified she doesn't know the guy.

MR. JACKSON: She previously testified to that. That is where I got it from, the previous testimony.

MR. MCGILL: It has nothing to do with this.

THE COURT: She does not know the name of the man she was talking to. Now, he doesn't know the name of

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#### Direct-Detective Thomas

the officer, or what the officer looked like that supposedly was there. How is he suppose to answer that question? He can't answer that.

MR. JACKSON: Maybe I can find out if she knows who the Highway Patrol officer is.

MR. MCGILL: I want to know if I can have fast rulings on the hearsay objections and if they are sustained to leave it at that? Because I have to go through this interview so it doesn't make it seem like I am hiding something.

MR. JACKSON: I just didn't know his name.

MR. MCGILL: You are asking as a result of what he said did you interview anybody else.

MR. JACKSON: No. I understand your objection. I am not trying to say that he didn't do it. I am trying to find out who the man is.

MR. MCGILL: It is all hearsay.

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Direct-Detective Thomas

(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. JACKSON:

Q. Detective Thomas, do you know the name of the Highway Patrol officer?

A. I looked it up. It was Police Officer Vernon Jones, badge number 4758 assigned to the Highway Patrol.

(At this time both counsel conferred off of the record.)

MR. MCGILL: May we approach the witness?

THE COURT: No. We better not. Unless you want to see me at sidebar and let me know what you are doing?

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(The following is a sidebar discussion with both counsel present.)

THE COURT: Where are we going now?

MR. MCGILL: I don't know. I want to take a look at the interview.

MR. JACKSON: I want to see if there

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is a statement in the interview. That is why we wanted to approach him.

THE COURT: Why don't you ask him to look?

MR. JACKSON: I was going to.

MR. MCGILL: It is hearsay. The whole thing is hearsay.

THE COURT: Bring Jones in.

MR. JACKSON: I didn't want to bring him in if he didn't give a statement.

THE COURT: Maybe he has to bring him in now. I think you are going to have to bring him in anyway for either rebuttal or something.

MR. JACKSON: I don't have the statements. That is my problem.

MR. MCGILL: Judge, is Your Honor going to permit further questions?

THE COURT: Where are we going? I don't know.

MR. JACKSON: I am done with him.

- - -

(At this time the sidebar discussion

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Direct-Detective Thomas

was concluded and the following is in open court.)

MR. JACKSON: No further questions at this time.

MR. MCGILL: Your Honor, may I proceed? I will not be too long.

THE COURT: How long are you going to be?

MR. MCGILL: Ten minutes, Judge.

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#### DETECTIVE THOMAS-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Detective Thomas, you were asked about your various duties involved in this investigation. Do you recall that, sir?

A. Yes, sir.

Q. It is true that you have worked almost close to six months and many

times with me in reference to this investigation, have you not?

A. That is correct.

Q. And would you say you are most familiar as to the contents of this particular investigation, sir?

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Cross-Detective Thomas

A. That is correct.

Q. That book in front of you contains somewhere near fifty interviews alone, does it not?

A. That is correct.

Q. Along with scientific reports and various data from all areas of the Police Department and related agencies, isn't that correct?

A. Yes, sir, it is.

Q. Would you say that in terms of your particular investigation, the investigation that you have conducted almost daily for a six month period, is as reasonably a complete investigation as you could possibly do?

A. Yes, sir, it is.

Q. Are you satisfied, sir, in reference to your investigation, interviews, and anything you have done in connection with this particular case, are you satisfied with the results of your investigation?

A. Yes, sir, I am.

Q. All of those statements that you see before you there, as well as a hundred and twenty other statements from another department, all of those were individually, by you as a matter of fact, given to this defense counsel, is that correct?

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Cross-Detective Thomas

A. That is correct. In fact, the hundred and twenty was given to counsel

and to the district attorney, but they were not given to me.

Q. And that was separate than those there?

A. That is correct.

Q. Now, also, Detective Thomas, in reference to the individual you mentioned, something about what Mr. Hightower had said about somebody running, if, in fact, there was anyone that he had seen you said that you thought based upon your view and your going out to the scene it may have been a woman, is that correct?

A. Yes, sir.

Q. And you were referring, were you not, to Veronica Jones, is that correct?

A. That is correct.

Q. And you had an interview of Veronica Jones which were among those interviews which were given to defense counsel, is that correct?

A. That is correct.

Q. Did you not arrange at my request that Miss Jones be present today if counsel wished to talk to her, or whatever he wishes to do?

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Cross-Detective Thomas

A. Yes. Before coming to court I did arrange that.

Q. And did you not in reference to your particular investigation in reference to her statement determine that the only reason why you felt that Veronica Jones may have been the person, if in fact he saw anyone, is because she would have been the only person standing there at approximately that time?

MR. JACKSON: Objection, Your Honor. Unless this officer was present how could he say that, Judge?

MR. McGill: It was brought out by you.

THE COURT: Just a minute. Rephrase your question.

BY MR. MCGILL:

Q. Why did you say you thought it would be her?

MR. JACKSON: Objection.

THE COURT: I didn't hear the question.

BY MR. MCGILL:

Q. Why did you say that you thought it might be her in response to his question?

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Cross-Detective Thomas

MR. JACKSON: I object to it because it is speculation.

THE COURT: I will allow him to answer the question.

A. It was brought out in Mr. Hightower's interview that he had observed a person running down near the hotel on Locust Street. In canvassing that area we came up with numerous people and I was led to Miss Veronica Jones. She was interviewed and in turn related that she had, in fact, been at 12th and Locust and in hearing the shooting she had walked up the street to I believe it is a little restaurant about a block away, at Camac and Locust, which is right near the hotel.

BY MR. MCGILL:

Q. Would that be Polly's?

A. Yes. Polly's.

Q. Is that the reason that you thought that may have been the person that he saw?

A. She also relates to seeing two men jog across the street, which I felt could have possibly been Mr. Hightower and another person.

Q. Also Mr. Pickford?

A. That is correct.

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Cross-Detective Thomas

Q. Now, Detective Thomas, in terms of reference to the cab that you spoke about with the material in it with the Defendant's name on it, was that parked south or north on 13th Street, or near 13th and Locust?

A. It was parked north of Locust Street on the west side of the street. I think it is just past the door of Whispers. This is Locust Street. The cab was parked I believe right here, about in here, on this side of the street over here.

Q. You are indicating above where the twenty-six feet is?

A. Somewhere right in this vicinity.

Q. Now, would it be parked on the right side or left side?

A. It would be on the right side of the street, on the west side of the street.

MR. MCGILL: Thank you, Detective. Nothing further.

MR. JACKSON: I have a few questions.

DETECTIVE THOMAS-REDIRECT EXAMINATION

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Redirect-Detective Thomas

BY MR. JACKSON:

Q. Detective Thomas, you said that you assumed or speculated that Veronica Jones was the person that Mr. Hightower said he saw, is that correct?

A. Anyone or anything that has been brought out in anyone's interview it is my job to substantiate who it was, or what it was, and how it came to be there and I made this attempt as best I could.

Q. But Veronica Jones never told you she was at the hotel, did she?

MR. MCGILL: Objection. Really.

MR. JACKSON: You brought it up.

MR. MCGILL: I will withdraw my objection.

BY MR. JACKSON:

Q. My question is, Veronica Jones never told you she was at that hotel, did she?

A. From the point she said she was when she heard the shot was at 12th Street near the Speedline. Up to Polly's is approximately eleven or twelve building doors to Camac Street. When you cross the street the hotel sign is right above your head. I believe you can see the hotel sign.

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Redirect-Detective Thomas

Q. My question again is, she never told you she was at the hotel, did she?

A. No, sir. She just described to me what she did and where she was. I can't put words in her mouth.

Q. She didn't say she was at the hotel?

A. No, sir.

Q. And you have also gotten a description of the man, or at least the color of the clothing. Did you ask her what she was wearing that evening?

A. I did not question Miss Jones.

Q. Okay. You simply assumed that that must have been the person when, in fact, you know there was someone else along with Veronica Jones?

MR. MCGILL: Objection.

MR. JACKSON: We will bring in Miss Jones.

MR. MCGILL: I object to any further hearsay upon hearsay upon hearsay. I object to it all.

BY MR. JACKSON:

Q. In any event, you then said that Veronica Jones said she saw ---

MR. JACKSON: Well, we are going to

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Redirect-Detective Thomas

have her here. No further questions.

MR. MCGILL: Thank you, Detective.

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(WITNESS EXCUSED)

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THE COURT: We will take a luncheon recess at this time.

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(At this time court was recessed for lunch at 12:50 p.m.)

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(The following is a discussion in chambers with both counsel present.)

THE COURT: Let the record indicate that we are here in chambers. Give us your name?

MR. ROSIN: David Rosin of the Public Defenders Office.

THE COURT: And you represent whom?

MR. ROSIN: Veronica Jones. Louise Tatum.

THE COURT: Mr. Jackson wants to call

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your client as a witness in this case. Could you tell him why you are calling her?

MR. JACKSON: Sure. Essentially, she was interviewed by the police sometime after December the 9th with regard to the shooting of Officer Faulkner. She indicates she saw two people jogging away from at or about the scene of the shooting. I simply wanted to get her on the stand and say

that. He is going to get the statement. I don't know anything more than what is in the statement and I guess it would be just to confirm what she has in the statement. I am not going to ask her --- well, I may ask her what she was doing down there. It maybe obvious what she was doing down there.

MR. MCGILL: Here is her statement.

(The district attorney just gave the public defender the statement.)

MR. ROSIN: I have spoken to my client and I have seen her statement. I see no Fifth Amendment problem with her in

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testifying to what she saw.

MR. JACKSON: Very good.

MR. ROSIN: Will you need me?

THE COURT: No. If it gets anywhere near the Fifth Amendment I will call you. I don't see any Fifth Amendment problem either.

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(At this time the discussion in chambers was concluded.)

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(Court was reconvened at 3:05 p.m.)

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(JURY PRESENT)

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MR. JACKSON: Your Honor, may I proceed?

The defense would call Veronica Jones.

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VERONICA JONES, having been duly sworn, was examined and testified

as follows:

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Direct-V. Jones

VERONICA JONES-DIRECT EXAMINATION

BY MR. JACKSON:

Q. Good afternoon, Miss Jones. Miss Jones, I want to direct your attention to December 9th, 1981 at about 3:50 a.m. Do you recall that date?

A. Yes.

Q. Could you tell us where you were at about 3:50 a.m.?

A. I just came from South Philly. I was on 12th and Locust.

Q. You have to speak louder.

A. I have a cold. Excuse me.

Q. You just came from South Philadelphia and where were you again at that time at about 3:50 a.m.?

A. Standing by the Speedline at 12th and Locust.

Q. Do you know what corner that was on, whether it was the northwest corner, or what?

A. Coming from the direction of 13th and Locust on the left-hand side. Coming from the direction of 13th and Locust. This is on the left-hand side.

Q. Let's see if this diagram might help us some. This is Locust. Here is Camac

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Street and 12th Street would be approximately here. Forgive me for being in your way. It would be on this corner here? The northeast corner of --- the northwest corner of 12th and Locust Street?

A. Yes.

Q. With whom were you standing? You were standing on the corner, is that right?

A. Yes.

Q. And who were you standing on the corner with?

A. I don't know his name. A young black man. I don't know his name.

Q. Was this the first time you met him?

A. Yes.

Q. He just came up to you when you came to the corner?

A. Yes.

Q. How long did you talk to him?

A. We talked for awhile.

Q. When you say "awhile" could you tell me?

A. I can't say. Maybe a half hour or more.

Q. Now, we are not going into the shooting yet,

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but he left you before the shooting?

A. No.

MR. MCGILL: Your Honor, I object to leading the witness. It is counsel's witness.

THE COURT: Just ask the questions.

BY MR. JACKSON:

Q. Do you remember what he looked like?

A. He was tall. Slim. Late twenty's.

Q. Do you know what he was wearing?

A. Jeans. I don't know what else.

Q. Do you know what kind of top? Was it a jacket or sweater?

A. No.

Q. Do you know if it was dark or light?

A. Dark.

Q. Any other bright colors in it?

A. No.

Q. What kind of hair?

A. Muslim cut.

Q. Now, you talked to him for about a half hour?

A. Yes.

Q. Now, at some point in time did you hear

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gunshots?

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Did you hear some noise?

A. Yes.

Q. At the time that you heard the noise where were you?

A. I can't say. I was directly on the corner, but If the Speedline is here I

was like a little behind the building that was on the corner.

Q. On 12th Street side?

A. (Indicating yes)

Q. So it would be fair --- well, after hearing the shots what, if anything, did you then do?

A. I just came around the corner and looked.

Q. And what did you see?

A. All I seen was two men and a policeman. I seen a policeman on the ground and --- what else can say? I was kind of intoxicated. They knew that.

Q. Who knew that?

A. The policeman that I talked to. When they came to my house.

Q. When did they come to your house?

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A. I can't say.

Q. Was it more than a week after this incident?

A. Yes.

Q. How was it they contacted you, do you know?

A. I don't know. Someone gave them my name and address and they were at my house in Jersey.

Q. Now, did you see anyone running away from the scene?

A. Running away?

MR. MCGILL: Objection.

BY MR. JACKSON:

Q. Jogging?

MR. MCGILL: Leading.

BY MR. JACKSON:

Q. What, If anything, did you see anyone do when you turned around and looked up Locust Street?

A. I didn't see anyone do nothing. No one moved.

Q. No one moved at all?

A. Not that I seen, no.

Q. You didn't see anyone jogging?

MR. MCGILL: Objection.

MR. JACKSON: Your Honor, may we

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see you at sidebar?

- - -

(The following is a sidebar discussion with both counsel present.)

THE COURT: This is your witness.

MR. MCGILL: This is incredible, Judge. If you can't get it out of the witness he then says give me a statement.

MR. JACKSON: I am now going to plead surprise, because now she is claiming nobody moved and he knows from the statement what she said.

THE COURT: He pleads surprise.

MR. JACKSON: I am going to cross-examine her.

THE COURT: Don't get excited. He said he is pleading surprise because she is now saying something different than what is in the statement. What

is your position on that?

MR. MCGILL: Are you telling me you never talked to her?

MR. JACKSON: I never talked to her.

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MR. MCGILL: Or anybody in your office?

MR. JACKSON: No. Never.

MR. MCGILL: I have no objection if he uses the statement. The degree of cross-examination should be limited to what she saw.

THE COURT: Of course to what she saw.

MR. MCGILL: It doesn't mean he cross-examines her for the next two hours.

THE COURT: Oh, no.

MR. JACKSON: The time limit is the subject matter. If it takes two hours or two minutes.

MR. MCGILL: Let's get going. I don't believe this.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. JACKSON:

Q. Do you recall being interviewed by the police

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on December 15th, 1981?

A. Yes.

Q. Do you remember talking to either Detective Bennett or Detective Harmon?

A. It was three detectives at my house.

Q. They came to your house over in Jersey, is that right?

A. Yes. They were there when I got home.

Q. Now, you are telling us today that you didn't see the men move at all?

A. I didn't say I seen anyone running.

MR. JACKSON: Your Honor, may I approach the witness?

BY MR. JACKSON:

Q. Please take a moment to review this statement? Raise your hand when you had an opportunity to review it.

A. (Pause) That is my signature, but the way they have the statement I did not say this, because I do not know anyone by the name of Candy.

Q. Just a minute. I want you to read each page in the interview if you can. I want you to review the entire statement and then we will talk about

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it.

Now, have you had the opportunity to review that statement?

A. Yes, I did.

Q. Does your signature appear on each of the sheets?

A. That is my signature. Yes, it is.

Q. At the time that you placed your signature on these sheets did you indicate to the police that the statement was true?

A. The policeman wasn't writing anything when I was talking to him.

Q. When did he ask you to sign it?

A. He asked me to sign one piece of paper. One piece of paper.

Q. Is that your signature appearing on one, two, three, four, five?

A. All of them.

Q. Five sheets?

A. Yes, it is.

Q. You signed each one of them?

A. I signed one.

Q. How did your signature get on five sheets?

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A. My mother is a witness. I signed one piece of paper. They had a conversation with me in my mother's house.

Q. Can you tell me which one of these sheets you did sign?

A. No, I can't. It was a paper just like that, but there were no words on it. He was sitting there talking to me. The black man.

Q. There were no words on the sheet at all?

A. He wasn't writing anything. He was making a diagram.

Q. And you just signed a blank piece of paper?

A. Yes, I did. My mother was in the kitchen at the time we were talking and he was asking me about Charlie Smith. I know that much.

Q. Who?

A. Charlie Smith. He runs the trash company. He asked me about that, but that is not the way our conversation went.

Q. What does Charlie Smith have to do with it?

MR. MCGILL: Objection.

THE COURT: May I see you a minute at sidebar?

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- - -

(The following is a sidebar discussion with both counsel present.)

THE COURT: Let me say something. Could it be she is talking about her earlier arrest?

MR. MCGILL: No.

MR. JACKSON: Charles Smith runs a trash company. I will withdraw the question, Your Honor.

THE COURT: Okay.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

MR. JACKSON: I will withdraw the question with regard to Charles Smith at this point.

BY MR. JACKSON:

Q. Let me ask you if you remember this question and answer.

Veronica, would you go on in your

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own words and tell me what you know about the shooting death of Officer Daniel Faulkner?

Answer: I was in a little restaurant called Rocky's. It is on Chancellor Street. We were drinking beer. We came out of the restaurant and went down the alley towards 12th Street. We went down 12th Street and crossed

Locust Street. We joked around on the corner for awhile.

We talked around by the entrance to the High Speedline and she (Candy) started talking to someone in a car and I walked back around the corner to Locust Street.

As I was walking away from the High Speedline entrance I heard firing. I heard three shots. I looked down Locust Street towards Johnny Dee's and I saw a policeman fall down. After I saw the policeman fall I saw two black guys walk across Locust Street and then they started sort of jogging.

The next thing I saw was a wagon coming. There was one other black guy standing by the entrance of the Speedline by Johnny Dee's.

Do you remember that question and answer?

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A. I remember the question. Yes.

Q. Do you remember that answer?

A. About Rocky's, he asked me was there anyone else in the area. I told him there were people in Rocky's, but I was not drinking in Rocky's.

Q. So, you are saying that this answer that you have here is wrong?

A. The way they have it, yes.

Q. You didn't say what they put here?

A. No.

Q. And you are saying although one police officer was asking the questions there were two others present?

A. Three detectives. One from Camden and I think two from Philadelphia.

Q. Okay. See if you remember this question and answer.

This is the question on page three.

After the policeman fell down did you hear any more shooting?

Answer: I was calling Candy telling him to come here, but I don't think I did.

Do you remember that question and answer?

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A. Did I hear more gunshots, I told him no.

Q. Do you know Candy?

A. No. I was talking to a man on the corner.

Q. So, Candy is not a man?

A. The man I was talking to was not a woman, no.

Q. But is the man named Candy?

A. No.

Q. You are certain of that?

A. Yes.

Q. What is the man's name?

A. It wasn't Candy.

Q. What is his name?

A. I don't know who it was. I don't know what his name was.

Q. Do you know his name wasn't Candy?

A. Let me put it this way, I am a hooker. I don't know nobody's name.

MR. MCGILL: Objection to relevancy. The whole area is irrelevant.

MR. JACKSON:

Q. So, the police made this up?

MR. MCGILL: Objection.

THE COURT: Sustained.

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BY MR. JACKSON:

Q. Next question on the same page.

Do you know Candy's full name?

Answer: She uses Candy and Sebrina. I don't know her real name.

Do you recall, that question and answer?

A. No.

Q. Who else was out there that night that may have seen the shooting?

Answer: I think one of the guys that pick-up trash for Charlie Smith's.

MR. MCGILL: Objection, Your Honor.

THE COURT: I have to sustain the objection.

MR. MCGILL: It is hearsay upon hearsay.

BY MR. JACKSON:

Q. By the way, so I understand you clearly you are saying that you never saw two men walk across Locust Street, or jog?

A. No, I didn't.

Q. When you saw two men at Locust Street ---

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did you see two men on Locust Street?

A. There was two men where the policeman was at. A man by the soda

machine. A soda machine on 13th Street. Almost, you know, near the Speedline entrance.

Q. Would that be on the same corner as Johnny Dee's?

A. No. It is the opposite corner.

MR. JACKSON: Can I have the diagram please?

BY MR. JACKSON:

Q. Johnny Dee's is right here, is that correct?

A. Yes.

Q. Now, you are saying there were two men and somebody at the soda machine over here?

A. (Indicating yes)

Q. And who was there?

A. One man there.

Q. One man?

A. Yes.

Q. Now, the two men that you said that you saw on Locust Street doing nothing where were they?

A. (No response)

Q. Do you want to use this?

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A. No. Right in here.

Q. And what did those two men look like?

A. I can't say what they looked like.

Q. Were they black men?

A. They were black men, but I can't say what they looked like.

Q. Can you tell us how tall they were?

A. No, I can't.

Q. Did they have Dreadlock hair styles?

MR. MCGILL: Objection. I would only remind the court that this is his witness.

MR. JACKSON: Yes, Your Honor.

THE COURT: Just ask the questions and let her answer.

BY MR. JACKSON:

Q. Did they have Dreadlocks?

A. I can't say. Like I told my public defender I was too far to say they had Dreadlocks.

Q. Did you see what kind of clothing they had on?

A. No, sir, I can't.

Q. See if you remember this question and

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answer?

Again, this is the statement taken on 12/15/81. at 9:45 p.m. This is on page five.

MR. MCGILL: I keep on objecting.

MR. JACKSON: It is the issue that Your Honor ruled on.

MR. MCGILL: Objection.

THE COURT: Look at it and see if it is?

MR. MCGILL: Go-ahead and ask her.

BY MR. JACKSON:

Q. How close did the two men who jogged across Locust Street get to the fallen officer?

Answer: Not close enough. Maybe two or three steps away.

Do you remember that question and answer?

A. No. I never told him about they jogged across Locust Street.

Q. See If you remember this question and answer?

How much time went by between the time you saw the officer fall and the time you saw the two men jog across the street?

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Answer: About a minute.

I had walked up near Polly's by then.

Do you remember that question and answer?

A. No, sir.

Q. You are saying that these one, two, three, four, five sheets of paper containing your name --- it is your signature, meaning you did write your name?

A. Yes, sir, I did. He had a tablet and I signed my name.

Q. But it is my understanding that you only signed your name one time?

A. I did.

Q. Can you account for your signature being here five times?

A. No, sir, I can't.

Q. Not at all?

A. No, sir.

Q. Now, you are saying that your mother was present at the time of this interview?

A. Yes. She was standing in the kitchen doorway.

Q. In the doorway for the entire time?

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A. Not really, because she was watching my kids while I was talking.

Q. How long did the interview last?

A. They might have been there for awhile, but I think about a half hour. Maybe an hour.

Q. Now, let me ask you this. We have dispensed with the statement now.

Back to what you remember right now. You are saying when you looked up Locust Street you just saw two men standing there near where the officer was shot?

A. Yes.

Q. What, if anything, did you then see then do, if anything at all?

A. I can't say I seen then doing anything. Like I say, I had been drinking.

Q. What did you then do?

A. I left.

Q. You just left the scene?

A. It was too many police cars and hookers do not stand in the area where there is too many police cars.

Q. That is reasonable.

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Did you walk up Locust Street?

A. No, sir. I walked down 12th Street past the Gay Restaurant.

Q. Polly's is where?

A. Polly's, that is the restaurant where they read tea leaves. That is on Locust Street.

Q. That is on what?

A. Locust and Camac.

Q. So, Camac is between 12th and 13th, isn't it?

A. Yes.

Q. You are saying you never went past there?

A. No, I didn't.

Q. What about the hotel that is in the same block between 12th and 13th ---

MR. JACKSON: Maybe I should point out for the jury as well Camac Street. This is 13th Street and this is Locust and this is Camac Street. 12th Street would be over here.

BY MR. JACKSON:

Q. Is that right?

A. (Indicating yes)

Q. And where would Polly's be?

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Would that be on this side?

A. Yes.

Q. And Polly's is down here at Camac and Locust Street?

A. (Indicating yes)

Q. You never went up there?

A. No.

Q. The hotel is up this way a little bit?

A. Right across the street.

Q. You never went up near that hotel?

A. No, sir.

Q. Do you recall seeing anyone wearing a blue and black, black and orange, or any of those colors?

A. No.

Q. Now do you recall what you had on that evening?

A. No, I don't.

Q. Do you have any idea at all?

A. Maybe jeans. I know it was a pair of pants.

Q. As far as the top, did you have a blue and red top on that night?

A. Blue and red? No.

Q. How about a black and red top?

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A. No. The top I had on had to be light.

Q. You are certain of that?

A. Very certain.

MR. JACKSON: May I have one moment, please, Your Honor?

(At this time Mr. Jackson conferred with the Defendant off of the record.)

MR. JACKSON: May I approach the witness?

BY MR.JACKSON:

Q. I ask you to look at this diagram and if you look all the way up here you will see a signature. Can you see a signature?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. Now, is this the blank sheet that you talked about?

A. That I signed?

Q. Yes.

A. This is the drawing he was drawing and I signed it.

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Q. As you talked to him?

A. Yes.

Q. Now, was he drawing the diagram as you talked to him?

A. Well, what you have is already drawn. The dots and things like that weren't there.

Q. Now, on this diagram, and you can place it in your hand so you can look at it very closely, that diagram you indicate number one there is one man standing at the southeast corner of 13th and Locust. Do you see where it says "man," m-a-n?

A. Yes. I see where it says that.

Q. You just indicate one man?

A. I told him it was two men on that side of the street.

Q. But there is just "man" there?

A. I see it.

Q. You told him two men?

A. I told him it was two men on that side of the street.

Q. Now, after that man you have got a police car in between there and then you have the policeman, is that right?

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A. I don't have it, they have it. There is a police car there and there was two men on this side.

Q. You have got a vehicle in between the man and the policeman?

A. They never drew the man I said standing by the soda machine.

Q. Wait a minute. We are not talking about that right now. Do you see on the diagram we have here "man"? You are saying that it shouldn't be "man" that it should be "men"?

A. Yes.

Q. Then we have a vehicle that says "PC," hopefully meaning police car. Then after the police car we have an X and you have "policeman." Is that correct?

A. He asked me did the policeman stop the car and I told him I don't know. Evidentially he did, because he must have been questioning them. I don't know.

Q. You don't have any other car in there?

A. No. I didn't draw this.

Q. In any event, after the police car that you

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have, you have a policeman here by himself. Was he by himself?

A. I didn't see anything until I looked around the corner. I heard the shots. He was on the ground. There was two men there and there was a man by the soda machine. I think there was one maybe across the street by Whispers, but I am not sure.

Q. Again, so I am clear, you signed this --- never mind the signing. If you look down at, I guess it would be the bottom of the page on 13th Street, do you see that?

A. (Indicating yes)

Q. Now, the diagram indicates that is suppose to be you, that you walked -- you were first on 12th Street south of Locust Street and then you walked from 12th Street south of Locust Street to Locust Street, on the south side of Locust Street you started walking west up Locust Street towards the police officer. Isn't that correct?

A. I see the dots.

Q. Now, you told him to put those dots there, is that right?

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A. No.

Q. Who told him to put the dots there?

A. I don't know.

Q. You are saying when you first saw it the dots weren't there?

A. I am saying I was on 12th Street.

Q. I understand that. The diagram that you signed indicates that you walked from 12th Street up Locust Street.

A. Look, I don't know how they put it there. They must have put it a different way. I don't know. I can't say something that I don't know about. I know I was on 12th Street. I was not on 13th, Street. This is 13th Street, isn't it?

Q. No. Here is 13th Street up here. 13th Street is up at the top. This is 12th Street down here. They have you on the south side of Locust.

A. You see, where they put me ---

Q. (Interposing) That is wrong?

A. Yes. I was on this side. I told you that.

Q. I understand what you are telling me.

MR. MCGILL: Objection.

THE COURT: No comments.

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MR. MCGILL: It is his witness.

THE COURT: Slow up a little bit. Relax a little bit.

MR. JACKSON: I will, Your Honor. I will try.

BY MR. JACKSON:

Q. By the way, on I guess it was the 15th of December were you intoxicated when the detectives interviewed you?

A. I was high.

Q. You were high?

A. Yes.

Q. How high?

A. How high?

Q. Yes.

A. Say half a nickel bag high.

Q. How high that is I don't really know. I mean you knew what you were saying?

A. I wanted to know how they knew where I lived at.

Q. That was your primary concern?

A. Yes.

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Q. But aside from wanting to know that the question is, did you know what you were saying to them?

A. Everybody was questioning me.

Q. Again, did you know what you were saying to them?

A. According to this right here it is a bunch of bull.

Q. Again, did you know what you were saying to them?

A. Somewhat, yes.

Q. Did you ever talk to a Detective Thomas in Philadelphia?

A. Who?

Q. Detective Thomas. William Thomas.

A. I don't know detectives by their names. No.

MR. MCGILL: He is outside.

MR. JACKSON: Maybe I will ask Detective Thomas to come in the courtroom.

THE COURT: Up the center here, please?

MR. JACKSON: Identify yourself for the record, sir?

DETECTIVE THOMAS: I am Detective

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William Thomas badge number 744 Homicide Division.

BY MR. JACKSON:

Q. Do you recognize him?

A. No.

MR. JACKSON: Thank you very much, Officer. You can step outside.

(At this time Mr. Jackson conferred with the Defendant off of the record.)

BY MR. JACKSON:

Q. Have you ever talked to him before?

A. No, sir. I never seen him.

Q. Now, on December the 9th, 1981 at about 3:50 in the morning what kind of hair style did you have?

A. I don't know.

Q. Did you have long braids?

A. No.

Q. Did you have a Rastafirian hair style?

A. Who?

Q. Did you have Dreadlocks? Do you know what Dreadlocks are?

A. I know what they are.

Q. Did you have them?

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A. No.

Q. You didn't have any long braids?

A. No.

Q. Are you sure?

A. Positive.

Q. How tall are you?

A. Five three.

Q. I suppose you had some kind of coat or jacket on. You said it was light colored, whatever it was?

A. (Indicating yes) Light gray jacket.

Q. Did you talk to the police about this incident that night?

A. All I know is that I had went to --- after I left off of 12th Street there is a store, I mean a restaurant called Nick's Roast Beef on Walnut Street. I used to sit in there with a man named Charlie and it came over the radio, but I did not ever call it in.

Q. What came over the radio?

MR. MCGILL: Objection.

MR. JACKSON: It is not offered as hearsay, Your Honor.

MR. MCGILL: Objection.

THE COURT: I will have to sustain

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the objection unless you want to see me at sidebar.

- - -

(The following is a sidebar discussion with both counsel present.)

THE COURT: Let's be practical. You know and I know they didn't talk to her on that night, because they wouldn't have bothered going to Jersey looking for her.

MR. JACKSON: Maybe. What did she say about the radio call?

MR. MCGILL: She heard something come over the radio.

MR. JACKSON: About her?

MR. MCGILL: No.

THE COURT: About the incident.

MR. JACKSON: I understand. Fine.

(At this time the sidebar discussion was concluded and the following is in open court.)

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BY MR. JACKSON:

Q. After that night --- you indicated that you were intoxicated that night, is that right?

A. Yes.

Q. After you left the area did you leave alone?

A. The man that was with me walked me like down to Pine Street.

Q. Then you went home somehow?

A. Yes. I left.

Q. On public transportation?

A. No. I didn't go home.

Q. You went somewhere else?

A. Yes.

Q. Just so we are clear, again going back to December 9th, you were intoxicated from what, alcohol, drugs or what?

A. I was in an after hours place in South Philly. I was there a little while.

Q. What were you doing, drinking?

A. Yes.

Q. But after drinking there you nevertheless came back to 12th and Locust --- excuse me. To work. Is that right?

A. Did I come back to work?

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Q. Yes.

A. Straight back to work?

Q. Straight back.

A. Yes, I did.

Q. So that even though you were intoxicated you weren't too intoxicated in order to work, is that right?

A. I was not intoxicated. I wasn't that intoxicated.

MR. MCGILL: Objection. This is irrelevant. Also it is his witness.

MR. JACKSON: I just want to find out her state.

BY MR. JACKSON:

Q. Before the police came to your house in Jersey did you tell anyone what you had seen or heard?

MR. MCGILL: Objection.

THE COURT: I will let that go.

BY MR. JACKSON:

Q. Did you tell anyone else what you had seen or heard?

A. I talked to my sister about it. Yes.

Q. When did you tell your sister?

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A. A few days later.

Q. But before the police arrived?

A. Yes. Because she had kept, you know, bringing it up.

Q. Now, other than this one day that the Police came to your home in Jersey to interview you, had you talked to any other police at any other time?

A. I had got locked up I think it was in January. I am not sure. Not January. I think sometime after that incident. They were getting on me telling me I was in the area and I seen Mumia, you know, do it, you know, intentionally. They were trying to get me to say something that the other girl said. I couldn't do that.

MR. MCGILL: Objection, Your Honor.

BY MR. JACKSON:

Q. Did you give them an interview?

A. No. They had locked me up. No.

Q. Do you know Cynthia White?

A. Yes, I do.

Q. Did you see her that night?

A. No, I didn't.

Q. Now, you got a chance to look up Locust Street

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didn't you, on the 9th?

A. Just to be looking?

Q. Yes. After the shots you looked up Locust Street?

A. Yes.

Q. Did you see Cynthia?

A. No.

Q. Had you seen Cynthia at all that night?

A. I just came to work. I can't say if she was there or not during the time I was there, no.

Q. She wasn't down in South Philadelphia with you, was she?

A. Where I was at?

Q. Yes.

A. No.

(At this time Mr. Jackson conferred with the Defendant off of the record.)

BY MR. JACKSON:

Q. Do you know Prince?

A. Yes.

Q. Did you see him that night?

MR. MCGILL: Objection.

THE COURT: She can answer.

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BY MR. JACKSON:

Q. Did you see Prince that night?

A. I seen Prince that morning like maybe around 7:00, 7:30.

Q. Where did you see him?

A. When I walked down after I left Nick's I sat there and drank for awhile.

MR. MCGILL: Objection. It is 7:30.

THE COURT: I will sustain the objection to that.

(At this time Mr. Jackson conferred with the Defendant off of the record.)

BY MR. JACKSON:

Q. Whatever the date was that you said you were arrested, do you know what police district that was?

A. 11th and Winter.

MR. MCGILL: Objection. Irrelevant.

THE COURT: She already said 11th and Winter.

BY MR. JACKSON:

Q. You are saying you did not give them a statement?

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A. They were more so conversating among each other and I guess they expected me to say something in their behalf, you know, but I couldn't. I just saw what I saw.

Q. And were they plain clothes officers or uniformed officers?

A. Uniformed.

MR. MCGILL: Objection, Your Honor. It is his witness.

THE COURT: Try not to lead, will you, please?

BY MR. JACKSON:

Q. What, if anything, did you say in response to those questions?

A. Nothing, really. I was just pissed off at the time.

Q. You were just what?

A. Pissed off.

Q. Why?

A. Because they picked me up for nothing.

Q. And did they release you?

A. Yes.

Q. And you weren't sent down to the Roundhouse?

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A. No. I was just held at 11th and Winter for about five hours.

Q. And how much time did they question you with regard to Cynthia White?

MR. MCGILL: Objection.

THE COURT: Sustained.

BY MR. JACKSON:

Q. How much did they question you with regard to what you had seen?

MR. MCGILL: Objection.

THE COURT: Rephrase your question.

BY MR. JACKSON:

Q. The police officers questioned you about December 9th, is that right?

A. Yes.

Q. I want to know when you were taken in for nothing how much time did they spend with you questioning you?

MR. MCGILL: Your Honor, I object. He is talking about January.

THE COURT: You better start over again.

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BY MR. JACKSON:

Q. Miss Jones, did you tell us that sometime after December 9th you were arrested by the police officers?

A. I was picked up.

Q. Do you know when?

A. No.

Q. Could it have been January or February?

A. It had to be the first week of January.

Q. You were taken where?

A. 11th and Winter.

Q. Which is the 6th District?

A. Yes.

Q. You were questioned by the police?

A. I wouldn't say questioned. Conversating. They had a couple of us. We had brought up --- I call him Lucky. We had brought up --- how come

Lucky is not here?

MR. MCGILL: Objection. Ask to strike.

THE COURT: Strike out that last thing.

MR. MCGILL: This is January. Objection to the whole line, Your Honor.

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It is his witness.

BY MR. JACKSON:

Q. I want to go back to your being questioned.

MR. MCGILL: And I am objecting.

THE COURT: Rephrase the question.

MR. JACKSON: Certainly, Your Honor.

THE COURT: Don't say she was being questioned now. Come on. Rephrase your question. You are presupposing something.

MR. JACKSON: Your Honor, she did say that earlier.

BY MR. JACKSON:

Q. Did the police ask you any questions about December the 9th when they picked you up in January?

MR. MCGILL: I am objecting to that as being irrelevant.

THE COURT: I will overrule it. Go-ahead.

BY MR JACKSON:

Q. In January did they question you about December the 9th?

A. It more so came about when we had brought up

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Cynthia's name and they told us we can work the area if we tell them.

MR. MCGILL: Objection, Your Honor.

THE COURT: Sustained. Come here.

MR. JACKSON: I am not responsible for her answers.

THE COURT: I know that.

- - -

(The following is a sidebar discussion with both counsel present.)

THE COURT: Where are we going?

MR. JACKSON: I want to ask her what the police asked her. I didn't know she was going to say that. I never talked to her before.

THE COURT: Why are you putting her on the stand? You told me you were putting her on the stand for one purpose and that is what she saw that night. Let's limit it to that.

MR. JACKSON: Judge, can I offer her

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for another purpose?

THE COURT: What purpose?

MR. JACKSON: To find out what she saw if she saw something.

THE COURT: Stick to that night then.

MR. JACKSON: I want to find out if there are any prior inconsistent statements.

THE COURT: The only statements they have is the written statement.

MR. JACKSON: She just said they asked her or they questioned her.

THE COURT: She didn't say that. She said they were talking among themselves. She has got somebody else being locked up with her. You should ask for a recess and take her outside and talk to her and interview her.

MR. MCGILL: It is too late now.

THE COURT: I know what your position is, but he should have talked to her before.

MR. JACKSON: I will talk to her

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now.

MR. MCGILL: No. Judge, she is going into facts and trying to say that the police are telling her she could work the area if they would tell us.

MR. JACKSON: I am not responsible for what she says.

THE COURT: We will take a recess.

- - -

(At this time court was recessed at 3:55 p.m.)

- - -

(Court was reconvened at 4:05 p.m.)

- - -

(The following is a sidebar discussion with both counsel present.)

THE COURT: Did you have an opportunity to talk to her?

MR. JACKSON: I can give you the substance of what she said.

THE COURT: What, is the area that you are going to go into?

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MR. JACKSON: Just a summary of what she said is that she was picked up and she believed it was in the first week of January. She was picked up by uniformed officers who took her, as well as some other people, aside and said, "Look, we will let you work the street and we will do you just like we have done Lucky." Lucky is Cynthia White's name. "We want to ask you some questions about where you were, because we know Lucky said you were out there that night and you saw what happened," and all of that.

They told her that if she would give a statement that backed up Cynthia White they would let her work the street just like they were letting her work. They asked her where she was and who she was with.

That is what she said. I simply wanted to ask her what questions they asked her. I want to ask her what questions they asked and what answers she gave.

I suppose in all fairness some of

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what I just told you she will respond to I am not so sure that isn't relevant.

MR. MCGILL: I object to the whole area. As I have objected throughout. "You are talking about not an individual that took a particular statement from her. This is suppose to be some police officers that at one time arrested her after the fact and you are suppose to say for whatever reasons they have, good, bad or indifferent, even if you take it as true they are suppose to have said, "All right. Tell us what you know about it and we will let you work the street." This particular individual is of no relevance. We have unknown people who happen to be police officers who tell them "We will let you work the street like Lucky if you tell us what you know." Judge, it is absolutely irrelevant. I don't think one more question should be asked about that.

THE COURT: She is your witness. What she saw on Locust Street that night you can go into as thoroughly as you want to.

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All this other stuff is not relevant.

MR. MCGILL: Absolutely. It is already in, but I will ask that Your Honor strike from the record the last response.

MR. JACKSON: I would not, but in any event I am not going to respond to that.

MR. MCGILL: I ask that that be done.

THE COURT: Okay.

MR. JACKSON: With regard to the surprise. Judge, it is legitimate. I have never spoken to this woman.

THE COURT: I don't care about surprise. I am saying it is not relevant to this case. You put her on because you say she saw something that night. Fine. Go into that area.

MR. JACKSON: I have found out that she knows more.

THE COURT: She doesn't know more. She seems to be saying "I can't say anything different than what I already told you."

MR. MCGILL: Have you ruled, Your

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Honor?

THE COURT: I did rule.

MR. MCGILL: That is it.

MR. JACKSON: Do you mind? What I am saying, Judge, is that once I establish it is surprise, because she is testifying differently than the statement ---

THE COURT: (Interposing) Let's stick to that night. Stick to what she saw if anything that night. You put her on because you felt she saw something. Fine.

MR. JACKSON: Judge, her statement was given on December the 15th

relating to that.

THE COURT: You can use the statement to impeach her as to what she said happened that night.

MR. JACKSON: Judge, in addition to using her statement to impeach her can I also bring out her bias?

THE COURT: No, because she is your witness.

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MR. MCGILL: You have ruled five times.

THE COURT: She can testify to only what she saw that night. That is it.

MR. JACKSON: You are allowing me to impeach her with the statement?

THE COURT: Just to that night, because you said there is something in the statement that she saw two people jogging. As far as that she has already gone over that.

MR. JACKSON: You are saying I can't bring out any bias she would have today to testify?

MR. MCGILL: Absolutely not.

THE COURT: She is your witness.

MR. JACKSON: Judge, it is the fact she has given me different testimony.

THE COURT: This doesn't have anything to do with that.

MR. JACKSON: I think it does.

THE COURT: Let me say this. Under the rules that prior statement can be used as substantive ---

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MR. MCGILL: (Interposing) Not any more.

MR. JACKSON: It has been overruled.

MR. MCGILL: It can't even be used for that.

MR. JACKSON: It can be used for impeachment purposes.

MR. MCGILL: It can be used to the extent he already used it. I am objecting to any further action. If he wants to ask her what she did and what did she say, this and that, that is fine. But that has already been done. He has gone through the entire statement in that area and attempted to impeach her on that, because of surprise, Judge, and no more. I am objecting that it is repetitious now.

THE COURT: We are getting too far a field in this case. We have got to stick to the issue. The issue is who shot the cop and who saw anything that night. That is what I am interested in.

MR. JACKSON: If there is an

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indication a witness is going to testify let's say more for the prosecution or more for the defense?

THE COURT: She is not testifying for the prosecution.

I ruled. Stick to that night and that is all I am interested in. I am interested in what she saw that night, if anything.

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(At this time the discussion in chambers was concluded and court was reconvened at 4:10 p.m.)

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(JURY PRESENT)

- - -

BY MR. JACKSON:

Q. Miss Jones, back on December 9th, you are familiar with the plain

clothes officers who worked that area?

A. Very much.

Q. Did you see any plain clothes officer that night on December 9th?

A. They drive through, but I don't really look

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at them.

Q. How often are you in that area? Nightly? Every other day?

MR. MCGILL: Objection. Irrelevant.

MR. JACKSON: I will withdraw that question.

BY MR. JACKSON:

Q. How often would you see a plain clothes officer on a given evening?

MR. MCGILL: I object. We are talking about the incident on trial.

THE COURT: Talk about that night.

BY MR. JACKSON:

Q. On December 9th, do you recall at anytime while you were at 12th and Locust, or 13th and Locust, or anywhere in that area, whether, in fact, you saw a plain clothes officer?

A. No. Like I said, I just got there.

MR. JACKSON: Okay. No further questions at this time.

MR. MCGILL: I should be ten or fifteen minutes, I think.

- - -

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VERONICA JONES-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. This is your statement again, at least what purports to be your statement, that you were shown before.

A. Yes.

Q. As I understand what you are saying most of what you said in that statement is not true?

A. Yes.

Q. Now, I am going to be asking you some questions over here because I maybe pointing to this chart. Now, you had stated before to Mr. Jackson that you were intoxicated that night?

A. Yes.

Q. Would you say very intoxicated?

A. No.

Q. You were just so-so intoxicated, or what?

A. I was there.

Q. You were there. Being there, as you stated, were you also intoxicated at the time that you were at 12th Street?

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A. I was intoxicated, but not to the point where I was staggering, no.

Q. Now, on this particular exhibit here this is 13th Street. This is 12th Street somewhere down here, indicating the right side of the chart. This is Camac Street here. You know where Camac Street is, don't you?

A. Yes.

Q. That is the street in between 12th and 13th. Now, there is still quite a

distance, would you not agree, from the point of Camac Street to 12th Street? Would that be accurate?

A. It is a small distance. Yes.

Q. If I were to say to you that there were approximately twelve houses, house fronts, you know those row house fronts, twelve house fronts from Camac Street to the end of 12th Street, would you disagree with me at that point?

MR. JACKSON: Objection. It is not relevant whether she agrees with him.

MR. MCGILL: I object.

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THE COURT: Rephrase your question. Let her answer.

BY MR. MCGILL:

Q. Approximately how many car lengths would you say it would be from Camac to 12th Street?

A. Not many, because there is a parking lot there. So, I would say about five cars could park on that side of the street.

Q. When you say "five cars could park," are you including the area which is in the parking lot?

A. No.

Q. So, would I be right in saying this is Camac Street and you would go five car lengths in this direction toward 12th Street and then you would have the parking lot which is on the same side of the street, correct?

A. (Indicating yes)

Q. You have to say yes or no.

A. Yes.

Q. Then you have that parking lot and that parking lot goes to the corner or goes to another house?

A. Into a house.

Q. And approximately how many car lengths in

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distance is the parking lot on Locust Street from one end of the parking lot to the other?

A. I would say about three.

Q. And then you said after that I think you mentioned something like a few houses, there were houses after that?

A. After the parking lot?

Q. Yes.

A. There is one building.

Q. One building. Then what is next after the building?

A. The corner.

Q. So, you then have five car lengths on the other side of Camac Street plus three, which is the parking lot, which is eight, plus the building, is that correct?

A. (Indicating yes)

Q. Then there is the corner?

A. Yes.

Q. Now, do you know how wide that building is in terms of a car length?

A. From the beginning to the corner?

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Q. Yes. Well, from one end of the building to the other. How many cars

could you park in front of the building?

A. I would say a Monte Carlo and a Toyota.

Q. How many?

A. Two.

Q. That would give us then ten car lengths, wouldn't it, from Camac Street to 12th Street where you were?

A. Maybe.

Q. Now, where were you when you first heard the shots?

A. I was across the street. Like there is a building here. I would say standing right about here was that building on 12th Street.

Q. Were you anywhere near the Speedline on 12th Street?

A. The guy was laying up along the Speedline. I was talking to him.

Q. Were you then talking to the guy at the Speedline at the time when you heard the shots?

A. He was doing the talking.

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Q. But my point is, where were you when you heard the shots, were you talking to him at the Speedline entrance on 12th Street at the time that the shots were heard?

A. No. I wasn't at the entrance of the Speedline. The entrance is here. I was right in back of that entrance.

Q. Now, is the back of the entrance closer to Locust Street or closer to south of Locust Street? In other words, if you were to go down would you go down to 12th Street? You would have to be on 12th Street to walk down?

A. Yes, but it is further away from the corner.

Q. Further away from the corner?

A. Right.

Q. How far away from the corner is the High Speed entrance?

A. (No response)

Q. Since we are using the same measurements how about car lengths?

A. One car. Not even a whole car.

Q. Now, you recall that incident now, is that correct?

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A. Yes.

Q. Do you feel all right?

A. I am freezing. Pay me no mind.

Q. Perhaps a sweater of some sort?

A. I am okay. I am anemic. I am okay.

Q. Anytime you want water let us know.

You are here on the corner of 12th Street down there about one car length down, or not quite a car length, is that right?

A. I was on that side of the street.

Q. This side of the street. Okay. There is the Speedline entrance on that side also, the south side?

A. Right.

Q. This is south and this is north. Okay?

A. Okay.

Q. You are saying you are on the north side of the street?

A. Right.

Q. You are one car length above Locust Street on the north side of 12th Street?

A. Right.

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Q. And that is when you heard three shots? Were there three?

A. I wasn't counting. I just heard shots.

Q. Do you have any idea how many there were, or would that just be a guess? If it is a guess then don't say it.

A. I just know a gun shot when I hear one.

Q. You heard more than one?

A. It was more than one, but I can't say whether it was three.

Q. At the time the shots went off were you at that point being talked to by this gentleman?

A. He was talking more so trying to figure out --- I wasn't that far away from the edge of the building.

Q. Okay. What I am saying is, you didn't know shots were going to go off?

A. Oh, no.

Q. So, you were talking to him while the shots went off, is that correct, at the time the shots went off?

A. Yes.

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Q. Now, at that point you were, I believe as you said, almost there in terms of being intoxicated?

A. Almost there.

Q. How long had you been drinking before then in the South Philadelphia place that you went to?

A. I had about three.

Q. Just three?

A. I am not one to get drunk too fast. I had about three and some marijuana.

Q. Did you have anything else besides that?

A. No.

Q. How much marijuana did you have?

A. I wasn't counting when they were passing it.

Q. Would you have had more than maybe two or three or four?

A. (Pause) No. I don't think it was that many.

Q. Over what period of time were you smoking this marijuana?

A. I got there about say twenty minutes to 3:00. The club closes at ten of 2:00, 2:00 o'clock. So, I would say about 2:30. Between that time I got there. It doesn't take that long to get there.

Q. Around 2:30 to ten minutes to 3:00?

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A. I got there around that time. I don't know.

Q. When did you start smoking the marijuana?

A. I started early that night, because it didn't really bother me.

Q. I was trying to figure that out. When did you first start smoking the marijuana that day, if you can remember?

A. If you smoke marijuana all day by the end of the day you be tired and

you don't really be high.

Q. Were you, in fact, smoking the marijuana all day?

A. On and off.

Q. So, over the entire day on and off you were smoking marijuana?

A. Yes.

Q. During the course of that same day were you doing any partying at all any place?

A. No. I have children to take care of. I wasn't going to any party.

Q. Were you drinking at all wherever you were?

A. No.

Q. And you went out what times?

A. I got in the club about 11:00, 11:30.

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Q. While you were in the club you were there from 11:30 until when, 2:30?

A. 2:00, a quarter to 2:00.

Q. During that period of time did you smoke any more marijuana?

A. No, you can't smoke in the club.

Q. Did you drink during that period of time, drink any beers?

A. I had two beers. I had two tickets.

Q. Did you meet any gentlemen in there?

A. Quite a few gentlemen, yes.

Q. Did they buy you drinks?

A. No, they didn't.

Q. You only had the two that you bought?

A. Yes.

Q. Now, after you finished and left that club you left at around a quarter to 2:00 or 2:30?

A. A quarter to 2:00. The club closes at 2:00. About a quarter to 2:00 or 2:00 o'clock.

Q. Then how did you get to 12th Street?

A. I went down to South Philly first after the club.

Q. Excuse me. You went to the club? I thought

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the club was in South Philadelphia?

A. The club is the 13 Club on 13th and Locust.

Q. At that point you then went to the South Philadelphia club for about how long?

A. About an hour.

Q. Did you have anything to drink there?

A. Like I said, I had three.

Q. Did you smoke any marijuana there?

A. Yes, I did.

Q. Do you remember how many you smoked there?

A. No, I don't.

Q. Did you smoke any marijuana on the way to the club from Thirteen?

A. No.

Q. On the way back did you smoke any marijuana?

A. No.

Q. So, at that point when you finally arrived at 12th Street there you were, as you say, almost there?

A. Right.

Q. At the time you heard the shots and you were talking to him do you recall what you were saying?

A. I was arguing with him.

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Q. Did you continue to argue after the shots?

A. No.

Q. What did you do then?

A. I walked away from him and looked around the corner.

Q. When you looked around the corner you looked around the corner on the north side, is that correct?

A. On that side.

Q. North I am going up like this and south is down like that. This is 13th and this is Locust. This is 12th. So, were you north?

A. I was on that side.

Q. Were you on the left side of 12th or the right side?

A. Left side.

Q. Then did you feel anxious or scared at all when you heard the shots?

A. I wanted to know what was going on.

Q. Were you at all concerned that maybe you might be hit by something, or anything like that?

A. I didn't know whether a fight was breaking out. Yes.

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Q. Did you then immediately walk over there, or did you slowly approach the corner to see what happened?

A. I am very noseey. I immediately walked over.

Q. Did you stay on that side?

A. Yes, I did.

Q. You did not walk across the street at all?

A. No.

Q. Then you looked down the street?

A. (Indicating yes)

Q. And is it then that you say you saw two men?

A. Yes.

Q. And those two men, looking at this chart, were they on this side of the street or were they on that side of the street?

A. When I looked up Locust Street I seen two men on this side and I seen the body laying out and I just looked around and I seen another man by the soda machine, but it was more so deserted out on the street.

Q. Rather than have you move there tell me if I am wrong on this? When you say you saw two men over there are you referring to where then officer was shot?

A. Yes.

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Q. That is in the same general area where the officer was shot?

A. Yes.

Q. The other man that you said you saw by the soda machine, the soda machine is on the north side of Locust?

A. Yes.

Q. Is that close to the corner?

A. He was walking away from the soda machine. Like maybe towards the corner, I guess, but he didn't leave off the corner.

Q. That is all you saw according to what you said to Mr. Jackson?

A. (Indicating yes)

Q. You did not see anybody running down Locust Street, did you, towards the south part of Locust Street going in that direction? Did you see anybody running there?

A. No.

Q. Did you see anybody running down the north side of Locust Street?

A. No.

Q. Or running either that way or that way which

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would be toward 13th Street?

A. No.

Q. At that point I think you said police cars started to come and at that point you left because they chase you?

A. Yes. When I seen the lights coming from Broad Street.

Q. Broad Street?

A. (Indicating yes)

Q. So, was it the first police car that you saw coming from Broad Street, which would be over here?

A. The first police car I saw was right parked on Locust Street. I seen the wagon lights coming from Broad Street.

Q. Wagon lights?

A. Yes.

Q. They would be coming in this direction?

A. This way.

MR. MCGILL: Indicating in an easterly direction on Locust Street.

BY MR. MCGILL:

Q. That was the first wagon you saw, correct?

A. Yes.

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Q. Was this a wagon or police car?

A. A wagon, I guess. I just seen the police lights.

Q. Did you see any other police cars coming in any other direction?

A. No.

Q. Was it just that after you saw the first wagon coming that is when you turned around and left?

A. I turned this way and left.

Q. You went like this?

A. South.

Q. So, you then said you saw that police car coming here and then you turned around and then left going south and you kept on going south past Locust Street and that was it?

A. I was going towards the restaurant.

Q. I didn't hear you.

A. Going towards the restaurant.

Q. Would it be fair to say that you did not then at anytime, at any point, return to Locust Street while the police were there?

A. No. I went straight up to Pine Street.

Q. Which way?

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A. That way south.

Q. Past the restaurant?

A. Yes.

Q. You went past the restaurant and went to Pine Street and then what?

A. Made a right. I took the long way back to Locust Street.

Q. You made a right on Pine Street and went all the way to Broad Street?

A. Right.

Q. And you agree with me that if you go down to Pine Street, which would be south of Locust, then you walked the long way at least two full blocks to Broad Street?

A. Yes.

Q. Then you walked up Broad Street?

A. (Indicating yes)

Q. Then you walked ---

A. (Interposing) Stood there.

Q. At Broad and ---

A. (Interposing) Locust. All I saw was a plot of police cars.

Q. And that was it?

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A. Yes.

Q. At that time, as I understand what you just said, you at no time walked either close in that direction, or in that direction, indicating east on Locust Street, is that right?

A. Right.

Q. As I also understand what you are saying according to your responses to Mr. Jackson, you knew that the two men were, I believe you said black males, but you really were unable to make any further description, is that correct?

A. Yes. I knew they were black, but I didn't know who they were.

Q. That was it?

A. Right.

Q. Did you see a Volkswagen there?

A. On Locust Street?

Q. Yes.

A. Yes.

Q. Had you seen that Volkswagen before there?

A. The only thing I seen was I seen it circle maybe twice. Once or twice. I

don't know. I really wasn't paying any mind.

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Cross-V. Jones

Q. There were some points that I wish to ask you here if I can on this statement. This is on page two. Did you see a Volkswagen parked on Locust Street that night? I saw a green Volkswagen go around the block a couple of times that night before the shooting. It was driven by a black guy. Did you say that?

A. No.

Q. You didn't say that?

A. No.

Q. Did you know Officer Faulkner at all?

A. Yes. I knew him.

Q. Did you tell the police that you knew Faulkner, "He saved me from being robbed once"?

A. Yes. And beaten up.

Q. Is that right?

A. True. Very true.

Q. Officer Daniel Faulkner, the one that died, saved you from being robbed one time?

A. Yes, he did. And beaten up.

Q. Was that the same incident or two separate

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incidents?

A. Two separate incidents.

Q. I am going to ask you if you would read that to yourself here and see if you recall saying that?

MR. JACKSON: Can I have the page?

MR. MCGILL: Page four. The last question and answer.

MR. JACKSON: May we see you at sidebar, please?

(The following is a sidebar discussion with both counsel present.)

MR. JACKSON: It is hearsay.

THE COURT: Where are you going with that?

MR. MCGILL: I will withdraw it.

(At this time the sidebar discussion was concluded and the following is in open court.)

MR. MCGILL: I will withdraw the question, Your Honor. Nothing further.

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Cross-V. Jones

Thank you.

---

(At this time Mr. Jackson conferred with the Defendant.)

---

VERONICA JONES-REDIRECT EXAMINATION

---

BY MR. JACKSON:

Q. Just so I am clear, first of all you said that night of December 9th --- did you say you saw or you don't remember if you saw Cynthia White?

MR. MCGILL: Objection. Beyond cross-examination. I object to that area.

THE COURT: Let me see you at sidebar.

(The following is a sidebar discussion with both counsel present.)

THE COURT: For what purpose?

MR. MCGILL: My objection goes two ways. Number one, it is beyond cross-examination. If he wants to reopen I object to it. It has been covered completely.

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Redirect-V. Jones

THE COURT: What do you want to ask?

MR. JACKSON: I don't remember whether she said she didn't see her.

THE COURT: She said she didn't see her.

MR. JACKSON: Okay. If she didn't see her then I don't have to have her answer the question.

The only other thing I wanted to know is whether or not she and Cynthia have talked since this incident and whether or not there has been collusion in effect between the two of them before either one of them testified. I think I have a right to know that.

THE COURT: What is your position now? He wants to know whether she talked to Cynthia.

MR. MCGILL: The problem there is that --- well, it is wrong to get into that area to begin with. It emphasizes it. I know what he is trying to do and I am

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objecting to it.

THE COURT: The question is whether or not she had talked to Cynthia about this incident since then?

MR. JACKSON: Yes.

THE COURT: Any objection?

MR. MCGILL: Yes, there is an objection.

THE COURT: What is the objection?

MR. MCGILL: The objection is, number one, he has already finished direct examination and this is cross-examination. I am objecting to it being reopened.

Secondly, the primary reason for the objection is that I believe that the area that he is going into particularly about Cynthia is going far a field and even if this were a relevant question on direct examination it does nothing but emphasize the areas which were inadmissible and improperly allowed.

THE COURT: Let me ask you a question now. Suppose she says "Yes, we did

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#### Redirect-V. Jones

talk about it." Then where would you go?

MR. JACKSON: I want to know whether or not the testimony that Cynthia has given in this trial and Billy's trial and the preliminary hearing, as well as the statements to the police is because she knows about that and because of her conversations with Cynthia she has now changed the story with regard to seeing those two men.

MR. MCGILL: Objection.

THE COURT: We have the witnesses sequestered. How would she know what Cynthia said at these trials?

MR. MCGILL: I object.

MR. JACKSON: Don't I have a right to find out whether there was collusion between her and Cynthia?

THE COURT: There is no collusion, because she is testifying as to what she saw, which is nowhere near what Cynthia testified to. She is not the judge of Cynthia's testimony, that is for the jury.

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MR. JACKSON: I understand. I am not trying to judge Cynthia's testimony. Judge, what I am saying is I should have a right to find out if there is some reason, some bias for her testimony today.

THE COURT: If you want to talk to her later on I guess you can, but I don't think you ought to ask that question while she is on the witness stand before you know what she is going to answer.

MR. Mc.GILL: I am objecting at this point.

THE COURT: I am denying it now.

MR. JACKSON: I can dismiss her now and bring Cynthia White on because Cynthia White isn't going to take long.

MR. MCGILL: I object.

MR. JACKSON: I would reserve the right to talk to her.

MR. MCGILL: This is really going far a field. Judge, you ruled that he cannot proceed with this line of questioning.

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MR. JACKSON: He has not.

THE COURT: Yes I have, because you can't follow that question up with anything. You want her to judge what Cynthia White said.

MR. JACKSON: No. Leave Cynthia's testimony as such out of it. Has she talked to Cynthia White. Of course they are going to talk about the case, but as a result of her conversations with Cynthia has her testimony been somehow impacted.

THE COURT: Whose testimony?

MR. JACKSON: Veronica's. The one who is testifying now.

THE COURT: She hasn't said anything different.

MR. JACKSON: She has.

THE COURT: No she hasn't.

MR. JACKSON: That is the whole point. She said in the statement there were two men there.

THE COURT: If you want to call those cops in to say that she said that you can.

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MR. JACKSON: I will definitely call them.

THE COURT: That is the way to do it. You can't be fighting with her. She said she didn't say that. If you want to bring the cops in to say that she said that then that is fine.

MR. JACKSON: Judge, if somebody says "I didn't say something ---

THE COURT: (Interposing) You can't get every witness that you put on the stand and put them through a lie detector test.

MR. MCGILL: Your Honor can stop it by ruling.

THE COURT: I have ruled.

---

(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. JACKSON:

Q. Miss Jones, did you see anyone move from one position and go to another position on December 9th when you looked up Locust Street?

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A. Yes. The man that was by the soda machine.

Q. And where did he move?

A. Just from the soda machine to the corner, I guess.

Q. To the corner of 13th and Locust?

A. Yes.

Q. He stayed in your view?

A. Yes.

Q. About how long would you estimate that you looked up Locust Street before you saw the police?

A. Maybe five or ten minutes.

Q. Five or ten minutes?

A. It took them about five to ten minutes. It must have took them about a few minutes to get there. I am not sure.

Q. When you say "them to get there" you mean the police?

A. Yes.

Q. Did any police pass you --- did you see a police wagon pass you?

A. No.

Q. You are right on the northwest corner of 13th --- I am sorry--- 12th and Locust?

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A. (Indicating yes)

Q. You are certain the police wagon that you saw first came from the area of Broad Street?

A. It was coming from up Locust Street. Like I said, I had a couple of drinks. I don't really know. All I seen was lights.

MR. JACKSON: I have no further questions at this time, but I reserve my right to recall this witness perhaps tomorrow. Thank you.

MR. MCGILL: No further questions on cross-examination.

MR. JACKSON: Before she does leave ---

MR. MCGILL: (Interposing) Are you going to make a speech?

MR. JACKSON: I just have a couple of questions.

THE COURT: You changed your mind?

MR. JACKSON: Because I may not have to recall her.

BY MR. JACKSON:

Q. The two men that you saw --- first of all,

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they were just standing there?

A. They didn't go nowhere. Not that I seen.

Q. Both of them continued to stand there?

A. They didn't run. They was just there.

Q. How far apart were they?

A. A small distance.

Q. Would you say between two or three feet?

A. I can't really say how far apart they were.

Q. Now, how is it that you know --- maybe you said it and I don't remember. You said that the officer fell, or you knew they were standing where the officer was?

A. I know I seen someone laying down. Yes.

Q. You could see someone laying down?

A. From that distance you could see the body. Yes.

Q. Where, was the body?

A. There was a part hanging off the curb. I don't know. I don't know. I left. I don't know.

Q. The two men were they facing the same direction or the opposite direction, as best as you can recall?

A. I can't recall.

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Q. The officer that was on the ground, did you see his entire body or part of his body?

A. I seen part of his body, because, you know, the guy I was talking to he was looking, but he told me I should go-ahead and leave and I was going to leave anyway.

Q. Did you see anyone sitting on the curb, too?

A. On the south side?

Q. The same side of the street that these men and the police officer were?

A. No. I don't think I was there that long.

Q. Those two men, you never saw one of them fall?

MR. MCGILL: Objection. It is his witness.

THE COURT: I will sustain the objection.

BY MR. JACKSON:

Q. Did you see either of the two men leave before you left?

A. I can't say, because I was being more so distracted by him and wanting to get out of there. He mentioned something about he had a weapon on him and he didn't want to be there. I was trying to be nosey

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plus listen to him at the same time.

Q. Did you happen to see anything in either man's hand, the two men, did you notice anything in their hands?

A. No.

Q. Could you see the officer's hands while he was on the ground?

A. No.

Q. Were there cars between you and the men, you and the officer? Do you know what I am saying?

A. It has been so long. I don't know. I don't know.

(At this time Mr. Jackson conferred with the Defendant.)

MR. JACKSON: Again I have no further questions at this point, but I reserve my right to recall the witness.

THE COURT: Let's have the next witness.

- - -

(WITNESS EXCUSED)

- - -

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Direct-C. White

MR. JACKSON: Cynthia White.

- - -

CYNTHIA WHITE, having been duly sworn, was examined and testified as follows:

CYNTHIA WHITE-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Miss White, just a couple of questions. On December 9th you saw the man running across the street with the gun in his hand, is that right?

A. Yes.

Q. What hand did he have the gun in?

A. I don't remember.

Q. That is what you testified to earlier, is that right?

A. Yes.

Q. If you saw the gun in his hand why is it you don't know what hand it was in?

MR. MCGILL: I object. It is his witness.

THE COURT: I will sustain the objection.

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Direct-C. White

MR. JACKSON: I am trying to refresh her recollection.

BY MR. JACKSON:

Q. Back on December the 8th, 1982, page fifty-seven, question at the top of the page. You saw him run across toward the officer, the driver of the Volkswagen?

Answer: Yes.

Question: While he was in the street you said you noticed there was a gun in his left-hand?

Answer: Yes.

Do you remember that question and answer back on December the 8th, 1982?

I was asking you the questions.

A. Yes.

Q. So, again, let me ask you, in what hand did he have the gun in?

A. I don't know. I am not sure.

Q. You are not sure. Same day. Page fifty-eight.

Question: You saw him running across the street at some point in time in the middle

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Direct-C. White

of the street, you say you saw in the left-hand a gun?

Answer: Yes.

Do you remember that question and answer?

A. Yes.

Q. Is that the hand the gun was in?

A. I don't remember.

Q. Just so we are clear ---

MR. MCGILL: (Interposing) Objection. Again, it is his witness.

MR. JACKSON: I understand it is my witness.

BY MR. JACKSON:

Q. You can just direct your attention to this diagram, Miss White. If you were standing here the man you indicate was coming from this parking lot, is that right?

A. Yes.

Q. If the gun was in his left-hand that means between you and him at some point in time his body would have shielded the gun, isn't that true?

MR. MCGILL: Judge?

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Direct-C. White

THE COURT: I will have to sustain the objection.

BY MR. JACKSON:

Q. Did his body shield the gun?

A. What do you mean?

Q. Sure. You were standing here. The man was coming from here somewhere from the parking lot. I believe your testimony has been that you first saw the gun when he was in the middle of the street, is that right?

A. Right.

Q. The question is if you were here seeing him in the middle of the street, did his body shield the gun from you?

A. No.

Q. Did you also say that he had his hand down when he was going across the street?

A. No.

Q. You didn't say that?

A. I don't remember saying that.

Q. Let me ask you now. Did he have his hand down or up?

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Direct-C. White

MR. MCGILL: Objection. At what point?

MR. JACKSON: When she saw him in the middle of the street.

BY MR. JACKSON:

Q. Was his hand up or down?

A. (Pause) I don't remember exactly.

Q. You can't remember if his hands were up or down, but you remember you saw the gun, is that what you are saying?

A. Yes.

Q. And you don't remember what hand it was in?

A. No.

Q. You are certain it was in the left-hand?

A. I said ---

MR. MCGILL: (Interposing) Objection.

THE COURT: Sustained.

MR. JACKSON: Can I have a moment, please?

BY MR. JACKSON:

Q. When the person fired the gun after running across the street, what hand did that person have the gun in?

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Direct-C. White

A. (Pause) I don't remember.

Q. The first shot or two, whatever, one or two shots, did you see the flash from the gun, or did you just hear it?

A. I don't remember seeing the flash.

Q. You know that the sound came from the area of where the officer was? You are certain of that?

A. Yes.

Q. When the person was standing over top of the officer did you see any flash, any gun flash?

A. I don't remember.

Q. When the person was standing over top of the officer when Mr. McGill asked you to demonstrate you demonstrated the person's right-hand jerking. Why did you do that?

A. Because I am right-handed.

Q. Is that the only reason?

A. Yes.

Q. But you told us at least in previous testimony that the person had the gun in his left-hand?

MR. MCGILL: Sir, he is cross-examining his own witness.

THE COURT: I will sustain the

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objection.

MR. MCGILL: Every question, Judge.

BY MR. JACKSON:

Q. So, let me ask you this, the demonstration that you previously gave with Mr. McGill, was it accurate?

A. What do you mean?

Q. The demonstration, was it accurate that you gave? You demonstrated before what happened that evening. I want to know whether it was an accurate demonstration of what happened of what you saw?

A. I still don't understand what you are saying.

Q. I want to know if it was true? In other words, when you got up and you pantomimed and did what you did I want to know was it pretty much what you saw?

A. Yes.

Q. Okay. But you have an exception and one of those exceptions is that rather than the right-hand it was the left-hand?

MR. MCGILL: Objection. She said

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Direct-C. White

she did not know the hand.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Let me ask you this. The testimony that I have read from January the 8th, does that refresh your recollection in anyway as to what hand the person had the gun in?

A. I don't remember.

Q. You don't remember whether or not this refreshes your recollection?

A. What hand it was in?

Q. Well, would it be fair to say that on January the 8th your recollection was better than it is today?

A. (Pause ) What do you mean?

Q. Sure. On January the 8th, which is about twenty-nine, thirty days from the date of the incident, wouldn't you say that your memory was better then than it is today?

A. (Pause) No.

Q. Your memory is better today than it was then?

A. No difference in my memory.

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Direct-C. White

Q. Well, on January the 8th you said the left-hand. Today, you said you

don't remember. Yet you said there is no difference in your memory?

A. I don't know which hand it was in.

MR. JACKSON: No further questions.

---

CYNTHIA WHITE-CROSS-EXAMINATION

---

BY MR. MCGILL:

Q. Miss White, I am referring to the hearing before Judge Ribner. I don't have it in front of me so I don't know the date.

MR. JACKSON: January 11th.

BY MR. MCGILL:

Q. January 11th. Page one zero six. Do you recall at another hearing being asked similar questions and saying you cannot recall whether it was the left or right-hand?

A. Yes.

Q. This is one zero six. I am going to ask these questions and answers and the hearing was before Judge Ribner in room 613. If that helps you to recall.

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Cross-C. White

This is the question and answer:

What hand did he have the gun in?

Answer: I am not sure. I believe it was the left.

You believe it was what?

Answer: The left. I am not sure if it was the left or right.

On Friday you were sure it was the left and today your answer no I --- then

there is an objection. Then another question and answer. You say you are not sure today what hand it was?

I said I believe it was in the left, but I am not sure.

Do you recall those questions and answers?

A. Yes.

Q. And is that what you are telling Mr. Jackson today?

A. Yes.

Q. That you don't know which hand it was in?

A. Yes.

Now, at the time that you saw this, Miss White

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Cross-C. White

at the time you saw the Defendant running from the parking lot you had the opportunity to observe his hand from the time that he ran from the parking lot until the time he was over the officer firing down, isn't that correct?

A. Yes.

Q. Wouldn't it be fair to say, Miss White, that that total time period may well have been somewhere in the area of perhaps --- well, less than a minute, at least thirty seconds, or something of that nature?

A. Yes.

Q. Now, do you also recall telling Judge Ribner --- excuse me. That you were at least aware the man had a gun in his hand? In other words, do you recall being asked by Mr. Jackson whether or not you were able to tell whether something was in his hand or not? Do you recall that or don't you recall?

A. I don't recall.

Q. Page one zero seven and one zero eight of the same hearing. When you

saw him running across the

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Cross-C. White

street you said you saw a gun in his hand, is that right?

Answer: Yes.

How much of the gun did you see?

Then there were objections.

One zero nine.

You say you saw the gun. What did you see?

Answer: I guess --- I don't know. The barrel or whatever you call it.

Do you remember those questions and answers?

A. Yes.

Q. Also on page one zero nine.

Was there something that you could see other than the hand?

Answer: Yes.

That material that you saw other than the hand was that cardboard, paper, wood or metal?

These questions were by the judge.

Your answer was: Metal.

Do you recall that question and answer?

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Cross-C. White

A. Yes.

Q. What time did you see the metal in the Defendant's hand?

Do you recall whether it was while he was running across the street or when he was over the officer?

A. When he was in the middle of the street.

Q. And when you saw the metal in his hand would you show the jury exactly how it was positioned, how his hand was positioned? In other words, how was his hand when you saw the metal in his hand?

MR. JACKSON: Objection, Your Honor. She can't tell how his hand was positioned, because she already testified she doesn't know what hand it is in.

MR.MCGILL: He can save that argument for his summation if he wishes.

MR. JACKSON: That is an objection, Your Honor.

THE COURT: Overruled. Move on.

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Cross-C. White

BY MR. MCGILL:

Q. Miss White, would you demonstrate how the weapon was, or when you first saw the metal in his hand how the hand was, whether or not it was the right or left-hand? Demonstrate it with your right-hand?

MR. JACKSON: Your Honor, of course I object.

THE COURT: Go-ahead.

BY MR. MCGILL:

Q. Did you understand?

A. (Indicating no)

Q. When you saw the gun in his hand show us how it was with your own hand?

A. It was in his hand. I seen the part here.

Q. You are indicating your right-hand. You don't know whether it is the right or left?

A. No.

Q. How was it positioned when you did see it in his hand? How was his arm positioned?

A. What time?

Q. Okay. When you saw the metal in his hand

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Cross-C. White

that was when he was running across the street?

A. (No response)

Q. Do you understand?

A. (No response)

Q. Do you want me to ask it again?

A. Yes.

Q. You saw the Defendant running across the street, is that correct?

A. Yes.

Q. You saw a piece of metal which you indicated was the barrel of the gun in his hand, is that correct?

A. Yes.

Q. Now, how was it in his hand, or how was his arm positioned when you saw the barrel in his hand?

A. I don't remember if it was up or down.

Q. Now, was that during the course of the time when he was running across the street?

A. Yes.

Q. Now, did you keep your eyes on the Defendant from the times that he ran from the parking lot until the time that he stood over the police officer and fired downwards?

A. Yes.

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Cross-C. White

Q. Did you see anybody else anywhere with any kind of weapon around the officer at that time?

A. No.

Q. The officer was on the ground and the Defendant was on top of him pointing his arm down, isn't that correct?

A. Yes.

Q. Although you may not have seen the weapon in his hand you saw his arm pointed in the direction of the officer, isn't that correct?

A. Yes.

Q. And then you heard shots when his arm was positioned in the direction of the officer, is that correct?

A. Yes.

Q. Then immediately after that you then walked over to --- he walked over to the curb and slumped down, is that correct?

A. Yes.

Q. You had your eyes on him during that entire time?

A. Yes.

MR. MCGILL: Thank you.

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Redirect-C. White

MR. JACKSON: I have a few more.

MR. MCGILL: I would object.

THE COURT: It is redirect.

MR. JACKSON: I have a right to defend this man's life.

MR. MCGILL: Oh gees.

- - -

CYNTHIA WHITE - REDIRECT EXAMINATION

- - -

Q. You indicated that you don't remember what hand but you know you kept your eye on him and you know you saw his arm jerk. How can you tell us that if you don't know what hand?

MR. MCGILL: Objection.

THE COURT: That is sustained.

MR. JACKSON: Fine. Again I understand she is my witness, Your Honor. Unfortunately.

BY MR. JACKSON:

Q. Miss White, you indicated previously that you saw the hand go up and down, is that correct?

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Redirect-C. White

A. Yes.

Q. You don't know whether it was the right-hand or the left-hand going up and down, but you know a hand was going up and down?

A. Yes.

Q. Now, on January the 8th, which was a Friday, without hesitation you

said the gun was in his left-hand. Over the weekend ---

MR. MCGILL: (Interposing) Objection. This is repetitious.

BY MR. JACKSON:

Q. I am going back to the 11th, on the 11th when you testified at the hearing before Judge Ribner you testified --- well, let me do it this way.

Page one zero four. This is Mr. McGill questioning you.

Question: You are indicating with your right arm and you are jabbing in a -- you are pointing with your finger, rather with your index finger two or three times. And is that toward the ground where the police officer was?

Answer: Yes.

You answered that question when he

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#### Redirect-C. White

asked or when he described to you that you were pointing with your right-hand?

A. Yes.

Q. Do you remember that question and answer?

A. Yes.

Q. Page one zero five. Again Mr. McGill.

So that what you meant when you said you observed the Defendant over the police officer firing you saw his back and movement of his right arm, or his arm rather in the direction of the ground?

Your answer: Yes.

Do you remember that question and answer?

A. I don't remember.

Q. You don't remember anything I ask you, do you?

THE COURT: Quiet in the courtroom.

MR. JACKSON: No further questions, Your Honor.

MR. MCGILL: I have nothing further.

Thank you.

- - -

(WITNESS EXCUSED)

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- - -

THE COURT: We will recess for the day until tomorrow morning at 9:30.

- - -

(PROCEEDINGS ADJOURNED)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause

is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS  
 PHILADELPHIA COUNTY  
 CRIMINAL TRIAL DIVISION

	:	January Session 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Courtroom 253  
 City Hall  
 Philadelphia, Pa.

June 30, 1982

Before: HONORABLE ALBERT F. SABO, J. (and a Jury)

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
 Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
 Court Appointed Counsel for the Defendant

Joseph Masciantonio, R.P.R

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(The following is a discussion in chambers with both counsel present.)

THE COURT: We are back in chambers. I am advising counsel that it is now 10:30 and the jury is getting restless.

MR. MCGILL: Mr. Jamal has been here for about ten or fifteen minutes.

MR. JACKSON: Your Honor, I would like to bring to your attention that we have a prospective witness a Debbie Kordansky. Yesterday counsel for the prosecution Mr. McGill gave me her phone number and the St. James Hotel as to the place where I could locate her.

I contacted her by phone. She indicated to me by phone that she no longer lived at the St. James Hotel, although I have not been able to confirm it.

In any event, she indicated that last Monday she was in a bicycle accident and she injured her head and she would find it extremely inconvenient and impossible to appear in court. My sense is

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that she simply wants to avoid appearing as a witness.

Given the fact yesterday I guess it was about 6:00 p.m., 6:00 o'clock, last night was the first opportunity I had of contacting this witness I wondered whether or not there maybe some means that the court could suggest that I could have her brought in, or her injury confirmed, or if she is not going to testify?

THE COURT: Let's find out what she is going to testify to in the first place.

MR. JACKSON: She is going to testify that after --- I can read her statement. It is so short.

I was watching TV and I heard about five gun shots sometime between 3:45 and 4:00 a.m. The gunshots seemed to be in succession. I thought that it was firecrackers. I didn't look out the window at first. I heard sirens a short time later. I saw about ten squad cars and two vans at 13th and Locust Street. I saw a male running on the south side of

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Locust Street.

Specifically the defense would want her to testify regarding a statement of a man running on the south side of Locust.

MR. MCGILL: Apparently according to the statement as I look at it, Judge, it says, "I heard sirens a short time later." This is after the shots. Then she says, "I saw about ten squad cars, two vans at 13th and Locust." Then she says, "I saw a male running on the south side."

MR. JACKSON: My point is, Judge, that maybe the sequence, or that may not be the sequence.

MR. MCGILL: Did you ask her?

MR. JACKSON: I did ask her. She said, "Well, I am afraid to tell you what I said because I really don't want to help you. "I read the statement to her. She said, "I really don't want to help you," and she says she doesn't like black people. She says, "I was raped by a black male about

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five years ago and if I could avoid coming in court I will."

THE COURT: Maybe you are better off without a witness like that.

MR. JACKSON: I think -- notwithstanding her attitude I understand that, but in fact there was a way I could question her specifically on this point? She says, "You can have the judge call me, or anyone else, and we can straighten it out."

I don't know, Judge. That is my predicament. I think I would be remiss if I did not make some further attempt to get her in court.

THE COURT: I don't think it is my prerogative to call her. That is for you.

MR. McGILL: Did you get an address from her?

MR. JACKSON: She won't tell me anything. She says, "Nobody said anything about Mumia's case, but it sounds like some Moslems, I don't know whether they are white or black, are calling me and harassing me."

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She says, "I don't know if it has anything to do with this case." I said, "He is not a Moslem." "Oh."

MR. McGILL: Judge, first of all, the first time I heard that name as a potential defense witness was yesterday. I then said let me check. I checked my book. This was yesterday afternoon. I checked to see if I could get the address and give it to them right away. I said it was not here and I would check the book which had been taken over. They take the box over right after court, the police officers, and I said it is over on my desk. I went over and got the information and called Mr. Jackson immediately and gave it to him.

MR. JACKSON: That is correct.

MR. McGILL: I can appreciate the fact you would like to have a witness. I have never contacted the woman, although we have had the telephone number.

I suppose that the Commonwealth would be willing to try and have somebody call

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her, but we don't have any more information than does Mr. Jackson.

So, it will be that much more difficult if she is in a position of not wanting to come in. I don't know how cooperative she will be.

I will be glad, if Your Honor feels it would be necessary, at this time to have my detective make some effort to call her and find out where she is and if she is physically able to come in and if so how the situation could be satisfied. How the means could be set up so she could get here. I am not sure.

On the face of her testimony it appears to be irrelevant in the sequence as stated, but yet perhaps it has marginal relevance and we can make the effort. I can't guarantee that we are going to be successful. I don't want to give the court the impression that we would be.

THE COURT: I don't want you to think I am going to order you to do anything.

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I don't think it is my job to order anybody in here without the proper service. Number one, she hasn't been served. What you ought to do is try to talk to her. I don't care who does it. As long as Mr. Jackson is not objecting to your efforts to do it. This is potentially his witness. I don't want him to say that your people somehow influenced the witness.

MR. JACKSON: If the court pleases, as you understand in homicide cases the addresses of the witnesses are not given to counsel.

THE COURT: I know that, but you didn't tell him you were going to call this girl until yesterday. So, he was in no position to give you any information prior to that.

MR. JACKSON: I understand. That is not the nature of my criticism. What I am simply saying is that one of the things we could do, of course, if the witness - - in the beginning if we had her address we

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could perhaps have known where she is right now. I have a phone number for her.

THE COURT: If you had told him three or four weeks ago, if you told him before this he could have given you a phone number and you could have called her and you could have gotten her address. You could have served

her. I am saying don't expect the court to act as some sort of magician here and pull witnesses out of the hat for you at the last minute. Do whatever you have to do.

MR. MCGILL: Certainly in his very thorough preparation of the case Mr. Jackson had several avenues of defense that he could have pursued. He was attempting to pursue various areas and it is clear that the Defendant hasn't been all that cooperative in certain areas. He has done it largely himself. I really don't criticize Mr. Jackson for last minute things.

I will point out also that the Defendant did have conversations and, in fact, as far as I could see suggested

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questions to be asked of Veronica Jones yesterday by writing questions down and giving them to Mr. Jackson for him to ask. It shows he was participating.

MR. JACKSON: He didn't write questions. I talked to him.

THE COURT: All I am saying is Mr. Jackson should talk to her even if It is by phone to get this sequence of events, but I don't really see how it is going to hurt him. I don't see how it is going to help him either. You are talking about after the police arrived there. You have about ten vehicles there and somebody may have run down the street.

MR. JACKSON: That assumes, Your Honor, that it was after.

THE COURT: You should find that out. You talk to her.

MR. JACKSON: She won't talk to me. She won't discuss it.

THE COURT: What am I going to do If she won't talk to you?

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MR. JACKSON: What I am saying is we have never known her location. The only thing that I know --

THE COURT: (Interposing) What I am trying to say to you is that the district attorney didn't even know you were going to call her. Reading her statement doesn't really mean anything.

MR. JACKSON: I never had an opportunity to interview her.

THE COURT: You talked to her yesterday to find out what she was going to say. If she tells you she is going to be antagonistic toward you in my opinion you would be crazy to force her in. But you do what you want to do.

MR. MCGILL: I think it is also potentially explosive for us if she comes out with things like that, too. It doesn't help, us out. I mean the Commonwealth.

MR. JACKSON: With regard to the specific facts regarding her attitude and perceptions and all I don't think that is

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relevant.

THE COURT: You have her statement. Ask her if that is the sequence in which it happened.

MR. JACKSON: She says she is not going to testify. She said she is not going to testify. She said, "I am not going to discuss it with you."

MR. MCGILL: I will do this. I understand the situation and there has been another case where this came up, although I will admit in other cases I was at least advised a little bit more than one day before, but in this case, Judge, I will have one of my detectives also call her to see what the situation is, because we don't know her address either. We can't even subpoena somebody when we don't know where they live.

MR. JACKSON: At least I would like to find out where she is now living, because at this point I would like to subpoena her. I know she doesn't want to come in.

MR. MCGILL: That is the point.

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If she says, "I don't want to see you, I don't want to come in," we have no way of getting around that.

MR. JACKSON: I was forced into this situation. I can't afford and I can't pay for an investigator. I have to run around and do it. That is my problem, Judge. But I have to make an attempt to bring her in.

THE COURT: Do whatever you have to do. I will make whatever rulings I have to make when the time comes. There is nothing more I can do for

you, gentlemen.

MR. MCGILL: I will do what I said. I will attempt to have one of my officers make some effort to contact her.

THE COURT: You don't object?

MR. JACKSON: No. I don't object.

THE COURT: You are not objecting to one of his detectives trying to induce her to come in?

MR. JACKSON: No, I am not.

THE COURT: You won't say there is some collusion here or something like that?

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MR. JACKSON: No, Sir. I need the witness.

THE COURT: Anything else before we go out? Do you have any other problems?

MR. JACKSON: I asked him if he was going to come in. He said not until he saw his sister. I don't know, Judge.

THE COURT: Is there any other problem with these witnesses or anything?

MR. JACKSON: I am going to start off with two or three character witnesses, because a couple of people have to leave.

THE COURT: Any problem with the character witnesses?

MR. MCGILL: Who are they?

MR. JACKSON: Sonia Sanchez, Allen Lawson and I think John Skief is here.

MR. MCGILL: Is that the Street's aide?

MR. JACKSON: I don't know if he is going to testify.

THE COURT: Any problem?

MR. MCGILL: No problem. I do have

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a problem with any other character witnesses. I think twenty-five is enough. If any more names come up I may object. I may object to some of these, because it is putting me at quite a disadvantage. I can't check-up on any of the people since I only had one day and half of the names are not English names. That makes it more difficult.

MR. JACKSON: I think to remedy the situation we could possibly have an in camera hearing with respect to the criminal record.

MR. MCGILL: Let's go on with these three. Let's move on. You have three now?

MR. JACKSON: There maybe some more. I don't know.

(At this time the discussion in chambers was concluded and the following is in open court, in the presence of the jury.)

MR. JACKSON: The defense would call Sonia Sanchez.

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SONIA SANCHEZ, having been duly sworn, was examined and testified as follows: SONIA SANCHEZ:-DIRECT EXAMINATION

BY MR. JACKSON:

Q. Do you know Mumia Abu-Jamal?

A. Yes.

Q. For approximately how long have you known him?

A. For about three or four years.

Q. Would you tell us how it is you have come to know him?

A. I came to know Mr. Jamal through his writings and his newspaper comments and radio commentaries.

Q. Now, could you tell how you came to know him directly?

MR. MCGILL: I object to that. It is his reputation based on hearsay and not

personal experiences.

MR. JACKSON: I still have to establish that she knows him, Your Honor.

THE WITNESS: I too am a professor and writer. I came to know Mr. Jamal as a writer. At many events we were both there and

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we began to have conversations and we talked about certain things and that is how I came to know him.

BY MR. JACKSON:

Q. Do you know other people who know Mr. Jamal?

A. Yes, I do.

Q. Among those other people that you know who know Mr. Jamal what is his reputation for being a peaceful and law abiding citizen?

A. Well, Mr. Jamal has always been viewed by the black community as a creative, articulate, peaceful, genial man. As one speaks to people throughout the city that opinion has not changed and has not varied at all.

MR. JACKSON: Thank you very much.

#### SONIA SANCHEZ-CROSS-EXAMINATION

BY MR. MCGILL:

Q. That is Miss Sanchez?

A. That is correct.

Q. Miss Sanchez, in reference to your writing you wrote a Forward, did you not, for the book "Asata

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Speaks," correct?

A. That is correct.

Q. Did that not deal with convicted police killer Judy Chesmar's case?

A. Did you read it?

Q. I am asking you?

A. It has nothing to do with that at all. It has to do with her as a black woman in America.

Q. Were you not in sympathy with her position and through the surrounding circumstances of her action?

A. That is not correct. That is why I asked you did you read it?

Q. Is it a fact, Miss Sanchez, - - if you would answer my question ---

A. (Interposing) I am trying to.

Q. It does deal with Miss Judy Chesmar, is that correct?

A. It deals with her as a black woman.

Q. And was she not convicted of killing a policeman and is presently a fugitive from justice, is that correct?

A. I think so.

MR. JACKSON: Your Honor, I would

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object and move to strike.

MR. MCGILL: This is admissible, Your Honor.

(The following is a sidebar discussion with both counsel present.)

THE COURT: When we were in chambers I asked whether there was going to be any problem so I could decide on that.

MR. MCGILL: It goes to bias.

MR. JACKSON: I would object and I would move for a mistrial. Counsel is questioning this woman not about any crimes, false cases, he is questioning her personal life with regard to what she has written and the contents of what she has written. It is highly irrelevant. What she has written about other people has nothing to do with this case. He is obviously attempting to inflame the jury with regard to a specific writing that she has made. He is incorrect about it .

MR. McGILL: It is very clear that

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this goes to her bias and assisting and helping out individuals who are accused of very serious crimes and in particular involving policemen. I think it goes into her bias and the jury has a right to know. It is certainly relevant. It is a bias character witness.

MR. JACKSON: The bias of a character witness is obvious because they are coming into testify about a person's good reputation

THE COURT: He is questioning her motive in coming in and testifying as to good reputation.

MR. JACKSON: Then I should be allowed to go into other writings as well.

MR. McGILL: Wait a minute. Let me explain to you, Judge, the reason for this. He can't just go into anything else he wants to.

MR. JACKSON: If he don't want to I will.

MR. McGILL: I would like you to

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make a ruling.

MR. JACKSON: I can get all of her writings. If he wants to do that, fine. Otherwise I object.

MR. McGILL: This is in reference to only police killers.

MR. JACKSON: He is going to pick out certain things she has written.

THE COURT: Just a minute. If he brings out that she is biased then you can rehabilitate her if you wish to. You cannot go into all the writings.

MR. JACKSON: I don't think he can go into any of the writings.

MR. McGILL: I can go into her actions as a character witness.

THE COURT: He is going into her motive for being here as a character witness. You can bring out that that is not her motive for coming in here. That is fine.

(At this time the sidebar discussion was concluded and the following is in open court.)

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BY MR. McGILL:

Q. Also, Miss Sanchez, did you have occasion to publicly speak in support of Herman Bell, Anthony Bottom and another Defendant by the name of Washington who were convicted killers of three police officers in New York?

A. No, I didn't.

Q. Did you have any contact at all in terms of those Defendants in reference to that case?

MR. JACKSON: I object again. I would ask for a sidebar.

(The following is a sidebar discussion with both counsel present.)

MR. McGILL: Can we move on, Judge? Please? Can we move on?

THE COURT: Where are you going now?

MR. McGILL: I am again trying to find out the same thing. It is my information that she, in fact, was involved in that. I am trying to determine either

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through writing or speaking any involvement at all in support of them as individuals.

MR. JACKSON: Can he ask her about every police killing in the world?

MR. McGILL: Obviously not.

THE COURT: You are bringing somebody in for reputation. He has a right to go into it and see whether or not this person maybe biased in what she is saying as to the Defendant's reputation, because she somehow seems to get involved with people that are police killers and she has written books and testified for them.

MR. JACKSON: We have a hundred people that she had been involved with and five of them are people who have been convicted of killing police.

THE COURT: This is a police killing and you have to limit it to this case. I can't let him go into being biased as to everybody else. Bias only to these sets of facts. She said no she had nothing to

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do with that.

MR. JACKSON: How is it bias against police because she testifies on individual cases about the good character of people? She doesn't always testify. She has written about people who are accused of these killings and that has no indication of bias against police. It just shows that she is talking about the individual.

THE COURT: The jury has a right to hear this and they will make the decision.

MR. McGILL: It goes on and on.

MR. JACKSON: If it takes all day for me to make an objection I will take all day.

MR. McGILL: I am waiting for the judge to rule.

THE COURT: I have ruled on this thing now. He can go into that area and

that limited area only. Not that she maybe biased against society or biased against the whole world. I am not concerned about that.

MR. JACKSON: We don't know whether

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this woman gets involved before they are accused or after.

THE COURT: He asked her the question and she said "No" to that.

(At this time the sidebar discussion was concluded and the following is in open court).

BY MR. MCGILL:

Q. I believe the answer to that question was "No," is that correct?

A. That is correct.

Q. Now, understand, Miss Sanchez, I am not criticizing what you are doing at all. I am just trying to find out whether you did it. Did you in anyway publicly either support, discuss, write or in any sense indicate awareness and direct concern about those Defendants Anthony Bottoms, Herman Bell, and also a Defendant by the name of Washington?

A. Who are they? Would you explain who they are? Evidently you know who they are.

The answer then is you did not know and

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had nothing to do with them?

A. I am asking you who they are? They were three Defendants convicted of killing three police officers. Any connection with them at all in your memory?

A. No.

MR. MCGILL: Thank you very much.

MR. JACKSON: I have a few additional questions.

SONIA SANCHEZ-REDIRECT EXAMINATION

BY MR. JACKSON:

Q. Where are you presently teaching?

A. Temple University.

Q. How long have you been teaching?

A. I have been teaching at Temple for five years.

Q. And before that?

A. Amherst College. The University of Penn and Amherst College.

Q. How long have you been writing?

A. I have been writing for twenty years.

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Q. How many individuals have you written about?

A. I have written about many people. I have written about Martin Luther King, Brookes and many people that I know in the black community. People who have dealt with things as they affect us in a place called America.

Q. Let me ask you this. Do you have any bias against police?

A. Against police? No, I don't.

MR. MCGILL: I object, Your Honor.

THE COURT: Go-ahead, please.

BY MR. JACKSON:

Q. Your purpose in writing about anyone -- let me strike that. Has there

been a purpose in any of your writings to criticize the Police Department?

A. I have written about many facets of America. I have written about the oppression in a place called America. I teach also at Gratorford Prison. I teach young men in prison and have also talked to the guards there. You cannot talk about America without talking about oppression and the Police Department and

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the courts.

MR. JACKSON: Thank you very much.

SONIA SANCHEZ-RECROSS-EXAMINATION

BY MR. MCGILL:

Q. When you use the word "oppression" are you also referring to oppression by police?

A. By America. The government. Does the Police Department come under the government?

Q. Try to answer my question, please?

A. I am trying to.

MR. JACKSON: She is answering the question. He doesn't like the answer.

MR. MCGILL: Would Your Honor kindly instruct Mr. Jackson about the rules?

THE COURT: Please, gentlemen. Come on. Let's go.

MR. MCGILL: May I finish my question?

BY MR. MCGILL:

Q. When you say --- the question is simply this. When you care talking about oppression in your answer to

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Mr. Jackson the question is simply are you including oppression by police on black people?

A. By everyone.

MR. MCGILL: Thank you.

THE WITNESS: You are welcome.

(WITNESS EXCUSED)

MR. JACKSON: The defense would call Nellie Reynolds.

NELLIE REYNOLDS, having been duly sworn, was examined and testified as follows:

NELLIE REYNOLDS-DIRECT EXAMINATION BY

MR. JACKSON:

Q. Do you know Mumia Abu-Jamal?

A. Yes, I do.

Q. For about how long have you known him?

A. About eight years.

Q. Could you tell us how is it you have come to know him?

A. Well, I would really say during his radio

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work I came in contact with him. The type of work that I do he often came out and interviewed me.

Q. What kind of work do you do?

A. I represent the Public Housing tenants.

Q. What is your position in the organization?

A. I am an executive director of the Residence Advisory Board.

Q. Do you know other people who know Mr. Jamal?

A. Yes.

Q. Among those other people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. An excellent reputation.

MR. JACKSON: Thank you.

MR. MCGILL: Your Honor, I have no questions of Miss Reynolds.

MR. JACKSON: Thank you very much.

(WITNESS EXCUSED)

MR. JACKSON: The defense would next call Allen Lawson.

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ALLEN LAWSON, having been duly sworn was examined and testified as, follows:

ALLEN LAWSON-DIRECT EXAMINATION BY

MR. JACKSON:

Q. Mr. Lawson, do you know Mumia Abu-Jamal?

A. Yes, I do.

Q. The Defendant seated before you?

A. Yes.

Q. How long have you known him?

A. I guess about ten years.

Q. Could you tell us how it is you have come to know him?

A. Well, I come to know him because of his activity in reporting news in Philadelphia. In working with WDAS. I come to know him because I was a teacher at Temple University for seven years and on three or four occasions he came up and guest lectured with the students in the class.

I know him in reference to different problems that have occurred in prisons which we have shared information with each other that he reported

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Direct-A. Lawson

while he was a newspaper reporter.

Q. Do you know other people who know Mr. Jamal?

A. Yes, I do.

Q. Among those other people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. As far as I know he has always been peaceful and law abiding and that is what he generally speaks about in the nature of his talks. It is usually peaceful and law-abiding and dealing with the truth.

MR. JACKSON: Thank you.

Cross-examine

ALLEN LAWSON-CROSS-EXAMINATION

BY MR. MCGILL:

Q. Good morning, sir. You are the director of the Prisoners Rights Council?

A. I am.

Q. Mr. Lawson, you indicated you have known this Defendant for about ten years?

A. Yes.

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Cross-A. Lawson

Q. Have you known him for any extended amount of time in the last year and a half since 1979?

A. Yes.

Q. How often would you see him during that period of time?

A. I don't know how to judge that. I have seen him quite a few times. In fact, during the times he lectured in my classes it has been within the past two years.

Q. Within the past two years?

A. Yes.

Q. Mr. Lawson, you were convicted yourself, is that correct?

A. Yes, I was.

Q. And would it be fair to say that was robbery and conspiracy arising out of an incident which occurred in August of 1960?

A. Yes. It was a robbery.

Q. And as a result of that did you serve time?

A. Yes, I did.

Q. Following that on February 8th, 1965 were you also convicted of robbery at that time?

A. Yes, I was.

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Cross-A. Lawson

Q. And did you also serve time as a result of that?

A. Yes, I did.

Q. During the course of that time did you have occasion to meet or talk to this Defendant during the period of your incarceration?

A. No. In fact, when I met him it was after the incarceration.

Q. And the first time would have been ten years ago?

A. Somewhere along there. After I was left out of jail. After '71. That is when I met everybody.

Q. Did you hear of him before that period of time, 1972?

A. I don't recall.

Q. You mentioned individuals that know him and that you have heard his reputation is good for being peaceful and law-abiding?

A. Yes.

Q. Could you tell me what you mean by peaceful and law-abiding?

MR. JACKSON: Objection. What he means isn't relevant, Your Honor.

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MR. MCGILL: He testified to it.

THE COURT: I will sustain the objection.

BY MR. MCGILL:

Q. Did you at anytime ever hear others speak of the fact that this Defendant at one time was suppose to say --

MR. JACKSON: (Interposing) Objection. May we see you at sidebar?

(The following is a sidebar discussion with both counsel present.)

MR. MCGILL: What is the objection?

THE COURT: I want to hear the question first before you say it in front of

the jury.

MR. JACKSON: What does it have to do with his reputation?

MR. MCGILL: If he heard it. His reputation is what you hear.

MR. JACKSON: From people. It is not what he himself has said. It has nothing to do with reputation.

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Cross-A. Lawson

MR. MCGILL: That is completely inaccurate.

THE COURT: You read that? I can't read that.

MR. MCGILL: It says the black brothers and sisters and organizations which wouldn't commit themselves before are relating to us that black people are facing the reality that the Black Panther Party has been facing. Political power grows out of the barrel of the gun.

That is absolutely relevant as hearsay. This has been quoted often in various newspapers since then. This is certainly admissible and relevant cross examination on character testimony.

MR. JACKSON: Whatever words he said, if he said, "Kill the Goddamn pigs" it has nothing to do with the reputation. He can cross-examine with regard to what they know about his reputation, good, bad or indifferent, and not as to whether or not he has heard a witness say specific words.

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How can he bring up specific words?

MR. MCGILL: It is completely wrong.

MR. JACKSON: I will get some cases. I know I am right.

THE COURT: You better get the cases then.

MR. JACKSON: He knows that, Judge.

MR. MCGILL: Listen to the reasoning. Number one it is hearsay.

Reputation evidence is hearsay. What did you hear from others? He has already gotten many inadmissible things in as to individual instances which are not relevant.

You are suppose to say how did you know him? I knew him professionally. That should be enough. Not because when he did a, b, c, d, e, which gets in a lot of specific incidents.

Your Honor allowed that. The real admissible testimony is have you heard from others? What have you heard from others? Have you heard from others about his

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reputation? What have you heard about his reputation?

So, if he says he has been a good and peaceful and law abiding person and all that, that is fine. On cross-examination they should be cross-examined on whether or not he has heard anyone say, this Defendant or anyone talk about this quote which has been widely publicized.

THE COURT: I remember there was a time when you could cross-examine about reputation witnesses in regards to the Defendant's bad actions on the streets even though he was not convicted of a crime, but I understand recently the Supreme Court, I think it was, had ruled that you cannot use any prior incident unless that incident somehow resulted in a conviction and that conviction has to be for a crime of *crimen falsi*. That is what they have said.

MR. MCGILL: Can I explain what the ruling is that refers to hearing about specific bad acts?

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Cross-A. Lawson

THE COURT: This is a specific bad act?

MR. MCGILL: No. No.

THE COURT: This is something he wrote advocating some form of violence?

MR. MCGILL: I would like to finish. I am explaining to you what the law

is.

THE COURT: Let him finish so I can understand his position.

MR. MCGILL: The case is the Smith case, the Harold Smith case. It says you can use on cross-examination as well as rebuttal the same kind of incident which is testified about.

For example, if he had been convicted of another murder, or if he had been convicted of aggravated assault I could say had you heard that he had been convicted of aggravated assault? I can't say in this case have you heard that he was convicted of burglary, because that was crimen falsi. Only the specific issue that is raised by the witness. That is the limitation of that

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case.

Now, this is different. We are not talking about specific bad acts. We are talking about his competence and the basis for his statement that he has heard others talk about Mr. Jamal as being peaceful and law-abiding.

Now, the question then becomes have you heard those others say, or have you heard from others, or heard generally or in publications in which publication this is stated? If he says yes he heard that I would ask how that would affect, if at all, your judgment as to his reputation. He will probably say not at all, or he will probably say he didn't hear it at all. It is a quote from him and something he said and something, which is widely publicized as things which he has said. This is not a specific bad act. It goes to what they have heard about him and he has put that into evidence on direct. He has heard his reputation is good. That is the only relevance of direct anyway.

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Cross-A. Lawson

MR. JACKSON: Could we dismiss the jury? He is going to go on. He is absolutely wrong. He can bring on bad character witnesses to say a host of things. I am not going into that. First of all, you have an unauthenticate news article of something that he said he is going to give you evidence of some bad character. First of all, the reputation is in the eyes of whoever it is that is testifying. Not as to what he characterizes as being something bad. If he thinks it is bad that is one thing. Neither one of those things are

competent evidence for this witness to comment on. This witness says his reputation for being peaceful and law-abiding is good.

He cannot get into any specific acts whatsoever. Any specific acts. In particular the courts have said recently as well as with regard to even arrests that they are equally consistent with innocence as well as guilt. You are not going to be able to say we can talk about specific acts. This is

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not even an act. It is a quote. He said it is a quote.

It is not that I have any problem with hearsay, Your Honor, it is just that he can't get into it.

MR. MCGILL: Of course you can on cross-examination. I would like to hear how this is not admissible?

THE COURT: I don't make the rules. I remember reading this recent case that the court said you could not.

Let's assume he was arrested for advocating violence to destroy the country and he was not convicted of that crime. As I understand that case you could not bring that out.

MR. MCGILL: That is a specific bad act. This is not. This is a statement. This is a hearsay statement. This is an admission. This is a fact.

THE COURT: How the court reasoned that was they said that he maybe innocent of that arrest and, therefore, we are only

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Cross-A. Lawson

going to allow in convictions. They overthrew the decisions. The law was in existence from as far back as I can remember.

MR. MCGILL: This is not an arrest.

THE COURT: It doesn't make any difference. They are saying arrests or conduct. It is the same thing.

MR. MCGILL: Judge, in other words, what you are saying is you are

saying he can bring hearsay out on direct examination?

THE COURT: You can bring in witnesses who will say that his reputation for being a peaceful and law-abiding citizen is lousy. You can do that.

MR. MCGILL: Of course I can do that .

THE COURT: What the Supreme Court said is you cannot do it on cross-examination no matter what his actions may have been. Let's assume for the sake of argument that it is true that he made that statement and it is a bad statement.

MR. MCGILL: Are you saying I can't

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Cross-A. Lawson

cross-examine?

THE COURT: No.

MR. MCGILL: That is not what the case says.

THE COURT: That is the way I read the case. If you want to bring a case in I will be glad to read it over.

MR. MCGILL: This is not a bad act. This undercuts hearsay. Have you heard from these people that he had said this?

MR. JACKSON: It is irrelevant.

MR. MCGILL: It goes to his competence in making a judgment as to hearsay reputation.

THE COURT: I will be willing to let you bring in the case and you can bring in anybody you wish and I will make a ruling later. We will hold this fellow subject to being recalled and if you can convince me that is the right approach I will let you go forward. Otherwise I am inclined to think you can't do it.

From my reading, of the case as I

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Cross-A. Lawson

understand it they are not saying you can't bring in witnesses who will testify that he has a bad reputation for being a peaceful and law-abiding citizen. You can do it the same as he did. You can't use any act or any statement of the individual even if it didn't amount to an arrest, or even if it amounted to an arrest.

Under the old rules you could do that. As it was for years and years you could do that, but it has been overruled now.

MR. JACKSON: That is right.

THE COURT: As I understand it. You just can't do it. I know your hands are tied, but I didn't make the decision.

MR. MCGILL: Your Honor has ruled and I will accept your ruling. I think Your Honor is wrong. That is not what the case says.

THE COURT: I will hold this witness for you and you can bring in the case.

MR. MCGILL: He won't have to stick

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Cross-A. Lawson

around, because he will have other character witnesses.

THE COURT: If you knew there was going to be a problem why didn't you load yourself down with cases and present them to me?

MR. JACKSON: I didn't know it was problem.

MR. MCGILL: I didn't view it as problem. That was my fault. This is hearsay information which undercuts his hearsay.

MR. JACKSON: It maybe appropriate for us now when we finish with this witness to have a recess and find out the nature of the questions that he plans to ask about documents so we can find out if he is going to use different documents.

THE COURT: Do you have more character witnesses now?

MR. JACKSON: I think I have two more.

THE COURT: We will hold them and

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Cross-A. Lawson

during the lunch hour I will allow you to present any cases to me that will substantiate your position so I can make my ruling as to whether you can go into this.

Mr. Jackson wants to know in advance how you are going to attack those character witnesses. He wants to know now so he can prepare and give me cases to show that it can't be done.

What I am going to do is give you an opportunity to present cases to me and show me that you can do it.

Do you have any other witnesses other than character witnesses?

MR. JACKSON: Oh, yes. I have a few other witnesses.

THE COURT: Let's get to those and over the luncheon recess we will come back at 2:00 o'clock and I will make a ruling.

(At this time the sidebar discussion was concluded and the following is in open court).

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Cross-A. Lawson

MR. MCGILL: Consistent with the court's ruling I have no further questions of Mr. Lawson.

MR. JACKSON: I have some further questions.

ALLEN LAWSON-REDIRECT EXAMINATION BY MR. JACKSON:

Q. How long have you been director of the Prisoners Rights?

A. I have been director --

MR. MCGILL: (Interposing) Objection. Improper redirect.

BY MR. JACKSON:

Q. Mr. McGill has indicated that you had arrests back ---

MR. MCGILL: (Interposing) I object.

THE COURT: He is going into something else.

MR. JACKSON: Certainly.

BY MR. JACKSON:

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Redirect-A. Lawson

Mr. McGill has just brought out on cross examination that you were convicted of robbery both in '65 and '60, is that correct?

A. Yes.

Q. Now, you have had the opportunity, being director of the Prisoners Rights Council, of coming into contact with a number of individuals within the institutions, is that right?

A. Yes.

Q. And you have had the opportunity since being director of your organization to come in contact with a number of individuals within the penal institutions, is that correct?

A. Yes.

Q. Tell us the purpose of your organization, sir?

MR. MCGILL: Objection.

THE COURT: I will sustain that.

MR. MCGILL: It is not Mr. Lawson's character.

MR. JACKSON: Fine. Thank you, Mr. Lawson.

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(WITNESS EXCUSED)

- - -

MR. JACKSON: Police Officer McGurk.

- - -

POLICE OFFICER JOHN McGURK, badge number 3185, 6th Police District, having been duly sworn, was examined and testified as follows:

OFFICER McGURK-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Officer McGurk, let me direct your attention to December 9th, 1981. Were you employed by the Philadelphia Police Department at that time?

A. Yes.

Q. I further direct your attention to the area of 13th and Locust at or about 3:50 a.m. Do you recall that date and time, sir?

A. Yes.

Q. Did you have occasion to come upon the scene

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Direct-Officer McGurk

of an alleged shooting of Officer Daniel Faulkner?

A. Yes.

Q. At that time did you further have reason to come in contact with a gentleman by the name of William Cook?

A. Yes.

Q. Can you relate to us the facts and circumstances under which you came in contact with him?

A. At that particular time and date upon arrival at the scene of the shooting

I arrived with my partner and observed William Cook against the wall. At that time my partner and I split up. My partner proceeded to William Cook and I proceeded to help Officer Daniel Faulkner.

Q. Now, at some point in time you came in contact, you directly, with William Cook?

A. Repeat the question?

Q. At some point in time when you were right there at the scene did you come --- strike that. Did you have an opportunity to observe Mr. Cook?

A. Yes.

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Direct-Officer McGurk

Q. And as a result of your observations what is it that you saw, sir?

A. I saw blood on the left side of his head and on his hand.

Q. Now, on his hand or hands?

A. On his hand.

Q. On which hand did you see blood?

A. The left-hand.

Q. Now, you are certain it wasn't hands, sir?

A. (No response)

Q. Let me do it this way. Are you testifying now from what you recall or are you testifying as a result of perhaps reading a statement that you may have given before?

A. From what I recall.

Q. Okay. Your recollection is that he had blood on one hand?

A. To my knowledge.

Q. Officer, would you just take a brief moment to at least read down just the first page right now? Does that refresh your recollection in anyway

with regard to whether or not he had blood on his hand or hands?

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Direct-Officer McGurk

A. I just saw it on his neck, the left side of his face and hand.

Q. Okay. On the front of the document does it not say a black male identified as William Cook was standing over blood on the highway and I noticed blood on his neck and hands, with an s?

A. Yes.

Q. Now, do you recall giving the statement to Detective Thomas?

A. Yes.

Q. And are you saying that "hands" is incorrect?

A. Hand or hands. Whichever.

Q. I want to know whether it is hand or hands?

A. Hand.

Q. So, this is incorrect?

A. From my recollection it was one hand.

Q. So, wouldn't it be fair to say that when you gave this statement on December 9th, 1981 at 5:50 a.m. that your recollection of what had just happened was fresher in your mind than it is today?

A. Yes.

Q. Nevertheless you are saying that what you told him then is incorrect and what you recall now is

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Direct-Officer McGurk

correct?

A. I believe so.

Q. Did you have occasion to take a swab from his hand to find out what blood type that was?

A. No.

Q. Did you order it?

A. No.

Q. Do you know if anyone did?

A. I don't know.

Q. Did you handcuff Mr. Cook?

A. No.

Q. Did you search Mr. Cook?

A. No.

Q. Did you see him searched?

A. No.

Q. Did you see him handcuffed?

A. No.

MR. JACKSON: No further questions.

- - -

OFFICER McGURK-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Officer McGurk, did you pay much attention to

Cross-Officer McGurk

his hand or hands, or whatever, I am talking about Cook now?

A. Not much attention at all.

Q. Officer McGurk, while you were there on the scene did you have occasion to see any other officer with weapons in his hand?

MR. JACKSON: Objection. Beyond the scope, Your Honor.

THE COURT: I didn't get the question.

MR. MCGILL: Did he see any other officer with guns in his hands at the scene.

MR. JACKSON: I am objecting.

THE COURT: Technically I will have to sustain it. You can call him later on.

MR. MCGILL: Nothing further.

MR. JACKSON: I have nothing further.

- - -

(WITNESS EXCUSED)

- - -

MR. JACKSON: Police Officer Chinn.

- - -

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Direct-Officer Chinn

POLICE OFFICER CAROLINE CHINN, badge number 2915, 6th Police District, having been duly sworn, was examined and testified as follows:

OFFICER CHINN-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Officer Chinn, let me direct your attention to December 9th, 1981 at approximately 3:50 a.m. Were you employed as a Philadelphia police officer on that date and time?

A. Yes, I was.

Q. At that time or about that very same time, could you tell us if, in fact, you came in contact or went to the scene of the shooting of Officer Faulkner?

A. Yes, I did.

Q. At about what time did you arrive?

A. Approximately 3:55.

Q. And were you riding solo or were you with a partner?

A. Riding solo.

Q. What was your vehicle number?

A. Car number 611.

**PLEASE NOTE: Page 58 is missing. Every attempt will be made to locate it.**

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Direct-Officer Chinn

Q. Were you at the wagon when he gave you that?

A. I just turned my back.

Q. And he just gave it to you?

A. He handed it to me saying one of the officers must have dropped it.

Q. Did he say which officer?

A. No.

Q. Did you question him further?

A. I asked him where he picked it up. He just motioned with his hand toward the curb on the south side of Locust Street.

Q. You don't know where he got where he got it, or exactly where he got it?

A. No, I do not.

Q. Do you have a flashlight like that?

A. No, I don't.

Q. Do you know Officer Faulkner, or did you know Officer Faulkner?

A. Yes.

Q. Did you know him to have a flashlight like that?

A. Yes, he did.

Q. Do you know if that is it?

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Direct-Officer Chinn

A. (Pause) More than likely.

Q. The question is do you know if that is it?

A. No.

MR. MCGILL: Objection. She responded.

BY MR. JACKSON:

Q. Do you know now whether or not that is his flashlight?

A. No.

Q. Are there other officers in the 6th Police District that have flashlights similar to that?

A. Yes, there are.

Q. How many officers?

A. A rough estimate?

Q. Yes.

A. Twenty, twenty-five.

Q. Now, did you take that flashlight into homicide?

A. No, I did not.

Q. Did you go into homicide that day?

A. Yes.

Q. About what time did you go into homicide?

A. Approximately 4:05 a.m.

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Direct-Officer Chinn

Q. Did you have the flashlight with you?

A. This particular flashlight?

Q. Yes.

A. No, I did not.

Q. Where was it?

A. In the police vehicle that I left.

Q. You left it in your vehicle?

A. Yes.

Q. Number 611?

A. Yes.

Q. Did you handle the flashlight?

A. Yes.

Q. And Officer Repsch did the very same thing when he handed it to you?

A. Yes.

Q. You went into the homicide unit and did you mention to anyone that you had the flashlight that was left at the scene?

A. No, I did not.

Q. By the way, were any other items given to you allegedly having been dropped by a brother officer?

A. No.

Q. How long did you stay in homicide?

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Direct-Officer Chinn

A. Approximately about an hour.

Q. And after you left homicide you went back to your vehicle, your radio patrol car?

A. Yes, I did.

Q. Did you ask while you were in homicide if, in fact, anyone dropped the flashlight?

A. I asked several officers that were there and they replied they did not.

Q. How many officers did you ask, approximately?

A. Approximately ten.

Q. How many officers were at the scene?

A. Approximately twenty, twenty-five.

Q. When did you go off duty?

A. 7:30 a.m.

Q. What did you do with the flashlight?

A. Took it home with me.

Q. Even though you were told that it maybe from an officer at the scene who dropped it you didn't leave it at the 6th District?

A. No.

Q. And you are assigned to the 6th District?

A. Yes, I am.

Q. When did you report back again for work?

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Direct-Officer Chinn

A. 11:30 p.m.

Q. At that time did you bring the flashlight back with you?

A. Yes, I did.

Q. And what did you do with it then?

A. Asked all the officers that I worked with if they lost the flashlight and my answer was "No."

Q. Then what did you do with the flashlight?

A. I got in touch with officers in the 9th District and asked them and they replied "No."

Q. And was that the very next day? Would that have been the December?

A. Yes.

Q. What did you do with the flashlight after you got off work on the 10th?

A. Took it home with me.

Q. On the 11th what did you do with the flashlight?

A. Took it home with me.

Q. Did you make any further inquiry?

A. I was trying to reach the stake-out officers who were at the scene, but I couldn't.

Q. What about on the 12th?

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Direct-Officer Chinn

A. I was still trying to locate the owner of the flashlight.

Q. What about on the 13th?

A. The same thing.

Q. What about the 14th?

A. The same.

Q. And the 15th?

A. On the 15th when I went to work we had a message read out at roll call asking everyone if they had seen a flashlight, or had a flashlight.

Q. Now, Officer Chinn, at anytime between the 9th and the 15th did you contact the assigned detect Officer Thomas?

A. No, I did not.

Q. Did you contact any homicide officer?

A. No, I did not.

Q. So that other than your statement that you gave on December the 9th and the contact that you had on December the 15th you never contacted homicide?

A. No, I did not.

Q. It never crossed your mind that maybe it might be a piece of evidence?

A. No, it didn't.

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Direct-Officer Chinn

Q. Each day you took the flashlight home, what you do with it?

A. Placed it with my other police items.

Q. Did you use the flashlight?

A. No, I didn't.

Q. Did you have a flashlight of your own?

A. Do I have a flashlight of my own?

Q. Did you at that time?

A. Yes.

Q. And you brought that to work with you each of those days between the 9th and 15th?

A. Yes.

Q. And you never left it in your locker, or you never left it with the desk sergeant, or anyone at the 6th District?

A. No, I did not.

Q. When you went to homicide that night you were still riding solo?

A. Yes.

Q. You arrived I think you said --- or you left 4:05 you either left the scene or arrived at homicide?

A. Arrived at homicide.

Q. Did you have any prisoner in your custody?

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Direct-Officer Chinn

A. I had a witness.

Q. Who was the witness?

A. Michael Mark Scanlon.

Q. Were you present when Mr. Scanlon gave a statement?

A. No, I wasn't.

Q. Did you talk to Mr. Scanlon at all?

A. No, I didn't.

Q. You never had any discussions --- well, strike that. Did he ever say anything to you?

MR. MCGILL: Objection, Your Honor. That is hearsay.

MR. JACKSON: I am not asking what he said.

BY MR. JACKSON:

Q. I want to know did he ever say anything to you?

A. Yes, he did.

Q. Did he say more than one thing to you?

A. Yes, he did.

Q. Were you instructed or directed by someone to take Mr. Scanlon in?

A. Yes, I was.

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Direct-Officer Chinn

Q. That was not an independent decision on your part?

A. No, it wasn't.

Q. And you took him directly there; just him?

A. Yes.

Q. When he got to homicide you took him to the homicide unit itself?

A. Yes, I did.

Q. And did you see whether or not --- whether in fact one of the detectives interviewed him?

A. I saw him speaking with one of the detectives, but after that I don't know what happened to him.

Q. So, you were not present at the beginning or the end or at any portion of his interview?

A. No, I wasn't.

Q. Have you ever had an opportunity to review the interview that he gave?

MR. MCGILL: Objection.

THE COURT: Sustained.

BY MR. JACKSON:

Q. Did you before the 15th have an opportunity to review the contents of the interview?

A. No.

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Direct-Officer Chinn

MR. JACKSON: No further questions.

---

OFFICER CHINN-CROSS-EXAMINATION

By MR. MCGILL:

Q. Officer Chinn, just a very few minutes. As I understand your testimony you received a flashlight from Officer Repsch with the thinking that this was dropped by somebody?

A. Yes.

Q. You made efforts when you went back to the district to find out who the owner was, is that correct?

A. Correct.

Q. And you were unable to find out who the owner was and you kept the flashlight?

A. Yes, I did.

Q. And it was not until the 15th --- let's see. I think that was the 15th at roll call when it was brought to your attention about the flashlight, did anyone find it, or if anyone has one from the scene to get in touch with homicide?

A. Yes.

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Direct-Officer Chinn

Q. Then you had it at home because you remembered it was home?

A. That is correct.

Q. And then the next day you got it, is that correct?

A. Yes.

Q. You made out a property receipt for it?

A. Yes, I did.

MR. MCGILL: Your Honor, I would ask that this be marked as C67 and ask that it be shown to the witness?

BY MR. MCGILL:

Q. Can you identify the exhibit?

A. Yes, I can.

Q. What is it?

A. It is a flashlight.

Q. What is that piece of paper?

A. That is the property receipt that I signed for the flashlight.

Q. Is it for that flashlight that you have in your hand?

A. Yes.

Q. That is part of the evidence and you have

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Direct-Officer Chinn

been testifying to that from questions from Mr. Jackson?

A. Yes.

MR. MCGILL: Would you ask Officer Repsch to come in?

(At this time the police officer entered the courtroom.)

MR. MCGILL: Would you step-up here, Officer, please?

BY MR. MCGILL:

Q. Can you identify this gentleman?

A. Yes, I can.

Q. Who is that?

A. Officer William Repsch.

MR. MCGILL: You may walk out, please?

(At this time the officer left the courtroom.)

BY MR. MCGILL:

Q. And who is Officer Repsch in connection with your testimony?

A. He is the officer who handed me the flashlight at the scene.

Q. Officer Chinn, in your direct testimony you

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Direct-Officer Chinn

stated that you had, I believe, helped to take the Defendant and place him in the wagon, is that correct?

A. That is correct.

MR. JACKSON: Objection. There has not been any direct testimony, but I will allow it because I have redirect.

MR. MCGILL: I object to his comments. Number one, it was on direct.

THE COURT: If you are going to object just object. No speeches.

MR. JACKSON: I apologize to the court, Your Honor.

BY MR. MCGILL:

Q. You did say, did you not, that you put the Defendant in the wagon?

A. Yes.

Q. And who did you do that with?

A. Officer McGurk and Officer Soboleski.

MR. MCGILL: Thank you. Nothing further.

- - -

OFFICER CHINN-REDIRECT EXAMINATION

- - -

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Redirect-Officer Chinn

BY MR. JACKSON:

Q. Officer Chinn, do you recall giving a statement to Sergeant Farcas on 12/18/82 pursuant to a question by me --- a question on the first page --- just for context. Did you respond to the scene --- I am sorry. I apologize. 2/18/82. My eyes are getting bad. The bottom of the page. Did you respond to the scene of a police shooting in the 1200 block of Locust Street on 12/9/81?

Answer: Yes, I did.

Did you observe Mumia Abu-Jamal upon your arrival at the scene?

Answer: No, I did not. Jamal was gone upon my arrival.

Did you respond to that question with that answer?

A. Yes, I did.

Q. And you are saying now that you assisted Officer Soboleski and another officer in subduing Mr. Jamal?

A. Yes, I did.

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#### Redirect-Officer Chinn

Q. But in any event, it was in response to my request for an investigation that you told them he was gone, is that right?

A. That is right.

Q. Was Mr. Cook at the scene when you arrived?

A. Yes, he was.

Q. So, both Mr. Cook and Mr. Jamal were present when you arrived?

A. That is true.

Q. Both of them were there, so when you said that he was gone when you arrived you were absolutely wrong?

A. Correct.

MR. JACKSON: No further questions.

- - -

OFFICER CHINN-RE-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Officer, in reference to that, would you explain to the jury what happened?

MR. JACKSON: Objection.

THE COURT: Overruled.

A. Upon my arrival on the south side of Locust

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Recross-Officer Chinn

Street I saw Officer Soboleski and Officer McGurk struggling with a negro male who was face down. I helped them handcuff this prisoner and assisted them in taking him over to the wagon.

I observed another negro male against the wall. I heard another officer ask him if he was involved in this scene. He shook his head "No." So, I just didn't pay any more attention to him.

BY MR. MCGILL:

Q. You made a mistake, is that correct?

A. Yes.

Q. You didn't know who it was that you put in the wagon?

A. No.

Q. And you then gave a statement on February 25th, 1982, also, didn't you?

A. Yes, I did.

Q. And did you, in fact, clarify that mistake?

A. Yes.

MR. MCGILL: May I approach the witness, Your Honor?

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Recross-Officer Chinn

BY MR. MCGILL:

Q. February 25th, 1982 on page two.

Police Officer McGurk told me he assisted Police Officer Soboleski in handcuffing Jamal, not the driver of the Volkswagen. Soboleski also told me he handcuffed Jamal.

If you assisted then you must have handcuffed Jamal. Can you explain this in reference to your other two interviews?

When I arrived at the scene I saw McGurk and Soboleski handcuffing a black male who was face down on the sidewalk near the street. I also saw at the same time another black male near the building wall. He had his back to me.

McGurk and Soboleski were tussling with Jamal attempting to place handcuffs on him. I assisted them and helped place Jamal in the wagon. I assumed the one I handcuffed was taken to homicide.

Do you remember that answer to that question?

A. Yes.

Q. What do you mean by "tussling"?

Answer: Jamal was flinging his arms about.

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Recross-Officer Chinn

Q. Do you recall that question and answer?

A. Yes.

Q. Also, Officer, that was pretty much a hectic situation when you arrived, wasn't it?

A. Correct.

Q. You really didn't know who you had at the time?

A. No.

Q. But you did eventually clarify that with the authorities that, in fact, you had the Defendant?

A. Yes.

MR. MCGILL: Thank you very much.

MR. JACKSON: I have a couple of more things if you don't mind?

MR. MCGILL: I object, Your Honor. It is further redirect.

THE COURT: Go-ahead.

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OFFICER CHINN-FURTHER REDIRECT EXAMINATION

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Further-Redirect-Officer Chinn

BY MR. JACKSON:

Q. First of all, the statement that you gave on 12/9/81 at 5:00 a.m. --- I will read the question and answer.

Police Officer Chinn, would you please explain to me your assignment in this incident?

It is very short. I was assigned to radio patrol car 611. I was at 12th and Chestnut when the call came out; I went south on 12th Street and west on Locust Street. Upon my arrival on the south side of the street Officer Soboleski and Officer McGurk were attempting to handcuff the prisoner who is in here now.

Who were you referring to?

A. Okay. Upon my arrival at the PAB en route to homicide the last thing I heard on the radio was "Take the prisoner to homicide." I had assumed the Defendant was being taken to homicide.

Q. But you are saying upon my arrival on the --- strike that.

Upon my arrival on the south side of the street Officer Soboleski and Officer McGurk were attempting to handcuff the prisoner who is in here now.

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Further-Redirect-Officer Chinn

Which prisoner was in there then?

A. At the present time William Cook was in there then.

Q. So, is that the one that you attempted to place handcuffs on?

A. No.

Q. You were mistaken?

A. Yes, I was.

Q. Now, you indicated again before that Jamal was not there at the scene, but you have told me that both Jamal and his brother were at the scene when you were there?

A. Yes, they were.

Q. So, who is it that you were saying had left the scene?

A. It was a case of mistaken identity.

Q. We don't want you to identify whoever it is, but ---

MR. MCGILL: (Interposing) Objection, Your Honor. If she wants to explain her answer she has to explain it.

MR. JACKSON: I thought she was done with her answer.

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Further-Redirect-Officer Chinn

You had something else to say?

MR. MCGILL: No.

BY MR. JACKSON:

Q. The question is, if Jamal and his brother were there who was it that they took away?

A. They didn't take anybody away.

Q. Why did you say they had taken somebody away?

A. I had not seen the faces of either of the males there.

Q. I understand that. But just because you didn't see their faces doesn't mean that they went away, does it?

A. No, it doesn't.

Q. You said on December the 9th -- let me find out for sure.

In February again in response to my request for an investigation --- I am sorry. Page two, the 2/18/82 interview.

Did you observe Mumia Abu-Jamal upon your arrival at the scene?

No, I did not. Jamal was gone upon my arrival.

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Further-Redirect-Officer Chinn

Now, on December the 9th you knew that you saw William Cook because you said that is who you took in. So, you knew what William Cook looked like. On December the 18th ---

MR. MCGILL: (Interposing) Objection, Your Honor. Is he asking a question?

THE COURT: Ask a question. Don't testify.

MR. JACKSON: My apologies.

BY MR. JACKSON:

Q. You said that on December the 9th you saw William Cook in homicide because you said the same prisoner that was in here, is that right?

A. I heard the prisoner was taken to homicide.

Q. Didn't you just tell me, and correct me if I am wrong, did you not just say that William Cook was the one that you saw on December the 9th in homicide?

A. Yes.

Q. So, now on December --- on February 18th you knew there were only two people arrested, did you not?

A. Yes.

Q. On December the 18th the question did you

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Further-Redirect-Officer Chinn

observe Mumia Abu-Jamal upon your arrival at the scene?

No, I did not. Jamal was gone upon my arrival.

You already knew what William Cook looked like. So, who else was arrested?

MR. MCGILL: I have to object. She didn't say she already knew it. She said she saw Mr. Cook later.

THE COURT: Let her answer the question.

BY MR. JACKSON:

Q. Did you see William Cook on December the 9th?

A. Yes.

Q. So that you already seen him and you knew what he looked like, did

you not?

A. Yes.

Q. And did you see this man on December the 9th?

A. Yes, I did.

Q. So, on February 18th when you were asked the question you said that he was gone, isn't that true?

A. Yes, it is.

Q. You knew what he looked like?

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#### Further-Redirect-Officer Chinn

A. From the back, yes.

Q. You said that you participated in the arrest of Mr. Jamal?

A. Yes.

Q. And whether you recognized his face or any other portion of his body you knew there were only two people arrested, one of whom you saw on December the 9th, is that right?

A. Right.

Q. So, when the question was asked of you, where was Jamal on that date and you said he had gone was there somebody else that you arrested?

A. No.

Q. Are you sure of that?

A. Positive.

Q. Was there somebody else in homicide that had Dreadlocks?

A. No.

Q. Did you handcuff somebody else who had Dreadlocks?

A. No, I didn't.

Q. Do you know, in fact, that this was the man that you handcuffed?

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A. Yes, I do.

Q. How do you know he was the man you handcuffed?

A. (Pause) From identification.

Q. When?

A. From seeing his pictures.

Q. In the newspaper?

A. Yes.

Q. You are just assuming then, but on December the 9th what is that you saw about him that tells you that this is the same person?

A. I only saw the back of him.

Q. You don't know who you arrested do you?

A. It was the Defendant.

Q. How do you know?

A. From his back.

Q. You can tell from his back? Have you seen his back today?

A. No, I have not.

Q. How do you know that is him?

A. Just from identification.

Q. You arrested someone on December the 9th, you saw the back of him you say?

A. Yes.

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Further-Redirect-Officer Chinn

Q. Is that you think everyone who wears Dreadlocks looks alike?

MR. MCGILL: I object. As a matter of fact, this is his witness. I haven't objected so far, but I object now.

MR. JACKSON: I will withdraw the question.

BY MR. JACKSON:

Q. What I want to establish is that you participated in the arrest of someone and you are saying all you saw was his back. We know already that you said on February the 18th you said Jamal was gone. So, I want to know who you arrested on December the 9th?

A. The Defendant.

Q. How did you arrest him if, in fact, you said that he was not there?

A. I had mistaken him for his brother.

Q. You already knew on the 18th who his brother was, didn't you?

A. By that time, yes.

Q. So, how could you make that mistake?

A. (No response)

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Further-Redirect-Officer Chinn

Q. Could you tell us? Was it a mistake or did you, in fact, arrest somebody else?

A. No. It was a mistake.

MR. JACKSON: No further questions.

- - -

OFFICER CHINN-FURTHER RE-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Officer Chinn, was this your first homicide?

A. Yes.

Q. Was there a considerable amount of traffic and busy activity at the scene?

A. Yes.

Q. As a matter of fact, in your experience prior to that would you classify that one as the most activity that you have ever seen upon an arrest?

A. Yes.

Q. Tell the jury exactly what the circumstances were when you arrested the Defendant with the other gentlemen?

A. When I arrived on the scene I saw a negro

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Further-Redirect-Officer Chinn

male flinging his arms and kicking his legs. I saw two of my fellow officers trying to handcuff him. So, I went over and assisted.

Q. And what happened to the Defendant?

A. He was still moving about.

Q. Who picked him up?

A. I picked him up and Officer McGurk picked him up. Officer Soboleski was in the back of us.

Q. Then what happened?

A. Okay. We tried to get him to the wagon as quick as possible, because he

was a prisoner. En route to the wagon, we had a small area to work with, he accidentally ran into a pole.

Q. After that what happened?

A. The Defendant, the prisoner, fell on the ground and we picked him up and went over to the wagon and put him in the wagon.

Q. That was the same person that you arrested, the same person that was struggling, the same person that you held and the same person whose head contacted the pole and the same person that you put in the wagon, correct?

A. Correct.

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MR. MCGILL: Can I have that diagram?

BY MR. MCGILL:

Q. Officer, you have seen this diagram before?

A. Yes.

Q. This is north and this is south. This is Locust Street and this is identified as the RPC 610, the Volkswagen, and the Ford.

I will point out that that pole has been identified in this general area right here. I am indicating now at the rear right wheel of the Volkswagen.

Would it be accurate to say when you arrived and were with Officer Soboleski and Officer McGurk you were struggling with the Defendant in this location between the Ford and Volkswagen?

A. Yes.

Q. Is it also accurate that at that time when you moved forward quickly toward the wagon this is where he made contact with the pole with his head?

A. That is correct.

Q. Then after that immediately he was then taken to the wagon area which

was parked alongside the RPC 610?

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A. Yes.

Q. Is there any other individual that you arrested that you and Officer McGurk and Officer Soboleski carried over toward the wagon and whose head made contact with the pole?

A. No.

Q. And as I recall your testimony after the Defendant was placed in the wagon that is when you got the flashlight from Officer Repsch?

A. Correct.

Q. Then you went to homicide with Mr. Mark Scanlon as a witness?

A. Yes.

Q. Now, would that be the sum total of your duties in brief summary on the scene on December 9th, 1981?

A. Yes.

Q. And on the way I believe on the radio you said you heard that the prisoner was taken to homicide, is that correct?

A. Correct.

Q. And you felt or you thought that it was the one that you put in the wagon?

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Further-Redirect-Officer Chinn

A. Yes.

Q. You had just simply made a mistake as to who was who, correct?

A. Correct.

Q. There were no more than two individuals present, were there?

A. Correct.

MR. MCGILL: Thank you.

MR. JACKSON: I have a few more.

MR. MCGILL: I object. This is the fourth redirect.

MR. JACKSON: I don't know what the number of times has to do with it.

THE COURT: Let me see you over here so we can decide.

(The following is a sidebar discussion with both counsel present.)

THE COURT: I want to find out where you are going and to see whether it is repetitious or not.

MR. JACKSON: I want to know whether or not she saw blood on him.

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THE COURT: On whom?

MR. JACKSON: On the prisoner when she picked him up, because I never covered that. He brought up the beating. If you notice, Your Honor, he went back ---

THE COURT: (Interposing) Wait a minute.

MR. MCGILL: Okay.

THE COURT: You are going to ask if she saw blood. Anything else?

MR. JACKSON: I would like to know whether she was struggling with the Defendant. I never got into this struggle thing, he did. I want to find out if, in fact, she beat him or saw any beating when she arrived at the scene and under what circumstances she believed that he was the driver of the Volkswagen.

THE COURT: No. We have gone over that a million times already. She didn't say he was the driver.

MR. JACKSON: It is in her statement.

THE COURT: I don't care what is

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in the statement.

MR. MCGILL: I object to the repetition. She already clarified it a few times that it was a mistake. It was her first homicide and it was a busy area.

THE COURT: I am not going to let you go back into that area that has already been covered. That is all.

MR. JACKSON: I want to find out what reason she has for believing he was the driver.

THE COURT: You went through that twice already. He went through that. That is enough. I will let you ask about whether she saw blood or saw anybody hit him. That I will let you ask. What else?

MR. JACKSON: Whether she saw Dessie Hightower.

MR. MCGILL: Beyond the scope.

THE COURT: You should have brought that long ago.

MR. MCGILL: This is his fourth redirect.

THE COURT: I am sorry. I can't

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Further-Redirect-Officer Chinn

let you go back into that.

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(At this time the sidebar discussion was concluded and the following is in open court.)

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OFFICER CHINN-FURTHER REDIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Officer Chinn, the person who you attempted along with Officer McGurk and Officer Soboleski, the person that you arrested did you see any blood on that person when you were attempting to handcuff that person?

A. No, I did not.

Q. No blood at all?

A. No.

Q. Not on the chest, not on the head or anywhere, is that right?

A. I didn't see his chest.

Q. You didn't feel any blood?

A. No.

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Q. You came in contact with that person?

A. Yes.

Q. Aside from carrying the individual to the wagon you also assisted in placing the person in that wagon?

A. Yes, I did.

Q. Did you see the person beaten?

A. No, I did not.

Q. No beating whatsoever?

A. No, I did not.

Q. No one kicked him?

A. No.

Q. No one hit him with a night stick?

A. No.

Q. How about hitting him with a flashlight?

A. No.

Q. Do you recall seeing a Dessie Hightower across the street from you?

A. No, I don't.

Q. Was Officer Faulkner still there?

A. No, he wasn't. He had gone along with the suspect?

MR. MCGILL: Objection, Your Honor.

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Further-Redirect-Officer Chinn

THE COURT: You have gone far beyond what I allowed you to. I have to sustain the objection.

MR. JACKSON: Can I have a brief sidebar?

MR. MCGILL: No, sir. I will not object if it means another sidebar.

THE COURT: He has no objection.

MR. JACKSON: It is something else.

THE COURT: What do you mean? Do it here.

MR. JACKSON: I want to bring it up at sidebar.

THE COURT: Just a minute. I said sit-down and ask your question. He is not going to object. I am not going to rule on something I don't have to.

BY MR. JACKSON:

Q. Officer Chinn, do you recall this question and answer?

Did you see Officer Faulkner there when you arrived?

This is on 12/9/81.

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Further-Redirect-Officer Chinn

No, he had already been taken to the hospital along with the suspect.

Do you recall that question and answer?

A. Yes.

Q. What suspect?

A. (Pause) I had thought they had a suspect. So, I thought he was taken to the hospital for identification.

Q. Are these three different people you are talking about in the testimony that you have given?

A. No. Two.

Q. Was he a suspect in the shooting or a suspect in the Volkswagen? What suspect are you referring to?

A. The suspect in the shooting.

MR. JACKSON: No further questions.

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OFFICER CHINN-FURTHER RE-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Officer, again, that was a mistake, was it

**PLEASE NOTE: Page 96 is missing. It appears to be a mistake as the content is continuous.**

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Further-Redirect-Officer Chinn

not?

A. Yes, it was.

MR. MCGILL: Thank you very much.

- - -

(WITNESS EXCUSED)

- - -

MR. JACKSON: Your Honor, could we have a recess at this time?

THE COURT: We will recess at this time.

(At this time court was recessed and the following is in chambers with both counsel present.)

MR. JACKSON: Your Honor, for the record, with regard to Debbie Kordansky, the witness that we spoke to you about earlier, Mr. McGill was gracious enough to have Detective William Thomas, as well as Detective Morton contact her by phone. Detective Morton was the detective who originally interviewed her on December the 9th, 1981.

She indicated to both Detective

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Thomas and Detective Morton substantially the very same thing she said to me, that she was ill and injured and could not appear in court.

Because both of the detectives, as well as myself, did not receive her address we have only the phone number. I am unable to effectuate a subpoena. Based on the statement that I have, a copy that the Commonwealth made available to me, I cannot in good conscience determine that, in fact, she would be a hostile witness.

Indeed, based on the statement as it is here there is some reason for me to believe that indeed she might be a beneficial witness to the defense.

At this point I am not at all sure how I would go about securing the presence of the witness. I would just suggest that even though I only asked the Commonwealth yesterday for the address of the witness that, indeed, if

I had the address of the witness when I asked for it earlier, which is perhaps

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several months ago before Judge Ribner, at that time I might have been in a position to, number one, interview the witness myself and/or maintain some contact with the witness so I could have her in court.

I think at this juncture given the circumstances as I have just described I think the defense is being compromised and for that reason I would, in the absence of having her brought into court somehow, I would ask the court for some sort of instruction to the jury that the Commonwealth had access to this witness and did not provide us with her address until requested yesterday, which was the 29th. That the Commonwealth did have contact with her when I made the request for her address along with all of their witnesses and it should have been provided to me then so that the present circumstances we have before us would not be here.

If I had a chance to interview her before I would have been able to find

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out precisely what her testimony would be. But, again, the precise testimony that I think is pertinent and relevant is the last sentence of her statement. "I saw a male running on the south-side of Locust Street."

The sequence in the statement itself suggests arguably, that the person could have ran away after the police and all arrived. However, I have no way of verifying the sequence of events that have been described in the statement.

MR. MCGILL: In response, it is the practice in most homicide cases, particularly one of this nature, where there was some reason, however justified, that there maybe problems with witnesses because of the emotion generated by this incident the addresses were not made known to the public. At least through our office. Judge Ribner in a hearing made the determination and it is also his practice to prevent witnesses and addresses to be known, to be made known to the public or to defense counsel

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The arrangement that Judge Ribner made was that he would have me contact those witnesses that Mr. Jackson felt appropriate for his defense and see if they wished to be interviewed and if they were I would give Mr.

Jackson their phone numbers and if they didn't mind their addresses.

I did that.

At no time was this particular woman on that list. The list he gives me really was a verbal list. He told me that the people he would call were the police, Dessie Hightower and Robert Pickford, which I attempted to find. I found Dessie Hightower and told him what I believe Dessie Hightower told me.

To make a long story short, it was a rule of the court that we not do that. It was an order of the court. I believe for valid reasons.

However, I mentioned to Mr. Jackson at anytime that he did wish to see a witness I would, to the best of my ability, make that

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witness available.

I also told him, as I did this morning, that we cannot guarantee cooperation.

I will make this known to the court, that there have been witnesses who have not cooperated with me at all that I have attempted to bring in who will not come in under threat of going to jail. So, I have had bad experiences also with the inability of getting witnesses to cooperate.

So, as far as instructions are concerned, it would be completely inappropriate for an instruction. I never really heard that kind of instruction and it would not be appropriate for this case at all. Unless Your Honor thinks there is a basis for it I will continue arguing.

THE COURT: I think the only thing that you might be able to do would be, knowing the phone number, the police might be able to get the address and go there and maybe bring her in for Mr. Jackson to talk to.

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MR. MCGILL: Mr. Jackson already mentioned that we have had two individuals that have attempted to get in touch with her. We will continue to try and get the address through a phone number. I don't know whether we will be successful.

THE COURT: I am just throwing that out as a suggestion.

MR. MCGILL: I made that suggestion. I want you to know I have talked to both of them and I might point out since Mr. Jackson mentioned that this witness apparently is very aggressive and biased because of the incident that happened to her, I think Mr. Jackson said she was raped by a black person, I had both a black person as well as a white person call her up.

Now, I don't know whether she knew that, but at any rate both people received a pretty, a pretty arrogant reply, particularly Thomas, saying that she made herself very clear to the defense, or to that man, or something to that effect, and there was no

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way that she was going to come in. She was injured and didn't want to do it and couldn't and that sort of thing.

So, we are getting no cooperation at all, but we will continue to try.

MR. JACKSON: With regard to Veronica Jones, Your Honor, Your Honor has already indicated that I should not be permitted to bring in the detectives who took her previous statements, so I could not indicate that, indeed, she has given a statement.

My purpose in bringing on the detective --- I don't have his name right now --- that would be to, number one, show that, in fact, she has previously given another statement. Although I have read from the statement, what purports to be her statement, she has --- in fact, she says she has not made that statement. So, in the minds of the jury I could just as well be reading from a piece of paper that I have written on.

So, I would like to renew my

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request to have the detective come in and testify with regard to the statement that he took.

I would point Your Honor to the case of Commonwealth versus Hamm. The essence of that holding would be that a witness maybe impeached with proof that on a pervious occasion he made a statement inconsistent with his present testimony. As well as by the testimony of other witnesses whose version of the facts differs from that of the witness being impeached.

The Commonwealth versus Hamm case goes onto cite a number of other

cases, citing the very same legal proposition.

I could cite those cases for you.

Again, it is my understanding that I have to present proof that, in fact, she made a prior inconsistent statement. I have no proof she made a prior inconsistent statement and for that reason I think I have to have the detective to prove she made a prior inconsistent statement.

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This is just for Your Honor's convenience and consideration, the case that overruled Commonwealth versus ---

THE COURT: (Interposing) Let's do one thing at a time.

MR. JACKSON: I cite Your Honor to Commonwealth versus Waller, which is reported in Pennsylvania Superior Court 444, A Second, 653; which specifically overrules Commonwealth versus Lord. I don't know if anything in that case specifically speaks on the point that I am addressing other than whether or not it is to be used as substantive evidence.

I agree with Your Honor and counsel the prior statement could not be used as substantive evidence, but I still say that I need the detective to prove that there was a prior inconsistent statement.

THE COURT: It seems they are saying that the prior inconsistent testimony which is used for the purpose of impeachment could not be used for substantive evidence. However, the responses of that witness

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concerning these prior statements could be used as substantive evidence. In other words, whatever they are saying on the stand.

MR. MCGILL: In response to the point raised by Mr. Jackson I would oppose, and I have talked to our Appeals Division about this, I would oppose bringing the detective in.

There are two reasons for that, Your Honor. The primary reason is that this witness was a defense witness. So, everything that Mr. Jackson says in reference to prior inconsistent statements maybe accurate, but only as refers to the inconsistent statement of the Commonwealth witness and not his own, because he is not permitted to impeach his own witness as a general rule.

Specifically when he pleads surprise and Your Honor in a very limited area permitted cross-examination. Now, cross-examination is one thing that is permitted in reference to a plea of surprise. It is suppose to be limited to a very specific area and not beyond.

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Your Honor permitted him to cross-examine on a substantial portion of the statement which he felt was positive to his position. He cannot with his own witness bring in a detective or anyone who took the statement to have it read for the purposes of placing on the record a prior inconsistent statement, because it is his own witness. Particularly since Waller would knockout the substantive evidence.

That leaves impeachment and you are unable to impeach with a prior inconsistent statement, through a detective, your own witness.

Secondly, it emphasizes this testimony and the real testimony was her testimony of record of what she said she observed.

I may not feel and I don't know whether Mr. Jackson feels, but I personally may not feel too happy about her testimony one way or the other. However, the fact of having a detective come in you will have a

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detective actually walking in and testifying to an inconsistent statement, alleged inconsistent statement, which he is not permitted to use for his own witness and thereby emphasizing that which is not real evidence, which is the inconsistent statement. The real evidence is what she testified to. Also, Lord is no longer effective. So, I would oppose vehemently that detective.

Lastly, the third reason, she had effectively adopted a portion of that statement in the questioning by Mr. Jackson. She adopted a portion of the statement that I pointed out about Officer Faulkner's prior help of her. There were other answers to questions that she adopted during the course of Mr. Jackson's questioning and it turned out to be cross-examination of his own witness. One portion was the first long statement that she read. She did not deny all of that. She said a portion of it she denied. She didn't mention Charlie Smith. Not Charlie Smith. Candy. That was one

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she never mentioned. She adopted a portion and did not adopt another portion.

The jury is clearly aware, as well as the newspaper I might point out, the jury is well aware that there was something said before, because she has partially adopted it. That is a further reason why there would be no basis at this time for him to introduce a prior inconsistent statement for his own witness.

MR. JACKSON: Very briefly, Your Honor.

I concede the fact that she was brought up and presented as my own witness. Obviously, again, Your Honor, you have in my view properly ruled that I can plead surprise with regard to specific statements. That is whether she saw two men run from the scene or not. As to that issue I was permitted to cross-examine her and I must, in fact, present proof that there was a prior inconsistent statement.

THE COURT: I think the proof is

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she signed the statement.

MR. JACKSON: It hasn't been introduced as evidence. That would not be proof.

THE COURT: It wouldn't go out with the jury anyway.

MR. JACKSON: It is not proof, Judge. She says she did not sign the statement if you will recall.

MR. MCGILL: She signed once.

MR. JACKSON: That is why I have to have proof. Your Honor knows that you give a number of instructions to the jury and ---

THE COURT: (Interposing ) I am not going to talk about individual witnesses. I don't do that. I will just say "If the jury concludes that any witness on a prior occasion gave inconsistent statements" then I will go into the charge, but that is all I am going to say. It is up to them. They heard the evidence and they know which ones are inconsistent and they know which ones

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they are going to believe.

MR. JACKSON: The problem is, the law requires that I present proof.

THE COURT: As far as I am concerned you have presented proof. It is just whether or not they believe it.

MR. JACKSON: With all due respect, as far as you are concerned I presented proof? I don't see how. All I have done was read questions from it.

THE COURT: Suppose the witness said, "I don't remember"?

MR. JACKSON: She didn't.

THE COURT: The witness says, "I don't remember." It is something that they don't remember.

MR. JACKSON: It is not inconsistent. What I am saying in this specific area and the case again of Commonwealth versus Hamm says that the witness maybe impeached with proof. I have to provide that proof. I must be given the opportunity to present proof that there was indeed a prior

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inconsistent statement.

MR. MCGILL: The reason why this is improper, first of all, is that he can't impeach his own witness through an inconsistent statement. That deals with the Commonwealth witnesses.

Your Honor, what I am saying in reference to this is let us face reality, they know since they have been talking about statements throughout this entire event, if it were correct, which it isn't, even if Mr. Jackson were correct, they know very well there are statements made by witnesses to police as everyone testified and everyone has been cross-examined on statements. She has adopted a portion of it and just lied about the rest. Okay. The jury is well aware of what it is. Now, this is the problem. By putting this witness on to read that statement, which has already been partially adopted on cross-examination or direct examination is to make it in the jury's mind substantive evidence and it puts unneeded

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emphasis on an area that shouldn't be before them anyway. So, I would object.

MR. JACKSON: I am saying the case holds that I must present proof,

Your Honor.

THE COURT: I think you can argue that to the jury.

MR. JACKSON: That is the law, Judge.

THE COURT: You can argue she is inconsistent and that she said certain things you can argue that to them. I don't care.

MR. JACKSON: You are not giving me the opportunity to present the proof that the law requires. I don't understand.

THE COURT: We don't have to prove every witness is a liar on the stand. That is what you are doing. You are getting away from the crux in this case. We are beginning to try every witness in this case. You are getting far a field.

MR. JACKSON: The case says I

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must present proof. Fine.

MR. MCGILL: My next point is character witnesses, which is the primary issue of why we are back here. This is the general rule of cross examining character witnesses, or one of the general rules. It would be that you are able to cross-examine a character witness on the sources of his information. In other words, to determine the competency of his sources, the competency of the areas from which he received this information as to reputation, because the reason why is that the law cannot --- the law does not allow specific good acts to be admissible as part of reputation evidence. Granted that has been done in the direct examination. However, the law does not permit that. Inasmuch as these are sources from which he has received I could ask him questions of who did you talk to and how many people and so forth. Part of that type of cross-examination would be of these people that you talked to, and this is how

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it would have to be phrased, did they tell you that they had heard the Defendant saying --- and then the particular area.

THE COURT: Do you have a case on that?

MR. MCGILL: Well, Judge, if you agree with me that it is the general rule

---

THE COURT: (Interposing) You can cross-examine as to what people you talked to and how many people and were they in the neighborhood, or did you talk to people that live out of the county in reference to his reputation.

Do you see what I am talking about? That part I think is, right. You are going to specific acts or things that the Defendant did.

MR. MCGILL: I am going into the source; not what he did. What he said. That is important.

MR. JACKSON: It is an act.

THE COURT: It is an act.

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MR. JACKSON: It is a specific act.

THE COURT: Suppose he had shot a gun?

MR. MCGILL: Where do they get their information.

THE COURT: Suppose he shot at somebody. That is an act. The same thing as if he had verbally said something.

MR. MCGILL: The fact is this is also published.

THE COURT: I know that.

MR. MCGILL: He is stating this to a reporter. So, he is then making it public and that public part of it is the hearsay aspect which makes or breaks reputation. That is why it normally would not be admissible, because you are talking about something that is not direct and it is. So, this public information that is surrounding the area the question would be had you heard from these individuals that this Defendant had said this and their answer

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would be yes or no? If you had heard it, or if you did hear it how would that affect --- what affect would that have on your opinion or testimony as to reputation.

The case I have, Judge, is Commonwealth versus Turvilon. It speaks to a

general rule. This Turvilon deals with rebuttal evidence that was used of a prior extra judicial statement made by the Defendant that statement was not really specifically relevant to the case in chief, it had to do with something else, but what it had to do with was proof that the Defendant was not where he said he was.

As a general rule voluntary extra judicial statements may be used against the Defendant although they contain no admission of guilt. These extra judicial statements which differ from confessions which do not acknowledge all essential elements of the crime are generally considered qualified for introduction into evidence under the exception to then hearsay rule. It

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doesn't have to be an admission of guilt. Any kind of statement. In this case the Turvilon prior statement might properly have been received as part of the case in chief, but this fact does not necessarily exclude its use in rebuttal. Evidence is admissible in rebuttal to contradict that offered by the Defendant or his witnesses even though by doing so the Commonwealth supplies previous omissions from its case in chief. That is a general statement.

The point here is that you can use his admissions. I can use his admissions to test the competency of the sources of those character witnesses who offer him as a peaceful and law-abiding citizen, because their only sources could be hearsay and their only sources are what they hear.

THE COURT: Won't that be by way of rebuttal?

MR. MCGILL: It is cross-examination first to see if it would or would not affect their opinion.

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THE COURT: Would that be through your own witness?

MR. MCGILL: That is one way of doing it.

THE COURT: It might be the only way of doing it.

MR. JACKSON: May I suggest, Your Honor, that, in fact, that the courts just recently specifically indicated and specifically limited the area where the prosecution may cross-examine or attempt to impeach character testimony. That is why there is a greater use now of, I guess, rebuttal

character witnesses, or bad character witnesses.

For the Commonwealth to be able to introduce statements of prior admissions, whatever they are, of the Defendant that would be allowing them to introduce collateral statements that they could not get in any other way. So, they are going to use the bootstrap and say we can't get it in any other way and we are going to try to

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get it in this way.

Again, it is my understanding from another case that I believe is analogous what he is doing is introducing a collateral issue. If Mr. Jamal had said, "The only way we can obtain justice is at the end of a barrel of a gun" and he cannot get that statement in any other way then what he purports to do through character witnesses is to say, "Did you ever hear him say that?" Whether he said it or not it would be a specific act which he is precluded from questioning a prospective witness about. Because he speaks it as opposed to acting it out it is still an act if, in fact, he said it. He is not permitted to question him on particular acts or particular activities.

Your Honor has already indicated with respect to arrests and I suggest to you that any act or action on the part of the Defendant would be consistent with an arrest and that unless there is something implicit in what he has said or spoken

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that says he has got a bad reputation then he just can't say, "Well, because he says that, that means he has got a bad reputation." That is what he is trying to say. That there is something in and of these words that suggest that he has got a bad reputation.

I think again --- I am quoting now from Wharton's criminal evidence section 471, a witness may be impeached by evidence impugning his character or reputation for truth and veracity. Evidence of particular acts or of particular facts though tending to show untruthfulness is not admissible for this purpose.

I think that is what he is trying to do. They are specific acts. He can't impeach them.

MR. MCGILL: You don't determine the competency of sources solely by rebuttal. They may well answer, "Yes, I did hear that and I don't believe

that."

THE COURT: I think when you are questioning their sources you are

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questioning whether or not they have talked to other people. That is what the reputation is. It is no specific things that they do. In other words, did they talk to people in the neighborhood, or do they live so far away from him that they talked to people in their own neighborhood who wouldn't even know him. That would go to discredit what they are saying about reputation. In other words, it is not an individual's feeling. In other words, I can't say I think he has got a good reputation because I have talked to him and I like him and he has been good to me all along. That is not important. It is what other people in that so-called community where he evidently lived.

MR. MCGILL: Had they heard this or read it?

THE COURT: It is nothing specific. You can bring in reputation witnesses all you want in rebuttal. I don't know why you are worried about reputation one way or the other. That

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is not going to save this man. It is what they believe happened on that night. That is the issue.

MR. MCGILL: You have ruled. I have made my point and Your Honor ruled against me.

THE COURT: Show me where it says it and you can do it.

MR. MCGILL: It says you can use extra judicial statements of a Defendant for any purpose.

THE COURT: In that case he put on an alibi that he was in a certain place. You can put somebody on to say, "No, he was at such-and-such a place at that time." Sure you can do that. There is nothing wrong with that.

MR. MCGILL: It doesn't say it is limited to that, Judge.

THE COURT: That is what that case stands for.

If it had not been for that most recent decision of the Supreme Court that

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overruled all other cases on reputation evidence I would have agreed, but that case was so far reaching that to me to allow such a thing like that to enter might jeopardize the whole case and to me I don't even think it would be worthwhile.

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(At this time the discussion in chambers was concluded and court was reconvened at 3:05 p.m.)

- - -

(JURY PRESENT)

- - -

MR. JACKSON: The defense would call Dell Jones.

DELL JONES, having been duly sworn, was examined and testified as follows:

DELL JONES-DIRECT EXAMINATION

BY MR. JACKSON:

Q. Mr. Jones, what is your occupation?

A. I am a journalist with the New Observer.

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Direct-D. Jones

Q. How long have you been a journalist?

A. For the last about eight years.

Q. Do you know Mumia Abu-Jamal?

A. Yes, I do.

Q. How long have you known him?

A. About six years.

Q. Would you tell us how it is that you have come to know him?

A. Well, he was at WDAS and I was there as a volunteer in the Public Service Department and we worked together.

Q. Mr. Jones, do you know other people who know Mr. Jamal?

A. Yes, I do.

Q. Have you had occasion to discuss his reputation with other people?

A. Yes, I have.

Q. Among those other people that you know who know Mr. Jamal what was his reputation for being a peaceful and law-abiding citizen?

What is his reputation for being a peaceful and law-abiding citizen?

A. It is definitely excellent.

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Cross-D. Jones

MR. JACKSON: Thank you. You may cross-examine.

- - -

DELL JONES-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. What is your definition, sir, of law-abiding citizen?

MR. JACKSON: Objection. It is a legal conclusion.

MR. MCGILL: I would like to know what he means by law-abiding. He has testified to it.

THE COURT: All right. I will let him answer if he can.

A. Well, to me a law-abiding citizen is a person who struggles to right

wrongs within the context of the given rules of society.

BY MR. MCGILL:

Q. So then, it would be necessary for him or her to work within the rules of society, is that correct?

A. I suppose.

Q. So, if you had heard any kind of information

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Cross-D. Jones

that would suggest that an individual does not of his own choosing work within the rules of that civilization, or of that society, would you not change your opinion as to his reputation, sir?

A. Not necessarily. I would have to know more.

Q. In other words, are you saying then, sir ---

MR. JACKSON: (Interposing) I will object. Are we talking about Mr. Jamal or a hypothetical?

MR. MCGILL: Obviously I am talking about him. We are now talking about the sources of information of what he testified to. That is all.

BY MR. MCGILL:

Q. Are you saying, sir, that the word "motive," the fact of motive as a matter of fact may well change whether or not someone in your view is law-abiding if he does not choose to work within the rules of society?

MR. JACKSON: Now I am going to object.

THE WITNESS: Can you repeat the question?

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Cross-D. Jones

MR. JACKSON: He is talking about somebody else, Judge. Mr. Jamal is the only Defendant in this case.

MR. MCGILL: I believe we are not talking about specifics now. We have to stay with the hearsay reputation evidence.

THE COURT: Go-ahead and rephrase it.

BY MR. MCGILL:

Q. You stated, sir, as I understand, and you correct me if I am wrong, that in determining what a law-abiding citizen is, that this individual should right wrongs within the rules of that society, I asked you if an individual, if an individual, decides to act in a way outside of the rules of that society would that in anyway change your opinion as to his reputation for being law-abiding. Did I not ask you that?

A. (Indicating yes)

Q. And did you not say it would determine, I think you said, it would depend upon his motive? Didn't you say that?

A. I would have to say that as long as the

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Cross-D. Jones

system stayed within the law-abiding rules that they laid down.

Q. Okay. So then it would be important for the system to stay within the rules that they the system lay down, is that correct, or do you mean they the individual lay down?

A. That the system lay down.

Q. All right. Then again, sir, wouldn't it also be accurate to say that if the rules of the system are within the rules ---

MR. JACKSON: (Interposing) Can we see you at sidebar?

(The following is a sidebar discussion with both counsel present.)

MR. JACKSON: I object. This is all very interesting, but this philosophical discussion on the rights and wrongs of society is irrelevant.

MR. MCGILL: That is what he said. I didn't say law-abiding.

THE COURT: You asked him what he meant by law-abiding and I thought

he was going to say whoever obeys the law. I

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Cross-D. Jones

didn't realize he was going to go into some philosophical dissertation.

MR. JACKSON: That is the point. It is not relevant.

THE COURT: I am talking about the witness when he answered the question. That is why I allowed the question.

MR. MCGILL: This is a relevant point.

THE COURT: I said initially I let you ask the question because I thought the witness was going to say a law-abiding citizen is somebody who obeys the law. That is it. He went beyond that and now you are trying to figure out what he means. That is all right. He can do that.

MR. MCGILL: It is extremely important for the jury to know, since I have been precluded from using sources of information which I know have been available to the public and published in newspapers which I have present before me.

THE COURT: I don't want to go

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Cross-D. Jones

into that.

MR. MCGILL: What I am trying to limit it to is to find out what he means.

THE COURT: You can find that out.

MR. JACKSON: I can come back and I can ask him what he means by every word that he has used.

THE COURT: He is only asking just as far as law-abiding. I am assuming we know what peaceful means.

MR. JACKSON: What you have opened the door for is what do you mean by law-abiding and he explains that and what do you mean by your

explanation. What does your explanation mean.

THE COURT: I mean somebody who obeys the law.

MR. JACKSON: What you are doing now is because he gave an explanation he wants him to explain his explanation. Now he is getting further.

THE COURT: No, because now he is saying it depends on the motive of the

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Cross-D. Jones

individual. What does he mean by that? I don't know.

MR. JACKSON: That was the second question. He is getting into him explaining his explanation.

THE COURT: That is the only way we are going to know what he means by peaceful and law-abiding. Just stay away from the article.

MR. MCGILL: I know that.

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(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. MCGILL:

Q. Now, I believe you said and you agreed that if the system would stay within the laws of the system. That is what you said?

A. Yes. I believe it is a two way street.

Q. Okay. So, I guess what I am asking you then is, if a person acts in a way, or you have heard that a person would act in a way in which the rules of that system are violated would you in anyway change

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Cross-D. Jones

your opinion as to his reputation?

MR. JACKSON: I object.

A. No. I am a reporter. I go by facts that I see and touch and that are tangible. I can't go by what people are saying.

MR. MCGILL: I have nothing further. Reputation evidence is all what people tell you. I would move to strike that testimony.

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DELL JONES-REDIRECT EXAMINATION

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BY MR. JACKSON:

Q. Mr. Jones, do you know Mr. Jamal to be a violent person?

A. No.

Q. You know him to be a law-abiding person?

A. Yes, I do.

Q. Which means you know that he obeys the law?

A. Yes, I do.

Q. Has anyone ever told you, any of the people that you know who know him, has anybody ever said he violated the law?

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Redirect-D. Jones

A. Definitely not.

Q. Did anybody ever say he was a violent person?

A. Definitely not.

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

DELL JONES-RE-CROSS-EXAMINATION

BY MR. MCGILL:

Q. You have said and counsel asked you specifically whether you know if the Defendant is a violent person.

MR. JACKSON: I object.

MR. MCGILL: Judge, he said that. I heard it clearly.

MR. JACKSON: I asked if he knows other people.

MR. MCGILL: You asked him specifically whether he knew whether the Defendant was a violent person.

THE COURT: Let's go to sidebar.

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(The following is a sidebar discussion with both counsel present.)

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Recross-D. Jones

MR. MCGILL: Do you know he obeys the law? Do you know that he is a law-abiding citizen? Two or three times he asked specifically do you know that, which opens up the newspaper article.

THE COURT: I don't think it opens it.

MR. MCGILL: Oh my God.

THE COURT: I am not going to allow you to go into that.

MR. MCGILL: He can do anything with his reputation and I can't go into it on cross-examination? When he opens the door I can move in, sir.

THE COURT: Mr. McGill, this jury is not going to decide this case, as I told you before, on his reputation.

MR. MCGILL: Then he can't ask the questions.

THE COURT: Bring in rebuttal witnesses. They can say that they know

him to be other than a law-abiding citizen.

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Recross-D. Jones

MR. MCGILL: You have permitted him to say individually that he knows him to be a law-abiding citizen. I can't cross-examine on that?

MR. JACKSON: Because of what you said in terms of making your speech, with regard to making your speech, I move for a mistrial. I specifically asked him with regard to what other people know.

MR. MCGILL: I am not restricted, Your Honor, from cross-examining when he opens the door to his specific knowledge of the person.

MR. JACKSON: There is no exception to the rule with regard to cross-examination with regard to specific and particular acts. They don't say, "except when" they say "never." There it is.

MR. MCGILL: That is completely wrong.

MR. JACKSON: I can read the law to you.

MR. MCGILL: I can't believe you,

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Recross-D. Jones

you are letting him do that without me cross-examining.

THE COURT: You are getting all excited about nothing.

MR. MCGILL: I maybe, Judge, but he opens the door and I should be able to walk in.

THE COURT: You are getting all excited about nothing. I don't think you should go into that area. I feel that it is too dangerous. I am not going to risk this whole trial based on that.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

MR. MCGILL: Consistent with the court's ruling I have no further questions.

MR. JACKSON: Thank you, Mr. Jones.

- - -

(WITNESS EXCUSED)

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MR. JACKSON: The defense would

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call John Skief.

- - -

(The following is a sidebar discussion with both counsel present.)

THE COURT: How many witnesses are you going to bring in?

MR. JACKSON: About five, sir, and about five more tomorrow.

THE COURT: Can't you stipulate to them?

MR. MCGILL: I am not going to stipulate right now. One or two is something else, but he comes up with five or ten. Give me a break?

THE COURT: I don't care how many he brings in.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

- - -

JOHN SKIEF, having been duly sworn, was examined and testified as follows:

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Direct-J. Skief

JOHN SKIEF-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Mr. Skief, what is your occupation?

A. I am a school teacher.

Q. And where do you teach?

A. I teach at West Philadelphia High, as well as the Detention Center and House of Corrections.

Q. Do you know Mr. Jamal?

A. Yes, I do.

Q. How long have you known him?

A. I have known him, I guess, over about five or six years now.

Q. Could you tell us how it is that you came to know him?

A. I came to know him through various community activities in terms of education. He has also covered stories involving my own school and institutions. And just working together basically in community activities.

Q. Do you know other people who know Mr. Jamal?

A. Yes, I do know many that know him.

Q. Among those people that you know who know

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Direct-J. Skief

Mr. Jamal, what is his reputation for being a peaceful and law-abiding citizen?

A. He has a very strong reputation for being a very good and sensitive journalist in terms of getting into a story.

MR. MCGILL: Objection. It is not responsive.

BY MR. JACKSON:

Q. Unfortunately you have to just speak to his reputation for being peaceful and non-violent, whether it is bad, good, excellent, or whatever. So, again, among those people that you know who know him, what is his reputation for being a peaceful and law-abiding citizen?

A. Well, everybody that I know that knows him that I know feels that he is a very --- I guess a law-abiding and peaceful person.

MR. JACKSON: Thank you, sir. You may cross-examine.

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JOHN SKIEF-CROSS-EXAMINATION

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Cross-J. Skief

BY MR. MCGILL:

Q. How far back did you know the Defendant?

A. I would say around six years. At least that time.

Q. You have stated that he is law-abiding. May I ask you what you mean by law-abiding, Sir?

MR. JACKSON: Objection.

THE COURT: I will let him answer that.

A. What I mean by law-abiding is simply operating within the confines of the law.

BY MR MCGILL:

Q. Is this the first time that you have been in this courtroom, sir, or have you been here anytime within the last month?

A. This is the first time I have been inside this courtroom.

Q. Have you heard anything at all about what has occurred in this last month?

MR. JACKSON: Your Honor, I object.

THE COURT: I will sustain the objection.

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Cross-J. Skief

BY MR. MCGILL:

Q. If you had heard from the sources of information that you said stated that he was, in fact, law-abiding that his actions were not in accordance with the law as it is in this Commonwealth would that change your reputation testimony?

MR. JACKSON: Objection. That requires the witness to know what is consistent with the laws of this Commonwealth.

THE COURT: Come over here.

- - -

(The following is a sidebar discussion with both counsel present)

MR. JACKSON: I would like to state the basis of my objection.

First of all I am specifically moving for a mistrial. Mr. McGill has been specifically directed by Your Honor with regard to the scope of his questioning of character and reputation witnesses. We had a discussion in conference and we had two sidebar conferences and Mr. McGill nevertheless is persisting on asking inappropriate and inadmissible questions.

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Cross-J. Skief

I would specifically ask Your Honor to rule for a mistrial.

MR. MCGILL: I am absolutely outraged that I have to face character

witnesses without the ability to cross-examine

.

THE COURT: I am sorry, Mr. McGill, but I don't make the law on that.

MR. JACKSON: He is blaming you.

MR. MCGILL: I am not.

THE COURT: As far as this case is concerned we have gone so far away from the crucial issue here of who killed this police officer on that day.

MR. MCGILL: This is relevant evidence. Reputation witnesses whether he likes it or not happens to be relevant evidence. Therefore, they should be appropriately cross-examined.

Your Honor, as far as I am concerned when he starts saying all these people are saying this and that about being law-abiding and I am unable to test their sources and

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#### Cross-J. Skief

determine ---

THE COURT: (Interposing) I am saying to you that you can go out and dig up people to come in and say he has a bad reputation.

MR. MCGILL: It is just like a doctor's opinion if the facts were different. I think I should have the opportunity to say if you heard from these people that he had not been ---

THE COURT: (Interposing) I told you to look up the law on this. I told you to look up the law over the recess.

MR. MCGILL: I did. Your Honor disagreed with my position.

THE COURT: I disagree with your position because I don't think it is right. You give the impression to the jury that it is so important and it is not.

MR. JACKSON: I am reading from the quick index. In the case of Commonwealth versus Kosh, 305, Pennsylvania 146, among other things,

the proposed testimony shows

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Cross-J. Skief

that the doctor was able to give an opinion which was negative only as to Barnes' truthfulness concerning his use of drugs. Not his general truthfulness or lack thereof. As with the cross-examination of Barnes himself as to the use of drugs such evidence would serve only to introduce a collateral issue into the trial. For that reason the trial court's refusal to permit Doctor Fignitto to testify was not error.

In that case what they are saying is that even though the Defendant may have lied about one specific act he could still say he has good reputation for truthfulness and whatever it is. You can't go to a specific act. Again, that is what he keeps trying to do.

MR. MCGILL: I do not agree, but I accept the court's ruling. What I am saying is I only ask the court to be sensitive to the wording of Mr. Jackson's questions in the future. When the door is open I think I should be able to walk in.

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Cross-J. Skief

THE COURT: All he is asking is from your discussions with the people in the community what is his reputation for being a peaceful and law-abiding citizen. I know it is the type of thing you can't cross-examine, but I don't make the law.

MR. JACKSON: That is what the law says.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

MR. MCGILL: I have no further questions.

MR. JACKSON: Thank you, Mr. Skief. No further questions.

(WITNESS EXCUSED)

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MR.JACKSON: The defense would call Viola Young.

- - -

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Direct-F. Shionesu

FALAI SHIONESU, having been duly sworn, was examined and testified as follows:

FALAI SHIONESU-DIRECT EXAMINATION

BY MR. JACKSON:

Q. Do you know Mumia Abu-Jamal?

A. Yes, I do.

Q. How long have you known him?

A. Approximately five years.

Q. Do you know other people who know him?

A. Certainly.

Q. Among those people that you know who know him, what is his reputation for being a peaceful and law-abiding citizen?

A. His reputation is beyond anything I can possibly say at this point. He is upheld in our community. He has always been from the time I have known him. He is a type of person who if there is an incident occurring he is the type of person that would help cool it out, because people respect him. He is the type of person who has done just that.

Brothers who are younger who may

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Direct-F. Shionesu

have seemed hostile on certain incidents he may have said words to then and they have removed themselves from whatever incident they may have

thought they wanted to get into.

Q. Your response is based on his reputation? That is his reputation?

A. Yes. I have worked with him as a colleague. I have formerly worked at radio station WKDU. I worked with him in our community.

MR. JACKSON: Thank you very much.

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FALAI SHIONESU-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. I believe you stated that if the Defendant observed an incident he would do whatever he could to what?

A. To possibly resolve the incident, or lessen it. You must understand Mr. Jamal is a journalist, which means often times he would be on the scene of perhaps a possible incident and, therefore, seeing that could perhaps interject a word by being

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Cross-F. Shionesu

in our community to some of those persons and would possibly lessen the incident.

Q. These people that you have spoken to in relation to Mr. Jamal, have you ever heard the term hostility or aggressiveness?

A. No.

MR. JACKSON: I object.

THE COURT: She said no.

MR. JACKSON: I understand that. I knew she would.

MR. MCGILL: Objection. Is he going to be the next character witness?

THE COURT: Come on.

BY MR. MCGILL:

Q. What is your definition of law-abiding?

MR. JACKSON: Objection.

THE COURT: I will let her answer.

A. Law-abiding applied to an intelligent person means to address the rules that are set-up for us, addressing themselves in such a way that we adhere to them, that we understand what those laws are and that we try out best to uphold those laws.

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Cross-F. Shionesu

BY MR. MCGILL:

Q. And if for any reason any of those individuals say things to you that would indicate that an individual would not be upholding or following those laws would that in anyway change your opinion?

MR. JACKSON: I am going to object, Your Honor.

THE COURT: I will let her answer.

A. My opinion is based on what the situation is and how I view it.

Now, often times someone may feel as though that a law is being broken, but I often see things that are not necessarily being done that are said to be done.

For example, I understand a person is supposedly innocent until proven guilty. So, when you address that question to me you have to be a lot clearer on exactly what you imply.

BY MR. MCGILL:

Q. I am sorry if I wasn't clear. If you would hear from these individuals that the individual would not be acting within those very laws that you think are important to follow ---

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Cross-F. Shionesu

A. (Interposing) Are we speaking of laws that are kind of stabilized and not flexible?

Q. The laws of the Commonwealth.

MR. JACKSON: May we see you at sidebar, Your Honor?

- - -

(The following is a sidebar discussion with both counsel present.)

MR. MCGILL: Nothing further, Judge.

THE COURT: Mr. Jackson, I think this witness here has left herself in a hole. You asked her a simple question and all she had to say is excellent, good or very good, and she goes into a dissertation that leaves the door wide open. Now she is hedging about what she means about law-abiding. She is saying if the rules are rigid and can't be changed then she doesn't agree with them.

MR. JACKSON: It is because she went onto explain what she meant by law-abiding. What he did was give a hypothetical about this and if this and if that. What is her opinion. Her opinion is not what has

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Cross-F. Shionesu

been asked, it is reputation.

THE COURT: Her opinion as to what she means of a law-abiding citizen.

MR. JACKSON: Her opinion is not relevant.

THE COURT: Yes it is, because she has given testimony to his reputation. You should tell these people about what they are suppose to be testifying to and don't blame anybody if they deviate from that.

MR. MCGILL: This one has gone way far a field.

MR. JACKSON: He is soliciting an opinion.

THE COURT: You did it.

MR. JACKSON: I did not.

THE COURT: You asked it and when she went into that long dissertation she left the door wide open.

MR. JACKSON: I asked if that was based on reputation and she said yes. Then Mr. McGill said if this and if that would your opinion change.

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Cross-F. Shionesu

THE COURT: That is right.

MR. JACKSON: Her opinion is not being tested, it is the reputation.

THE COURT: Her opinion, plus maybe others. Maybe he can rephrase the question.

MR. MCGILL: As far as you are concerned what is his reputation and if others say various things would that change your opinion?

MR. JACKSON: She is not asked what her opinion is.

THE COURT: It is hers together with others.

MR. JACKSON: It is reputation and not her opinion. He is saying would that change her opinion.

THE COURT: Ask her if she thinks that would change the opinions of the other people.

MR. JACKSON: How would she know?

MR. MCGILL: It is her opinion, Judge, it is not the others.

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Cross-F. Shionesu

It is hearsay information.

MR. JACKSON: I will get the rule on opinion.

THE COURT: I went over that. Let me say that she wouldn't come in here in the first place if she didn't have an opinion of her own, too, along with the other people.

MR. JACKSON: I can't ask her about her opinion and neither can he.

THE COURT: She brought it out.

MR. JACKSON: Not her opinion. She said based on the reputation.

THE COURT: You bring the people in.

MR. JACKSON: I am bringing them in.

THE COURT: She has gone into a long dissertation and she is leaving the door wide open.

MR. JACKSON: She is saying that is his reputation.

THE COURT: I don't care. How does

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Cross-F. Shionesu

she know that then?

MR. JACKSON: It is his reputation. He asked specifically would your opinion change.

THE COURT: I am telling you that you better watch how you put people on. When they open the door I can't hold him down.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

BY MR. MCGILL:

Q. Have you been in this courtroom at all the last month?

A. Yes, I have.

Q. Does your opinion remain the same?

A. Does my opinion remain the same?

Q. As to his reputation, the reputation of this Defendant for being peaceful and law-abiding?

A. Yes.

MR. MCGILL: No further questions.

MR. JACKSON: Thank you very much.

- - -

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(WITNESS EXCUSED)

- - -

MR. JACKSON: Can we see you at sidebar briefly without the stenographer?

- - -

(At this time there was a sidebar discussion  
with both counsel present off of the record.)

- - -

MR. JACKSON: Before presenting the balance of our character witnesses I would request that I be given the opportunity to present them tomorrow consistent with Your Honor's rulings? I believe Mr. McGill has a request of the court.

MR. MCGILL: Yes, Your Honor. I wonder if I may call out of turn a rebuttal witness who is here today. I would hate to have them wait until tomorrow. She has to go to work. It is just one witness and it will be brief. It is the custodian of records, Elizabeth Williams.

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Direct-E. Williams

THE COURT: Sure.

- - -

ELIZABETH WILLIAMS, Thomas Jefferson University Custodian of Records, having been duly sworn, was examined and testified as follows:

ELIZABETH WILLIAMS-DIRECT EXAMINATION

- - -

BY MR. MCGILL:

Q. Miss Williams, you are presently employed as the custodian of records, is that correct?

A. Yes.

Q. That is for Jefferson Hospital?

A. Yes.

Q. And as custodian of records are you familiar as to how the records are kept?

A. Yes.

Q. Are you also familiar with whether or not those particular entries are, in fact, made at or about the time that the actual action occurs?

A. Yes.

Q. Would you be able to identify records from Jefferson Hospital?

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Direct-E. Williams

A. Yes.

Q. As a matter of fact, you came today pursuant to the district attorney's subpoena for that purpose, is that correct?

A. Yes.

MR. MCGILL: Can the witness be shown C63?

BY MR. MCGILL:

Q. Miss Williams, will you please take a look at C63 and flip through this and I will ask you if you can identify that exhibit?

A. Yes.

Q. What is C63?

A. The admission records for a patient by the name of Mumia Abu-Jamal a-k-a Cook admitted to the hospital on December 9th, 1981 and discharged on December 16th, 1981.

MR. MCGILL: Thank you very much. Cross-examine.

MR. JACKSON: No questions.

- - -

(WITNESS EXCUSED)

- - -

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THE COURT: We will adjourn court until 9:30 tomorrow morning.

- - -

(PROCEEDINGS ADJOURNED)

- - -

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS

PHILADELPHIA COUNTY CRIMINAL TRIAL DIVISION

		January Session, 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Courtroom 253, City Hall

Philadelphia, Pennsylvania

July 1, 1982

Before: HONORABLE ALBERT F. SABO, JUDGE

(AND A JURY)

---

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney
- ANTHONY JACKSON, ESQUIRE  
Attorney for the Defendant

---

JOSEPH MASCIANTONIO, R.P.R

<u>DEFENDANT'S EVIDENCE</u>	<u>DE</u>	<u>CE</u>
Mark Brakeman	3	4
Helen Fraser	6	
Rita R. Smith	8	
Viola Young	10	11
Gloria Cheeks	13	14
Jerome Hunter	17	19
Akil Chionesu	20	21
Harold Baranoff	23	24
Robert Sanders	25	26

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(JURY PRESENT)

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MR. JACKSON: Your Honor, the defense would call Mark Brakeman.

---

MARK BRAKEMAN, having been duly sworn, was examined and testified as follows:

MARK BRAKEMAN-DIRECT EXAMINATION

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BY MR. JACKSON:

Q. Mr. Brakeman, what is your occupation?

A. I guess like unemployed, but I write on a regular basis for a community newspaper and do free-lance writing.

Q. Do you know Mr. Jamal?

A. Yes.

Q. Do you know other people who know Mr. Jamal?

A. Yes.

Q. Among those people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. I would say excellent.

Page 4.

Cross-M. Brakeman

MR. JACKSON: Thank you very much. I have no further questions.

- - -

MARK BRAKEMAN-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. How long have you known him?

A. I guess I first met him personally last summer, but I know him off and on since last May.

Q. Last May of 1981, is that correct?

A. Yes.

Q. He was arrested on December 9th, 1981, is that correct?

A. Yes.

MR. JACKSON: Objection.

THE COURT: Go onto the next question.

BY MR. MCGILL:

Q. Mr. Brakeman, your knowledge of the Defendant's reputation is primarily based on the length of time that you have known him?

A. Yes. Before I knew him personally it

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Cross-M. Brakeman

was --- I guess I knew about his reputation pretty much through the newspaper and other people in the newspaper. They spoke about him regularly.

Q. Now, would any of the sources of your information be newspapers?

A. Not through printed --- not through things he may have written.

Q. How about things that have been written about him, any of those newspapers at all that you may have read that would in any way form a source of information that would be what you base your testimony on?

MR. JACKSON: Objection.

THE COURT: I will let him answer that question.

A. No.

BY MR. MCGILL:

Q. Has anything at all happened since the time that you have known him, which is May of 1981, which would have changed your opinion that he is a peaceful, and, listen to the words, law-abiding citizen?

A. No.

MR. MCGILL: Thank you, sir.

Page 6.

Cross-M. Brakeman

MR. JACKSON: Thank you very much Mr. Brakeman.

---

(WITNESS EXCUSED)

---

MR. JACKSON: The defense would next call Helen Fraser.

HELEN FRASER, having affirmed, was examined and testified as follows:

HELEN FRASER-DIRECT EXAMINATION

- - -

BY MR. JACKSON: Good morning.

Q. Do you know Mumia Abu-Jamal?

A. Yes. I call myself his grandmother, because I am the grandmother of the world. Thank you.

Q. How long have you known him?

A. I have known him for approximately four or five years.

Q. How is it that you come to know him?

A. I have been very active in Philadelphia in

Page 7.

Direct-H. Fraser

any organization that is --- to overcome racism, because I think racism is the cancer of the soul in Philadelphia. I belonged to PUSH at one time. I was a member of the 19th Street Baptist Church where the pastor, Charles Walker, was first Philadelphia president of PUSH. I was active in all of the PUSH demonstrations and ---

MR. MCGILL: (Interposing) Your Honor, I respectfully object.

BY MR. JACKSON:

Q. Miss Fraser, could you tell us how is it that you came to know Mr. Jamal? Was it in your activities?

A. At the different activities, because he was a reporter. That is how I met him.

Q. Do you know other people who know Mr. Jamal?

A. Yes, I do.

Q. Among those people that you know who know him, what is his reputation for being a peaceful and law-abiding citizen?

A. His reputation is outstanding.

MR. JACKSON: Thank you very much.

You may cross-examine.

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MR. MCGILL: No questions.

---

(WITNESS EXCUSE)

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MR. JACKSON: I would next call Doctor Rita Smith.

---

RITA R. SMITH, having been duly sworn, was examined and testified as follows:

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MR. JACKSON: May we see you at sidebar for just a moment? We don't need the stenographer.

(At this time there was a sidebar discussion with both counsel present off of the record.)

---

RITA SMITH-DIRECT EXAMINATION

---

BY MR. JACKSON:

Q. Doctor Smith, what is your occupation?

A. I am a psychologist and assistant professor

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Direct-R. Smith

at Temple University.

Q. How long have you been so employed?

A. Eight years.

Q. Doctor Smith, do you know Mumia Abu-Jamal?

A. Yes, I do.

Q. How long have you known him?

A. About eight years.

Q. Could you tell us how it is that you have come to know him?

A. I came to know him because when I came to Philadelphia I got involved with various people in the media, because I am in like the Association of Black Psychologists, you know, doing press releases for the organization and I was involved with Drexel's video station and I got to meet people in the media and people who are involved in community organizations.

Q. Do you know other people who know Mr. Jamal?

A. Several.

Q. Among those people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. Excellent.

MR. JACKSON: Thank you.

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Direct-V. Young

You may cross-examine.

MR. MCGILL: No questions.

---

(WITNESS EXCUSED)

---

MR. JACKSON: Viola Young.

---

VIOLA YOUNG, having been duly sworn, was examined and testified as follows:

VIOLA YOUNG-DIRECT EXAMINATION

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BY MR. JACKSON:

Q. Miss Young, do you know Mumia Abu-Jamal?

A. Yes.

Q. For how long have you known him?

A. Approximately five and a half years.

Q. Could you tell us how it is that you came to know him?

A. I met him when I was a student at Drexel University. I work at WKD Radio.

Q. Do you know other people who know Mr. Jamal?

A. Yes.

Q. Among those people that you know who know

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Direct-V. Young

Mr. Jamal what is his reputation for being a peaceful and law-abiding

citizen?

A. I would say they would say he was a peaceful, law-abiding citizen.

MR. JACKSON: Thank you very much. Cross-examine.

---

VIOLA YOUNG-CROSS-EXAMINATION

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BY MR. MCGILL:

Q. Miss Young, in your sources of your information concerning the Defendant's reputation would they also include newspapers that have written stories about him?

A. Newspapers?

Q. Newspaper articles, or authors, or, excuse me, newspaper reporters in various news media?

A. Yes.

Q. And do you occasionally --- would you listen to or read some of these articles which would quote what the Defendant would say in those articles?

MR. JACKSON: Objection. Your Honor, the question is posed "Does she know other people who know him?"

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Cross-V. Young

MR. MCGILL: It goes to her sources.

MR. JACKSON: Objection, Your Honor.

THE COURT: I will sustain the objection. Go to the other sources first.

BY MR. MCGILL:

Q. What are the sources of your information?

A. Other students who work at WKD Radio and presently people who are now news reporters.

Q. You did mention sometimes there are newspaper articles that you might have read about the Defendant, did you not?

MR. JACKSON: Objection.

THE COURT: I will sustain the objection.

BY MR. MCGILL:

Q. Have you ever heard him quoted as saying things?

MR. JACKSON: Objection.

THE COURT: Sustained.

BY MR. MCGILL:

Q. Have you ever heard others who have read or heard or been near him when he has made statements about

Page 13.

#### Cross-V. Young

his positions on matters?

MR. JACKSON: Objection.

THE COURT: Sustained.

BY MR. MCGILL:

Q. Do any of your sources include information which he has made known during the course of his lifetime regarding his particular feelings on subjects?

MR. JACKSON: Objection.

THE COURT: Sustained.

MR. MCGILL: No further questions.

MR. JACKSON: Thank you very much.

---

(WITNESS EXCUSED)

---

MR. JACKSON: Gloria Cheeks.

---

GLORIA CHEEKS, having affirmed, was examined and testified as follows:

GLORIA CHEEKS - DIRECT EXAMINATION

---

BY MR. JACKSON:

Q. Miss Cheeks, do you know Mumia Abu-Jamal?

A. Yes, I do.

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Direct-G. Cheeks

Q. For how long have you known him?

A. About four or five years. Quite awhile.

Q. Could you tell us how it is you came to know him?

A. Through the community. Him being a community activist and me attending meetings.

Q. Do you know other people who know Mr. Jamal?

A. Oh, hundreds of people.

Q. Among those people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. Excellent.

MR. JACKSON: Thank you. Cross-examine.

---

GLORIA CHEEKS-CROSS-EXAMINATION

---

BY MR. MCGILL:

Q. Miss Cheeks, the people that know this Defendant would they include Asil Moore that you may have talked to?

MR. JACKSON: Objection, Your Honor. As to specific names.

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Cross-G. Cheeks

MR. MCGILL: It is a source of information.

THE COURT: I don't know where he is going. Go-ahead.

A. I don't know him.

BY MR. MCGILL:

Q. Have you ever spoken to Judge Ribner, or Justice McDermott about the Defendant's reputation?

MR. JACKSON: Objection.

THE COURT: Sustained.

MR. JACKSON: May we have a sidebar, please? Never mind.

MR. MCGILL: Mr. Jackson thinks that is amusing.

THE COURT: I ruled. Come on.

MR. MCGILL: I would ask if this witness would review ---

MR. JACKSON: (Interposing) May we see you at sidebar?

(The following is a sidebar discussion with both counsel present.)

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Cross-G. Cheeks

MR. MCGILL: I emphatically object to the way I have been restricted on cross-examination.

THE COURT: I can't help it. What do Judge Ribner and Justice McDermott have to do with this case?

MR. MCGILL: I would like to develop from these witnesses their sources of information, how long it has been and has anything changed over a period of time.

THE COURT: Fine. You can go to their sources.

MR. MCGILL: As soon as they go to the source --

THE COURT: (Interposing) Why did you pick out Judge Ribner and Justice McDermott? What do they have to do with this?

MR. MCGILL: I want to see whether these notes of testimony would change her opinion. He cannot get all this in, Judge.

THE COURT: I don't care how many character witnesses he has.

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Cross-G. Cheeks

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

MR. MCGILL: No questions.

MR. JACKSON: Thank you very much Miss Cheeks.

- - -

(WITNESS EXCUSED)

- - -

MR. JACKSON: Jerome Hunter.

- - -

JEROME HUNTER, having been duly sworn, was examined and testified as follows:

JEROME HUNTER-DIRECT EXAMINATION

- - -

BY MR. JACKSON:

Q. Good morning, Mr. Hunter. Mr. Hunter, do you know Mumia Abu-Jamal?

A. Yes, I do.

Q. How long have you known him?

A. I have known Mumia for say a year and a half.

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Direct-J. Hunter

Q. What is your occupation, sir?

A. I do public relations for the Nation of Islam under the direction of Brother Louis Farkon.

Q. Tell us how it is that you came to know Mr. Jamal?

A. At the time Mr. Jamal was the president of ABJ, which is the Alliance of Black Journalists. ABJ was wanting to get Brother Farkon to speak to them and he came to me asking if I could get in touch with Brother Farkon so maybe they could come together and he could speak to them.

Q. Do you know other people who know Mr. Jamal?

A. Yes.

Q. Among those other people that you know who know Mr. Jamal what

is his reputation for being a peaceful and law-abiding citizen?

A. Okay. That is his reputation. A peaceful and law-abiding citizen.

From, you know, talking to people about Jamal, because as a result of getting in touch with me I wanted to know more about Brother Jamal and that was all that they had told me of him, that he was a peaceful and law-abiding citizen.

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Cross-J. Hunter

MR. JACKSON: Thank you very much. Cross-examine.

- - -

JEROME HUNTER-CROSS-EXAMINATION

- - -

BY MR. MCGILL:

Q. Sir, in your attempts to find out more about this Defendant did you have occasion to ask people about various statements he had made over the course of his life?

MR. JACKSON: Objection.

A. No, sir.

THE COURT: I will let him answer that.

BY MR. MCGILL:

Q. You are unfamiliar then with any kind of published statements he made about anything at all about his beliefs or about his feelings on certain issues?

MR. JACKSON: Objection.

THE COURT: Sustained.

BY MR. MCGILL:

Q. Has anybody told you anything about things

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Cross-J. Hunter

that he has said in the past and organizations he has been associated with?

MR. JACKSON: Objection.

THE COURT: I will sustain the objection.

MR. MCGILL: Nothing further.

MR. JACKSON: Thank you very much.

---

(WITNESS EXCUSED)

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MR. JACKSON: Akil Chionesu.

---

AKIL CHIONESU, having been duly sworn, was examined and testified as follows:

AKIL CHIONESU-DIRECT EXAMINATION

---

BY MR. JACKSON:

Q. Good morning, sir. Do you know Mr. Jamal?

A. Yes, sir, I do.

Q. How long have you known him?

A. Roughly four years.

Q. And could you tell us how it is you came to

Page 21.

Direct-A. Chionesu

know him?

A. Well, initially I met Mr. Jamal through program activities we had at the center. I work with the African Community Learning Center in North Philly and through that time I have come to know him. As a matter of fact, he serves on our Board of Directors.

Q. Do you know other people who know Mr. Jamal?

A. Yes, I do.

Q. Among those other people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. His reputation is outstanding.

MR. JACKSON: Thank you very much. Cross-examine.

---

AKIL CHIONESU-CROSS-EXAMINATION

---

BY MR. MCGILL:

Q. Any of your sources of his reputation would they include statements that he made in the news media during the course of his life?

MR. JACKSON: Objection.

THE COURT: I will let him answer

Page 22.

Cross-A. Chionesu

that question.

THE WITNESS: Repeat the questions please?

BY MR. MCGILL:

Q. Any of the sources of information that you had inquired into in determining whether or not what his reputation was, the sources that you would talk to in order to find out what his reputation was, did they include some periodicals or individuals that may have said certain things that he said in the past?

A. No.

Q. Or about organizations that he had been associated with?

A. No.

Q. Do you recall at anytime hearing from anybody --

MR. JACKSON: (Interposing) Your Honor, I am going to object.

THE COURT: I will sustain the objection. He said no.

MR. MCGILL: Thank you, sir.

MR. JACKSON: No further questions.

---

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Direct-H. Baranoff

(WITNESS EXCUSED)

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MR. JACKSON: Harold Baranoff.

---

HAROLD BARANOFF, having affirmed, was examined and testified as follows:

HAROLD BARANOFF-DIRECT EXAMINATION

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BY MR. JACKSON:

Q. Mr. Baranoff, do you know Mumia Abu-Jamal?

A. Yes.

Q. How long have you known him?

A. Over a year.

Q. And how is it that you came to know him?

A. Well, working with community newspaper and being up in our office.

Q. Do you know other people who know him?

A. Yes.

Q. Among those other people that you know who know him what is his reputation for being a peaceful and law-abiding citizen?

A. His reputation has always been peaceful and consistently working for justice.

MR. JACKSON: Thank you, sir.

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Cross-H. Baranoff

---

HAROLD BARANOFF-CROSS-EXAMINATION

---

BY MR. MCGILL:

Q. You said he has always had a peaceful reputation?

A. As far as I know Mumia and everyone I know always has spoken well of him.

Q. And have you at all accumulated any sources of information in reference to activities in the past and comments that he may have made?

MR. JACKSON: Objection.

THE COURT: I will let him answer that question.

THE WITNESS: Excuse me?

BY MR. MCGILL:

Q. Did you use any sources of your information in order to reach ---  
excuse me. In order to testify as you have, did you use any kind of  
newspaper articles or any kind of periodicals or any kind of information  
from others about certain things he has said?

A. I am speaking only from people that I know.

Q. Okay. Did they tell you about things he said,

Page 25.

Cross-H. Baranoff

organizations that he was associated with in the past?

MR. JACKSON: Objection.

THE COURT: I will sustain the objection.

MR. MCGILL: Nothing further. Thank you.

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(WITNESS EXCUSED)

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MR. JACKSON: Robert Sanders.

MR. MCGILL: This is another list?

MR. JACKSON: It is one from yesterday.

---

(At this time both counsel conferred off of the record.)

---

ROBERT SANDERS, having been duly sworn, was examined and testified as follows:

ROBERT SANDERS-DIRECT EXAMINATION

BY MR. JACKSON:

Q. Good morning, Mr. Sanders.

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Direct-R. Sanders

Q. Mr. Sanders, do you know Mumia Abu-Jamal?

A. Yes.

Q. Do you know other people who know Mr. Jamal?

A. Yes, I do.

Q. Among those other people that you know who know Mr. Jamal what is his reputation for being a peaceful and law-abiding citizen?

A. It is very good. A very dedicated person.

MR. JACKSON: Thank you very much. You may cross-examine.

---

ROBERT SANDERS-CROSS-EXAMINATION

---

BY MR. MCGILL:

Q. How long have you know him?

A. For about three years.

Q. How long have you asked people about him?

MR. JACKSON: Objection.

THE COURT: Rephrase the question.

BY MR. MCGILL:

Q. What are your sources and how?

A. Other people and me knowing him personally.

Page 27.

Cross-R. Sanders

Q. Well, are you making the judgment of your reputation on personal knowledge you have or on what people say?

MR. JACKSON: Your Honor, objection.

THE COURT: I will allow it.

A. Both.

BY MR. MCGILL:

Q. And of the people that you have talked to did they tell you about associations he has been involved in as well as statements that he has made in the past?

A. Yes.

MR. JACKSON: I object to anything further. May we see you at sidebar?

- - -

(The following is a sidebar discussion with both counsel present.)

MR. JACKSON: Your Honor, I am objecting for the same reason I objected in the past. He is trying to do the same thing you already ruled upon. We already know specific acts and specific words spoken by him or others about him or that maybe spoken

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Cross-R. Sanders

by him are not relevant subject matters to cross-examine, or impeach

character testimony with.

MR. MCGILL: This is a little different. This man has actually said he has heard things.

THE COURT: I don't like the law as it stands now on reputation evidence, but it is not for me to make that decision. I told you that the Supreme Court has recently ruled on this issue and whether I like it or not it is there.

MR. MCGILL: I am not saying that, Judge.

THE COURT: Prior to this last case you would have been able to do what you are trying to do. It would have been perfectly all right.

MR. MCGILL: He talked about sources of information. I can test his competency of the sources of information. That has not changed.

THE COURT: Yes it has.

Page 29.

Cross-R. Sanders

MR. MCGILL: I can't?

THE COURT: That is what the law says.

MR. MCGILL: I can't use bad acts in the past.

THE COURT: This is bad acts. Bad words or bad acts.

MR. JACKSON: It says specific acts.

THE COURT: Specific acts. I realize it, but I keep telling you time and time again that a jury is not going to decide this case solely on reputation evidence. Do you think they are going to forget everything else that is in here? Look, there are a lot of things in the law that you may not like and you may feel --

MR. MCGILL: (Interposing) Respectfully, I am not saying I don't like it, Judge, I am saying I think you are wrong, respectfully.

THE COURT: I asked you to give me

Page 30.

Cross-R. Sanders

some cases.

MR. MCGILL: Judge, I have already given it to you and you said it is not appropriate.

THE COURT: It is not to this. I am talking about reputation. What can you ask on cross-examination and reputation evidence. Give me a case?

MR. MCGILL: You can always cross-examine the sources of information.

THE COURT: No. Sources, yes. Did you talk to people in the neighborhood? If they say no --- in other words, if it is a wrong opinion then you exclude it. I understand that. They are not talking about that.

MR. MCGILL: You have your mind made up and I am not going to change it. I think it is wrong. This is very damaging to me and as far as I am concerned it is improper, because I am extremely limited on my cross-examination.

THE COURT: Mr. McGill, I told you

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to look up the law and show me cases.

MR. MCGILL: I have and you have not agreed.

THE COURT: It is not the law-on cross-examination. Could you say to him "Did you at one time hear that he pulled a gun on somebody" Could you say that?

MR. MCGILL: No. You couldn't do that.

THE COURT: What is the difference between saying that and saying did you hear that he said we should kill all certain type of people? Isn't that the same thing?

MR. MCGILL: No.

THE COURT: You say no and I say yes. That is where we differ.

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(At this time the sidebar discussion was concluded and the following is in open court.)

MR. MCGILL: No further questions.

MR. JACKSON: No further questions,

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Your Honor.

- - -

(WITNESS EXCUSED)

- - -

MR. JACKSON: Your Honor, may we have a brief recess?

THE COURT: We will take a five minute recess.

- - -

(At this time the jury was dismissed and the following is in open court out of the presence of the jury.)

MR. JACKSON: Your Honor, there are several other matters I would like to bring to Your Honor's attention. We have now found there is another police officer that we would like to have testify. It is anticipated to be very brief. Mr. McGill just advises me that he is not present today. I would ask that of course that he be called in.

THE COURT: When did you ask for this witness? Let me see you over here.

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(The following is a sidebar discussion with both counsel present.)

THE COURT: What is this officer that you want? What is he going to

testify to?

MR. JACKSON: That he picked Mr. Jamal up at the scene.

THE COURT: So?

MR. JACKSON: During this time the negro male made no comment. He was with him the entire time.

MR. McGILL: He is not around. I am going to object to bringing this guy in. He is not around.

MR. JACKSON: That is what he says.

MR. McGILL: I am not bringing him in at the last minute.

THE COURT: You knew about this before. I am not going to hold up this trial.

MR. JACKSON: I didn't.

THE COURT: What do you mean

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didn't? Didn't you get statements from the detectives months and months ago?

MR. JACKSON: Absolutely right, Judge.

THE COURT: I am not going to delay the court.

MR. JACKSON: We can get the man by this afternoon. His testimony would be very limited. This is what he says, that he made no comment. You can understand with regard to at least the statements of Officer Gary Bell and --

THE COURT: (Interposing) Let me see his statement?

MR. JACKSON: I was forced to try and remember everything that everybody said and I couldn't do it.

MR. McGILL: I object to this. I think if Mr. Jamal, the Defendant in this case, decides he is not going to give statements until the very last minute to his attorney that is on him. I don't see any

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reason why this trial should be delayed.

THE COURT: I don't know what he means by this. During this time the negro male made no comments. That maybe as far as he is concerned.

MR. JACKSON: He remained with him the entire time.

THE COURT: Look, there were a lot of police officers in that room. There were other people that were there that may not have heard it.

MR. JACKSON: Judge, he didn't say "I didn't hear anything." He said he made no comments.

THE COURT: Made no comment as far as he was concerned. There are other police officers that were in that room and only two that heard anything was Durham and I forget who the officer was. There was nobody else that made any statement that they heard anything. There was no other officer brought in that they heard a statement and

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there was a lot of officers there.

MR. JACKSON: I understand that Your Honor.

THE COURT: It is a fact he didn't hear it. It doesn't mean it wasn't said.

MR. JACKSON: It isn't a matter of him not hearing it. He is saying, in fact, that he made no comment.

THE COURT: As far as he is concerned. He can't speak for everybody else that is in that room. I am not going to delay the case any longer.

MR. MCGILL: Judge, this Defendant has nothing else to do except this case. It seems to be the strategy to delay it. We are getting closer to the July 4th holiday and it would seem to be to get this jury disgruntled and upset.

THE COURT: It may hurt the defense, too.

MR. JACKSON: I think it would hurt us more than the prosecution. Again, I think in this instance with

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regard to Officer Wakshul we have a specific denial that he said anything.

THE COURT: He didn't say that. He said he didn't hear it. What else could he have to testify to? He can't testify to what somebody else may have heard.

MR. JACKSON: There is a difference as to whether he heard anything or he said he didn't say anything.

THE COURT: You could have had this man long ago. I am not going to delay the case any more. There has been enough delay. It is a quarter after 11:00. I am not delaying the case any longer.

MR. JACKSON: I think it is a matter that is crucial enough for us to do it. How long is it going to take to get a police officer here.

THE COURT: How do I know? He could be on vacation.

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(At this time there was a short recess.)

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(The following is a discussion in chambers with both counsel present.)

MR. MCGILL: Your Honor, I have made efforts to find out where Officer Wakshul is and I am informed that he is on vacation until July 8th.

MR. JACKSON: That means he is not in the city?

THE COURT: I am not going to go looking for anybody now. You had the opportunity to let us know in advance and we could have made the effort to bring him in.

MR. MCGILL: It is not your fault, it is his.

THE COURT: Who knows where he is.

MR. MCGILL: I understand Mr. Jackson has four more character witnesses.

MR. JACKSON: One is Robert Harris who is here.

THE COURT: How many character witnesses are we going to have?  
After a

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point character witnesses don't mean anything.

MR. MCGILL: I think you had about fourteen already.

MR. JACKSON: I don't know.

THE COURT: Give me the sheet out there?

MR. MCGILL: He is probably upstairs checking out statements.

MR. JACKSON: I told him when we were at sidebar if there were any others to let me know.

THE COURT: I have reached an end to my patience with this nonsense. Twelve character witnesses is enough.

MR. JACKSON: We have about three more, Your Honor.

THE COURT: That is fifteen. Fifteen character witnesses is enough. We are going to proceed. I want to know from him whether he wants to take the stand or not.

MR. MCGILL: Let's get moving.

- - -

(At this time the discussion in chambers was concluded and the following is a sidebar discussion with both counsel and the Defendant present.)

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THE COURT: Mr. Jamal, do you want to do this in open court?

THE DEFENDANT: I don't care.

THE COURT: Do you want to do it here? It is up to you.

MR. MCGILL: Let's do it here.

MR. JACKSON: Mr. Jamal, you understand that you have the right to testify in your own defense and the right to take the stand and you have the right not to take the stand. Only you and you alone can waive that right. If you choose not to testify in this case the district attorney or the court can't comment on it one way or the other.

THE COURT: I would comment that that is a constitutional right that he has not to testify and the jury is not to give any adverse inference to the fact he didn't testify, but I will do that if you ask me to.

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MR. JACKSON: Right. So, the question now is whether or not you want to take the stand.

THE DEFENDANT: My answer is that I have been told from the duration of this trial, the beginning of the trial, the inception of the trial, that I had a number of constitutional rights. Chiefly among them the right to represent myself. The right to select a jury of my peers. The right to face witnesses and examine them based on information they have given. Those rights were taken from me. It seems the only right that this judge and the members of the court want to confer is my right to take the stand, which is no right at all. I want all of my rights, not some of them. I don't want it piecemeal, I want my right to represent myself and I want my right to make closing argument. I want my rights in this courtroom because my life is on the line and I don't want no gift.

THE COURT: Mr. Jamal --

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THE DEFENDANT: (Interposing) I heard what you said.

THE COURT: I already ruled on that issue. I ruled on all those issues. You have the perfect right to take the stand and give your version of what happened in the early morning hours of December 9th of 1981.

THE DEFENDANT: Like I had the perfect right to represent myself in this case.

THE COURT: If you choose not to let the jury know your version of it you do not have to. That is your own free will.

THE DEFENDANT: It is no question of free will. You have taken every

right I have and you want to save one right. You have taken all my rights and you want to say "You can have that right but you can't have the other four that I said you had." I mean it is horse shit.

THE COURT: If you choose not to take the stand and if you asked me for that instruction that I mentioned to Mr. Jackson

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I will advise the jury that you have the constitutional right not to take the stand and that they are not to draw any adverse inference from that fact. Whether or not you elect to take the stand and give your version of what happened in the early morning hours on that date is for you and you alone to decide. Whichever you want to do. It is up to you.

THE DEFENDANT: I have given you my answer.

THE COURT: You say you have given your answer?

THE DEFENDANT: Yes.

THE COURT: You don't wish to testify?

THE DEFENDANT: It means I want all of my rights and not some of them.

THE COURT: Then you are saying you don't want to testify, is that it?

THE DEFENDANT: I said what I said, Judge. You are a smart man.

MR. JACKSON: One moment, Your

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Honor.

(At this time Mr. Jackson conferred with his client off of the record.)

MR. JACKSON: My client --- I have been ordered to make a motion. The charges against him I would ask be dismissed on the grounds that murder as previously defined by the courts is not defined to the satisfaction of my client. My client wants to put on the record that he is making a motion for the definition of murder while the trial is still in progress and not after closing arguments. I would like to read that to you. He asked me to read that specifically in open court.

THE COURT: What is your interpretation of his answer? Is it that he is not going to take the stand?

MR. JACKSON: If you don't allow him to exercise all of his rights to the fullest he is not going to select his right to take the stand.

THE COURT: He is not going to take the stand.

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MR. MCGILL: That is my interpretation.

THE COURT: Do you want to have the flashlight moved into evidence?

MR. MCGILL: Yes.

THE COURT: That is moved into evidence.

MR. MCGILL: I think it is already in.

THE COURT: You had her identify it.

MR. MCGILL: The property receipt. That was a new exhibit. That is 67.

THE COURT: C67 is admitted into evidence.

MR. JACKSON: Also I believe D15 the statement from the medical examiner's office, is that admitted?

THE COURT: I think I already put that in for you. Just in case I haven't, D15 is admitted.

MR. JACKSON: I think also that D1 through 14 had previously been admitted.

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THE COURT: What is D15?

MR. JACKSON: The statement from the ME's office.

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(At this time the sidebar discussion was concluded and the following is in open court out of the presence of the jury.)

MR. JACKSON: The defense rests.

THE DEFENDANT: The defense does not rest. There are two statements from Gary Wakshul, police number 3763. I have informed this court appointed lawyer that you have appointed to defend me of the existence of pertinent information. It was your decision that he not be allowed to come in here and that he not be allowed to testify.

THE COURT: That is not true.

THE DEFENDANT: It is true. Whose decision was it, Judge?

THE COURT: The officer is on vacation.

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THE DEFENDANT: On here it says no vacation. He was an officer who arrested me at the scene. It has pertinent information that differs substantially from information that I was provided.

THE COURT: That is not true. It does not differ.

THE DEFENDANT: I am telling you it does. Here on the statement it says that I made no comments. That is different, isn't it?

THE COURT: What I am saying to you is you had a right to ask for him before and you didn't do it.

THE DEFENDANT: I had a right to represent myself, but you stopped that, didn't you?

THE COURT: He is on vacation and will not return until July 8th or 9th.

THE DEFENDANT: Why would a policeman be on vacation if he is ordered not to be on vacation?

THE COURT: There is no order.

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THE DEFENDANT: It says no vacation. Judge. I am reading this.

THE COURT: It maybe there, but he is on vacation.

THE DEFENDANT: This is an investigative interview record from the

Police Department.

THE COURT: Your attorney and you goofed.

THE DEFENDANT: You goofed.

THE COURT: I didn't goof, you did.

THE DEFENDANT: You stole my right to represent myself.

THE COURT: You did by your own actions.

THE DEFENDANT: By fighting to defend myself I stole my right? That is a lie, Judge.

THE COURT: You should have told Mr. Jackson you wanted him from the beginning of the trial.

THE DEFENDANT: I told him at the motion to suppress and he didn't show up.

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THE COURT: Yes.

THE DEFENDANT: What do you mean "Yes"?

THE COURT: All right.

THE DEFENDANT: Are you going to order him to come in?

THE COURT: He is not here. He is on vacation.

THE DEFENDANT: I am sure he can be located, Judge. Do you want me to go out and find him?

THE COURT: I don't blame you, but I am afraid it is not possible.

THE DEFENDANT: It is possible if you direct the Police Department to find him. You are saying this is not pertinent. Here is a man who says --- he arrested me at the scene and took me to the hospital and he said I made no comments.

THE COURT: The district attorney has another witness that he wanted to bring in who heard you made the statement and I have ruled he can't

bring him in.

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THE DEFENDANT: He is not standing here in my defense, he is in your defense. Just like McGill is the attorney for the Commonwealth because he is being paid by the same Commonwealth. He is not fighting. I told him about pertinent information. He had the statements for months and he can't find the man. The man is on vacation. It is not my fault, Judge.

THE COURT: It is not my fault.

THE DEFENDANT: It is the fault of the Police Department. They knew he was there. They knew he was at the scene, because they had statements from December the 9th. Then they allowed him to go on vacation.

THE COURT: Mr. Jamal, are you going to allow the court to proceed?

THE DEFENDANT: I am not going to allow this court to proceed to lynch me without speaking in defense of my life. Damn. I know you want to kill me. It has been made abundantly clear.

THE COURT: I have nothing to do with

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killing you. The people that sit in that jury over there they are going to decide your fate.

THE DEFENDANT: Those people I didn't have a right to select. I didn't have a right to select.

THE COURT: They will decide what the true facts are and what happened in the early morning hours of December 9th.

THE DEFENDANT: You don't want the jury to hear what the cop has to say?

THE COURT: He is not available.

THE DEFENDANT: You can find him. Do you want me to find him?

MR. MCGILL: Your Honor, maybe the record should be clear in the officer's statement he clearly says --- do you want to give it to me?

THE DEFENDANT: I will read it to you. It is damn near the same thing.

During this time the negro male made no statements.

This is December the 9th.

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MR. MCGILL: I would also point out that Mr. James LaGrand is now present in the waiting room area and has come into --

THE DEFENDANT: (Interposing) There are other statements.

MR. MCGILL: Can I finish? Or do you want to ramble?

THE DEFENDANT: The point is he was there on the scene and you weren't.

MR. MCGILL: Will you let me speak?

THE DEFENDANT: Knock yourself out.

MR. MCGILL: We have Mr. James LaGrand who is ready to come in aid testify to what he heard, which was the exact same thing that Priscilla Durham heard and Gary Bell. Your Honor ruled I am not permitted to bring him in.

THE DEFENDANT: Bring him in and bring Gary Wakshul. You are trying to hide the truth.

THE COURT: I am not hiding anything. You have the perfect right to

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take the stand.

THE DEFENDANT: I have a right to call witnesses and you want to say what rights I have.

THE COURT: It is your choice.

THE DEFENDANT: You said I couldn't defend myself. You are the one who said I couldn't select a jury of my own choice. You pinned me with this inefficient bungler over here.

THE COURT: Don't blame him. He is an excellent lawyer.

THE DEFENDANT: Would you put your life in his hands?

THE COURT: Absolutely. Absolutely.

THE DEFENDANT: Then you do that, because I have not chosen him. I have said consistently I didn't want him to defend me. That is a legal trained lawyer?

THE COURT: He has a difficult job. You won't assist him.

THE DEFENDANT: Assist him in hanging me? What is the use if I tell him

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something and you tell him no?

THE COURT: I only rule on the law.

THE DEFENDANT: That is a lie. You rule on convictions.

THE COURT: I have nothing to do with your conviction.

THE DEFENDANT: That is a lie, Judge. You have everything to do with that. You stopped me from my right to represent myself. Here I am sitting here on trial for my life essentially gagged silent until I have to protest. I talk to this man and he says what he wants to say and not what I want to say.

THE COURT: Never in a million years could you do as good a job as Mr. Jackson.

THE DEFENDANT: I don't think you have any knowledge of what is going on.

THE COURT: Anything else before we bring the jury in?

THE DEFENDANT: Bring this cop in here, Judge.

MR. MCGILL: I have nothing.

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MR. JACKSON: I have a statement I would like to read, Your Honor.

Your Honor, for the record as well as for Your Honor's purposes, I would like to make it perfectly clear that my client Mumia Abu-Jamal ordered me to make a motion that the charges against him be dismissed on the grounds that murder as is previously defined by the courts is not defined to the satisfaction of my client. My client wants to put on the record that he is making a motion for the definition of murder while the trial is still in progress and not after the closing arguments.

THE DEFENDANT: Is Police Officer Wakshul being allowed to come here?

THE COURT: We can't change the law to suit Mr. Jamal. The courts have decided and the legislature has decided what murder is and that is what the court must charge to the jury.

THE DEFENDANT: Why can't Policeman

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Wakshul be brought in here, Judge? Why can't he be brought in?

THE COURT: Any rebuttal?

MR. MCGILL: No, sir. May we bring the jury in so we can rest in front of them?

THE COURT: What I am afraid of is I know Mr. Jamal is going to act up.

THE DEFENDANT: I am not acting up. I am fighting to defend myself. You can call that acting up if you want. Those are your terms.

THE COURT: What is your wish?

MR. JACKSON: I would like to preserve my right to rest in the afternoon.

THE COURT: We have to do it now. I want to know whether you wish to rest in front of the jury now?

MR. MCGILL: We don't have to do that in front of the jury. He can do it anyway he wishes.

THE COURT: What ever his choice is. The only reason is that it maybe

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better if you don't do it in front of the jury because I am sure Mr. Jamal is going to stand up and say something and it is going to reflect adversely for him. That is your decision.

MR. JACKSON: Your Honor, I think before making the decision as to when and where we rest the outstanding motion for Mr. Jamal to present his closing argument is still before Your Honor.

THE COURT: That has been denied. I denied that before and I deny it again.

MR. JACKSON: If you may recall, you indicated that you were going to take it under advisement.

THE COURT: I denied it before and I deny it now. If he wants to give his version of that night he is free to take the witness stand. I already ruled that you will make the closing argument.

MR. JACKSON: Very well.

THE COURT: You have been his

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attorney.

THE DEFENDANT: He is not my attorney. He has been your attorney. He is working for you.

THE COURT: Are you resting?

MR. JACKSON: Yes, I am.

MR. MCGILL: The Commonwealth has no rebuttal, sir.

THE COURT: We will break for lunch until 1:30.

MR. JACKSON: If it please the court, could I have until 2:00 o'clock?

THE COURT: Let's make it a quarter to 2:00.

THE DEFENDANT: You give this man respect. Don't listen to him.

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(At this time court was recessed at  
12:00 o'clock and reconvened at 2:10 p.m.)

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(JURY PRESENT)

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MR. JACKSON: Your Honor, may I

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approach the jury?

THE COURT: Please.

MR. JACKSON: Your Honor, Mr. McGill, Mr. Jamal and ladies and gentlemen of the jury.

This trial has now come to an end. I am sure most of you and many of you said "Thank God."

I would like to take this opportunity to apologize to you for many of the delays that you had to experience. Sometimes and often times the wheels of justice grind very slowly. Nevertheless, the wheels of justice grind on.

You have had the opportunity today and throughout the trial to participate in a democracy in the way most folks never have the opportunity to do. Many of us will read the newspapers and listen to the news and we hear about a crime and we say it is good, it is bad, or it is a shame. Many things. We wish there was something we can do. You now have the opportunity to do something

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about it. You have an opportunity in your decision that you are going to make to determine if, in fact, the prosecution has indeed proven the case that they have indicated to you that they would prove at the beginning of the case.

We in America unlike many other countries are fortunate in that we are here today as a result of the struggles of a number of people, people that we don't know and people perhaps that we have never even read about

who have fought and died to make this system work.

I am not here to say to you that this system of justice is perfect. I don't know what perfect justice is, but I think you might all agree it is probably the best system around and until indeed there is a better system let's deal with this system.

What do I mean by "dealing with the system". In some countries, particularly the communist countries, Russia and places like that, if a Defendant is arrested he is

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arrested and he is taken away from his family and friends and is given the responsibility of proving his innocence. He must prove that he is innocent. In America I believe there is a more favorable climate. They say the prosecution, the state, must prove a person guilty beyond a reasonable doubt.

Why is that? In Philadelphia we have approximately seventy-five hundred police officers. The Commonwealth in the person of Joseph McGill has at his disposal those seventy-five hundred police officers, the civilian workers, the state police, the FBI and perhaps even more unlimited resources than I mentioned. It stands to reason that if you are going to -- if the state is going to accuse someone, and this is the Commonwealth versus Mumia Abu-Jamal, if the state is going to prove someone guilty it says it assumes the responsibility of using each and everyone of those resources to bear to prove his guilt.

It is a fair system. It is a

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system that we have lived with for a number of years. It is a system that has been tried and it is the result of human experiences as to what is the best way of trying a man for his life.

You have heard testimony over the last few weeks, many of it in my view which is contradictory. Not His Honor, not the prosecution, not even me will decide what the truth is. That is the responsibility that you and each of you alone has to make. No one, absolutely no one else will make that decision at any other time but you. That responsibility rests on your shoulders.

You made a promise when you were selected as jurors that you would be fair and impartial to both sides. That you would hear all of the evidence

before making the decision as to the guilt or innocence of Mumia Abu-Jamal.

It may seem kind of strange to you, perhaps to some of you and to some other people as well, when I say to you that

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Mr. Jamal aside from the fact he has been arrested is indeed fortunate, fortunate in an ironic kind of way. When I say he is fortunate, he is being tried in America, in a courtroom in an American courtroom where we say to each and every defendant, black, white, short, fat, tall, it doesn't matter, we are not going to try you by the way that you look. We don't care what your hair looks like. We don't care what your life style is. We don't care what your religion is. We are saying in a perfect world, meaning an all white world or an all black world, whatever the world is, those kinds of emotional and artificial trappings, or substantive trappings, what I mean by that is whatever your religion is or whatever those relationships that you have with other people they have absolutely nothing to do with this trial. The only thing that has to do with this trial is what came off that witness stand. That and that alone is what you are to consider.

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The Commonwealth will assume and has assumed the burden that the constitution of our United States and the constitution of this state which has been placed upon it they are saying okay if that is our responsibility we are going to do the best we can.

You have heard all of the evidence and, by the way, there is no more evidence. No other words from that witness stand will be presented to you. Whatever explanation or whatever reasons you are still seeking will not be forthcoming. The arguments of counsel are not evidence. You have heard the evidence. You and you alone will be the sole arbitrators of the truth as to what happened at 13th and Locust on December the 9th at about 3:50 a.m.

At the conclusion of the remarks by me and Mr. McGill, His Honor Judge Sabo will provide to you some guidance. He will tell you what the law is. Not necessarily how it should be and not

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necessarily how it will be, but what it is today. You have sworn an oath when you were selected as jurors, notwithstanding any feelings that you

may have to the contrary, that you will follow the law. It was based on that promise that each of you were selected as jurors.

I know many times during the voir dire, the jury selection process, we went back and forth and asked you a number of questions, some of which probably seemed pretty insane to you and pretty crazy and pretty silly.

As I indicated to you that is the only way that we have an opportunity to find out how you feel. Whether, in fact, you are going to be fair.

Just like we questioned you we questioned these witnesses on direct and cross-examination. Why is that? The reason for that is it should be clear and from time-to-time people say one thing to one person and another thing to another person

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depending on who is asking the questions and when they are asking and why they are asking. So, that when you begin to assess the credibility or believability of a witness you must say, is there some reason for this person to be saying it without deciding whether the person is telling the truth. Is there some reason for that person to be giving the testimony they are giving? Particularly if they have given statements contrary in the past. Is it a mistake now? Is it a bias? Is it a prejudice? Is there a promise being made? Is there some hope that some benefit would be gained by their testimony?

We have had a number of witnesses who testified, and I will touch upon their testimony in a moment. I only want to remind you that when a lawyer addresses a jury and begins to comment on the testimony of witnesses, he runs the risk of saying something that perhaps that witness didn't say, but I assure you that my attempt at

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restating some of the responses of the witnesses, is to be as clear as I can as to what they are saying. Because it seems to me, if you don't have an opportunity to ask these persons questions someone has to assume the role of seeking the truth, the whole truth.

You are not to believe only and solely that which is presented by the Commonwealth; that which the Commonwealth wants you to believe. You have heard the witnesses that were called by the defense. Witnesses that the Commonwealth had interviewed. We called no witnesses that the Commonwealth had not interviewed. What we did was to say this jury ought to hear everything that was said. This jury ought to hear the full

truth and not just part of the truth that benefits the Commonwealth.

As you will recall some of the witnesses we have put on, they said some damaging things to us. Nevertheless, we felt it was our responsibility to give you

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an opportunity to place you in an environment where you could assess the believability of the witnesses after hearing all of the testimony. After hearing, who the witnesses said shot Officer Faulkner, as to who the witnesses said shot Mumia Abu-Jamal, as to what the witnesses said and what the truth is.

You have heard many times, me ask why a certain test was not given? Why was this not done? This is something that me, Tony Jackson, assumes and thinks should be done, but it is after years and years of experience you understand that there are a number of resources available to the Commonwealth. One only wonders why were they not brought to bear in this case? Was it because of some preconceived notion, preconceived bias as to what happened?

You know if you are told from the beginning Mumia Abu-Jamal shot Officer Faulkner and you believe that and you then temper and gear your investigations in that

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direction then you are often times left with the possibility of not turning over every stone. As Detective Thomas said, "You don't turn over every stone because you already know, or at least already assume what is going to be true."

An example of that would be Detective Thomas saying, "Well, I assumed after talking to Dessie Hightower that he saw Veronica Jones."

Veronica Jones told us, of course, that she was wearing a light top that evening. She told us she didn't wear her hair in braids. She didn't have long hair.

You are saying what could he have done? I don't know. I have no responsibility to prove anything to you. My responsibility is large enough as it is without assuming the responsibility and rule and burden of the Commonwealth, as well as, defending Mr. Jamal for his life and liberty. It is not my responsibility.

There could always be more done.

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Why was it not done? Well, some witnesses have said it was Mr. Jamal who did it. No one ran from the scene. Dessie Hightower said he saw someone else run away from the scene who was wearing a red and blue jacket, or red and black jacket. I don't recall, or a sweater. The person in his original statement, if you recall it, the first response at that time, the first question asked of him on December the 9th at approximately 5:00 a.m., he responded he saw someone who looked like Jamaican. I understand what that means. When we talk about Jamaicans, many times we talk about the Rastafarian sect which have the same hair style very similar to Mr. Jamal's. He said in that first statement, the very first answer, so it wasn't something later on, where he went back and read the newspaper and heard the news and said it. He said that without any coaching and without anything at all. He said that to you right away.

There is something else I would like

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to point out to you. The character witnesses. You may ask after you heard one you have heard them all. They pretty much give the same answers as to what his reputation was for being a peaceful and law-abiding citizen. You would probably wonder why do I have to put those fifteen character witnesses on the stand to say that Mumia Abu-Jamal is a peaceful and law-abiding citizen. They are all friends and they are all people who know him. So, of course, they are going to say that.

Who else could I bring in? I couldn't bring in somebody that doesn't know him to say that he is a peaceful and law-abiding citizen. That is what our courts do. They say you bring in people who know him from his community, from his profession, from his work and from his life and let them tell us what his reputation is.

Why is that? Well, the policy and thought of the law is that a person lives his life each day in a manner that he lived it

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pretty much in the way he lived it yesterday. That you are not going to live your life style for perhaps twenty-seven years and then all of a sudden decide that you are going to live it another way. If he is known to be peaceful, known to be law-abiding then the theory in the law is that you are going to continue to live that way. Otherwise, what good is it to

have a good reputation? What good is it to be peaceful and law-abiding if someone can just arbitrarily come out and say no you are not peaceful, or no you are not law-abiding? So, you bring in character witnesses who attest to your reputation from people who know you and people who work with you and people who live in your community.

It may offend some of you, and I hope not, that there are black persons I who say "In the black community he is thought of a certain way." Well, that is where he lives. He lives in the black community.

There were, of course, white

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citizens whom I have called and they said they knew him and they knew other persons who knew him. Among those persons who know him, he has a peaceful reputation and a law-abiding reputation.

So, the thought again is that if you live your life twenty-seven years in a certain kind of way, there is no reason to think that one day you are going to act out of the ordinary any more than either one of you. Whatever kind of life styles you live if we were to ask someone, even if they haven't seen you for months, they would say, "Well, I know juror number one, or juror number three, or juror number twelve lives this kind of life." If they say one of you was on a flying trapeze one day in Center City, well, that is not like that person. That is not like that person.

Again, the thought is you are going to continue your life because you have already established a course of life style that you choose to follow, a law-abiding life,

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a good life, a life of peace.

Mr. Jamal has been said to be very articulate. Very gentle. Very peaceful. The people who have said something to the contrary are people whose character is indeed in question themselves. Of course, we will get to that.

Let me just dispense with one other little thing for you.

At the beginning of this trial the crier read out certain Bills of Indictment saying "You are charged with murder. You are charged with possession of an instrument of crime." That is a Bill of Information and I have the copies of them. That is not evidence. The Bills of Information simply say

someone said you committed a crime. You have to defend yourself. That is all that it is. I don't want you to think there is anything chiseled in stone about that Bill of Information. It is simply a record. It is a simple means for the court to keep track

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of a certain court file. That is all the Bills of Information is.

So, I don't want you to think there is something mysterious, or something onerous about that. It is only a piece of paper that has some names and some writings on it. That is all it is.

The presumption of innocence that we talked to you about from the very first time that you were perhaps, questioned as jurors it was suggested to you that that presumption of innocence remains in tact and even now that presumption of innocence follows and surrounds Mr. Jamal, as it would with anyone, anyone who is charged with a criminal offense here in America. That presumption of innocence, just like good character, is evidence. It is evidence itself of his innocence. It is not something that you should say, "Oh, they are just some words and I am going to put them aside." His Honor, Judge Sabo will tell you that evidence of good character is evidence. It is

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evidence that he is a peaceful and law-abiding citizen.

He will further tell you that the presumption of innocence follows Mr. Jamal until you go into the jury room and unless and until the Commonwealth strips him of that innocence. Strips him with proof beyond a reasonable doubt that, indeed, he and he alone was the individual who shot and killed Officer Daniel Faulkner. If you are not convinced of that, if you are not convinced that this incident happened in the manner in which the prosecution has indicated, then you have reasonable doubt.

Reasonable doubt. I am a lawyer and I have studied reasonable doubt, so much now that I kind of have a feel as to what reasonable doubt is. It is very difficult to tell someone or to teach someone, or to suggest to someone what reasonable doubt is.

What is reasonable doubt? Is reasonable doubt some kind of mathematical

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certainty? Can we plot it out on a graph or use some kind of formula?  
No.

The Commonwealth is not even required to prove guilt to some mathematical certainty, but they have to prove it to you beyond a reasonable doubt that, indeed, he is guilty of the crimes which they have charged him with.

Reasonable doubt in most persons' life experiences maybe suggested by perhaps these couple of examples.

Many of you have purchased homes, or thought about purchasing homes and you contact a real estate agent and say I want to buy a certain house, or I like this house. You go to the agent with your wife, husband, loved one, or whoever it is, and you go there and you look at the house. You start kicking on the walls and that kind of stuff and turning on the water and all that. I don't know what that does, but you do that anyhow, because you say you want to make a good decision about what you are going to do.

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That decision in buying a house is probably one of the more important, or most important decision that you would make in a life time and you want to be kind of sure that you make the right decision. So, you look through the basement and go to the top of the house. You come away and you say, I think I want that house. I feel pretty good about that.

You begin to leave with the agent and you are walking away and you just kind of look back at the house and you see some shingles kind of falling back. What do you do? Do you say that is all right I still want it, or do you say, I wonder what that is an indication of? Do you say what is wrong with the shingles? Why were they falling? Is something wrong with the roof that I didn't see?

You then have what is called a reasonable doubt as to whether, in fact, the house is as sound as you think it is. That is an example of reasonable doubt. There

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are other examples of reasonable doubt and, perhaps we can touch on them and perhaps we won't, but I want you to understand that that is the duty that you have. It is not something that I am begging you for. It is not

something that I am desirous of. That is your duty as jurors. You are to be convinced that Mr. Jamal is guilty beyond a reasonable doubt. For if you have reasonable doubt he is not guilty.

The Commonwealth must prove each and every element of the crimes to you. Not some parts, not most parts, but each and every element of the crime.

Judge Sabo will give you those instructions at the conclusion of the trial. That's what must be done. If you are not again convinced beyond a reasonable doubt of his guilt you must find him not guilty. It is just that simple.

Let me suggest to you, ladies and gentlemen, that at the conclusion of the trial when His Honor Judge Sabo reads and

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gives you a recitation of the law, he will give you the definitions of the crimes. He will give you the definition of murder in the first degree and murder in the third degree. He will give you the definition of voluntary manslaughter.

I say to you now if you believe beyond a reasonable doubt that Mumia Abu-Jamal committed the crimes as the Commonwealth has suggested, then you should find him guilty of murder in the first degree. I am his defense lawyer and I am telling you that. I don't want you to compromise this verdict. I don't want you to say well, I am not really sure if he is guilty of murder in the first degree. Maybe he is guilty of murder in the third degree, or maybe he is guilty of voluntary manslaughter. I am saying to you, if you are not convinced that he is guilty of murder in the first degree then he is not guilty, because that is what the Commonwealth said they would prove, that he was guilty of murder in the first degree. Don't compromise

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your verdict in anyway whatsoever. Face it head-on. He is either guilty or not guilty. That guilt must, again, be proven beyond a reasonable doubt.

You should also understand that although there is proof that is presented, and you can accept that and consider it, you must also understand that the lack of proof is also something that you should consider. If there are certain things that you want proven, certain things that you wanted to hear, certain things that you wanted to know that were not provided to you and if that proof, that explanation, that reason is not provided to you,

then the Commonwealth has failed its responsibility. But it has not necessarily failed to you and you have not failed in your responsibility as being fair and impartial jurors. You must not feel for any reason whatsoever that if you find him not guilty that you are doing something that is wrong. You as jurors are the ones to make the decision. Not these people. Not any

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of them. It is your responsibility. You and you alone must live with your decision each and every day of your life. So, that is why you need to take your time and decide what the true facts are.

You cannot guess or presume. You have to know beyond a reasonable doubt what happened. You have to know whether it was Mumia Abu-Jamal that fired that weapon, or if it was his brother, or if it was someone else.

One of the situations that we do find ourselves in, in America, in our criminal justice system is that although the defense has no obligation to prove anything, oftentimes there is this temptation that maybe I should say this. You don't do it because we don't have a situation where Cane must turn against Abel, or Abel against Abel. Brother must testify against brother. There is no responsibility, none whatsoever, for Mr. Jamal to take that stand and say anything to you. That is something that

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wasn't just created for Mr. Jamal when he was arrested. It wasn't created last week or last month or last year. It is a principle, a founding principle and fundamental principle, of our criminal justice system that the defendant need not take the stand in his own defense. Particularly, I suppose if you may have to give testimony against someone that he doesn't want to.

Mr. McGILL: Objection.

Mr. JACKSON: The rule is that he need not take the stand in his own defense. For whatever reason he decides not to take the stand you must not look beyond it. His Honor Judge Sabo will tell you not to draw any adverse inferences from his failure to take the stand.

What does it mean?

Don't assume that because he doesn't take the stand that he is hiding some guilt of his own. You are not permitted to make that assumption.

Indeed, you are cautioned and ordered not to do that.

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When you are asked to retire to the jury room to deliberate and make your decision in this case, you of course, will listen to your fellow jurors in terms of what they believe, or what they feel has been proven beyond a reasonable doubt. Each of you have an equal voice into this decision, because it takes twelve of you to decide the guilt or innocence of Mr. Jamal. So, each and every one of you have an equal voice. Each and every one of you is required to consider the explanations, the arguments of your fellow jurors. You must do that respectfully and considerately. Listen to your fellow jurors and if one of your jurors has some doubt as to the innocence or guilt of Mr. Jamal hear that out. Hear that explanation before deciding once and for all what the verdict is, because oftentimes you may have missed some testimony. You may have been focusing on something that they have not heard, or vice versa.

So, I implore you to listen and

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to consider each and every aspect of testimony that has been given from that witness stand.

I would like to apologize to you if I am taking a long time to give this summation. I am not. I am not. You have been here a long time. You have been asked to endure perhaps more than one should ask you to endure. I am going to apologize for that.

Mr. Jamal is on trial for his life and his liberty. It is a long time. I may talk to you for another half hour or an hour. I don't really know. I am going to talk to you until --

Your Honor, may I have a moment?

Forgive me?

I am not threatening you with time. I am simply saying that please don't ask me to rush through this. That is the only point I want to make. It is important that you listen to me.

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Let's now talk about the testimony of those witnesses. I guess that is really what you want to listen to and that is what this is about, the

testimony that came from that witness stand. I am not going to say look at the prosecution witnesses and look at the defense witnesses, because each and every witness was presented for a purpose. So, for me to go and say that one person was a crucial witness or not I can't say that, because that is your decision. I just ask you to remember that each witness is important.

Cynthia White testified in this case. Cynthia White gave four or five statements. We didn't hear the tape recorded statement, but we can assume that for the most part it was pretty much as she testified in this case, or as she had given a statement to the police.

Before we go to her specific testimony, again, when a witness testifies you ask yourself why is that witness

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testifying in the first place and then why is that witness testifying in a certain way in the second place.

Why is Cynthia White testifying? Well, we know on December the 9th it was the day before she was to appear in court, December the 10th. She didn't appear December the 10th. We know a bench warrant was issued for her arrest. She gave a statement to the police and remember that in the first statement on December the 9th she never said anything about William Cook punching the police officer, but she said she was in a position to see everything that happened. We already know she didn't see everything, but for the moment she gave a statement about what happened. She didn't say anything about William Cook being struck by a police officer. She didn't say a lot of things. We will get into that.

She gave an address. Was that her address? No. In fact, each and every time that they got a statement from her, or had

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gotten her to testify after she was arrested, each and every time, not most of the time or many of the times, but each time she was arrested what did she do? "I got some more information for you." She is reading the same newspapers you are reading.

I know everyone has heard something about this case and we are not going to pretend that you didn't read it. She is reading the same newspapers that you are reading.

What did she do after December the 9th? She went out and got arrested

again. What did she do? She called homicide and said, "I got some more information for you." "Come on up, Cynthia."

She made another statement.

She went out for a little while and again got arrested. "Homicide, I got some more information for you."

Why is that important? The only reason I am saying this is if she saw what she said she saw, why didn't she tell them all

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the first time, or the second time? Why does it take her three, four, five times to give the statement? These aren't little things that she was forgetting. These are major things.

I think you had the opportunity and you heard her on the stand. I must apologize for this. When I cross-examined her, often times what she did say was "I can't remember." When Mr. McGill questioned her she remembered everything.

Why do you think that is? Well, you should understand by now that you cannot cross-examine a person on what they don't remember. If I ask you what did you say on so-and-so day and you say, "I don't remember," there is nothing I can do.

What did you do on such-and-such a day? I don't remember.

When you say you don't remember, or a witness says they don't remember, there is nothing I can do with that testimony. There is nothing I can do with it.

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She has given us each and every time another story. One time she testified that she saw the man running across the street and she saw a gun in his hand.

Now, I don't know about you, but assuming that you could see a person running across the street that night with a gun in his hand, if I remember seeing the gun I would at least remember what hand. She doesn't even remember what hand.

You say, "Oh, yes she does, because she said so when she previously

testified. She said it was the left-hand.

Well, she demonstrated from the notes of testimony from her previous hearing in this matter indicating to you she said "I am right-handed. That is why I said the right-hand, but it was the left-hand." When she testified in court she said, "I don't remember what hand it was."

So, what is it? Is she now saying it wasn't the left-hand, or she doesn't remember if it was the left-hand,

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because she heard that Mr. Jamal had a holster for a right-handed draw?

So, if you assume for a moment that a person is right-handed and has a right-handed holster you say right-handed. It seems logical and reasonable to me that you don't put a right-handed holster on a left-handed person. I don't know, but again, she is reading these newspapers, but she has had more of an opportunity than you to know what other people are saying, because she has testified in this hearing and she has talked to Mr. McGill and she has talked to the detectives in this case. She knows what is going on. She knows that if her testimony is consistent with their theory then it helps her.

How does it help her? Veronica told you how it would help her. She wouldn't be picked up like the rest of them. Veronica said, "Why don't you pick-up Cynthia like the rest of us?"

"What did she say? The police told

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her that if you give testimony like Cynthia then we don't do that to you.

Low and behold what does Veronica do when she comes and testifies? When she originally gave a statement, she said she saw those two men running across the street after the shooting. What does she tell you in court? Oh, no. I just saw them standing.

Why do you think she does that? Because she saw it benefited Cynthia. If she gives the testimony that the Commonwealth and the police want, she can go out there and work free.

You know, it is like you now have a credit card to go out and work. We are not going to bother you. We are going to treat you like Cynthia, and

she told you that.

You can ignore it if you want. That is what she told you. It is not something that I am conjuring up in my mind. I spoke to her the very first time when you heard me ask her questions. The very first

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time I talked to her I am basing my examination on the statements that the district attorney's office gave me. She previously said she saw two men run from the scene. Why now does she say, "Well, I didn't say that they were running?" The detectives took a statement and I only signed one sheet of paper. Somehow even though she signed one blank sheet of paper with the diagram, and the diagram shows people and shows her on Locust Street. But in any event, she said in that statement, she saw the two people run away and she later finds out that that is inconsistent with the prosecution's case. That is not going to help them. She remembered back in January they said if I give the testimony they want, if I give testimony like Cynthia, she wouldn't be picked up.

Has she been picked up? I don't know. You don't know.

Cynthia told us she was subsequent to that. Veronica never told us she was picked up, but we know she has given different

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testimony and the judge will tell you that in assessing the credibility or the believability of Veronica, Cynthia or any witness that if they lie about one thing then they will lie about another thing. You can believe part of what they say, none of what they say, or all of what they say. That decision is up to you.

There is something in the law, and my Latin is bad, but the expression goes "Falsus in uno, falsus in omnibus," if you lie about one thing then you lie about everything. Consider that. Consider whether or not Cynthia is telling the truth or Veronica is telling the truth, or if they are lying, or what they are lying about. If you have to guess, or if you have to presume and assume, that is reasonable doubt and you are not permitted to do that. You have to reconcile what they say with some physical factor, with some corroboration. You can't just say, "Well, I know she is lying about something, I guess it is this, or

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I guess it is that." You are not permitted to do that, because you weren't

there and I wasn't there. So, if it is not credible then don't believe it, any of it, because you know you have been presented with a reason for her to lie.

Now, am I suggesting that there is some major conspiracy among the seventy-five hundred police officers in the City of Philadelphia? I am not necessarily saying that. I don't have the means or the resources to make that determination. All I am saying is for those witnesses who testified in this case there is a reason for their testimony and you have to make that assessment. Just like you make an assessment if you are going to buy a car from a used car dealer.

You know the old story "Would you buy a used car from this person?" I mean you look at a person and you look at whether there is a twitch in their ear, or if they shake, or whatever it is, to determine whether or

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not that person is telling you the truth. Whatever those reasons are use your common sense in this case just like you do when you are outside of City Hall.

One of the other things that Cynthia White said in her original statement, she said, "I saw a man run across the street, fire three or four, five or six shots, I don't recall, then the officer fell."

I made a point of that and I guess that is one of the points that you may recall. She said, "I didn't really mean it that way. I didn't really mean three or four shots then he fell. I mean there were three or four shots and after one or two of those shots he fell."

When she previously testified in a hearing in this matter she said there was one shot and the officer fell. One shot and he fell. Later on what does she say? She says, "Well, it was one or two shots. He didn't fall right away. He turned around and he twisted and moved."

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Why is that? Because then she understood and recognized that the place she put the officer was not where he was. He was not found between the Volkswagen and the police car, but he was found between the Ford and the Volkswagen. You maybe saying, "Well, one car length isn't very important." If you consider the testimony of all these witnesses when they say there was one person running away or two people running away it is important that you know where this event happened. In order to determine what the truth is you have got to know where the truth

happened. You can't say wherever it happened this is the truth. Part of what you need to know is where and how. If you are not provided with that information you then have to guess again.

Cynthia said in a couple of statements --- I am not going to tell you in the first statement she said this, that and the other, and in the second she said something and in the third and fourth she

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said another and in the hearing on the 5th she said one thing and --- I am sorry. The hearing on the 8th she said one thing and the hearing on the 11th she said another thing. She did say prior to her testimony here in court that the man when he ran across the street, he was ten feet away when he fired. She said she didn't see the flash, but that is when she heard the gunshot. She didn't see any flash. We know from the testimony of the medical examiner and others that if the officer was shot by someone, and we know he was shot by someone, it had to be within twelve inches.

So, what is Cynthia saying? I am not good at distances. I am not good at feet. I am not good at telling height. I am not good at weight. She is not good at anything, I guess, because she said the man who shot the police officer was short. She said her friend Prince is tall. Prince is about the height of Mr. Jamal, but she said, "Well, he is not tall." She didn't

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say Mr. Jamal was short. She said on December the 9th that the man was short.

Mr. Chobert testified and Mr. Chobert said he was six feet, two hundred and twenty-five pounds.

Who did they see? Did they see the same person or did they see different people? You may say sometimes when people look at things they see different things. I understand that. We want to know what the truth is and we want to know who they saw shoot the officer. We want to know if, in fact, the person running across the street when he raised his hand, if he raised his hand if there was a firing from that person. No one who testified in this case said they saw a flash from the first shot. What did they say? The subsequent shooting, yes, I saw the flash." If that was the same gun that was used in the first firing then why didn't someone see the flash the first time? They were in a position to see the gun. Why didn't they see the flash then? If the

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person running across the street was the one who did the shooting. Could it have been that someone else did the shooting? They saw the flash of the weapon on the subsequent shootings, but no one, absolutely no one, saw the flash of the first shot. We know each and everyone of those other shots they saw the flash. Is it a coincidence that no one happened to see the first one, or is it because there was no flash from the person who was running across the street, because there was no firing?

Before I leave Cynthia White I think I probably have to talk about her a little bit as we go through the testimony.

One of the things that Mr. Chobert told us, I believe it is Chobert, and again it is your recollection that is going to count, he is the one that said one of the persons had an Afro haircut. Not Dreadlocks. Afro haircut.

We have pictures of Jamal's brother. Dreadlocks. Mr. Jamal. Dreadlocks. Mr.

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Chobert made a distinction between Dreadlocks. He said Move-like hairstyle. He said this man had an Afro haircut.

Who had an Afro haircut that we know about? Cynthia White, remember she talked about this man she was talking with earlier? I asked what did he look like? Well, he was heavy set and he was six feet tall. He had an Afro hair style.

Do you remember that? Cynthia told us what happened to him. She said she saw him talking to the police and never saw him again. You haven't seen him either. I certainly haven't seen him. Where is he? Who is he?

We don't know his name and we don't know his whereabouts. I think you want to know who he is. I think you want to know which police officer he talked to and what he told that police officer.

We don't have the resources to obtain that information. We don't have the burden of obtaining that information, but the Commonwealth has the burden of proving

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someone guilty beyond a reasonable doubt. Also the Commonwealth should have the burden as well to provide exculpatory evidence,

evidence that would tend to show that someone did not commit the crime that they are accused of. We don't have that information.

You don't have that information. Joseph Grimes is the one who does the leg work. I didn't question his qualifications, because you know his qualifications. Joe Grimes testified that it is difficult to get fingerprints off of weapons so you can match them up and compare them positively. I don't really have any questions about that.

We talked about these points of comparison, nine to twelve points. Well, what that means is if I lifted a latent print from this place it maybe Tony Jackson's print and I want to compare it. So, you take it and look at it and an evidence technician will say "Yes, in fact that is the same one." You want nine to twelve

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points before you make a positive identification.

Well, we know that the characterization of fingerprints are broken up into three basic characteristics, whirls, loops and arches. So that if they may not be able to determine, in fact, who it was that handled the weapon they might be able to exclude someone if all of these patterns, arches and whirls and loops that was lifted from the gun was something else then you would be able to exclude that person.

So, we understand about handling the metal part a number of things may happen. What about the grips of the weapon? Did he even do that? No. Why do you think he didn't do it? Well, they got Jamal and he was arrested and he did it and he had the gun. Why take the gun? Why do it? That is what he was told. Is that the professional thing to do? Is that all that he could have done? Why not just take the extra step to make sure?

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Everyone is presuming and assuming. So, Joe Grimes tells us, "Well, I guess it could have been done but it wasn't done."

I have asked a number of questions of witnesses as to why certain things weren't done. It may not be important to them and for the moment it may not even be important to you, but it is important to this man. It is important to this man that they didn't do their job, because they are saying, "We didn't do our job and we are going to still say you murdered somebody."

If you are going to accuse somebody of murdering somebody then you

better be on your toes and do what you are suppose to do. What they are saying in fact is, "We are going to accuse you of murder and we are not going to present or discover the evidence that tends to show you didn't commit the offense. We are not even going to present any evidence that might suggest it was someone else."

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I think by now you ought to know, you ought to feel it was really somebody else. I am not going to ask you who yet.

Anthony Paul testified. Anthony Paul is the ballisticsian of great renown. He said the bullet that was taken from Mr. Jamal was fired from Officer Faulkner's weapon. No argument, really. He didn't say Officer Faulkner fired it, mind you, but that the bullet came from Officer Faulkner's gun.

We heard from Dessie Hightower and it has not been controverted by anyone that Officer Faulkner's gun was still in his holster. We have not heard from anyone how Mr. Jamal was shot. That is part of the explanation that you need to know before deciding the case.

I don't believe, - - my belief is not really important, but I would suggest to you that that is also proof what you need to know. I am not simply suggesting to you that you just look at the proof I am presenting. I am saying that you look at

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the proof that both sides are presenting together as a whole before making your decision.

Then what did Anthony Paul say? He said, "Well, I looked at some bullets -- at the bullet that was taken from Officer Faulkner and it could have come from the small gun." What did he say about the bullet? That it could have come from any multitude of millions of other guns. You know what they are really saying when he says it came from a weapon like that, that it could have come from this Smith and Wesson and it could have come from any 38 weapon. That is all. That is all.

So, I don't want you to assume that just because he says, "Well, it could have come from this gun," that it did. It could have come from any multitude of millions of guns. I am not necessarily saying it didn't come from that gun, but I am simply saying we don't know. You are not allowed to guess. If the expert doesn't

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venture a guess certainly you shouldn't venture a guess.

He indicated that Officer Faulkner's gun had a crack in it. He said it was a fresh crack. He couldn't tell how fresh the crack was in terms of the hammer. We don't know when that hammer was cracked, we don't know how or by whom. We understand that there was some amount of pressure required in order to fire that weapon. We understand further even if we accept some or most of the testimony of the prosecution witness - - strike that. Not the prosecution witnesses, but some of the witnesses. I am not going to say prosecution or defense, because it doesn't really matter. The witnesses have not indicated to us who fired Faulkner's weapon. The witnesses have suggested that Officer Faulkner fell. Cynthia told us at one time at least that he fell after the first shot and at other times he fell after the second shot. Nobody saw him fire. So, if he fired are you going to assume that he fired

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when he was on the ground or that he fired while he was falling down?

Consider that. I am sure that is the Commonwealth's theory. That while after being shot in the back, I don't know whether he was suppose to have turned or fallen back. It depends on which one of Cynthia White's stories you believe, if you believe any of them, because one is he fell right away and he fell on his back and the other is he was shot in his back and he turned around and fell on his back. So, if he turned around she would have an opportunity to see his hand. She said he reached for --- it looked like he was reaching for something. He never reached for anything, but it sounds good. Doesn't it tend to make you think maybe he did grab the gun? These officers, if you will note, don't carry around these guns like Marshal Dillion; quick draw. Look at the guns. You have seen the officers with their guns. How easy do you think it is to get one out of the holster particularly after

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being shot in the back? Do you think it is easy? You are shot in the back and while falling down you pull it out and fire a round. It is not that easy. In fact, it is impossible. He has got to pull the snap and pull the weapon out and he has to aim. He has to aim it at somebody. This is, of course, if he, in fact, fired the weapon. I am not sure, because I am speculating now to provide you with some reasonable explanation of how Officer Faulkner did it. I really don't know. I am sure he didn't do it. He was on the ground and fired the weapon. What did the ballistics tell us about

Jamal's wounds? He had to receive that wound from within twelve inches. Whenever he received that wound. So, you are saying the officer is on the ground and he points the weapon up somehow and then he fires the weapon at Jamal.

If you accept the only testimony we have with regard to Mr. Jamal, or whoever it was that was supposedly standing over top, not bending over, remember, standing

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up shooting. Why is that important? It is important because if the officer did fire a weapon at Mr. Jamal there would be an upward projectile if he is down firing up. It is just that simple.

What did Doctor Colletta say? He said he had a straight wound downward. It is clear that is the physical evidence that we have. We know that Mr. Jamal had a wound that had a downward trajectory. The only information that we have with regard to at least the shooter of Jamal, the only evidence that we have of the shooter was that he was standing up over top of the officer. No one of course saw him shoot the shooter or shoot anyone else for that matter.

You saw Priscilla Durham and she testified and she has no real ax to grind with anybody.

Well, first of all, Priscilla Durham like Officer Gary Bell didn't give the statement until sometime in February. The shooting happened in December. What did

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she testify about? Jamal claimed that he was shot, and that he was beaten by the police. That is when she was asked the question and then she said, "Oh, well, he made a statement." She said that he said, "Yes, I shot the ---" whatever she said. "I hope he dies."

No one found that out until this man decided to say, "Look, I am a victim and you are talking about Officer Faulkner."

We have many victims and we certainly have two victims, Officer Faulkner and Mr. Jamal. He says, "I am a victim. Why does no one talk about what happened to me? I want to know why I was shot."

Mr. McGILL: Objection to statements by the defendant who did not take

the stand.

THE COURT: It is noted.

Mr. JACKSON: He filed a complaint with the Police Department and after that the complaint was filed by me on his behalf, that is when he alleges statements were given and what does Priscilla Durham say, she

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heard, "Yes, I shot him. I hope he dies." It doesn't necessarily mean it was in response to a question. Assume for a moment that she heard that. If he just wanted to boast, or if he wanted to be arrogant as the Commonwealth would suggest, he doesn't have to say "Yes." He said, "Yes, I shot him. I hope he dies."

Was it in response to a question? Well, Priscilla Durham says no, because the police officers weren't asking him anything. They weren't asking him anything at all.

How many police officers were around? Seven. Eight. Nine. Ten. I don't know. Who else came in and testified that they heard him say that? His former partner is the only other one who came in and said that he said what Durham said. What about the other seven or eight officers, or fifteen or so officers? Why didn't they come in and say, "Yes, we heard him, too"?

Officer Gary Bell says he has been a police officer, I think he indicated he was

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a police officer for perhaps eight years or so. Forgive me if I am wrong. He said he never told anybody what he heard. I ask you reasonably don't you think that it would be important for him to tell somebody about that? I mean in conversations, or while drinking a beer. Wouldn't you say to somebody "I heard him say he shot my partner"? He says no. Not until you, Jackson, filed that complaint on behalf of Mr. Jamal. That is when he came to his senses and said, "Well, yes, I heard him say he shot my partner", or words to that effect.

Think about it. Think about that. Nearly two and a half months it took him before he came out and said something that I would consider to be rather significant.

Would you like a break? Fine. I just wanted to make sure.

We have the testimony of Mr. Scanlon. Mr. Scanlon appeared to be a fairly forthright individual. He testified I think particularly in comparison to some

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of the witnesses who testified he presented a very forthright appearance and you could accept some of the testimony or all of the testimony or none of the testimony.

What did he say in his first statement to the police? Well, he saw somebody run across that street. I think we can accept the fact that somebody ran across the street. I am not debating that. He saw a man run across the street. The officer was in the street and had a man laying across the Volkswagen. After the officer struck that man who supposedly was William Cook, struck him about the shoulders and back, that man was beginning to fall. At about that time the man across the street ran. The man was running across the street. He saw his hand go up. Yet not seeing any flash, but then he heard a shot. He then began to tell us as best as he could recall the relative position of the man he saw running across the street and the man who was over the top of the car.

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Again, I am not going to venture and try to recall his specific testimony, but again somehow he indicates that the man who was spread across the car went around him somehow and got on the pavement ahead of the officer. How he did that I don't know, but in any event he said in his statement to the police, "I don't know whether it was the driver or whether it was the man who ran across the street who fired the weapon." That is what he said in his initial statement.

He comes back to us later and he says, "Well, what I meant by that is that I didn't know their names. I didn't know Mr. Jamal's name. I didn't know William Cook's name." That is what he meant. There was no reason to assume that Mr. Scanlon knew Mr. Jamal or knew his brother or anyone else. He could have been mistaken as to their names. That is what he told us. He said he didn't know their names. He said that in his initial statement. "I don't know who had the gun." That is what he said the

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first time.

Then what did he say? He said, "Well, I read the newspaper and the newspaper told me what their names were." So, it was Mr. Jamal who had the gun and it was William Cook who was spread across the car.

Do you remember when we questioned you on voir dire we said whatever it is you read in the newspaper is not proof? The proof comes from that witness stand alone. He is coming in and telling us that he is sure it was Mr. Jamal, because he saw it in the newspaper.

Now, if I am misquoting what he said you have to remember that it is your recollection that counts. You have to recall what he said. In his initial statement he said "I don't know who had the gun. I don't know who fired it." In fact, he never saw the gun flash the first time and then when he did see the gun flash a little later on he didn't know

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who had the gun until he read it in the newspaper. Then he knew.

If that were the way we decided these cases then you wouldn't be needed. We would just have the press tell us who it was that committed the crime, because they would go and talk to somebody who talked to somebody who talked to somebody else and tell us that is what happened.

You are not permitted to decide that case on innuendo and rumor.

One of the other interesting aspects of the case, and I am not sure what to make out of it, maybe it means nothing to you, but Mr. Scanlon testified that he saw Officer Faulkner strike the man who he believed to be William Cook on the head --- I am sorry. Around the shoulder and back. He then indicated that he believed it was either a blackjack --- not a blackjack, a night stick or the flashlight that we have seen.

You say, well, the Officer made a

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mistake and took the flashlight away, because Officer Chinn was told that somebody else must have dropped it and take it and see if you can find out whose it is.

Why didn't Officer Repsch keep it? Why couldn't he take it and find out? Nevertheless she took it and she had that flashlight that seemingly was unimportant so she indicated, so that we can never test it for fingerprints and never test it for blood and never test it for hair so we could find out,

in fact, whether Officer Faulkner struck somebody with it and whether or not it did draw blood we don't know. Whose fault is that? Is that Mr. Jamal's fault? Of course it isn't. Is it my fault? Obviously not. It wasn't done. It wasn't done for a reason. You have to decide what that reason is. We know it wasn't done.

The other interesting thing that Mr. Scanlon says is that the shooter had a black hat on. The driver of the Volkswagen had no hat on. We have been told that the

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driver of the Volkswagen is William Cook. We have got photographs that show you that William Cook has a hat on. We know that there was another hat found on the pavement near the pole. Whose hat is it? That is a dark green hat. William Cook had a dark blue hat.

Remember what he said now? He said that the driver of the car had no hat on. One or two conclusions. Mr. Jamal was the driver of the Volkswagen, or there was somebody else.

Now you begin to see a picture about why it is important that there was somebody else there. If the driver of the Volkswagen didn't have the hat on, did Mr. Jamal have a hat on? William Cook still had his hat on when he was photographed at the Police Administration Building. It is shown in his photograph. A dark blue hat.

Mr. Chobert said when I showed him --- I think it was Mr. Chobert --- when I showed him the hat he said it looks like

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it. He knows it was a dark hat. William Cook had on a dark hat as well.

How many people do we have here at the scene? If nothing else we are talking about physical evidence, because we can be mistaken in terms of who looks like who and who looks like what. In terms of the physical evidence that was discovered at the scene it is important that you understand who was wearing the hat, where they were when they were wearing the hat and whether there was just two people or three or more people.

Mr. McGilton I think his testimony was kind of refreshing. It probably reminded us, or at least suggested that we would probably do some of the same things. What did he do? He said, "I heard some shots. I counted those shots. One, two, three, four, five." What did he say? He said, "I

counted them because I thought there maybe another shot left." He paid particular attention.

He said he counted the shots, five shots, he said that because he didn't want to

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run over to that area because somebody else might have another bullet. It seems reasonable to me. I think each and everyone of you think it is a six shooter and there maybe another bullet, but if we accept the testimony of the ballisticsian, Mr. Paul he said there were five shots fired from the Charter special and there was one shot fired from the 38. Where was the other shot? If there were five shots fired and we know that there is six and we know from the two weapons there was six shots fired well maybe Mr. McGilton is wrong.

Dessie Hightower said that five shots were fired. Is it a coincidence that they both say five shots?

Cynthia says there was one shot. Then she said there was three, four or five. Nobody ever said anything about six shots. If there is a mental hang-up about saying it was six we don't know, but we know at least it has been suggested that if both of those weapons were fired at that scene

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there should have been six shots fired. We have no evidence of six shots fired. None. We know there was a bullet in the doorway. How it got in the doorway we have never been told. We know there was a bullet that went through the glass. We have never been told how that happened. Particularly since it was not in the line of fire. It was off to the side. When did those bullet holes happen? When were they fired and by whom? We don't even know that.

Is that evidence to suggest there was maybe two additional shots, or are we saying those were two of the shots that were fired at the scene? If you believe there was some pumping actions when the officer was on the ground would the shots go over there in the doorway? I would think not.

I would just remind you of something else in the testimony of Mr. Chobert. Chobert said in his original statement to the police after the shooting he said, "Well, the first person was about six feet

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tall." He said two hundred and twenty, two hundred and twenty-five pounds. He says, "Well, I told him that, but I know it is Mr. Jamal."

I don't mean to tell a bad joke, but you know how sometimes people think people look alike. Mr. Jamal has Dreadlocks. Mr. Jamal's hair style suggests an appearance that is very similar to anyone else who would wear Dreadlocks. I don't think by any stretch of the imagination you could believe he weighed two hundred and twenty or twenty five pounds. That is what Mr. Chobert said, that the man who did the shooting weighed two hundred and twenty, two hundred and twenty-five pounds. He said that to the police the initial time.

What did he also say? He said that the shooter wore a gray shirt. He said it was a gray shirt. We know from the evidence, if we accept the evidence of the police as being true, that when Mr. Jamal was taken to the hospital he didn't have a

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gray shirt on. So, who did he see?

You may say, well, he was just mistaken. He was mistaken about the build. He was mistaken about the shirt. He was mistaken about the hat. I mean how many things was he mistaken about? How do you make that determination as to what he was mistaken about? What statement will you use to say he was mistaken about the height, mistaken about the shirt and mistaken about the hat, but that he is not mistaken about it being Mr. Jamal? How can you do that? There is no corroboration of what he said. Again, you are not permitted to guess at all. It doesn't make sense. His testimony contradicts the physical evidence. The physical evidence is the physical evidence. It does not change at all.

The physical evidence was there on December the 9th and it remains the same.

The testimony of these witnesses has changed gradually and frequently from December the 9th until they testified in

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this courtroom. Whose responsibility is that? I don't know. I am not even suggesting that you have to assign responsibility for the change in testimony. You just have to recognize that the testimony has changed. It belies the physical evidence. There must be a reason for it belying the physical evidence.

Let's very quickly go through these tests that I have talked about. I assure you that I wasn't attempting to go on an ego trip to show you that I knew an awful lot about the Trace Metal Detection or the Neutron Activation Test, or the fingerprint tests. I worked in the Police Labs a few years and I didn't do those other tests because at that time we weren't doing them. I did fingerprint stuff and this Trace Metal Detection Test has been around for a number of years. It is not an unusual test. There are three pamphlets given out about the Trace Metal Detection Test. The kit that is sold for four dollars and ninety-eight cents.

I don't know whether it was detective

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Thomas or Officer Land who said they didn't have a kit with them. I mean this is the fourth largest city in the United States. They say we didn't have one of those little tests kits to perform the test. Why is that? Is it really that they didn't have it, or they didn't want to use it, or was it just sloppy police work?

You are not here to decide whether or not to discipline anyone for sloppy police work, you are here to decide the guilt or innocence of Mr. Jamal and if that sloppy police work impacts negatively upon Mr. Jamal then you have got to let the Police Department know that we are not going to hang this man just because it is something you are trying to suggest to us and you haven't proven your case.

Doctor Tomosa is the criminologist who testified and I asked him about all those tests. He indicated with regard specifically to the Trace Metal Detection Test he said that test is really not

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reliable. He went on to talk about the fact that it is not reliable, but not saying they don't use it. He is not saying the FBI don't use it and he is not saying that most of the Police Departments across the country use it. He just said it isn't reliable. He just throws that out there for you to accept, because he has got a doctor in front of his name.

The publication that I read to him to test what he was saying indicates that it is a reliable test and that you can wash your hands and rub up against things thirty-six to forty-eight hours afterwards and you can still use that test to determine if someone handled a weapon.

The testimony is that Officer Faulkner was rushed to the hospital and Mr. Jamal was rushed to the hospital. Granted I have no criticism of them

being taken to the hospital. At some point in time within thirty-six to forty-eight hours Officer Faulkner certainly could have had the Trace

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Metal Detection Test taken of him and Mr. Jamal who was certainly in their custody could have had the test performed. Just so we would know who had a gun in their hand. At this point we don't know whether Mr. Jamal had a gun, whether Officer Faulkner had a gun or William Cook, or one or two of the people who ran. We don't know. We could have found out if they did what they were suppose to do. Then you wouldn't have to make this decision that you are making. If, in fact, Jamal had a gun why didn't they take the test? They got him. They could say "We have this test to show that he had a gun." Well, they didn't do that test.

The Neutron Activation Test that is another test that is conducted. Again, it is not a rare thing. The Philadelphia Police Department and most major Police Departments across the country, the FBI, they all use that test. This test would determine who fired the gun. It would seem to me that even on December the 9th they had

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enough indication to know or to have some question as to who fired the weapon. Did they take the test? No. Well, there was too much confusion right away. Was there ever any attempt to take it? Absolutely not. Who loses? Who loses when they don't take those tests? Mr. Jamal loses. You don't lose and the Commonwealth doesn't lose, but Mr. Jamal loses.

You are saying why should we do that for him? I am saying you should do it for him and for everybody, because if we don't do it for everybody then who is going to start picking and choosing?

There is physical evidence that has been presented in this case and a great deal of testimony. Some of the physical evidence if I can get away with saying there is a lack of physical evidence to corroborate what it is that people say. I am not asking you to --- I am not suggesting or asking you to consider that the Police Department should have done flip-flops in this case. I am not

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asking you to assume that the police should have acted in this case in any manner that was unprofessional. I am not asking that they should have done anything favorable to Mr. Jamal. There are no favors being asked for or solicited from them. Only that they do as much for Mr. Jamal as

they would do for anyone, whether they shot a police officer or anyone else. They are saying, "Well, he must be the one. He has a bullet wound."

There is some question of when he got that bullet wound. Remember the witnesses saying they didn't see any blood? The only blood that is seen was in the wagon when someone said they saw blood on his forehead and at the hospital there was blood on his forehead. Was he shot at the scene? I know by my questions and by my cross-examination of the officers I suggested how could he be doing all this kind of stuff if he had a bullet wound in his shoulder? What did they all say? "I didn't know he had a bullet wound. I didn't know he was shot." Who knew

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he was shot? Nobody knew he was shot. Why? If he was shot don't you think somebody would have known it? There is a life threatening wound of his chest and nobody knew it. Nobody paid attention to it and no one took note of it.

Officer Forbes tells us, among other things, when he arrived at the scene with his brother officers he saw Officer Faulkner and eventually saw Mr. Jamal and saw William Cook. I think Officer Forbes was the one who indicates at least that he picked up the weapon and eventually took it to ballistics.

From the witnesses who testified about what William Cook was doing what do we know? Let's accept all of what they say about William Cook right now as being true. I am not even going to debate that for a moment. Please do this with me?

Cynthia White says she saw the officer get him out of the car and walk on the pavement and turn him around and stand

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him there at the wall.

Mr. Chobert said he saw him walk out of the car on the pavement and doing something. He is standing there.

Mr. Scanlon said they were out in the street and there was a blow struck and he hit him a couple of times. His statement to the police is that William Cook had blood on his hands.

There was some testimony I believe by Dessie Hightower that he saw William Cook standing over the officer. Dessie Hightower said that. And

he had blood on his hands. From where? Well, maybe he brushed his wound. If he brushed his wound that means that Cynthia White lied about him being struck by an officer. It means Chobert lied about it. It means well maybe Mr. Scanlon he was a truthful witness. Well, I mean when did he do all that? He had blood on his hands. If you assume that is what happened. Was there any test to determine whose blood it was? We don't know. Was it

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Officer Faulkner's blood? Was it William Cook's blood? Was it Mr. Jamal's blood?

You come upon a scene and a witness tells you that this guy is standing against the wall and he didn't do anything. He has got blood on him. He didn't do anything and nothing happened to him but he has got blood on him.

Doctor Colletta indicated Mr. Jamal was near death when he arrived at Jefferson Hospital. That the bullet wound had a downward trajectory and he checked the vital signs to determine exactly what was wrong with him. He knew he had the cut above the head and he knew that he had a bullet wound of the chest.

He further indicates a few other injuries that occurred to him which suggests that when Dessie Hightower and Cynthia White say that he was beaten that they were lying. I am not trying to rehabilitate either one of their testimonies. If you want to believe that they were lying about him being beaten

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you are free to do that.

You know Cynthia White gave statements three or four times before she said that he was beaten. Then she said it was not to her advantage or to the advantage to the Police Department to say that Jamal was beaten, but she eventually conceded that, yes he was beaten, or he was struck. I think later she said, "I don't know. I saw them swinging. I saw them kicking. I don't know if they kicked him."

Dessie Hightower said, "Yes, they were."

The officers testified well they kicked him and they don't know whether it was in the shoulder or in the face. They ran his head accidentally into a pole. They dropped him on the pavement. They put him in the wagon and

dropped him in the hospital.

Doctor Cudemo said, "I saw the officer's leg raised."

When you raise your leg your foot goes with it.

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She saw an officer's foot and leg raised and then she saw Jamal's hand go up and then heard him moan.

Is that coincidental, or does it suggest that he was kicked?

You maybe saying, "Well, if he was kicked how come Colletta doesn't know?" I don't know. I am not a doctor. I am not a doctor. I am not here attacking the effectiveness of Doctor Colletta. He saved Jamal's life. Thank God for that. I am simply saying that weather or not Mr. Jamal had been kicked in the stomach or side or butt or chest wasn't really important, because he had a bullet wound of his chest. That is where his attention was focused. That is what he looked at. He made a cursory examination and he noted those injuries that he testified to.

What difference does it make whether Mr. Jamal was beaten? You decide whether or not it makes any difference as to whether or not he was beaten by the police.

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Officer Chinn testified that again aside from the flashlight I don't know what to make of her testimony.

I will be closing pretty soon, so please bear with me.

Officer Chinn said that she assisted I believe, Officer Soboleski and another officer, I think McGurk. She assisted them in handcuffing a prisoner and she only saw the back of him. That is what she said. Then she was going to homicide, I think she said with a witness. Somebody. She was on her way to homicide. She heard they had a suspect at the hospital. At homicide she said that she saw William Cook.

She was later asked "Did you see Mr. Jamal?"

What did she say? She said, "No, he was already gone when I got there. She made a mistake. She did arrest Mr. Jamal. If she made that mistake why did she make the mistake? Were there other things going on which

caused her to make the mistake?

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Because she said when she got there there were two people there at the scene. There were two people at the scene. One was going to the hospital that she heard about and one was in homicide. She said as far as Mr. Jamal was concerned he was gone.

Now, I think you can accept the fact that she made a mistake, but are you, or should you accept the mistake that, in fact, there were only two people there?

Is Officer Chinn the one that tells us, the one that confirms for us that indeed there was someone else there that for one reason or another we are not being told about it? I don't know.

I am not trying to paint any cloak and dagger stuff. I am saying in terms of your consideration of what happened you got to consider that. You got to consider and I can do this since I am a lawyer and it is not anyone that close to me. Are you satisfied that William Cook did not shoot Officer Faulkner? Are you satisfied that

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it was not one of those other individuals who ran away that shot Officer Faulkner?

If you are not satisfied of those facts then you have to find Mr. Jamal innocent or not guilty. You are not saying in making that decision of not guilty that you condone violence, or that you condone murder. What you are saying is that the case wasn't proven to you. That is the wrong person who was brought in and that you are not going to require brother testify against brother, or sister testify against sister. You are not going to require anything more than finding him not guilty, because that is your obligation and that is your duty. There is no reason for you to feel shameful about that at all.

Oftentimes I think when jury members are asked to sit on a jury and asked to decide guilt of innocence of a man or woman for some reason somebody comes over and says, "Well, I guess I am here to see if I can do something about crime in the streets

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and violence. So that if it looks like if there is a likelihood that he may

have committed the crime I am going to find him guilty.

Resist that urge. Resist that urge. You do not stop crimes of violence on the streets of Philadelphia or anywhere else in this universe by finding innocent people guilty. You do not do that.

Oftentimes when I address a jury in my summation oftentimes I feel after I sit-down that I wish I could have said something else, because there was something more that I wanted to point out to the jury. But, I find that jurors are smart enough to know, "Well, Mr. Jackson forgot so-and-so, but I remember so-and-so saying this and the other." You are permitted to do that. You are permitted to remember the testimony of each and every witness who testified and everything they testified about. It isn't necessary that I remind you of that, because I think you have been attentive and you

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have heard the witnesses. If you remember and recall the testimony and if I suggest a theory that is inconsistent with the Commonwealth then you are free to explore that. You are free to consider that in discussing it among yourselves. If there is anyone among you who decides, "Well, I think he is guilty," and the other eleven say he is not guilty, consider it and discuss it. Of course, the opposite is true, too. If any one member of this Jury has some doubt then that ought to create reasonable doubt for the entire Jury. When I say "doubt" I mean doubt as to guilt and doubt as to innocence. Consider it and explore it.

Our system of criminal Justice says that the defense addresses the Jury first and then the prosecution will then give its summation to you when I finish here. I will not speak to you again. I would ask you when the prosecution begins to give its summation listen and ask the prosecution, or consider when the prosecution

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has given its summation what argument will be advanced by Anthony Jackson in response to the argument being presented by Mr. McGill. Is there some other reason, some other way the circumstances could have happened other than the way Mr. McGill would suggest to you? Ask the Commonwealth, silently of course, why didn't you take those tests? Why didn't you take the Neutron Activation Test and why didn't you take the Trace Element Test? Why didn't you find out who that man was that Cynthia White was talking to? Why didn't you? Why didn't you explore the possibility or probability that William Cook was the one who shot Officer Faulkner, or someone else shot Officer Faulkner? Is it because

Mr. Jamal was a well renown journalist in the black community and is it because having him somehow adds to it? I mean I don't know. I mean why him? There is everything to suggest that Mr. Jamal's character is such that shooting a weapon would be inconsistent and shooting a police officer would be inconsistent

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with what his character witnesses have said. They know him. They have told you they have known him over a number of years.

It was easy since he was shot to make that assumption.

Tell me this, even if you accept for a moment what the security officer Priscilla Durham said and what Officer Gary Bell said, "Yes, I shot him, I hope he dies." what would the love of your brother cause to do if you thought you were dying? If you thought you were dying and your brother was all right would you say "Yes, I shot him, I am going to die anyway"? Would you say that?

Ladies and gentlemen of the jury, I am going to close now and I hope that I have been of some benefit to you not just in this summation, but throughout the trial in attempting to seek the truth, because you sit as a board of truth to determine what the truth was on December the 9th at 13th and Locust. There have been a number of heated

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debates between counsel and if you hate me, fine, but don't transfer that hate to Mr. Jamal. I have attempted to do the best as I could to assist you in seeking the truth as to what happened on December the 9th at about 3:51 a.m. that morning. I just suggest to you, ladies and gentlemen, if you have been attentive you will know that Mumia Abu-Jamal did not shoot Officer Faulkner. You are not asked to assume the responsibility of deciding who it was. You only have to decide whether or not Mr. Jamal did it. I think it is clear and it ought to be very clear to you that the Commonwealth has not proven him guilty beyond a reasonable doubt and he did not commit that crime. I would ask you to find him not guilty.

Thank you very much.

THE COURT: Let me see counsel at sidebar.

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(The following is a sidebar discussion with both counsel present.)

THE COURT: I noticed that you

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objected twice. I didn't want to interrupt Mr. Jackson.

MR. MCGILL: It is no good now. I was objecting to his making statements about the Defendant's motivations without his testifying. It is clearly improper.

- - -

(At this time the sidebar discussion was concluded and the following is in open court.)

THE COURT: We will take a short recess at this time.

- - -

(At this time there was a short recess after which time court was reconvened.)

- - -

(JURY PRESENT)

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THE COURT: Mr. McGill?

MR. MCGILL: If the court pleases?

Ladies and gentlemen, there are advantages and disadvantages of talking last. The main disadvantage is that everybody is

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asleep by the time I get to you. Will you do me a big favor? Try and stay awake and bear with me, because it has been a long time. It has been two long weeks. So, give me the benefit of your attention, if you will.

There is no question with respect to what Mr. Jackson said regarding the system and the importance of the jury. I should like to add directly to this. The power of the jury is immense. Truly immense. Because your

actions will determine action.

It is amazing a lot of us don't do things we want to do and we continue to act in certain ways so we can reach certain results. But in this group as I see all of you from various parts of the city, from Northeast Philadelphia, Germantown, Strawberry Mansion, all different types, Southwest, Roxborough, all around, you have represented truly the City of Philadelphia right now and as the city of Philadelphia you as a unit

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are in a position of deliberating and reaching a decision and a decision of finality to a certain degree. If your decision of course were to acquit, to allow the Defendant to walk out, that is fine. There is nothing I can do and there is nothing that the judge or anyone could do that would affect that in any way.

If you find the Defendant guilty of course there would be appeal after appeal and perhaps there could be a reversal of the case, or whatever, so that may not be final. Nonetheless, the action which you have is immense, extremely important.

I do ask you to consider this, if you would, before I even go into the facts? Consider these three points. I call them virtues, or whatever. I ask you to consider first of all responsibility, common sense and finally courage. Responsibility is pretty clear, because there is no question, ladies and gentlemen, that you are immensely

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responsible individuals and that we have chosen you over a period of time. The responsibility of reaching such an important decision is indeed immense and I ask you that you accept that. Accept it in the context of common sense, because I ask you to consider everything that you do and everything that occurred and all the particular evidence that you heard in common sense. Things do not just happen. Every single thing that we looked at and reviewed was broken down into very simplistic terms so everybody no matter who could understand. This is not television. This is reality. Very definitely reality.

I ask you finally of course to have the courage, the courage to stand-up and recite your verdict in open court.

Let me tell you this, let me make this clear, you have heard constantly, constantly you have heard about the facts that this Defendant is on trial for his life. You have heard this all the time. Let me also add this. Will

you understand that this

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Defendant is on trial for taking somebody's life, too. That is one thing we hadn't heard too much about. It maybe true and indeed it is true that Daniel Faulkner on December 9th, at 3:51, as he looked up at the barrel of this gun did not have an opportunity to ask for any type of counsel, or to make any type of abusive remarks in relation to anybody, the system, the laws or anything. No one quickly ran down and said "Do you want an attorney? Do you want something? Do you want this? Do you want that?" He was just shot in cold blood with this weapon.

Ladies and gentlemen, that is reality and that is what all of you must consider.

Let me talk about the weapon. Is that all that this is? Ladies and gentlemen, consider the bullets. Consider those bullets. These very cartridges used, the projectiles that came from those cartridges, and since I do not have one of those, because none of

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those were in evidence, since they all were shot and other than the one that was taken from his brain, we use this which I borrowed from an officer. In borrowing that I tried to show you through the witness' testimony what various parts of the bullet represent. The projectile, the casing and so forth and fragments and whatever. This at the top is what is called a Plus P projectile. A Plus P is what was fired from this weapon. A Plus P is what destroyed a life. A Plus P is what broke into pieces a brain. Plus P bullets. Highly powered bullets that officers by and large are not permitted to use.

Isn't it ironic that Daniel Faulkner after stopping someone in the normal course of his duties was killed by a bullet that he could not put in his own gun, because it was too highly powered?

Isn't it ironic that the shot he was able to get off, because it wasn't a Plus P, did not kill the individual? That is fortunate that that individual was not

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killed, but just isn't it ironic?

It is not the one bullet, ladies and gentlemen, that took his life, but

several shots of Plus P highly powered projectiles, whether it be the back or the brain.

I would point out, ladies and gentlemen, to please consider when we go through all of the evidence that fact, because that is reality and that is what you are deciding on.

Ladies and gentlemen, in thinking of terms of intent to kill can there be any question of what was the intent of the Defendant when it was done? Because, ladies and gentlemen, as you heard this weapon being loaded as it was and the size that it was with those highly powered projectiles took eight to ten pounds of pressure, eight to ten pounds each time and it is fired five times. Of those times a number of those were done right when the individual is looking right up at that barrel. That is reality, because nobody has

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contested that. That man down there without an attorney or anybody to assist him at that time, that man who was looking at a barrel that was going to blow his brains out was a man who was a life that was lost.

The evidence is not only that he was a police officer that you heard, but in terms of reference to one's ability or one's background what do we find out but that very night the last arrest he made before the one that killed him was a rape suspect which he arrested for a victim that had been raped and was at Jefferson Hospital being cared for, the very hospital where he died. We found out that man, that officer who during the regular course of his duties stopped William Cook on that road for a routine stop, we know what the last words were. We all heard what his last words were in this world. You all heard it in reference to that routine car stop. He said, "I have a car stopped. I have a car stopped at 12th and - -" then he says, "13th and Locust. On

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second thought, send me a wagon."

He asked for assistance in a very bad area of the city at a very, very dangerous time at night. Very dangerous as we found out.

This same man as we found out also from a witness that was called by the defense whose testimony you may well completely disregard, and I am talking about Veronica Jones, it will be up to you, it was so confusing that you don't know what she was saying or how she could be where she was. She testified that she knew Daniel Faulkner and he had saved her

from a robbery one time and at another time saved her from a beating.

This is the other life that we are talking about in this case.

Let us keep in mind that there may be justice for the Defendant and there may be justice for the victim, because he has all of his rights as will people that live after him who feel and see and think and remember.

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What is there to remember? A hat without a badge. A hat that was found on the scene. This. The remnants of an individual. An individual that had done those things for so many people.

That is why this is such an outrage and what a way to go. What a way to go.

Ladies and gentlemen, reality is what we are talking about. We are talking about the intent to kill. Deliberate. Eight to ten pounds each time.

Ladies and gentlemen, let us look at the evidence. Common sense. Common sense. What we are talking about in terms of the number of individuals is not just one witness or two witnesses. Not just some physical evidence here and there, but if you take a look at the conglomerate, the combination of all of the facts you see what the results reasonably could be.

Ladies and gentlemen, you have four witnesses that testified from different times.

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As you recall all of the testimony that you heard you will see that they had a consistency throughout.

Let's talk for example about identification.

Ladies and gentlemen, when you speak of identification, when you speak of an individual looking and being able to say that that person did it, there are a lot of things that may go into it, but you have to remember one thing, we are not, as I mentioned before, --- you are not considering somebody that saw somebody do something for a split second and then ran away for about two or three blocks. That is not what you have. You do not have the test of perception of several witnesses who for a moment saw something and then lost sight never to see them again except on the

day in court. That is what you don't have.

What you do have, ladies and gentlemen, is an individual who was observed by the witnesses and who never left the scene.

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Who was arrested on the scene. Who was on the scene and taken to a wagon at that very time and who was identified while in the wagon by the people who did not leave the scene either.

When you talk about identification evidence, when you talk about that type of evidence, one would wonder whether you would even need an identification, since you never lost sight of the man who shot.

It is important to recall, and I ask you to please consider this, remember on this chart and remember these actions, the Defendant as he ran across and as he fired Daniel Faulkner fell down. He never left. Having been shot himself after his firing he then moved over and slumped down. At that time when the police came there was a struggle. There was no question about that. And he was injured. He was taken back and his head hit a pole and he was taken to the wagon. All during that time, ladies and

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gentlemen, he does not leave the scene. None of those people closest to the scene see anybody going anywhere except firing and staying there. I mean how much common sense do we need! You wouldn't have to see somebody's face let alone know a person runs, shoots and then slumps down, or falls down to the curb and is arrested and taken to a wagon. He hasn't left your sight. What more compelling identification testimony would you need than that? That is where he was and that is what you heard.

Mike Scanlon you also heard, which I will get to, but recall Cynthia White's testimony, Robert Chobert's testimony and Albert McGilton's testimony. Those three people clearly saw that man and he never left the scene. All of those witnesses have some strange motive.

Let us take a look also at Mr. Scanlon. I would suggest to you that it is your recollection, but let me recall for you.

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As I questioned Mike Scanlon I believe it was Mr. Jackson who told all of you that in his first statement he didn't know who shot him, but all of a

sudden in the second statement after reading the newspapers he all of a sudden knew.

Ladies and gentlemen, excuse my back. I will have to run back and forth with these various exhibits.

This statement, which is marked C57 which is the first statement, you will recall that on redirect examination after cross-examination I walked right to Mr. Scanlon and asked permission to come up and walk over here and I said, "You gave a statement on December the 9th about twenty, twenty-five minutes after?" He said, "Yes."

Then I went onto read that statement and you will recall as I said the guy running across the street pulled out a pistol and started shooting at the officer. He had the gun pointed at the officer. He fired while he was running at the officer once

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and the officer fell down. Then he stood over the officer and fired three or four more shots point blank at the officer on the ground.

His first statement twenty-five minutes after.

You are the judges of the facts. Ladies and gentlemen, I would ask you to recall his first statement and that there was no change all of a sudden later on. That was twenty-five minutes later.

Scanlon left right away. He couldn't identify anyone, but knows that the one running across was the one who fired. You heard his testimony as to that.

Ladies and gentlemen, I ask you to consider that and consider it very, very seriously, because that is the type of evidence that you may well find compelling. The evidence that the man never left the scene.

How many wrong identifications are you going to make when you see him arrested

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and see him brought around and he is in the wagon and then you see him there and you say that is him, that is him?

Ladies and gentlemen, let's take a look at some of the physical evidence.

Consider how that would corroborate the testimony.

You will recall the various pieces of clothing, for example, those pieces of clothing that were part of the evidence, and I won't bring all of them out, but I wish only to show you this. Excuse me again.

I am talking about the jacket. You will recall the medical examiner's testimony clearly has the bullet between the eyes. You saw that in the chart. I point out to all of you, too, that you will recall the projectile went through the right side and you could see here it went through and because of the looseness of the jacket did not have contact with the body.

There you have two direct pieces

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of evidence. On this jacket you have evidence of three of the shots that were fired. The man just did not make contact with all the shots. Although he certainly tried. You saw the weapon and you noted that all of those shells were used. There were four loaded, five, or whatever, and all of them anyway were spent. There just wasn't any more. Was there any doubt what he was trying to do? Was there any doubt?

Ladies and gentlemen, in reference to the Chem. Lab. testimony itself not only do you have those pieces of evidence which deal with projectiles and the blood, but you do have, for example, when that hat was brought up, the hat that Cynthia White and the others were speaking about, there were two, one was on Mr. Cook and the other one was on the ground, one as you saw was right by the pole as it was located in this photograph. This was right by the pole which is not quite in there. You can see it here. The pole is out of view there. There

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was some blood on that particular hat. The Chem. Lab. reported there was blood on the hat. You recall that the Defendant was bleeding and had definitely made contact with that pole.

This should be again pointed out to you that Miss White no matter what you thought of her, or the other witnesses, whether they were speaking about dark green or whatever, this again is physical evidence to back-up what had occurred.

The Defendant hit his head here and as a result of that you have that blood.

Ladies and gentlemen, there were many things that were said in reference to various parts of the evidence, such as a beating. You are here to consider the shooting of Daniel Faulkner and really nothing beyond that. Even if you were to view the evidence in terms of any kind of beating I would suggest to you to think of Doctor Colletta, and his testimony was clear. Those records were C63, the medical records that I had.

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They were authenticated as you recall by Mrs. Williams. These records show the specific injuries and the only injuries that were on the Defendant and those injuries were completely consistent with what Doctor Colletta said, completely consistent with the testimony of the police. The struggle, the hitting of the head, the kicking in the face, on the side and then the hitting of the pole with the head. That is consistent with these very records.

Again, pointing out documentary evidence that would follow.

Ladies and gentlemen, there are a number of pieces of evidence that you will recall on your own. I am sure that some of these I may not even recall myself, but pointing out the ballistics testimony, you heard that testimony which was uncontradicted, which was the fact that the bullet was fired from Daniel Faulkner's weapon that wounded this Defendant. That evidence was clear.

You heard the testimony of the

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medical examiner that the shot, ladies and gentlemen, in the back that he had, that shot in the back was not totally debilitating at all. As a matter of fact, he said that in the area of the arms, the left arm may have been affected in some way, but you could move well with your right arm. You could do your normal action with your right arm, at least for awhile.

Noticing again in that particular case and the facts all of you heard there was at least one, two, maybe even three seconds before he turned around. Whether it was a stagger or a turn, Scanlon talked about it, he talked about two or three seconds and Cynthia White talked about a staggering at that point in time, certainly as he would turn around and point --- it should be known, ladies and gentlemen, that as you actually would know now that the trajectory of a weapon, certainly Doctor Colletta as he said was not at all an expert in that area, but he did say this, he said

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there are drops as a bullet would go. When you are dealing with the barrel of a weapon -- I won't use the weapon at this time. This would be the barrel of the weapon. It would depend, ladies and gentlemen, as to exactly where the weapon is with respect to the position of the body. I am holding my left-hand as the body and what the trajectory would be. As a matter of fact, both of you are standing up next to each other. You are pointing a weapon like my finger at this point and you move that finger somewhat, either up or down, just a little bit, even though you are standing straight up right at him that trajectory would change depending on where the barrel is pointed. If you turn the body down a little bit then you get a different angle if you are like that. If you turn the body down further you get a different angle. And further the same thing.

So, when you are dealing with both sides and two individuals you are dealing with a target body and you are dealing with

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a weapon the slightest change of either, the slightest change of either of those two things would change the trajectory, because there is no absolute thing. It is not nailed to the body so it won't change. The slightest change of either, the slightest difference in angle would get a different trajectory.

Ladies and gentlemen, I will ask you not to be confused about that particular piece of evidence.

There was some mention about the testimony of some of the defense witnesses. I would suggest to you when you consider, and because it is late I am trying to get directly to the evidence, and it is up to you to decide, Mr. Hightower has incredible eyesight when you think about what he is suppose to have observed. Mr. Hightower at one point said it was a blind side hit on the police officer as he was pulling somebody out of the car. He changed that. When he was asked again he said, "Well, I surmised that."

When it was pointed out to him,

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"If you are over here and seven car lengths up you can't very well see through a wall, could you? You must not have seen that."

"I surmise it, because of the way the officer laid down."

Okay. Right after the shots he goes to the corner and then going to the corner he then began to glance out and take two glances, because he was concerned that he might be hit. As he is taking two fast glances he is able to see, ladies and gentlemen, somebody not only who is one or two car lengths from him at 3:51 a.m., which it is dark, but he is able to see somebody who is down here in one or two glances.

He does remember one thing. Some six days later he says he remembers how the officers were beating on the Defendant with the stick. Doctor Colletta said that just could not be, that there would be --- you would expect more damage.

He is sure of that and he is also

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sure that the holster has a gun in it, or something like that. He says he is really sure of that. Six or seven days later.

I won't put on the officer's holster. He remembers that.

Ladies and gentlemen, he then says there are no shots. Does he suggest, or is counsel suggesting that the shot had occurred sometime on the way to the hospital? If the gun was in the holster and he is driving to the hospital what did they do, take the gun when they got to the hospital and then shoot him at the hospital? Is that what they are suggesting?

Ladies and gentlemen, I ask you to recall and use your common sense, because that is what you are dealing with. You are dealing with human observations and reasonable inferences. You may well find that Mr. Hightower surmises quite a bit, particularly six days after the fact when he realizes that he may know the individual in some way or the other, perhaps in a way that he thinks

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is very, very important.

Ladies and gentlemen, I ask you to consider all of that portion.

Now, a good portion of some of this evidence you already heard and I have kind of surmised it to a great extent. I ask you to consider in terms of intent to kill first, which is what we see without question in a first degree murder verdict. All you are concerned about is guilt at this time.

You are not concerned about any kind of penalty, just guilt.

The reason why we suggest to you that first degree murder is compelling is because of the nature of the weapon. The bullets that are in that particular weapon were bullets to destroy. Remember Mr. Cone? "Devastating" was the word. Highly powered. Paul used the word. "Devastating," and indeed they were. The medical examiner, Doctor Hoyer. The same damage which is consistent with the Plus P bullet. You may not often see that type of damage done to the head

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because of the fragments, the different type of fractures. That is consistent with that type of high velocity.

When you look down or when you are pointing that particular weapon down and you are using eight to ten pounds of pressure each time what is your intent? You are deliberately acting to kill. Four or five times, or whatever. That is what happened, The intent to kill.

Ladies and gentlemen, a reasonable inference based upon the circumstances.

We have seen other things, also. Perhaps you may find those very consistent with the type of evidence that you have seen and as a matter of fact what you may have seen even in this courtroom. This sort of thing, ladies and gentlemen, when you arrive at the hospital and with the action that was just done and you speak out and you proclaim almost in a boastful and defiant way you say, "I shot him and I hope he dies." That has to be the supreme arrogance that can

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be associated with such a vicious act, because it would take somebody with that frame of mind to shoot down a man on the ground. To shoot him in the back and then straight on in the face. That same kind of arrogance that would carry on through to the hospital and would be stated.

Normally during the course of the evidence you really are not permitted to get into certain areas, but the defense did bring it up, which I can comment on because it was brought up.

In terms of the investigation is counsel suggesting in some innuendo that this was a mass conspiracy to get this Defendant? Is this Defendant so important to the Commonwealth of Pennsylvania and the people that we

are just going to put a killing on him, or are we interested in finding out, investigating as completely as we can this case?

There was Detective Thomas, as well as many others. Herbert Gibbons. All

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of them working hard with me everyday for six months and coming up with fifty-seven, fifty-seven statements all given to the defense, with one hundred and twenty-five other statements all given to the defense, with all sorts of medical reports and ballistic reports and chemical reports and property receipts and all physical evidence. Is all this done so that we can hang this job on this man? Is that what the situation is? Is he trying to suggest because he is a person of, as the defense said, of some notoriety that we therefore seek him out and we don't put it on anybody else?

Ladies and gentlemen, the reason he was arrested, the reason he is prosecuted, the reason why you sit there as a finder of fact in this is a culmination of the investigation of what you saw and although they have no burden to do anything, of all that they had, all that was presented to them over that period of time you saw what the defense put on, and they don't have any burden

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that is true, but --

MR. JACKSON: (Interposing) Objection.

THE COURT: Your objection is noted.

MR. MCGILL: Are they suggesting that there was a third man, a fourth man, or is he doing this all for his brother? I ask you to look through all of this, as well as any other strategy or tactics you have seen during the course of this whole particular trial and recognize it for what it is. You make the decision.

This is one vicious act. This is one uncompromising vicious act. This is one act that the people of Philadelphia, all of them, all of you everywhere is outraged over. This act demands action. This act demands a reasonable view and the result of responsibility and courage.

Ladies and gentlemen, the evidence is many fold. Whether it be photographs that we have shown, charts, statements made right

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after the fact by individuals that have nothing to gain and not even involved with the Police Department.

Priscilla Durham. Present was also LaGrand as he comes in and makes that statement.

MR. JACKSON: Objection.

MR. MCGILL: The comment was also from Mr. Jackson that Miss Durham all of a sudden two months later came out with this revelation about what the Defendant had said at the hospital. Do you recall the cross-examination? Who did you first tell? Who did you talk to?

I didn't talk to the police. It is not my responsibility to talk to the police. It is the police's job. I talked to the staff.

Did what?

I talked to the staff.

I would like to have that interview?

This is D14. You recall that.

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That document, the interview that Miss Durham had given the very next day at 2:16 a.m.; December 10th, 1981. Durham also stated that when Jamal was first brought in and lying on the floor Durham also stated that Jamal shouted "Yes, I shot him and I hope he dies."

D14 on December 10th. Not February, ladies and gentlemen, as was suggested to you.

In considering all of the testimony I of course would ask you to use the same common sense you use everyday. You will hear that in the instructions of the law that the court will give you. Please listen to all of them and reach a verdict that is based on the evidence and not on any kind of conjecture, or any kind of thought as to what may be, or this, or that, but what was there and what you saw happen, saw happening in terms of the witnesses. What did they see and how they said it.

Ladies and gentlemen, the consistency of all those witnesses you may

find to be indeed compelling. No matter what

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the specific areas may be that would be questioned or backed up by statements please understand that you are human beings and all of you may describe things different than other people. Just because one witness may think somebody is a certain height and another person may think they are another height, maybe you are good at heights. I know I am not. Maybe you are good at weight, good at colors or good at descriptions. I am not particularly good at any of those things, but maybe you are. Not everybody is. Consider the time that you are dealing with. Something happening anywhere from thirty seconds to one minute. That is the time you are dealing with. Is it in the right-hand or left-hand? What is the type of description you are talking about? What is the color hair or whatever? Can you really recall in such a short time? You maybe off here or there, you maybe a bit off, but you know that the person who shot him stayed there and this person was arrested and taken to the wagon.

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You know that. What kind of description ability can you expect? There is a great deal of difference between the ability to describe and the ability to recognize. You may recognize someone very quickly and easily.

Does the Defendant have those facial features that are the type of features that you would forget after you saw him once and didn't see him again for a week? How about once and didn't see him for a day? How about seeing him once and then seeing him less than two minutes later in a wagon? Are you going to be wrong?

Ladies and gentlemen, is that not compelling?

I show you something here in reference to your own self. If you will recall perhaps you have seen me often in the last two weeks walking around. You have seen me as I am seated here. I was very close to you. If I were talking I may look at you, look over here and I would look over there and talk to the witnesses. Do you recall the tie

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I wore yesterday? Maybe some of you do remember what tie I did have on yesterday. What color was it? There I was in front of you for an entire day. Which tie was it? Was it this one or another one?

I did, as a matter of fact, bring it over. I just wanted to show you. Some

of you probably noticed. I wish you would be a witness some time.

Ladies and gentlemen, this is the one that I had on. This is the type of tie.

I used that only to simply show you that you are looking at me all day. These people were looking at somebody for thirty seconds or a minute. Are they suppose to know height, weight, color of shirt, pants and everything?

There is one comment that came from Robert Chobert that I remember.

There are certain people that you may not think --- you would view them maybe as being somebody that would be a philosopher

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or somebody that might be a teacher or something like that. But you may think maybe they wouldn't be that kind of person. I will tell you one thing, they may not express themselves well, they may almost stutter and try to get it out, but darn it, they know what they saw. They know what they saw. They were there, they were close and they saw it.

So, Mr. Chobert when he was on cross-examination he said, "He never left my sight. I was right there. I was there in the cab as I dropped off my customer. I was there and I saw and I heard the shot."

Then he sees him on the ground and sees him go over and shoot him and he is looking at him and he goes over and started to approach. As the same man who shot him went over he slumped down and he starts to approach and he turned around and saw him and then saw the struggle and stood there.

So, he was questioned again, "What do you mean? What do you mean that you had him in view all the time? You didn't have

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him in view. You turned around four or five seconds."

He turns and said, "What did he do, fly away?"

That really, ladies and gentlemen, is what it is all about. Common sense. Did the Defendant fly away? They were seeing him, they were looking at him and he didn't go away. He was arrested and taken to the wagon. The kernel of believability, the trust that you can have in an individual when he talks as he did I would not criticize that man one bit. Ladies and

gentlemen, he knows what he saw and I don't care what you say or what anybody says, that is what he saw. Do you think that anybody could get him to say anything that wasn't the truth?

Ladies and gentlemen, that was really the key point that I ask you to consider in terms of what appears to be the main defense, that of identification. He never left the scene.

I ask you to consider the following

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things. One person is here. Another person is there. Another person is here looking at what occurred as the light was turning, and also another person who was walking over and there. They are the positions and that is what they saw as they came closer, seeing no one go anywhere, and they approached. Cynthia White no matter what you may think of her, also Robert Chobert as he walked across, and Albert McGilton, all three of them saw the same man being arrested and taken into the wagon. Nobody else anywhere. All of their statements indicate nothing else. If there was some kind of grand conspiracy for some God knows what reason to accuse that man of something he is suppose not to have done I am telling you it was made up pretty quickly, because twenty-five minutes after Mike Scanlon testified what he saw, he testified or gave a statement, and Robert Chobert forty-five minutes, forty-five minutes after it happened he gave his statement, and Cynthia White gave her statement within hours.

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The first hour. Albert McGilton within the same forty-five minutes. What a very fast moving conspiracy that was. All to get this man. Boy, that's the most fantastic conspiracy I ever heard.

Ladies and gentlemen, the credibility of witnesses must be made on common sense factors. What they observed, the time they had observing the thing, how long they had to view it immediately before and after, what kind of motivations they had.

What motivation does Michael Scanlon have? If he had any motivation it would be not to come here and testify. What is his motivation?

MR. JACKSON: Objection.

MR. MCGILL: What motivation would Albert McGilton have? What motivation would he have to lie forty minutes after this? What

motivation?

Robert Chobert. What motivation would Robert Chobert have to make up a story within thirty-five to forty-five minutes

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later?

Cynthia White, if she was going to make up something immediately within that hour she came out with the same story substantially as everyone of those other witnesses, substantially the same story. The man running over and doing the shooting. Again, you may not appreciate her way of life, or whatever, but she tried to express to you all what she wanted and at times she wasn't very good at an explanation. She was on the stand for one day and a half. One day and a half. You saw her constantly. You recall what she said and how she said it and the statement she gave shortly there after, which was substantially the same as the others.

One grand conspiracy, ladies and gentlemen? Really. Just to put it on this man.

Ladies and gentlemen, the investigation as thorough and complete as it was, was to get the man and to prove the case of the man who did it.

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One thing we did also, and let us not forget this, this holster and this gun, ladies and gentlemen. Did he wear a holster without any gun? The gun that was identified as the one he purchased a year and a half ago. The gun that was loaded ready to go with Plus P's. Is that also a conspiracy? What is he doing with this? What did he do with the gun, throw it to somebody or something? What is he doing with his finger going up in the air.

Ladies and gentlemen, we are talking about three and a half or four car lengths. I suggest, and you decide how many car lengths this is, are you going to be able to see a gun in a hand? If you are standing there, you are over there on the south side of Locust Street, or you are there at the light at 13th and Locust Street and somebody is running over here are you going to see a gun? Are you going to be able to define exactly the dimensions of that weapon and see that? Are you going to be able to do that? You are going to see from the man running and going

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slow motion to fast and putting his arm up. What is he doing, directing traffic? This is out and this means business. Going in slow motion and then you see the same man when he goes over and shoots and goes down like that. That you know. If you are even closer than that, because if you are there you would be there where Mike Scanlon was -- let's put you with Chobert. Let's put you where Chobert is. The police car. How big is a police car? A Volkswagen. How big is a Volkswagen? You figure it out. Figure whether I am right or wrong. You are now where Chobert is. You are going to somehow miss this right over him? As he goes over and slumps down and when he is down at the curb you then get out of your car and walk toward me until you are about there and you still see me and then the police come and the police arrest him. You are going to be wrong about that? Are you? Or are you Cynthia White from her position? Are you Albert McGilton? All of them running

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across and then seeing the man. Nobody going anywhere else. Except William Cook who is standing there and nobody sees him with anything and nothing at all in his hand from nobody. Nobody. Fifty-seven statements.

Excuse me for a moment.

Ladies and gentlemen, I will be less than five minutes. I know you don't believe me any more than I told you it would be three days the first day, but I tried. I know that I was way off on that, but as it turned out my case was seven days. I apologize for myself.

Ladies and gentlemen, I would like to sort of conclude by asking you to remember again what I said what I first intended to prove at the beginning. I also mentioned, I don't know if you will recall, the ironies that exist in this case. The ironies that an individual who is killed and treated at the same hospital as the Defendant who killed him. The irony that the Defendant who killed him would go to the hospital being

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brought there by the very police whose brother officer he killed. And the fact if he had not been brought there by the police within a half hour or so and treated by Doctor Colletta he also may have died. While there at the hospital having been brought in by those policemen he then turns and looks at Gary Bell, the partner of Daniel Faulkner, straight in the eyes and says, "I shot him and I hope he dies."

The irony of having both the killed individual and the doer shot by each

other at the same time at the same scene. All of this and in particular the conduct of this Defendant. I plead to you consider the thrust of such arrogance and hostility and injustice. The action of a judging body, the actions of all of you must be filled with the courage and the responsibility of seeing to it that, that man as he looked up, as he watched in the last seconds of his life, the very instrument the Defendant purchased and carried with him loaded with those bullets, demands

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action. An officer of the law who serves two years in service and assists individuals throughout that time, some of whom have testified here. He helped a rape victim and mother of the victim and the last arrest he ever made. That man as a member of the Police Force of this city comes back from war and is faced with a war on the street right at 13th and Locust.

Ladies and gentlemen, I ask you, all of us, the Commonwealth, the people of this city, reach out to you and demand justice. Look right at that intent to kill and that man who did it with that weapon and say, "The evidence is clear to us. You are guilty of first degree murder."

Thank you very much.

THE COURT: We will adjourn court until tomorrow morning at 9:30 at which time I will give my final charge.

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(At this time court was adjourned.)

- - -

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(The following is a discussion in chambers with both counsel present.)

THE COURT: Let the record show that we are back in chambers.

MR. JACKSON: I had a couple of objections. I am not sure I heard them right so I will make them and if I say something wrong you can correct me. He commented on the defense's failure to present additional defense. I don't think that is an appropriate comment, Your Honor.

MR. MCGILL: What I said was I prefaced it with the defense has no burden. I said that when they do offer or put on a defense you look at it for what it is worth. I commented on the fact of that. This was the

evidence that you put on, which you didn't have to, but nonetheless since you did you look at the credibility of that and make a judgement on that. That was I believe the thrust of what I tried to say.

THE COURT: What was the other thing?

MR. JACKSON: He argued that Priscilla Durham was there with James Lagran

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and they confirmed each other's statement. Of course, Lagran never testified.

MR. MCGILL: I don't believe I said confirmed each other, I said that Priscilla Durham stated what she heard and James Lagran was present at the time. I believe that is what I said. The record will reflect what I said.

MR. JACKSON: Did you say something about Mr. Jamal's motivation about not testifying?

MR. MCGILL: What I said was this. I said he has no obligation to testify, but that it is improper to characterize his motivation for not testifying without his taking the stand.

MR. JACKSON: I wasn't certain I heard you right. I think that would be it.

THE COURT: I looked over your points for charge, Mr. Jackson. Most of it is all right except you are talking about --- you seem to be talking about some sort of

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liability of accomplice. That is not here. This jury has to decide either he killed him or he has nothing to do with it. Strictly that. There is no accomplice around here.

MR. JACKSON: I don't know. The jury may not feel there is an accomplice, but ---

THE COURT: (Interposing) I don't care what they feel. You are asking me to charge it. I have no evidence here of any accomplice or any conspiracy. His brother was stopped for some sort of violation. I don't know what it was. Let's say a car stop. No way could you say that there was some sort of conspiracy, or that there was some sort of accomplice

here.

The district attorney's whole case is that the Defendant is the actual shooter. He didn't say somebody else shot him and he is an accomplice of that person. For me to charge on accomplice would certainly be confusing to the jury and would not be proper in this case. It is strictly a question

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either that they believe this Defendant shot him, or he is not guilty.

You said that in your closing summation anyway. You said the only verdict you can really find here is either first-degree murder or not guilty. There should be no compromise and there is no question that you are saying if he didn't do it, if you don't believe he actually shot the officer you must find him not guilty.

MR. MCGILL: What is the charge you asked?

MR. JACKSON: It was like an accomplice charge.

THE COURT: There is none here.

MR. JACKSON: I am concerned even though we may agree there is no accomplice even without charging conspiracy the Defendant could be found guilty of murder by virtue of the accomplice theory.

THE COURT: There is no accomplice theory. There has been no testimony of an accomplice.

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Am I going to say to them you can hold the Defendant liable if you conclude he was the accomplice of the person who did the shooting? Is that what you are asking me? There is no testimony of that. The evidence here presented is that the Defendant shot him. Either this jury believes this Defendant shot him and finds him guilty, or they have to come in with not guilty, because somebody else other than this Defendant shot him. By your own argument to the jury they must find him not guilty.

I am ruling that it is not in the case.

MR. JACKSON: Fine. That is your ruling, Your Honor.

THE COURT: You might ask me to charge that he is insane. That is not

here.

MR. JACKSON: I am suggesting it is in the case by virtue of the witnesses indicating that his brother was there and there may have been other people.

THE COURT: His brother and other

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people may have been there, but the comment was --- the whole case rests on the fact that this Defendant did the shooting. No where did they present evidence somebody else did the shooting and he happened to be the accomplice of that person.

The first officer on the scene tells you the brother William Cook he says, "Hey, I got nothing to do with this." They didn't charge him with murder. His brother is not charged with murder. How can you say there is an accomplice theory here?

MR. JACKSON: You are required to give the charge of voluntary manslaughter. Voluntary manslaughter is not here.

THE COURT: I could instruct the jury in my opinion voluntary manslaughter is not here. It is your opinion that controls. I don't do that. The cases say I can. I am compelled to charge on that. If I wasn't compelled to charge on it I certainly wouldn't charge on voluntary manslaughter in this case, because it is not applicable. You know

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it is not and I know it is not. But the courts require me to charge it so I am required.

As far as the accomplice theory there is no accomplice theory here. They are liable to convict him and I will be charging the accomplice theory and there is no evidence of it. They must actually believe he shot him and nobody else and not his brother. They can't find him guilty if somebody else shot him.

MR. JACKSON: Judge, that is your ruling.

THE COURT: Off the record for a minute.

(Off the record discussion)

- - -

MR. MCGILL: What charges do you want?

THE COURT: He wants willful, deliberate premeditation and the accomplice. I am not going to get into accomplice. I could be reversed for that and that would be

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silly. I would be telling them if in fact, they believed somebody else shot him, but he was the accomplice of that person, he could be held liable. I don't want to go into that. It is not the theory of your case. Your theory of the case is that he is the one who deliberately shot him and nobody else. Not the brother. Nobody else. What about a charge on --

MR. MCGILL: The Defendant not being present?

THE COURT: No. The one about where the witnesses' prior statement could be used only for impeachment purposes. Is that what you want?

MR. MCGILL: Prior inconsistent statements.

MR. JACKSON: I don't want it.

THE COURT: Put it on the record if you don't want it.

MR. JACKSON: I am sorry. I do want the prior inconsistent statement charge.

MR. MCGILL: You have to do it then.

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THE COURT: He said first he didn't want it.

MR. JACKSON: I also need you to comment on his failure to take the stand.

THE COURT: Yes. I always put that in as long as you want it.

MR. JACKSON: I do want it.

THE COURT: That will be it then.

- - -

(PROCEEDINGS ADJOURNED)

- - -

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS

PHILADELPHIA COUNTY CRIMINAL TRIAL DIVISION

		January Session, 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

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Courtroom 253, City Hall  
Philadelphia, Pennsylvania

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July 2, 1982

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Before: HONORABLE ALBERT F. SABO, JUDGE

(AND A JURY)

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APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney
- ANTHONY JACKSON, ESQUIRE  
Attorney for the Defendant

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JOSEPH MASCIANTONIO, R.P.R

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(The following is a discussion in chambers with both counsel present.)

THE COURT: It is now 10:48 a.m. and we were suppose to start at 9:30. You are late again, Mr. Jackson. What is the excuse this time?

MR. JACKSON: This morning, Your Honor, at about 6:30, a quarter to 7:00, fire engines came to my house again and I think I indicated that to you, before. There was no fire. I left and I finally got to the office about ten minutes to 9:00. At about a quarter after 9:00 my son called me. I am a single parent. My son called me and indicated that someone called and asked for me and I wasn't there. He said, "You are the one that we want. We will be over to get you." He is fifteen years of age. I told him to leave the house and go to my mother's house.

Less than five minutes later he, called back and said it was a different person that called. I then decided to go

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home and pick him up and take him to my mother's house.

I don't know who made the calls. He couldn't tell whether they were black, white, old or young. I thought that the best thing for me to do was to take him over to my mother's house.

THE COURT: Why didn't you give us a call?

MR. JACKSON: I told my secretary to call.

THE COURT: Why don't you call here? You know the courtroom number. Let the court crier know.

MR. JACKSON: You had no call at all?

THE COURT: Absolutely not. We had to call your office and get your phone number. Your son said you left for here.

MR. JACKSON: I called this morning. I mean my secretary was suppose to call.

THE COURT: Here is the crier.

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You can ask him. He spoke to your son. Your son said that you had left and you were here. I thought you took him to your mother's.

MR. JACKSON: I didn't want to leave him alone. I don't know what is happening to my house.

THE COURT: He is back at home now. You weren't in any other courtroom, were you? You didn't go to any other courtroom?

MR. JACKSON: I have no other trials. None.

THE COURT: The next time I wish you would call here and let us know what you are doing.

MR. JACKSON: I assure you that I wasn't thinking to call here. I was thinking about getting home.

THE COURT: Okay. The next time you call here and let us know. I mean it is terrible. It is 10:45.

MR. JACKSON: There would be no

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reason for me to be late.

THE COURT: Remember yesterday there was mention about inconsistent statements or consistent statements. Either one. I looked at the Waller case and it seems to be that the inconsistent statements can't be used as

substantive evidence. However, if the person testifies in regards to those inconsistent statements that can be received in evidence. So, it would seem to me that if you give a charge to that you have to say on the one hand you can only use it for one purpose and it can't be used as substantive evidence. However, whatever he said on the stand or she said on the stand in regards to that prior statement can be used as substantive evidence. It is rather confusing to the jury to explain that and I felt there request that you had made for the false in one false in all would cover that situation, which I think they would understand a lot better if I tried to explain to them that, no you can't consider it substantive on one

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hand and on the other hand whatever she said on the witness stand you can.

MR. JACKSON: I am sure the jury would say "What is substantive evidence?"

MR. McGILL: That is a good point, Judge.

THE COURT: It is confusing. You didn't request it, but you mentioned it to the jury. So, I am assuming that you want it. The false in one false in all would be the thing that would cover that situation. In other words, they would have the alternative to disbelieve or believe whatever they wanted to. Do you want anything on motive?

MR. McGILL: No.

THE COURT: Okay. Do you want anything - - I wouldn't do it in my charge in chief, but in my closing remarks do you want me to say anything about if they come in with first degree that there is a second charge?

MR. McGILL: Absolutely not.

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THE COURT: I will stay away from that.

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(At this time the discussion in chambers was concluded and the following is in open court.)

- - -

(JURY PRESENT)

- - -

THE COURT CRIER: While His Honor is charging the jury no one will enter or leave the room. Remain seated at all times. If you wish to leave please leave now.

THE COURT: Ladies and gentlemen of the jury, the time has now arrived for me to give you my charge. After I have finished you will gather together and undertake the task for which you are chosen. That is to discover the truth and announce your finding in the case of Commonwealth versus Mumia Abu-Jamal.

When you undertake your deliberations I want you to keep one point clear in your

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mind. No matter what verdict you reach it must be unanimous. Each of you must agree and concur on the ultimate finding of the Defendant's guilt or non guilt.

The verdict then must be a composite of your individual views based on the evidence as it was presented in this courtroom during the course of this trial.

After you retire you must do one thing before beginning your deliberations. You must select a foreman from among yourselves. The foreman's task will be to sign and date the verdict report which will be given to you and on which you will note your verdict. The foreman will also conduct your deliberations and act as your spokesman and announce the verdict as you all find it when called upon in open court.

Remember as I have told you, the verdict must be unanimous. You are responsible for it individually and collectively. After it has been announced by the foreman you may each be polled for

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your personal view.

I am holding in my hand the verdict report which will go out with you. You will see it has the Judge's name, the courtroom number, the attorneys' names, the date, the crier's name and it says Commonwealth of

Pennsylvania versus Mumia Abu-Jamal.

Down on the left-hand portion to your left you will see it has the first charge possession of instrument of crime generally under bill number 1357, January Term of 1982. To the extreme right you will see the printed word "Verdict." Underneath there you will put either guilty or not guilty as you all find it. Below that you will see the charge of murder. That is under bill number 1358, January Term of 1982. To the left of that word "murder" you see a little asterisk which if you follow it down to the bottom it says "See, reverse for crier's notes. On the reverse side it says "Only one of four possible

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verdicts." One, guilty of murder in the first degree. Two, guilty of murder in the third degree. Three, guilty of voluntary manslaughter and four, not guilty. Whichever one of those verdicts you reach you will go to the front and to the extreme right under the printed word "Verdict" you will write in that full verdict.

Down the bottom in the middle it has a place for the foreman's signature. He or she, whoever is the foreman, will write in either his or her name and to the right of it you put the date that you reached the verdict and bring this back with you into the courtroom.

At the very outset I want to say to you that the speeches of counsel are not part of the evidence and you should not consider them as such. However, in deciding the case you should carefully consider the evidence presented in light of the various, reasons and arguments which each lawyer presented.

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It is the right and duty of each lawyer to discuss the evidence in a manner which is most favorable to the side he represents. You should be guided by each attorney's argument to the extent that they are supported by the evidence and insofar as they aid you in applying your own reasoning and common sense.

However, you are not required to accept the arguments of either lawyer. It is for you and you alone to decide the case based on the evidence as it was presented from the witness stand and in accordance with the instructions on the law which I am now giving to you.

You must also remember that it is a fundamental principle of our system of criminal law that the Defendant is presumed innocent. The fact that he was

arrested and he is accused of a crime is not any evidence against him.

Furthermore, the Defendant is presumed innocent throughout the trial and

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until and unless you conclude based on careful and impartial consideration of the evidence that the Commonwealth has proven him guilty beyond a reasonable doubt.

It is not the Defendant's burden to prove that he is not guilty. Instead, it is the Commonwealth that always has the burden of proving each and every element of the crime charged and that the Defendant is guilty of that crime beyond a reasonable doubt.

A Defendant is not required to present evidence or to prove anything in his own defense. It is entirely up to the Defendant in every criminal case whether or not to testify. He has an absolute right founded on the constitution to remain silent. You must not draw any inference of guilt from the fact that the Defendant did not testify.

If the Commonwealth evidence fails to meet its burden then your verdict must be not guilty. On the other hand, if the

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Commonwealth evidence does prove beyond a reasonable doubt that the Defendant is guilty then your verdict must be guilty.

Although the Commonwealth has the burden of proving that the Defendant is guilty this does not mean that the Commonwealth must prove its case beyond all doubt and to a mathematical certainty. Nor must it demonstrate the complete impossibility of innocence. A reasonable doubt is a doubt that would cause a reasonably careful and sensible person to restrain before acting upon a matter of importance in his own affairs. A reasonable doubt must fairly arise out of the evidence that was presented, or out of the lack of evidence presented with respect to some element of the crime. A reasonable doubt must be a real doubt. It may not be an imagined one, or a speculative one. Nor may it be a doubt manufactured to avoid carrying out an unpleasant duty.

So, to summarize, you may not find the Defendant guilty based on a mere

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suspicion of guilt. The Commonwealth has the burden of proving the

Defendant guilty beyond a reasonable doubt as I have defined that term for you. If it meets this burden, then and only then must the Defendant be no longer presumed innocent and you must find him guilty. On the other hand, if the Commonwealth does not meet its burden then you must find the Defendant not guilty.

It is part of the function of the jury to decide the credibility of the witnesses. You are the triers of the facts. It is up to the jury alone to determine whom you believe and what weight you will give to the testimony of the witnesses in determining their credibility.

You should consider the witnesses' manner of testifying, their candor and frankness or lack of it, and the corroborators of other witnesses. You will take all of the surrounding circumstances and determine which witnesses you will believe and, what weight you will give their testimony.

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In considering the credibility of witnesses you have seen you should consider what opportunity the witness had to observe the facts to which the witness has testified. Also, whether the witness was capable of observing them accurately in the first instance and remembering them and now recounting them and whether the witness did so fully and honestly, or untruthfully or evasively.

All of these considerations are matters to be passed upon by you.

Where the opportunity for positive identification is good and the witness is positive in his or her identification and his or her identification is not weakened by prior failure to identify, but remains even after cross-examination positive and unqualified, the testimony as to identification need not be received with caution. Indeed, the law says that his or her positive testimony as to identity may be treated as the statement of a fact.

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Where there is a conflict in the testimony of different witnesses the jury has the duty of deciding which testimony to believe, but you should first try to reconcile, that is fit together, any conflicts in the testimony if you can fairly do so.

Discrepancies and conflicts between the testimony of different witnesses may or may not cause you to disbelieve some or all of their testimony. Remember that two or more persons witnessing an incident may see or hear it happen differently. Also, it is not uncommon for a witness to be innocently mistaken in the witness recollection of how something

happened.

If five witnesses to the same occurrence give different details and descriptions you must bear in mind that some persons have better powers of observation. Some have more accurate powers of expression. Some have better memories. Some have an interest or motive which may have colored

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their recollection and testimony. And all such personal equations must enter into your determination as to how much reliance you can place on the testimony of each witness.

If you cannot reconcile a conflict in the testimony it is up to you to decide which testimony, if any, to believe and what to reject as untrue or inaccurate.

In applying or making this decision consider whether the conflict involves a matter of importance or merely some detail and whether the conflict is brought about by an innocent mistake, or by an intentional falsehood.

If you conclude that one of the witnesses testified falsely and intentionally about any fact which is necessary to your decision in this case then for that reason alone you may, if you wish, disregard everything that the witness said. However, you are not required to disregard everything the witness said for this reason. It is entirely possible that the witness testified

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falsely and intentionally in one respect, but truthfully about everything else. If that is the situation then you may accept that part of the witness's testimony which is truthful and which you believe and you may reject that part which is false and not worthy of belief.

You should also keep in mind the other factors already discussed which go into deciding whether or not to believe a witness. In deciding which conflict in testimony to believe you should not necessarily be swayed by the number of witnesses on either side. The number of witnesses is not a controlling factor. It is the quality of their testimony and the credibility and believability of the testimony which must guide you in your deliberations. On the other hand, you should also consider the extent to which the conflicting testimony is supported by other evidence in the case.

Remember, a witness is credible

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if the witness honestly tried to tell the truth and if you believe the witness was able to observe and recount with reasonable accuracy the matters to which the witness testified.

In summary, you must bring to bear all the faculties you acquired as adult human beings which enable you to determine who is and who is not telling the truth.

Although you are the sole judges of the facts in this case you are bound to apply the law as I give it to you to the facts which you determine. In doing so you are not to be concerned about the wisdom or correctness of the law. Your oath as jurors requires that you apply the law as it is in accordance with my instructions to the facts as you find them.

The defense offered evidence as to the good reputation of the Defendant for being a peaceful, law-abiding citizen. The law recognizes that a person of good character is not likely to commit a crime

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which is contrary to his nature. Evidence of good character may by itself raise a reasonable doubt of guilt and justify a verdict of not guilty. You must weigh and consider the evidence of good character along with all the other evidence in the case.

If on all the evidence you have a reasonable doubt of the Defendant's guilt, then you must find him not guilty. However, if on all the evidence you are satisfied beyond a reasonable doubt that the Defendant is guilty then you must find the Defendant guilty.

As a general rule a witness can only testify about what he saw or heard. He may not give an opinion or draw conclusions. An exception to this rule is the so-called expert witness. Such a witness is one who by training, education or experience has acquired a special level of skill or knowledge in some art, science, profession or calling. By virtues of his special skill or knowledge an expert is permitted to

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give explanations and draw inferences not within the range of ordinary knowledge intelligence and experience, and to give an opinion and state his reasons for it.

Whether or not to accept the expert's opinion, namely Joseph Grimes, the

fingerprint expert, Anthony Paul, the ballisticsian, Doctor Morton Hoyer the assistant medical examiner, Doctor Charles Tomosi, the criminalist, and Doctor Anthony Colletta, the surgeon, you should consider the evidence as to each of their training, education or experience, as well as the reasons and facts on which their opinion is based.

Also in deciding whether or not to accept the experts' opinion you should bear in mind that you are not bound to accept it merely because it is the testimony of someone having special skill or knowledge.

The evidence in this case is of two different types. On the one hand there is direct evidence, which is testimony by a witness from his own personal knowledge.

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Such as something that he saw or heard himself.

Let me give you an example of what I mean by direct evidence.

If you were to leave City Hall on a summer afternoon and the sky was very dark and you heard thunder and you saw lightning in the distance and moisture was falling from the sky you could say that you saw it raining. That is direct evidence.

The other type is circumstantial evidence, which is testimony about facts which point to the existence of other facts in question.

Let me give you an example as to what I mean by circumstantial evidence.

Let us assume that you entered a moving picture theater in Philadelphia at 1:00 p.m. on a summer afternoon and the sun was shining very brightly. You came out of the movie about 3:00 p.m. in the afternoon and the sun was still shining very brightly, but when you came out of the theater you

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noticed that the streets were wet, the pavements were wet, the buildings were wet, some people were wearing raincoats and some had their umbrellas up. Now, you could not actually say that you saw it rain, but certainly the things that you had seen would be very persuasive circumstantially of the fact that it did rain.

Whether or not circumstantial evidence is proof of the other facts in question it depends, in part, on the application of common sense and human experience. You should recognize that it is sometimes necessary to

rely upon circumstantial evidence in criminal cases particularly where the crime was committed in secret.

In deciding whether or not to accept circumstantial evidence as proof of the facts in question you must be satisfied first that the testimony of the witness is truthful and accurate, and second that the existence of the facts the witness testified

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to leads to the conclusion that the facts in question also happened. Circumstantial evidence alone maybe sufficient to prove the Defendant's guilt.

If there are several separate pieces of circumstantial evidence it is not necessary that each piece standing separately convince you of the Defendant's guilt beyond a reasonable doubt. Instead, before you may find the Defendant guilty all the pieces of circumstantial evidence when considered together must reasonably and naturally lead to the conclusion that the Defendant is guilty and must convince you of the Defendant's guilt beyond a reasonable doubt.

In other words, you may find the Defendant guilty based on circumstantial evidence alone, but only if the total amount and quality of that evidence convinces you of the Defendant's guilt beyond a reasonable doubt.

In addition, where one of the

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elements of the crime requires intent, knowledge or a specific state of mind you will note that it is not always possible to prove intent, knowledge or state of mind by direct evidence unless for example there is evidence that the Defendant made a statement concerning his state of mind. However, intent, knowledge or state of mind like any other matter maybe proved by circumstantial evidence. That is by inferences that reasonably maybe drawn from all the facts and circumstances including the Defendant's acts and conduct which have been shown by the evidence in this case.

Thus, you may conclude that the Defendant had the intent, knowledge or specific state of mind required for one of the elements of the crime charged based on circumstantial evidence alone, but only if the circumstantial evidence is strong enough to convince you that the Commonwealth has established this intent, knowledge or state of mind

beyond a reasonable doubt as I have

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previously defined that term for you.

Under Bill of Information number 1358, January Term of 1982, the Defendant is charged with various offenses involving various classes or kinds of criminal homicide, which is the taking of a human life without justification or excuse.

You are advised and instructed that you have the power to return but one of four permissible and proper allowable and available verdicts in your deliberations pertaining to this Bill of Information.

That is, one, guilty of murder in the first degree. Two, guilty of murder in the third degree. Three, guilty of voluntary manslaughter. And four, not guilty.

Note well that there are but two types of murder which may possibly be involved in this case, murder in the first degree and murder in the third degree. You are advised that there is no issue of murder of the second degree in this case and that a verdict of murder in the second degree is

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not a possible verdict in this case. Accordingly, I shall not extensively charge you thereon.

Later in the charge it will be briefly referred to and explained for the purpose of exclusion. That is, I will explain briefly what it is so that you will definitely know that it is not involved as a possible verdict in this case.

Thus you see, members of the jury, that your duties are numerous. Not only are you to determine in this case the guilt or innocence of the Defendant, but if you find him guilty you must also determine of what class or kind of criminal homicide he is guilty of. That is, murder in the first degree, murder in the third degree or voluntary manslaughter. But I repeat that during your deliberations in order to find the Defendant guilty of any class of criminal homicide encompassed in said general murder bill you must first find that the Commonwealth has established by the evidence introduced

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or has proven each and every essential element of that class of criminal homicide beyond a reasonable doubt as I have previously defined and explained the meaning of that term for you.

Further I shall now instruct you as to the elements of each of those offenses involved in this case. As I do so you should keep in mind that after considering all of the evidence you are entitled to find the Defendant guilty of any one of those offenses which you find is established beyond a reasonable doubt by the evidence presented in this courtroom based on the instructions which I shall now give you as to the elements of each offense.

The term "homicide" refers to the taking of human life. A homicide is a killing or causing of death by one human being of another human being. It is a generic term that embraces every killing of one human being by another. By "generic" is meant --- it refers to a class of crimes and the

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term itself does not designate a particular crime.

The classifications of homicide are threefold. One, justifiable. Two, excusable. And three, criminal.

If human life is taken by due legal process, on command of the law or in self-defense with permission of the law it is called justifiable.

If human life is taken by accident without culpable negligence or certain other circumstances it is excusable. But when human life is taken without legal justification or excuse it is criminal.

Criminal homicide is divided into two classes, murder and manslaughter.

There are three types of murder. Murder of the first degree, murder of the second degree and murder of the third degree.

Note well as previously stated that you are once again instructed that there is no issue of murder in the second degree in this case and you are not to consider such

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a possible verdict during your deliberations.

As stated the second class of criminal homicide is manslaughter. It will be your duty in this case to determine whether Officer Faulkner died as a result of a gunshot wound inflicted upon him by the Defendant. Gunshot

wounds. If so, whether such killing amounted to murder of the first degree, murder of the third degree or voluntary manslaughter.

The difference between murder and manslaughter lies in the fact that to constitute murder the unlawful killing must have been done with malice. Where an unlawful killing has been done without malice the crime rises no higher or greater than manslaughter.

Thus, if the killing is intended with malice, a term which I shall define for you, it is murder. If the unlawful killing is not intended with malice the crime rises no higher or greater than manslaughter."

Malice is the thing which

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distinguishes murder from any other type of homicide.

Malice then becomes an important item for you to consider.

In addition to the common or ordinary concept of the term malice from which we derive our word "malicious," malice has a specific legal meaning involving more than a particular ill will.

Malice maybe of two kinds, either expressed malice as where there existed a particular ill will against a particular person, or implied malice as in the case of a crime committed with the depravity of heart, the wickedness of disposition and indifference to social duty. Hardness of heart, evil purpose, cruelty, recklessness of consequences, a reckless disdain for consequences of action and a disposition of mind regardless of social duty.

If any person has so acted he is regarded in the eyes of the law as having acted with malice. Thus malice is the thing

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which distinguishes a murder from other types of homicide. Therefore, to determine whether a homicide constitutes murder you must first determine whether malice was present. You must decide whether at the time of the killing the slayer was motivated by malice. That is whether there was wickedness of disposition, depravity of heart, cruelty, hardness of heart, evil purpose, recklessness of consequences or a mind regardless of social duty.

If there was no malice there was no murder of any degree.

Please note that legal malice may be inferred and found from the attending circumstances. As a matter of law you may infer legal malice from the intentional use without legal excuse or legal justification of a deadly weapon on a vital part of the body of the victim.

A vital part of the body means a portion of the body containing organs necessary to the continuance of life.

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A deadly weapon means any firearm or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which in the manner in which it is used or intended to be used is calculated or likely to produce death or serious bodily injury.

This inference of malice that arises from the use by the killer of a deadly weapon upon a vital part of the victim's body is one which you are at liberty to apply or not to apply as you see fit. If you find that there were any qualifying facts indicating a contrary intent such facts would prevent application of this principle by you.

In conclusion, you may infer from such conduct that the act was done with malice, but if you find facts from the circumstances surrounding the Defendant's conduct indicating a contrary intention on his part you would not infer malice.

Thus, if you find the Defendant

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guilty of murder, that is an unlawful killing with malice, you must then determine whether he is guilty of murder of the first degree or murder of the third degree.

What is murder of the first degree? The Act of Assembly or statute on which the Defendant is being tried expressly defines what is murder of the first degree. This statute which is known as the crimes code enacted June the 6th, 1973 and amended on March 26th, 1974, under section 2502A, expressly defines verbatim, or word-for-word, as follows:

A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing. Thus, in order to find the Defendant guilty or find that the Defendant caused the death of another person. And thereafter you must determine if the killing was intentional.

Now, what is an intentional killing?

Section 2502D of the same crimes

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code provides verbatim, or word-for-word, as follows:

Intentional killing. Killing by means of poison or by lying in wait or by any other kind of willful, deliberate and premeditated killing. Therefore, in order to find the Defendant guilty of murder of the first degree you must find that the killing was a willful, deliberate and premeditated act.

You must ask yourselves the question, did the Defendant have the willful deliberate and premeditated specific intent to kill at the time of the killing.

What is meant by these words willful, deliberate and premeditated?

If an intention to kill exists, or if a killing was consciously done with knowledge of such consequences, or if the killer consciously decided to kill the victim then the killing is willful. If this intent to kill is accompanied by such circumstances as evidence or demonstrate a

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mind fully conscious of its own purpose and design to kill, it is deliberate. if sufficient time has been afforded to enable the mind of the killer to fully frame the design to kill and to select the instrument or to frame the plan to carry this design into execution, it is premeditated.

Our cases have consistently held that the requirement of premeditation and deliberation is meant whenever there is a conscious purpose to bring about death.

Note well that the law fixes no length of time or no appreciable length of time as necessary to form or frame the intent to kill, which design to kill can be formulated in a fraction of a second, but it leaves the existence or non existence of a fully framed intent to kill as a fact to be determined by the jury from all of the facts and circumstances in evidence.

Accordingly, no appreciable, amount of time is needed between formulation of intent and the killing if you as finders

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of fact determine that the killing was done with the required intent to kill.

The required intention to kill maybe found in the Defendant's acts, declarations, words or conduct, or by the circumstances under which the killing was accomplished.

There is evidence in this case that the killing was caused by a gun. As to that the law holds where anyone without sufficient cause or provocation unlawfully kills another by using a deadly weapon upon a vital part of the body with a manifest intention to so use it, an inference of intent maybe drawn in the absence of qualifying circumstances by common knowledge that such use of a deadly weapon is likely to cause death.

Thus, an intent to kill maybe inferred by reason of the killer's use of a deadly weapon on a vital part of the body of the victim.

You will recall my prior

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definitions of a deadly weapon and vital parts of the body.

Note well that you are not to infer this intent to kill if the facts and circumstances indicate a contrary intent. In short, you are not bound by this inference of intent to kill arising from the use of a deadly weapon upon the vital part of the body of the victim by the killer, but you may or may not apply it under the facts as you find them and as you see fit.

Further, although the nature of the weapon used maybe quite material in ascertaining whether there was or was not an intent to kill, that intent must still in every case be collected from all the attending circumstances no matter what may have been the instrument of death.

A criminal homicide constitutes murder of the second degree when the death of the victim occurs while the Defendant was, engaged as the actual perpetrator, or, as an accomplice in the application of or an

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attempt to commit or flight after committing or attempting to commit robbery, rapes deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

In the case before you we do not have so far as the evidence discloses any perpetration of or attempt to perpetrate any of the other crimes mentioned in the Act of Assembly. Therefore, I will not charge you further

concerning murder of the second degree, since it is not a part of this case.

All murder which is not murder of the first degree or murder of the second degree shall be murder of the third degree.

Section 2502C of the crimes code provides verbatim, or word-for-word as follows:

Murder of the third degree. All other kinds of murder shall be murder of the third degree. Murder of the third degree is an unlawful killing of a human being with malice, but with, an intention merely to inflict bodily harm to wound,

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maim, frighten or to cause bodily injury to a victim and not to take human life and yet as a result of the infliction of the injury death results.

Third degree murder includes any unlawful killing of a human being with malice, but where no specific intention to kill exists or can reasonably and fully be inferred as I have defined that intent for you under first degree murder.

Malice in murder of the third degree is the malicious design to do harm but not to kill.

Third degree murder is, therefore, the unlawful taking of a human life with malice afterthought with no specific intention to kill, but with intention to inflict bodily harm and not to take human life yet as a result of the injury inflicted death results.

Voluntary manslaughter is of a lesser grade than murder. Voluntary manslaughter is the intentional and unlawful

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killing of a human being without malice either expressed or implied, but under the immediate inference of a sudden and intense passion resulting from serious provocation by the individual killer.

The absence of malice is the controlling element which reduces an unlawful killing to voluntary manslaughter.

Since voluntary manslaughter is frequently a willful act, to reduce a criminal homicide to manslaughter it is necessary that the circumstances indicate an absence of malice either expressed or implied. Voluntary

manslaughter exists where there is an intentional act which causes death, but such act was administered with a sufficient provocation by the individual killed and while the Defendant was in a state of terror, anger, fear, rage or resentment without time to cool, so that he was placed beyond the control of his reason and suddenly impelled to do the deed.

If any of these factors be lacking

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if there is provocation by the individual killed but no passion, or if there is passion without sufficient cause or provocation by the individual killed, or if there had been time to cool and reason has resumed then the killing will be murder.

What is sufficient provocation? It cannot be defined exactly, for it must vary with the circumstances. However, no mere words, jests or charges however false or insulting, and no mere slight assault can constitute what the law knows as sufficient provocation.

What is serious provocation involves an objective standard of evaluation which you must apply by asking yourselves if the provocation involved under the facts and circumstances of this case would create an intense passion in a reasonable man.

Just as malice is the impelling power of murder, either terror or anger or fear or rage or resentment is the impelling power of voluntary manslaughter. The

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passion involved must be sufficiently intense to obscure temporarily the reason of the person affected and it must be due to a legally adequate provocation on the part of the deceased.

In short, the causal provocation by the individual killed must be such as would induce a reasonable man to lose control over his reasoning faculties and to enter into an uncontrollable frenzy which leads him to the use of deadly force without time to cool and reason to resume.

Finally, the Defendant under bill number 1357, January Term 1982 is charged with possession of instrument of crime.

In order to find the Defendant guilty of possessing a criminal instrument you must be satisfied that the following three elements have been proven

beyond a reasonable doubt:

First, that the Defendant possessed a certain item, that is, a hand gun.

Second, that the item was an

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instrument of crime.

An instrument of crime is anything specially made or specially adapted for criminal use, or anything commonly used for criminal purposes and possessed by the Defendant under circumstances not manifesting the appropriate or lawful uses it may have.

Third, that the Defendant possessed the item with intent to commit - - to employ it criminally. That is with the intent to commit a crime with it.

For a person to possess an item he must have the power to control and the intent to control that item.

If you are satisfied that the aforesaid three elements of possessing a criminal instrument have been proven beyond a reasonable doubt you should find the Defendant guilty. Otherwise you must find the Defendant not guilty of this crime.

Now, before I give you my final remarks I would like to see counsel at sidebar.

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(The following is a sidebar discussion with both counsel present.)

MR. JACKSON: I still think something has to be done with the statements. I heard the charge with regard to believing some or believing none, but I am just wondering if they were sufficiently guided to know how to handle the statement.

THE COURT: What statements?

MR. JACKSON: Prior statements of witnesses.

THE COURT: You didn't give me anything in writing.

MR. MCGILL: It would emphasize it now. I think in the closing it was made very clear about the inconsistent statements. Besides that, the "falsus in uno" does cover a pretty large area and it may well be that inconsistent statements may hurt you as well as me, because your defense witness --- what is her name?

MR. JACKSON: Veronica Jones?

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MR. MCGILL: Yes. That could completely wipe out her testimony.

I thought initially when Your Honor on the record asked there was an agreement it would not be used and at this point it would sort of be emphasizing that point.

THE COURT: Do you have anything else?

MR. JACKSON: Your Honor, maybe it was my hearing, but when you talked about evidence of good character I don't think you said that it could raise ---

THE COURT: (Interposing) Raise a reasonable doubt.

MR. JACKSON: I couldn't hear.

THE COURT: Anything else?

MR. JACKSON: No.

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(At this time the sidebar discussion was concluded and the following is in open court.)

THE COURT: Now, at this point

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before I give you my final remarks I just wish to say that the jurors who will consider the verdict in this case will comprise of jurors number one to twelve. The alternate jurors were selected in the event their replacement became necessary if one of the principal jurors became sick, or for any other reason. Therefore, it is my duty to discharge you alternate jurors from further service. The court extends to you its thanks for your services

as alternate jurors and you are excused.

Ladies and gentlemen of the jury, before you retire to decide this case I would like to provide you with some final guidelines for the way in which you conduct your deliberations and how you may properly arrive at your verdict.

It is my responsibility to decide all questions of law. Therefore, you must accept and follow my rulings and instructions in the matters of law. I am not, however, the judge of the facts. It is not for me to

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decide what are true facts concerning the charges against the Defendant. You the jurors are the sole judges of the facts. It will be your responsibility to consider the evidence, to find the facts and apply the law to the facts as you find them to decide whether the Defendant has been guilty beyond a reasonable doubt.

Your decision in this case, as in every case you hear, is a matter of considerable importance. Remember that it is your responsibility as jurors to perform your duties and reach a verdict based on the evidence as it was presented during the trial. However, in deciding the facts you may properly apply common sense and draw upon your own everyday practical knowledge of life as each of you has experienced it.

You should keep your deliberations free of any bias or prejudice. Both the Commonwealth and the Defendant have a right to expect you to consider the evidence conscientiously and apply the law as I have

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outlined it to you.

Remember upon retiring to deliberate you should first select one of you to be the foreman. He or she is the one who will announce the verdict in this courtroom after you have finished deliberating. Remember, your verdict must be unanimous. This means that in order to return a verdict each of you must agree to it. You have a duty to consult with each other and to deliberate with a view to reaching an agreement if it can be done without doing any violence to your own individual judgment.

Each of you must decide the case for himself or herself, but only after there has been impartial consideration with your fellow jurors.

In the course of deliberation each juror should not hesitate to reexamine

his or her own views and change his or her opinion if convinced that it is erroneous.

However, no juror should surrender an honest conviction as to the weight or

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effect of the evidence or as to the guilt or innocence of the Defendant solely because of the opinion of his or her fellow jurors or for the mere purpose of returning a verdict.

In closing I would also like to suggest that you will be able to deliberate more easily and in a way that will be better for all concerned if each of you treats your fellow jurors and their views in the same courtesy and respect as you would other persons in your everyday life.

THE COURT CRIER: Everyone remain seated until the jury leaves the courtroom.

(The jury commenced deliberations at 11:48 a.m.)

THE COURT: Gentlemen, would you leave your phone numbers with the court crier so if we have a question or if they reach a verdict we can reach you.

I assume we will not sent out any exhibits until they ask us.

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Is that your feeling?

MR. JACKSON: That is correct, Your Honor.

MR. MCGILL: That is right, Your Honor.

THE COURT: If they ask for any of the exhibits we will get together and I will make a decision.

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(At this time court was recessed.)

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(The following is a discussion in chambers with both counsel present,

commencing at 2:45 P.M.)

MR. MCGILL: Judge, would you consider on section 505 of the use of force that the use of force is not justifiable under this section. To resist an arrest which the actor knows is being made by a peace officer, whether the arrest is lawful or unlawful. That is part of the section.

THE COURT: Where are you reading this from?

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MR. MCGILL: This section is B1.

MR. JACKSON: Of course I object, since it would exceed the request of the jury in that they specifically asked to redefine the crimes and not justification, not use of force or any other matter.

THE COURT: I should have maybe given them examples and I didn't.

MR. JACKSON: I would think at this point even to give an example would exceed their request. They simply asked for a redefinition of the crimes. I would think that in all due respect that you would be required simply to give your charge as you have done. If they want something else they can ask.

THE COURT: If they want something specific they will have to ask. If they have a problem with voluntary manslaughter they have to be specific. At this stage of the game I don't know which one.

MR. MCGILL: I understand.

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(At this time the discussion in chambers was concluded and the following is in open court.)

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(JURY PRESENT)

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THE COURT: I have a note from the jury requesting definitions of the

charges for first degree, third degree and voluntary manslaughter.

The difference between murder and manslaughter lies in the fact that to constitute murder the unlawful killing must have been done with malice. Where an unlawful killing has been done without malice the crime rises no higher or greater than manslaughter.

Thus, if the unlawful killing is intended with malice, a term which I shall define for you, it is murder. If the unlawful killing is not intended with malice the crime rises no higher or greater than manslaughter.

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Malice is the thing which distinguishes murder from other type of homicide. Malice then becomes an important item for you to consider.

In addition to the common or ordinary concept of the term "malice" from which we derive our word "malicious," malice has a specific legal meaning involving more than a particular ill will.

Malice maybe of two kinds. Either expressed malice where there existed a particular ill will against a particular person, or implied malice as in the case of a crime committed with the depravity of heart, wickedness of disposition and indifference to social duty, hardness of heart, evil purpose, cruelty, recklessness of consequences, a reckless disdain for consequences of action and a disposition of mind regardless of social duty.

If any person has so acted he is regarded in the eyes of the law as having acted with malice.

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Thus, malice is the thing which distinguishes murder from other types of homicide.

Therefore, to determine whether a homicide constitutes murder you must first determine whether malice was present. You must decide whether at the time of the killing the slayer was motivated by malice, that is, whether there was a wickedness of disposition, depravity of heart, cruelty, hardness of heart, evil purpose, recklessness of consequences or mind regardless of social duty. If there was no malice there was no murder of any degree.

Please note that legal malice maybe inferred and found from the attending circumstances. As a matter of law you may infer legal malice from the intentional use without legal excuse or legal justification of a deadly

weapon on a vital part of the body of the victim.

A vital part of the body means, a. portion of the body containing organs

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necessary to the continuance of life.

A deadly weapon means any firearm or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which in the manner in which it is used or intended to be used is calculated or likely to produce death or serious bodily injury.

This inference of malice that arises from the use by the killer of a deadly weapon upon a vital part of the victim's body is one which you are at liberty to apply or not to apply as you see fit.

If you find that there were any qualifying facts indicating a contrary intent such facts would prevent application of this principle by you.

In conclusion you may infer from such conduct that the act was done with malice. But if you find from the circumstances surrounding the Defendant's conduct facts indicating a contrary intention on his part you would not infer malice.

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Thus, if you find the Defendant guilty of murder, that isn't unlawful killing with malice, you must then determine whether he is guilty of murder of the first degree or murder of the third degree.

What is murder of the first degree?

The Act of Assembly or statute under which the Defendant is being tried expressly defines what is murder of the first degree. This statute which is known as the crimes code enacted June 6th, 1973 and amended on March the 26th, 1974, under section 2502A of that crimes code provides verbatim, or word-for-word, as follows:

Murder of the first degree. A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing. Thus, in order to find the Defendant guilty of murder in the first degree you must first find that the Defendant caused the death of another person. That is you must find that the Defendant's act is

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the legal cause of death of Officer Faulkner. Thereafter you must determine if the killing was intentional.

What is an intentional killing?

Section 205D of the crimes code provides verbatim, or word-for-word, as follows:

Intentional killing. Killing by means of poison, or by lying in wait or by any other kind of willful, deliberate and premeditated killing.

Therefore, in order to find the Defendant guilty of murder in the first degree you must find that the killing was a willful, deliberate and premeditated act. You must ask yourselves the question did the Defendant have the willful, deliberate and premeditated specific intent to kill at the time of the killing?

Now, what is meant by these words willful, deliberate and premeditated.

If an intention to kill exists, or if a killing was consciously done with

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knowledge of such consequences, or if the killer consciously decided to kill the victim, the killing is willful. If this intent to kill is accompanied by such circumstances as evidence or demonstrate a mind fully conscious of its own purposes and design to kill it is deliberate and if sufficient time has been afforded to enable the mind of the killer to fully frame the design to kill and to select the instrument, or to frame the plan to carry this design into execution it is premeditated.

Our cases have consistently held that the requirement of premeditation and deliberation is meant whenever there is a conscious purpose to bring about death.

Note well the law fixes no length of time or no appreciable length of time as necessary to form or frame the intent to kill, which design to kill can be formulated in a fraction of a second. But it leaves the existence or non existence of a fully framed intent to kill as a fact to be determined

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by the jury from all of the facts and circumstances in evidence.

Accordingly, no appreciable amount of time is needed between formation of intent and the killing if you as finders of fact determine that the killing was done with the required intent to kill.

Further, the required intention to kill maybe found in the Defendant's acts, declarations, words or conduct, or by the circumstances under which the killing was accomplished.

There is evidence in this case that the killing was caused by a gun. As to that the law holds where anyone without sufficient cause or provocation unlawfully kills another by using a deadly weapon upon a vital part of the body with a manifest intention to so use it an inference of intent maybe drawn in the absence of qualifying circumstances by common knowledge that such use of a deadly weapon is likely to cause death.

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Thus, an intent to kill maybe inferred by reason of the killer's use of a deadly weapon on a vital part of the body of the victim.

You will recall my prior definitions of a deadly weapon and the vital parts of the body.

Note well that you are not to infer this intent to kill if the facts and circumstances indicate a contrary intent.

In short, you are not bound by this inference of the intent to kill arising from the use of a deadly weapon upon the vital part of the body of the victim by the killer, but you may or may not apply it under the facts as you find them and as you see fit.

Further, although the nature of the weapon used maybe quite material in ascertaining whether there was or was not an intent to kill that intent must still in every case be collected from all the attending circumstances no matter what may have been the instrument of death.

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All murder which is not murder of the first degree or murder of the second degree shall be murder of the third degree.

Section 2502C of the crimes code provides verbatim, or word-for-word, as follows:

Murder of the third degree. All other kinds of murder shall be murder of the third degree. Murder of the third degree is an unlawful killing of a

human being with malice, but with intention merely to inflict bodily harm, to wound, maim, frighten or to cause bodily injury to its victim and not to take human life and yet as a result of the infliction of the injury death results.

Third degree murder includes any unlawful killing of a human being with malice, but where no specific intention exists or can reasonably and fully be inferred as I have defined that intent under first degree murder.

Malice in murder of the third degree is the malicious design to do harm but not

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to kill. Third degree murder is therefore the unlawful taking of a human life with malice aforethought with no specific intention to kill, but with the intention to inflict bodily harm and not to take human life. Yet as a result of the injury inflicted death results.

Voluntary manslaughter is of a lesser grade than murder. Voluntary manslaughter is the intentional and unlawful killing of a human being without malice either expressed or implied, but under the immediate influence of a sudden and intense passion resulting from serious provocation by the individual killed.

The absence of malice is the controlling element which reduces an unlawful killing to voluntary manslaughter.

Since voluntary manslaughter is frequently a willful act to reduce a criminal homicide to manslaughter it is necessary that the circumstances indicate an absence of malice, either direct or implied.

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Voluntary manslaughter exists where there was an intentional act which caused death, but such act was administered with sufficient provocation by the individual killed and while the Defendant was in a state of terror, anger, fear, rage or resent without time to cool so that he was placed beyond the control of his reason and suddenly impelled to do the deed.

If any of these factors be lacking, if there is provocation by the individual killed but no passion, or if there is passion without sufficient cause or provocation by the individual killed, or if there has been time to cool and reason has resumed then the killing will be murder.

What is sufficient provocation by the individual killed cannot be defined

exactly, for it must vary with the circumstances. However, no mere words, gestures or charges, however false or insulting, and no mere slight assault can constitute what the law knows as sufficient

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provocation.

What is sufficient provocation involves an objective standard of evaluation which you must apply by asking yourselves if the provocation involved under the facts and circumstances of this case would create an intense passion in a reasonable man. Just as malice is the impelling power or murder, either terror or anger or fear or rage or resentment is the impelling power of voluntary manslaughter.

The passion involved must be sufficiently intense to obscure temporarily the reason of the person affected. It must be due to a legally adequate provocation on the part of the deceased.

In short, the causal provocation by the individual killed must be such as would induce a reasonable man to lose control over his reasoning faculties and to enter into an uncontrollable frenzy which leads him to the use of deadly force without time to cool and reason to resume.

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THE COURT CRIER: Everyone remain seated until the jury leaves the courtroom.

MR. JACKSON: May I see Your Honor at sidebar for a moment?

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(The following is a sidebar discussion with both counsel present.)

MR. JACKSON: Your Honor, I have concern that even though I know that you discussed premeditation and deliberation I don't think you made it clear that it must precede the actual act.

THE COURT: You said in chambers that I could only answer the question that was asked. If they have any further questions they can come back later.

MR. McGILL: I would object.

MR. JACKSON: I am only saying that that is part of the definition.

THE COURT: They only asked for that.

MR. MCGILL: You covered that.

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(At this time the sidebar discussion was  
concluded and the following is in open court.)

THE COURT CRIER: Everyone remain seated while the jury leaves the  
courtroom.

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(At this time the jury continued with their deliberations and court was  
recessed at 3:10 p.m. and reconvened at 5:18 p.m.)

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(JURY PRESENT)

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THE COURT CRIER: Your Honor, may I take the verdict?

THE COURT: Yes.

THE COURT CRIER: Jurors, have you agreed upon a verdict?

THE JURY: Yes, we have.

THE COURT CRIER: Do you all twelve agree?

THE JURY: Yes, we have.

THE COURT CRIER: Will the foreperson

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please rise?

On Bill of Information number 1357, January Term 1982, charging Mumia

Abu-Jamal with possessing instruments of crime generally what is your verdict?

THE FOREPERSON: Guilty.

THE COURT CRIER: On Bill of Information number 1358, January Term 1982, charging the Defendant Mumia Abu-Jamal with murder, what is your full verdict?

THE FOREPERSON: Guilty of murder in the first degree.

THE COURT CRIER: Please be seated. May the verdict be recorded?

MR. JACKSON: I would like the jury polled.

THE COURT: Poll the jury.

THE COURT CRIER: Defense counsel has asked that the jury be polled. When your name is called please rise and give your verdict.

BY THE COURT CRIER:

Q. Juror number one, Edward Courchain, on

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Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict?

A. Guilty of murder in the first degree.

Q. Excuse me, sir. I will read that over. On Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number two, James Mattiace, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what

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is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number three, Richard Tomczak, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number four, Joseph Mangan, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

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A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number five, Maurice Simovetch, on Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what, is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number six, Miriam Adelman, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict.

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

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THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number seven, Savanna Davis, on Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with possession of instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number eight, Lois Pekala, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possession of instrument of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

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BY THE COURT CRIER:

Q. Juror number nine, George Ewalt, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possession of instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number ten, Basil Malone, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possession of instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

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Q. Juror number eleven, Domenic Durso, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possession of instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated.

BY THE COURT CRIER:

Q. Juror number twelve, Louis Godfrey, on Bill of Information number 1357, January Term 1982, charging Mumia Abu-Jamal with possessing instruments of crime generally, what is your verdict?

A. Guilty.

Q. On Bill of Information number 1358, January Term 1982, charging Mumia Abu-Jamal with murder, what is your full verdict?

A. Guilty of murder in the first degree.

THE COURT CRIER: Please be seated. Your Honor, the jurors have been polled. They have individually announced

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their verdict and all twelve agree. May the verdict be recorded?

THE COURT: Let the verdict be recorded.

THE COURT CRIER: Harken to the verdict as the court has recorded it.

On Bill of Information number 1357, January Term 1982, charging the Defendant with possessing instruments of crime generally you have found him guilty and so say you all.

On Bill of Information number 1358, January Term 1982, charging the Defendant with murder you have found him guilty of murder in the first degree and so say you all.

THE COURT: Gentlemen, can I see you at sidebar?

(The following is a sidebar discussion with both counsel present.)

THE COURT: It is practically 5:30. It is almost time for dinner for the jury. What is your pleasure? Do you want to do it tonight or do it the first thing tomorrow

Page 77.

morning, or what?

MR. MCGILL: Judge, I think the first thing tomorrow morning would be in order.

- - -

(At this time the sidebar discussion was concluded, and the following is in open court.)

THE COURT: Since the time for dinner is near we are going to adjourn and we will begin tomorrow morning at 9:30, at which time you will be given the penalty phase.

THE COURT CRIER: Everyone remain seated while the jury leaves the room.

(At this time the jury left the courtroom.)

THE DEFENDANT: Can the jury be called back in?

THE COURT: They are going to dinner.

THE DEFENDANT: Can they be called back in for my statement about

their decision?

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THE COURT: I don't think that is proper at this time.

THE DEFENDANT: Is it possible, Judge? They just left.

THE COURT: It is not proper for you to give your opinion to the jury.

THE DEFENDANT: I said my statement.

THE COURT: Or your statement. They are not finished yet. The second phase they have to go into is the penalty phase.

MR. MCGILL: Mr. Jamal will have the opportunity to speak and say anything he wishes.

THE COURT: We will adjourn court until tomorrow morning.

- - -

(PROCEEDINGS ADJOURNED)

- - -

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

In the Court of Common Pleas  
of Philadelphia Criminal Trial Division

	January Term, 1982
Commonwealth	: Nos. 1357 Poss Instru of Crime
	: Gen
vs.	: Poss Instru of Crime,
	: Concealed Weapon
Mumia Abu-Jamal	: 1358 Murder
	: Voluntary
aka	: Manslaughter
	: 1359 Involuntary
Wesley Cook	: Manslaughter

July 3, 1982

Courtroom 253, City Hall

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Jury trial

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Before: Honorable Albert F. Sabo, Judge

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Present:

- Joseph McGill, Esquire  
Assistant District Attorney  
For The Commonwealth
- Anthony Jackson, Esquire  
Attorney For The Defense  
(Court-Appointed)
- Mumia Abu-Jamal, Defendant

July 3,1982

Sentencing Hearing

<u>Commonwealth Witnesses:</u>	<u>Dr</u>	<u>Cr</u>	<u>Rdr</u>	<u>Rcr</u>
Patricia Beato	3	7		
Defendant Abu-Jamal (reading from a statement)			Page	10
Summations to the jury:		20		
By Defense Council			Page	34
By the Commonwealth				55
Charge of the Court				90
Verdict of the jury				98
Polling of the jury				99

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Page 2.

(At 9:45 A.M. Counsel for the defense entered into the courtroom.)

(At 9:58 A.M. The Assistant District Attorney entered into the courtroom.)

(At 10:07 A.M. The defendant entered into the courtroom  
and there was a conference with defense counsel.)

(At 10:17 A.M. The jury was seated in the box.)

(At 10:18 A.M. The court was convened, all parties present.)

THE COURT: Ladies and gentlemen of the jury, you have found the defendant guilty of murder in the first degree, and your verdict has been recorded.

We are now going to hold a sentencing hearing during which counsel may present additional evidence and arguments and you will decide whether the defendant is to be sentenced to death or life imprisonment.

Whether you sentence the defendant to death or to life imprisonment will depend upon what, if any, aggravating or mitigating

Page 3.

circumstances you find are present in this case.

Loosely speaking, aggravating and mitigating circumstances are circumstances concerning the killing and the killer which make a first degree murder case either more serious or less serious. The crimes code defines more precisely what constitutes aggravating and mitigating circumstances. Although I will give you detailed instructions later in this hearing, I will tell you now that aggravating circumstances must be proved by the Commonwealth beyond a reasonable doubt, while mitigating circumstances must be proved by the defendant by a preponderance of the evidence.

Mr. McGill, are you ready to proceed?

MR. MCGILL: Yes, your honor, if it please the court. Your honor, the Commonwealth's witness will be Miss Pat Beato.

PATRICIA BEATO, (SWORN)

DIRECT EXAMINATION

MR. MCGILL: May I proceed your honor?

THE COURT: Yes.

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BY MR. MCGILL:

Q. Is that Beato or Beatto?

A. Beato.

Q. Miss Beato, where are you currently employed?

A. Philadelphia Police Department, personnel.

Q. Are you custodian of records?

A. Yes, sir.

Q. And are you familiar to when those entries are made in reference to the records that are kept?

A. Yes, sir.

Q. Have you, pursuant to a subpoena, ma'am, brought the records that I have requested to court today?

A. Yes, sir.

Q. And just give us the name of the individual who is the subject of those personnel records?

A. Daniel J. Faulkner

MR. MCGILL: May I approach the witness?

THE COURT: Yes.

(Whereupon the District Attorney approaches the witness bench.)

BY MR. MCGILL:

Q. Would you place it up here for a second?

(Whereupon the witness places her

Page 5.

personnel file on the witness bench for the District Attorney's observation.)

Now, Miss Beato, does it indicate the employment of --

A. Yes, sir.

Q. And what was the employment of that particular individual?

A. The position was that of a police officer.

Q. And when did he have his appointment date?

(Whereupon the witness examines the file.)

A. 5/31/76.

Q. And when was the last date that he was serviced?

A. 12/9/81.

Q. As part of these personnel records, are there various documents?

A. Yes, sir.

Q. What is the nature of those documents?

A. Commendations, commendatory letters and merits.

Q. What are they?

A. They are letters that people write in commending him for a job that he did and merits for a specific arrest that he made.

Q. Would you indicate how many documents there are?

Page 6.

(Whereupon the witness examines the file.)

A. Seven.

Q. And during the course of these particular documents, you indicated there were several merit indications?

A. Yes, sir.

Q. And who, in experience, could tell us -- who determines the merit status?

A. The police commissioner.

MR. MCGILL: (examining the portfolio) excuse me while I find this.

(Later)

BY MR. MCGILL:

Q. You are familiar with the notations on his record, his performance of either satisfactory or unsatisfactory performance ratings?

A. Yes, sir.

Q. Would you take a look at those ratings?

(Whereupon the witness examines the ratings.)

Q. Would it be accurate to say, ma'am, that those documents reflect at all

times that he was a police officer, the performance rating was satisfactory?

Page 7.

A. Yes, sir.

Q. And at no time was there an unsatisfactory rating?

A. That's right, sir.

Q. And is it also accurate that on 12/9/81 the reason for his -- for determination or separation, -- excuse me, that's the correct word; separation was a service connected death?

A. Yes, sir.

MR. MCGILL: Cross-examine?

MR. JACKSON: Your Honor, may I have the record and have an opportunity to review the record, please?

THE COURT: Sure.

(Whereupon the District Attorney presents the personnel record to counsel for the defense who examines it at 10:25 A.M.)

#### CROSS-EXAMINATION

BY MR. JACKSON:

Q. Miss Beato, is that the complete personnel record of Officer Faulkner?

A. Yes, sir.

Q. Is there well, there is an indication that on

Page 8.

11/15/79 there was a transfer of officer Faulkner to the sixth district.

MR. JACKSON: Perhaps -- Your Honor, may I approach the witness?

THE COURT: Yes.

(Whereupon counsel for the defense approaches the witness box.)

BY MR. JACKSON:

Q. Again the question is: 11/15/79, there was a transfer of Officer Faulkner to the sixth district. Is that correct?

A. Yes, sir.

Q. I note, and correct me if I am wrong, in October there was a request made for him to be transferred to the Sixth District and that was denied?

A. No, sir, it does not.

Q. Fine, correct me please?

A. Commissioner O'Neill felt him deserving of it and approved the assignment on 11/14/79.

Q. Fine.

A. I think it says up here -- (indicating by pointing on the document) -- "Due to the lack of man power that is why his commanding officer denied the

Page 9.

request, but commissioner O'Neill changed it on the back."

Q. Would the disciplinary record of Officer Faulkner be included in this?

A. Yes. He had no disciplinary record.

MR. JACKSON: Fine Thank you very much. I have no further questions, Your Honor.

MR. MCGILL: Thank you, Ma'am. Does the court have any questions?

THE COURT: No.

(Whereupon the witness was excused and sequestered.)

MR. MCGILL: Your honor, the Commonwealth would move to incorporate all of the testimony of the trial into this hearing at this time and then rest for the sentencing hearing.

MR. JACKSON: Your Honor, with your approval the defense would call

Mumia Abu-Jamal.

THE COURT: Do you want to take the stand?

(Whereupon the defendant approaches the bar of the court.)

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BY THE COURT CRIER: (To defendant at the bar of the court:)

Q. Would you state your full name for the record please?

A. Mumia Abu-Jamal.

(At 10:34 A.M. The defendant was affirmed of record.)

DEFENDANT JAMAL: I would like to read a statement.

THE COURT: Mr. Jackson, do you want to question him?

MR. JACKSON: Mr. Jamal would have something to say to the court.

DEFENDANT JAMAL: I would.

THE COURT: Fine.

DEFENDANT JAMAL: Today's decision comes as no surprise, in fact, many will remember that I said this would happen last week when John Africa predicted and prophesied this jury decision. I want everyone to know it came after a legal trained lawyer was imposed upon me against my will. A legal trained lawyer whose interests were clearly not my own. A legal

Page 11.

trained lawyer named Tony Jackson, a man who knew he was inadequate to the task and chose to follow the direction of this black-robed conspirator, Albert Sabo, even if it meant ignoring my directions.

To quote John Africa, "When a lawyer chooses to follow the conditions of the court, he compromises his obligation to his client, it was a legal, trained lawyer who followed Sabo's direction. Not to introduce the testimony of policeman Gary Wakshul, a cop who, according to his statement of 12-9-82, arrested me, carried me to a wagon, accompanied me to Jefferson Hospital, guarded me and returned to homicide later that morning to make a statement, according to Wakshul, quote, "We stayed

with the male at Jefferson until we were relieved. During this time, the negro male made no comments." (Unquote). According to Wakshul's statement of Feb. the 11th, 1982, over 2 months later, Wakshul recalls, "Oh, yeah -- Jamal said: I shot him, I hope the M.F.er dies." Did he consider that a "comment"? According to Sabo, Wakshul is on

Page 12.

vacation, so despite the fact his testimony is directly linked to a supposed confession, he would not be called in to testify. How convenient! It was a legal, trained lawyer who told the jury "You have heard all the evidence" - - knowing that wasn't so. The jury heard merely what Sabo allowed -- nothing more. Many jurors were told I would cross-examine witnesses, make opening and closing arguments, and explore evidence, what they also heard was I would act as my own attorney, my own lawyer. What they saw was a man silenced, gagged by judicial degree. So what they heard was nothing.

A man ordered not to fight for his life. Every so-called "right" was deceitfully stolen from me by Sabo. My demand that the defense assistance of my choice, John Africa, be allowed to sit at the defense table was repeatedly denied. While, meanwhile, in a city hall courtroom just 4 floors directly above, a man charged with murder sits with his lawyer and his father who just happens to be a Philadelphia policeman. The man, white, was charged with beating a black man to

Page 13.

death and came to court to have his bail revoked, after being free for several weeks. His bail was revoked after a public outcry in the black community about the granting of bail at all. Of course, my bail, a ransom of \$250,0000,00 was revoked one day after it was issued. For one defendant everything is granted. For another, everything is denied.

But, isn't justice blind, equal in it is application? Did Winston see through it? Did Cornell Warren (sic) -- Cornell Warren was a -- (inaudible) -- to give justice to Philadelphia.

Does it matter whether a white man is charged with killing a black man or a black man is charged with killing a white man? As for justice when the prosecutor represents the Commonwealth the Judge represents the Commonwealth and the court-appointed lawyer is paid and supported by the Commonwealth who follows the wishes of the defendant the man charged with the crime? If the court-appointed lawyer ignores, or goes against the wishes of the man he is charged with representing, whose

wishes does he follow?

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Who does he truly represent or work for? To again quote John Africa, "When you judges hang a person, put a person in an electric chair, gas a person, shoot a person to death for a crime you all didn't see that person commit, you ain't solving the problem of crime of the so-called criminal or the victim. You've caused a burden for the mother that is now without a son, the wife that is now without a husband, the daughter that is now without a father and society for putting faith in this goddamning procedure, for it is the system that is guilty of the crimes of all that is criminal, all crimes are committed within the system not without, because the influence of that ignorant black boy you judges gassed to death, poor white boy you judges shot to death, unaware puerto rican boy, girl, adult you judges electrocuted to death came straight from you judges, your bosses, their crimes. In short, this system." A quotation by John Africa.

I am innocent of these charges that I have been charged of and convicted of and despite the connivance of Sabo, McGill and Jackson to deny me

Page 15.

my so-called rights to represent myself, to assistance of my choice, to personally select a jury who is totally of my peers, to cross-examine witnesses, and to make both opening and closing arguments, I am still innocent of these charges.

According to your so-called law, I do not have to prove my innocence. But, in fact, I did have to by disproving the Commonwealth's case. I am innocent despite what you 12 people think and the truth shall set me free.

This jury is not composed of my peers, for those closest to my life experiences were intentionally and systematically excluded, peremptorily excused. Only those prosecution prone, some who began with a fixed opinion of guilt, some related to city police, mostly white, mostly male remain. May they one day be so fairly judged.

Long live John Africa!! For his assistance in this fight for my life!! It is John Africa who has strengthened me, aided me, and guided me, and loved me! Could John Africa have done worse than this worthless sellout and shyster who

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promised much and delivered nothing? Could he have done worse than

Tony Jackson?

It was John Africa's influence that this court feared and his assistance that this court requested and denied as if it were unfair to have him help me fight for my life. It is his protection that remains despite this court's resistance and opinion.

On December the 9th, 1981, the police attempted to execute me in the street. This trial is a result of their failure to do so, just as police tried to kill my brothers and sisters of the family Africa on August the 8th, 1978, they failed and hence, a so-called trial was conducted to complete the execution. But long live John Africa for our continued survival!

This decision today proves neither my guilt nor my innocence. It proves merely that the system is finished. Babylon is falling!! Long live MOVE. Long live John Africa!

(There was a conference between counsel for the defense and the defendant.)

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MR. JACKSON: I have no further questions, your honor.

MR. MCGILL: May I proceed, your honor?

THE COURT: Go ahead.

MR. MCGILL: Perhaps it would be better, your honor, if I would stand over here and direct my comments to him.

THE COURT: I don't care.

MR. MCGILL: It seems kind of silly if I turn to the right.

(Whereupon the District Attorney stands at the witness box directing his cross-examination to the defendant.)

MR. MCGILL: I will not be that long ladies and gentlemen.

MR. JACKSON: Your honor, can we see you at side-bar for just one moment, please?

(The following colloquy occurred at side-bar.)

MR. JACKSON: Your honor, I know, of course, I am anticipating, I

believe Mr. McGill has a number of newspaper articles and publications and perhaps other quotations. I would

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object to the authority purportedly attributed or if attributed to the defendant, if they are not authenticated or without authentication and without any acknowledgement or truth, but, simply to the defendant himself. I would object to the questioning in that even if he asked the question, "Did you say so-and-so." whatever his answer is, or is going to be, it's already prejudiced the minds and inflame the jury and I would object to the reading of anything that is purported to be from the defendant.

MR. MCGILL: This is a sentencing hearing, Judge.

THE COURT: Yes.

MR. MCGILL: And any kind of a statement that is made by the defendant, the purpose of the authentication, I would authenticate it is what the defendant would say, the actions that would result or -- strike that --

Actually what the defendant would say because of -- or, that he would adopt it or not, I think that would be entirely up to the determining factors as to whether or not the

Page 19.

evidence is admissible. I think he has opened up an extensive amount of doors. I can't begin to count them in the statement, including the inadmissible testimony, or the inadmissible evidence, or documents and quoting of people, John Africa, among others. There are so many doors open, Judge, that really --

THE COURT: I realize that.

MR. JACKSON: Well, that is his prerogative to project or not to project, but -- and to go into that, but an unauthenticated document --

THE COURT: You knew that Mr. Abu-Jamal had the statement prepared and you knew that he was going to read it regardless whether the District Attorney objected or not, so it seems in point that I will allow him to cross-examine him.

Go ahead.

(The above concluded the side-bar conference.)

(In open court)

MR. MCGILL: Mr. Jackson do you have a copy of that statement that he read?

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MR. JACKSON: No, I don't.

MR. MCGILL: Okay.

### CROSS-EXAMINATION

BY MR. MCGILL

Q. Mr. Jamal, what was the first quote you made that John Africa had stated - I think that might have been on your first page?

A. Why don't you ask the stenographer?

Q. Do you have it in front of you; the document that you read?

A. I sure do.

Q. Would you take a look at it and tell me what that says?

A. I said, why don't you ask the stenographer?

Q. Well, is there any particular reason why you don't want to respond to my question, sir?

A. (no answer)

Q. Let me try something else, then.

What is the reason you did not stand when Judge Sabo came into the courtroom.

MR. JACKSON: Objection.

THE COURT: Overruled.

DEFENDANT ABU-JAMAL: Because Judge Sabo

Page 21.

deserves no honor from me or anyone else in this courtroom because he operates -- because of the force, not because of right.

(Whereupon the defendant stands up at defense counsel's table.)

Because, he is an executioner. Because, he is a hangman; that is why.

BY MR. MCGILL:

Q. You are not an executioner?

A. No.

(Whereupon the defendant sits at defense counsel's table.)

Are you?

Q. Mr. Jamal, let me ask you if you can recall saying something sometime ago and perhaps it might ring a bell as to whether or not you are an executioner or endorse such actions.

"Black brothers and sisters - and organizations - which would not commit themselves before are relating to us black people that they are facing -- we are facing the reality that the Black Panther party has been facing which is --

Now, listen to this quote. You've often been

Page 22.

quoted saying this:

"Political power grows out of the barrel of a gun."

Do you remember saying that, sir?

A. I remember writing that. That's a quotation from Mao-Tse-Tung.

Q. There is also a quote --

A. Let me respond if I may?

Q. Well, let me ask you a question.

A. Let me respond fully. I was not finished when you continued.

Q. All right, continue.

A. Thank you.

Q. Continue to respond, then, please, sir.

A. That was a quotation from Mao-Tse-Tung of the Peoples Republic of China it's very clear that political power grows out of the barrel of a gun or else America wouldn't be here today. It is America who has seized political power from the Indian race, not by god, not by Christianity not by goodness but by the barrel of a gun.

Q. Do you recall making that quote, Mr. Jamal, to Acel Moore?

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A. I recall quoting Mao-Tse-Tung to Acel Moore about 12 to 15 years ago.

Q. Do you recall saying: "All power to the people"? Do you recall that?

A. "All power to the people".

Q. Yes.

A. Yes. (Nods head affirmatively.)

Q. Do you believe that your actions as well as your philosophy are consistent with the quote:

"Political power grows out of the barrel of a gun."

A. I believe that America has proven that quote to be true.

Q. Do you recall saying that: "The Panther party is an uncompromising party, it faces reality"?

A. (Nods head affirmatively.) Yes. Why don't you let me look at the article so I can look at it in its full context, as long as you're quoting?

Q. I'd be very glad to give you the article. I am ashamed -- I'm kind of sorry you didn't give me your

Page 24.

statement before.

A. Well, you can't have everything I have.

Q. Here is your statement sir. Do you recall saying this when you had the name, West Cook?

A. Well, let me look at it.

(Whereupon the District Attorney presents the newspaper article to the defendant who examines same.)

I would like to read the entire article if you have no objection?

MR. MCGILL: Go right ahead.

DEFENDANT JAMAL: Okay. Do you have the continuation, page 12, column 1?

MR. MCGILL: Here is the underlined area where: "The Panther party is an uncompromising party, it faces reality"

(Whereupon the District Attorney presents the second portion of the article to the defendant.)

DEFENDANT JAMAL: This is Sunday morning,

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January 4th, 1970, the Philadelphia Inquirer. It's a picture of West Cook, communication secretary for the Philadelphia Chapter, Black Panther party.

BY MR. MCGILL:

Q. Is that you?

A. That was my name when I was born.

Q. Well, is that you in that picture?

A. That is a picture of me 12 years ago.

Q. It says:

"His organization is doing what the churches are supposed to do. Chapter

office is at 1928 Columbia Ave.

Protest killings by police. Headquarters cold, but issues are hot for black Panthers." By Acel Moore of the Inquirer staff.

The walls in the storefront headquarters at 1928 Columbia Ave. are painted black and plastered with revolutionary posters. The faces are dark and determined. Black men and women bundled in coats and jackets against the cold of the unheated interior are busy with telephones, paperwork, or huddling in earnest conference and barely take time to acknowledge new arrivals or departures. When they do, the standard salutation is a

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slogan, "All power to the people."

It was busy before at the Philadelphia chapter headquarters of the Black Panther party, it's busier now.

"Since the murders," says West Cook, chapter communications secretary, "black brothers and sisters and organizations which wouldn't commit themselves before are relating to us. Black people are facing the reality that the Black Panther party has been facing: Political power grows out of the barrel of a gun."

Q. So that is a quote, isn't it?

A. "Political power grows out of the barrel of a gun."

Q. Mr. Jamal, is that a quote or is it not?

A. Can I finish reading?

Q. Well, is it a quote or isn't it?

A. Can I finish reading it?

Q. Well, will you answer the question?

A. Didn't I ask if I could read this in its entirety?

Q. Will you answer the question? Are there quotation marks there?

MR. JACKSON; Your Honor -- Your Honor --

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Your Honor --

A. Will you stop interrupting me?

MR. JACKSON: He already agreed to let him read it. May he read it?

A. If you want to go over it after I finish, that's okay.

MR. MCGILL: Would Your Honor rule?

THE COURT: Let him read it.

MR. MCGILL: Okay.

DEFENDANT JAMAL: "Since the murders," says West Cook, chapter communication secretary, "black brothers and sisters and organizations which wouldn't commit themselves before are relating to us. Black people are facing the reality that the Black Panther party has been facing: Political power grows out of the barrel of a gun.

Murders a calculated design of genocide and a national plot to destroy the party leadership is what the Panthers and their supporters call a bloody two year history of police raids and shootouts. The Panthers say 28 party members

Page 28.

have died in police gunfire during that period, to last month.

Police who have had officers killed and wounded by Panther gunfire deny there is a plot. Police have been shot at, they say, simply and they have shot back.

Nevertheless, the gun battles and arrests of Panther leaders have convinced the Black Panthers that it is a party under siege.

Although there have been no shootouts between Philadelphia Panthers and police, Cook who ranks behind defense capt. Reggie Schell and Sister Love, a young woman who is field lieutenant in the Philadelphia leadership says there could have been.

On September the 28th, the FBI arrested Schell on a charge of possession of a stolen government weapon after alleging finding a loaded marine M-14 rifle in his room and city police raided the party headquarters

confiscating some office equipment.

They would have shot us then, Cook recently told a visitor to the headquarters, speaking with

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deliberate conviction, "Except we were all out in the community working at the time."

There were no visible weapons in the headquarters, but we can't hope to exist he said without some kind of protection.

Referring frequently to the party's newspaper, the Black Panther, West stressed the aim of the Black Panther party of helping black Americans gain a sense of dignity and of the party's insistence on self-defense.

There are 26 rules outlining the Black Panther newspaper for party members. One of them stipulates that no party member will use, point or fire a weapon of any kind unnecessarily or accidentally hurt anyone. Another rule however, states that all Panthers must learn to operate and service weapons correctly.

Genocide is coming to the forefront under the Nixon, Agnew and Mitchell regime says West, and that is exactly what it is. The Panther party is an uncompromising party. It faces reality.

In Philadelphia at least the Panther have been more socially activist than militant. Their

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rhetoric, frequent references to policemen as 'facist pigs,' and a 'racist, capitalistic American society' has been angrier than their actions.

Like other Panther chapters, the Philadelphia Black Panther party has established a free breakfast program for needy children. Cook estimates that the Philadelphia Panthers feed about 80 children daily. The number fluctuates some -- at two centers, 1916 W. Columbia Avenue and at the Houston Community Center, 8th St. and Snyder Ave.

Pennsylvania Black Panther party members have also initiated breakfast programs in Harrisburg and in Reading. The food is obtained primarily from donations by merchants in black ghetto areas but Cook denies charges which have been made, accusing the Panthers of intimidation.

"The donations", he said, "are voluntary."

By Mr. McGill:

Q. Mr. Jamal, let me ask you again, sir. If I may --

MR. MCGILL: If I may ask a question Judge? Was that or was that not a quote that you made to

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Acel Moore?

A. That was a quote from Mao-Tse-Tung.

Q. Is that one that you have adopted?

A. Say again?

Q. Have you adopted that as your philosophy theory?

A. No, I have not adopted that, I repeated that.

Q. Let me ask you, Mr. Jamal, when you were before this court, I believe it was yesterday, you said: "The system is finished," is that correct?

A. That's correct.

Q. During the course of this trial, several times, sir, you continuously said, "That rulings went one way or the other and they would go against you at times." You would then say, "Rulings are not to my satisfaction," And then, you would go on and on and on and on, is that accurate?

A. What did I say, "Going on and on and on;" are you quoting me now?

Q. Well, did you not continue to complain --

A. What did I say?

Q. -- argue and continually --

A. What did I say?

Q. -- about it?

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Mr. Jamal, do you recall those, sir?

A. I said, what did I say?

Q. Mr. Jamal, did you or did you not? Are you going to just keep on asking questions like you did to Judge Sabo, and constantly playing with words?

A. I'm not playing with words. I want you to ask me -- you said, I was going on and on and on, and I said to you, what did I say; that's all.

Q. Did you not continually question Judge Sabo and disagree with his rulings continually after he ordered you again and again and again and again is that correct?

A. (No answer)

Q. Or, is it not?

A. Did I disagree? Most certainly I disagreed with his rulings.

Q. Do you recall in front of the Supreme Court Justice McDermott who had affirmed the order of this court that your counsel continue to represent you that you shouted to him as he walked out, McDermott, get back here, "Do you remember saying that

A. No. (shakes head negatively)

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A. I said, "McDermott, where are you going?"

Q. Just like that? "McDermott, where are you going?"

A. I said, "McDermott, where are you going?" He wasn't as close as you are to me, I'm sorry.

Q. That was the only reason you wanted to know where he was going?

A. Because, he got up and walked away while I was trying to address him. Because, I was trying to make a point, this man could not defend my life. This is a perfect example of how well he is defending me.

Q. Mr. Jamal, on April the 29th, 1982, do you recall being in front of

Judge Ribner?

A. Yes.

Q. And do you recall over about two or three actual pages of testimony saying such things as, and this was in court, open court:

"I don't give a damn what you think, go to hell. What the hell are you afraid of? What the hell are you afraid of bastard?"

Do you recall saying that to Judge Ribner?

A. Sure do. (Nods head affirmatively.)

MR. MCGILL: I have nothing further, Judge.

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MR. JACKSON: Mr. Jamal do you have anything further?

DEFENDANT JAMAL: (shaking head negatively) No. (Waving of the hand away.)

MR. JACKSON: The defense would rest Your Honor.

THE COURT: Members of the jury you must now decide whether the defendant is to be sentenced to death --

MR. JACKSON: Excuse me, Your Honor, may I see you at side-bar?

THE COURT: I'm sorry; I'm sorry.

MR. JACKSON: Yes.

THE COURT: You're right.

MR. JACKSON: May I proceed, Your Honor?

THE COURT: Go ahead.

MR. JACKSON: Ladies and gentlemen you are of course now at the juncture where you must decide whether Mr. Jamal should receive life imprisonment or the imposition of the death penalty. Although His Honor, Judge Sabo, is in deed the judge of the law, I have an opportunity -- I

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have a right to comment on the law. The law as is given by Judge Sabo is the law that you must follow.

In the state of Pennsylvania, as His Honor, Judge Sabo, has indicated to you earlier the method by which, or the guide by which you are to follow in determining whether life imprisonment should be imposed, or the death penalty, says in effect that there are aggravating circumstances, meaning the presence of aggravating circumstances which would suggest to you the imposition of death would be appropriate. Although I can't presume what the Commonwealth will present to you in terms of its argument, the very first paragraph of our aggravating circumstances reads: "The victim was a fireman, peace officer or public servant concerned in official detention as defined in 18 PA, Section 5121, relating to escape who is killed in the performance of his duties."

I would assume that the Commonwealth will suggest to you that Officer Faulkner was a peace officer. Although the legislators, the

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Pennsylvania Legislators, has not specifically indicated that indeed a police officer is a person or the status of a person for which you are to decide that aggravating circumstances exist. So that you are left with the responsibility to determine if in fact it was the responsibility, the intent of the legislators to include police officers in this section. They did not specifically indicate police officers but I would assume the Commonwealth is going to argue that this is what they meant. If they meant police officers, why didn't they say police officers? It's not a decision that I can make for you. I'll bring that to your attention as a matter I think you need to consider.

The Commonwealth also has the responsibility of proving that beyond a reasonable doubt. Although you have made your decision this is not the opportunity, this is not the moment for me to now be critical of that decision but to move on. There are also mitigating circumstances that these legislators point out and indicate

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that you must consider if these mitigating circumstances exist. Then, you are to weigh them against the aggravating circumstances.

Unfortunately, the legislators have not, have not sufficiently presented guidelines for you to weigh the aggravating versus the mitigating. What do

I mean by that? Does it take one aggravating to offset two mitigating or does it take three mitigating to offset one or two aggravating? The legislators have not decided that. They simply -- the legislators simply said that you are to weigh them, how much weight is given to a killing of a peace officer? How much weight is to be given to the age of the defendant? How much weight is to be given to the lack of the criminal history of the defendant? How much weight is to be given to the family of the defendant? How much weight is to be given to his prior employment history?

Now why do I say how much weight is to be given to mitigating circumstances? The legislators, again, mitigating circumstances shall include the

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following:

Number one, "The defendant has no significant history of prior criminal convictions." I assure you if there were, Mr. McGill certainly would have told you there were prior significant convictions. There are none.

"The defendant was under the influence of extreme mental or emotional disturbance." That section does not mean that someone was mentally ill. It suggests by your verdict that you must assume that as a result of Officer Faulkner's beating William Cook, you felt that Mr. Jamal came to the rescue of his brother. If that is indeed your assumption, the question then would be was that circumstance sufficient to provoke anger, fear, to such an extent that the offense occurred. You must decide then, not by reasonable doubt mind you, as His Honor, Judge Sabo, has indicated to you that the defense must not prove its mitigating circumstances beyond a reasonable doubt, but by a preponderance of the evidence.

Preponderance of the evidence is not the

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same type of proof beyond a reasonable doubt. His Honor, Judge Sabo will instruct you on that.

We go on to mitigating circumstances. The age of the defendant at the time of the crime. That is a circumstance that you must consider, whether the person was obviously an adult and there is a factor for you to assume that someone who is 25, 26, 27, the age at the commission of the crime should receive the same penalty as someone who is 18, or someone who is 50 or

60 or 70, for that matter. It is a factor that you must consider.

These mitigating circumstances that I'm indicating to you are not things that you may or may not consider; you must consider, you must consider these mitigating circumstances when you look at the aggravating circumstances as suggested by the Commonwealth.

Another mitigating circumstance was --

strike that I'm sorry.

Any evidence of mitigation concerning the character and record of the defendant and the circumstances of his defense. What does that

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mean?

Generally speaking, you heard character witnesses testify on behalf of Mr. Jamal. The Commonwealth has just had Mr. Jamal to read a statement that he had given perhaps 12 years ago, and Mr. Jamal indicated that he was a member of the Black Panther party. When he further indicated that he was concerned about the black community, that is not a concern, unfortunately, of a lot of people. By and large the concern, the interest in the black community is left with those persons who have an interest in the black community. Black persons. Black persons who are not at all intimidated by what the system has forced upon them.

I'm not here to give you a history lesson or racial prejudice. I'm not going to present you with a history of bias or the racial slurs the black persons had to endure in this country. Many of you, I am sure, are already aware of that. There have been a number of groups in my lifetime, before my lifetime, who have attempted to assist black people in the black community

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because there has been not just a seeming indifference, but a real indifference to the problems that plague the black community. For some time in the past at least, the white community has simply been afraid of the words Black Panther. That was seemingly an attitude of the white people. It was almost as if it was Ku Klux Klan, the black people.

But, what is it? How much do you really know about the Black Panther party? Simply because they repeat as Mr. McGill asked Mr. Jamal, simply because they repeat what someone else, -- Mao Tse-Tung may have said

sometime ago, can we deny that political power in America was a result of a gun?

We know that we fought Great Britain. We know that we fought Indians, and we fought and we fought and we fought. And, we're still fighting in this world.

Does that in and of itself indicate that Mr. Jamal is abdicating violence? I think not. The article went on to state that the Black Panther, along with Mr. Jamal, fed 80 black kids

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daily. Can any of you -- and I don't say this in criticism -- but can any of you say that you fed 80 black kids each day? Those black kids needed to be fed.

So, the reality of the Black Panther party, the reality of Mr. Jamal's interest, the reality of Mr. Jamal's activities presented to you now for which you are to judge whether or not this man is to receive the penalty or life imprisonment.

One of the interesting things that the legislators have indicated is that if in fact someone is a fireman, a peace officer, or someone who is concerned in detention of offenders and if you kill those individuals those three types of persons, then the death penalty could be imposed. Well, what happens if your occupation is something else? Why not lawyers? Or judges? Or telephone linemen, secretaries, hospital workers, retired persons? Does that mean that your life is not worth as much as a police officer?

I am suggesting to you that when you consider that if that is the aggravating

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circumstance upon which you are to impose death, why is it that someone, the legislators have decided well, there are some people that if you kill them, you're to get the death penalty, but if you don't kill -- if you kill somebody else, well, then, that is not an aggravating circumstance. They don't even say the Governor of the State, the Mayor of the City, or the President of the United States. Just certain status of people, so that means that someone has decided, some people have decided that there are certain people in this Commonwealth of Pennsylvania that if you kill them, or you're convicted of killing them, that we're going to impose death because that is an aggravating circumstance. Is that fair? Is that fair to you? Is that

fair to the Commonwealth of Pennsylvania? Is it fair to the defendant?

Oftentimes when we get to the stage of the sentencing hearing, many people -- perhaps many among you as well simply as a result of your voir dire indications that you have no moral, religious scruples that would prevent you from

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imposing the death penalty in an appropriate case. In the appropriate case, many of you may - I know some people believe that the death penalty acts as a deterrent; that is -- well, if we impose death on someone then that will send signals throughout the community, throughout the state, that if you do certain things that you will be given the death penalty. Now, think about that. How many people do you think when they're committing crimes think about number one, being caught and number two, being convicted and number three, given the death sentence? Do you really think there is a rational decision that is being made that before I do this, am I going to be killed? Does that act as a deterrent? Statistics say no.

The death penalty, of course, has not been imposed since 1972 as administered. It's been ruled unconstitutional. So up until 1972 thousands of people have been killed in America unconstitutionally, so now you're being asked to do something that people had done for years and years and years thinking that it was right to

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kill someone. And now, later on the court said that was unconstitutional, it was wrong, it was wrong. Wrong.

In Pennsylvania when, of course, we have not had a death since perhaps 1962, 1963, but again, because the death penalty as it's been administered, not just in Pennsylvania, but throughout the United States was declared by the United States Supreme Court to be unconstitutional. So, we're now still waiting for the United States Supreme Court to determine whether or not you can constitutionally impose death and carry out death in the state of Pennsylvania.

We talk about first degree murder. His Honor, Judge Sabo, gave you instructions when you deliberated as to the requirements of the elements of first degree murder. One of those requirements is premeditation, meaning think about it. Deliberation, discussing, you think about it. Discuss it.

Let me ask you, as 12 members, 12 people, when you retire to the

sentencing hearing, what do you do? You go back and you discuss the

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termination of his life. That's what you going to do. The state has said that's what he has done when he committed first degree murder. You're going to go back and discuss whether or not he lives or dies. You're going to have an opportunity to think about his family. You're going to have an opportunity to think about the provocation.

Can you say, your actions -- again, I'm not criticizing, I'm simply -- I simply want you to be aware and to consider your situation that you're in -- can you say that your directed actions are not consistent with those persons who are indeed convicted of first degree murder when you're saying it's a premeditated act, it's a deliberate act. That is in effect what you'll be doing. You'll be committing and condoning first degree.

McGill: Objection.

THE COURT: Objection; Mr. Jackson, please.

MR. JACKSON: I say --

THE COURT: Please.

MR. JACKSON: Yes, Your Honor.

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Again, with regard to the imposition of the death sentence as a deterrent, I don't know how many of you have ever seen an execution; I don't know if anyone else in this courtroom has seen an execution. Why; because, executions are carried out in secret. How can a secret execution act as a deterrent upon persons who have never seen it carried out? It just won't happen. It's a legal fallacy, it's something that we tell ourselves in order to wretch vengeance for crimes that are committed.

Officer Faulkner cannot be brought back no matter what it is that you do; no matter what it is that you think; no matter what it is that you want to do. His life is now gone and there is no way that you can do anything to bring that life back.

Should vengeance be yours? Or, should vengeance be god's? I ask you that in justice's name.

You know one of the things that occurred to me when we get again to the

stage of the death penalty is aside from the fact that I'm suggesting

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to you that the death penalty is unwarranted in this case, of course, and you by again your voir dire promises indicated you have no moral philosophical scruples that would prevent you from imposing the death sentence -- but, at the same time just consider in the western world, in France, there is no death penalty. Great Britain there is no death penalty. Scandinavian countries, no death penalty. Holland no death penalty.

Where do they have the death penalty? Iraq, Iran, Afghanistan.

MR. MCGILL: Objection your honor.

THE COURT: You're going a little too far, Mr. Jackson.

MR. JACKSON: Your honor, it's a fact.

THE COURT: You're going a little too far. All right.

MR. JACKSON: Nevertheless --

THE COURT: All right.

COURT CRIER: (To the audience) Quiet.

MR. JACKSON: My indication to you is to consider, although you must follow the order of

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the court by virtue of the promises that you have given the court, I ask you at this moment whether in fact you're going to feel satisfied and comfortable making the decision that the Commonwealth would ask you to make, rendering the death penalty.

I suggest to you that although we still have the death penalty or provisions for the death penalty in Pennsylvania, will you one day wonder if in fact the United States Supreme Court says, well, for whatever reasons, whatever reasons the provisions of the death penalty as it is administered doesn't constitute cruel and unusual punishment? Is it going to be constitutional? Isn't that why one day something can be legal and constitutional, and the very next day it's not?

So, you're being asked at this very moment to decide whether or not it is

all right to kill Mr. Jamal.

MR. MCGILL: Objection.

MR. JACKSON: Or, maybe tomorrow impose the death penalty and forgive him. Impose the

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death penalty today and possibly tomorrow or the next day, the law might be changed.

MR. MCGILL: Objection, Your Honor.

THE COURT: Yes, if it's changed then it will take care of itself.

Please, try not to be so personally involved in that phase.

MR. JACKSON: Yes, Your Honor.

COURT CRIER: (to the audience) quiet, please.

MR. JACKSON: What's the alternative? The alternative obviously is life imprisonment. You read, you hear, you think, presume someone who is given life sentence will be out in a certain number of years. Don't believe every thing that you hear and say about people who are given life sentence and are out in a few years. It happens in some few cases. Just some few cases. Some isolated cases that someone brings to your attention, that the press for one reason or another decides that they are going to bring to your attention.

Those persons who are given life sentences

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a lot of time. A lot of time. Do they serve life sentences? Do they serve out their time until they die? There are some persons who do that.

What is life imprisonment? Life imprisonment is a life in a cage. That's what it is. It's no easy way. There is no pretty way of saying it.

MR. MCGILL: Objection, Your Honor.

MR. JACKSON: It's life in a cell. You can call a cell a cage; you can call a cell a box; you can call it what you will.

This is argument, counsel.

MR. MCGILL: Your Honor, I object. We're talking about aggravating and mitigating circumstances.

THE COURT: Please, much too far.

MR. JACKSON: Before or during the time that you're considering the aggravating circumstances and the mitigating circumstances consider, is there some compelling reason, some compelling reason why you must in this case impose death because the individual who was killed was a

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police officer as opposed to -- suppose he was a lawyer that was killed? Suppose it was an office worker, or a hospital worker, retired person? Is there some reason -- is society so compelling that society says yes in certain kinds of cases there are some lives that are more important than other lives to such an extent that we're going to take another life.

I am suggesting to you that that situation does not exist in this case. Also, understand and appreciate historically in America, in Pennsylvania and in Philadelphia, the death penalty has been imposed on certain classes of people; poor people, black people, and men. Mr. Jamal fits those categories. Statistics -- this is not Tony Jackson telling you -- statistics you will see that the greater percentage of those persons killed for the death penalty imposed have been black people, poor people and men. Black men who are poor. Do you just want to add to that statistic. I would hope not.

Consider the mitigating circumstances; consider them fully. I'm suggesting to you that

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the mitigating circumstances that I have suggested to you, the legislators have indicated that you must consider it. It's something that you are bound to accept, just as you're bound to accept the instructions of the court.

Just quote again from the statute:

"The verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance specified in subsection D" and that's what I was talking to you about, an aggravating circumstance and no mitigating circumstances. Understand that. Again, if you find aggravating circumstances and no mitigating circumstances, you are permitted to

impose the death penalty.

I am suggesting to you at least four mitigating circumstances, it goes on.

"Or, if the jury unanimously finds that one or more aggravating circumstances which outweigh any mitigating circumstance, the verdict must be a sentence of life imprisonment in all other cases."

I'm saying to you that the legislators,

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although it has not specifically and entirely given you guidelines -- I think the legislators have said we don't really know how you weigh aggravating circumstances against mitigating, but if you find there are indeed mitigating circumstances that outweigh the aggravating circumstances, then you would be doing your duty to impose life imprisonment.

I ask you ladies and gentlemen, --

(Whereupon there was an extended pause while counsel drinks water and composes his emotions.)

I ask you at this moment before Mr. McGill addresses you again, is there some compelling reason?

Thank you.

(At 11:24 A.M. Counsel for the defense concluded his closing argument to the jury.)

MR. MCGILL: Your honor may I have five minutes?

THE COURT: Sure.

COURT CRIER: Everyone remain seated while the jury leaves the room.

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(At 11:24 A.M. The court was recessed.)

(At the same time the defendant was taken to the sheriff's cell room for bathroom privileges and returned at 11:38 A.M.)

(At 11:39 A.M. The jury was seated in the box,

the court being reconvened, all parties present.)

MR. MCGILL: Your honor, may I proceed?

THE COURT: Yes.

MR. MCGILL: Mr. Jackson.

Good morning, ladies and gentlemen.

Ladies and gentlemen, I'll be speaking to you and this will really be the last time you'll be spoken to by either counsel. Following me will be the court who will give you brief instructions and then, you will go out and deliberate. There will be no extensive time period before that time.

I better not give you a time period as to the amount of time because I've already been wrong, a couple of times, so I just better stay away from that. But, I will try at best to keep it within say 45 minutes, a half hour, 45 minutes;

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maybe within that time, possibly.

All right, ladies and gentlemen, the purpose of this hearing as you clearly know is to determine the sentence for this defendant. You've heard a number of things. You had the opportunity to actually hear this defendant who chose to testify; he didn't have to, but he did. You had an opportunity of seeing the person, the type of person he is, and how he is. That way you again have an opportunity to reflect back upon the incident the events at the time.

Now, ladies and gentlemen, what we're talking about in terms of sentencing is aggravating and mitigating circumstances. That is it. I'm not going to come up with philosophy or the statutes, or whatever, except perhaps on one or two circumstances, and I will attempt to rebut something that Mr. Jackson said. But, other than that what you're concerned about is just that, aggravating and mitigating circumstances and the effect of either.

Because, ladies and gentlemen what we are dealing with now and who we are dealing with now is

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a convicted murderer. This man is no longer presumed innocent. This man

over here -- (indicating by pointing) -- is a killer, you're looking and have heard a killer. That's who we're dealing with. This is not a trial; this is a sentencing hearing.

Now, to what extent when we review this has this killer merited one or the other type of sentence?

The law is what you must be guided by, and beg you to consider that. That is what all of us have to be guided by. You must concern yourself with the tenets of law, the specific categories, and then, listen to the instructions. Very briefly, you will have either two situations to concern yourself with.

One would be aggravating circumstances that exist and no mitigating circumstances. Actually, I said two -- you can have three. Aggravating circumstances and no mitigating circumstances. So, up here we have aggravating and no mitigating (whereupon the District Attorney illustrates

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with his arms as a scale).

Another time, you can have no aggravating circumstances and mitigating. So, it would be like this. (Again, illustrating.)

Now, in between is the balancing stage where you would have aggravating and mitigating in which out balances or outweighs each other. Does the aggravating outweigh the mitigating? Does the mitigating outweigh the aggravating? That one area there. (Again, indicating)

So I would say to you then, that in either of the situations where you would find aggravating circumstances, one or more, and no mitigating circumstances then the penalty of death would be mandated by law. The other situation, we would have aggravating circumstances and mitigating circumstances, but the aggravating circumstances outweigh the mitigating circumstances. (indicating) Whether it be one or more aggravating circumstances or one or more mitigating circumstances. Either way, if the aggravating outweighs the mitigating, then the law requires the death penalty. That basically is only under

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those circumstances that you can impose it. But, if you find those facts, it's mandated by the statute; it's really not a question of discretion, but those facts must be found.

Ladies and gentlemen, in terms of facts what we're dealing with -- because

you will not be dealing with philosophy and I'll not go into that. We're dealing with the real facts. We're dealing with facts on December the 9th, 1981 and circumstances that surround that particular incident. We're dealing with facts of evidence which have been presented before you. What kind of evidence, not what kind of speculation, but evidence that you have heard on either side to make a determination about this aggravating and mitigating circumstances.

You have heard such things as age as a mitigating circumstance. You have heard character as a mitigating circumstance. You have had some sort of an emotional disturbance or emotional feeling. You heard nothing at all ladies and gentlemen in reference to testimony as to any kind of emotional feeling on the defendant's part

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because he has, as is his absolute right, he did not choose to take the stand and testify what the circumstances were. So, as a result, that really is not evidence that you would consider because it's just not in the record.

And you heard from what the evidence was at trial, exactly what those circumstances were, in terms of the aggravating circumstances you must consider this. The aggravating circumstance would be of a police officer being killed during the course of duty. Right in the line of duty.

There could be also another aggravating circumstance to the extent that another individual, namely William Cook, was in fact possibly, or could possibly have been injured as a result of this defendant's shooting since he was near by. That could possibly be an aggravating circumstance, but I just put that aside and deal with the main one, and that is, a police officer in the line of duty.

Because, ladies and gentlemen, that is what were talking about and in which I would like to focus clearly on. And I will read this since

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Mr. Jackson didn't mention something about the peace officer in case there is any doubt in any of your minds:

"The peace officer is any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses."

Ladies and gentlemen, that is a police officer. So, it is clear that is one of

the aggravating circumstances, police officer in the line of duty.

Now, you might ask yourself -- as a matter of fact, Mr. Jackson asked you too, in so many words why couldn't it be somebody else? What about a lawyer or a laborer or an insurance salesman, or somebody like that? Why does it have to be a police officer? You may ask yourself why.

Well, the fact of the matter is that Daniel Faulkner himself at the same age as he was, 26 years of age, actually younger than this defendant is now, that man if he were off duty or if he were not a police officer and did the

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exact same thing as what occurred on December the 9th, for some reason was talking to William Cook or something, and then the defendant came over and shot him as viciously as you heard the testimony, with that same weapon and that same repeated fashion, there would be no aggravating circumstance. You would ask yourself why? Same vicious act, but why?

Ladies and gentlemen, I'll point out to you what we must consider is the law as it is, the law as set out by the legislators, which is the law of the aggravating and mitigating circumstances and the purpose behind the law to determine why is this such an important aggravating circumstance? It was asked by the defense. I will attempt to respond.

The fact of the matter is simply this. It's all called law and order. That is why that is so important, that aggravating circumstance. Law and order. And, ladies and gentlemen, this is what this trial is all about more than any other trial I have ever seen, and certainly, more than any other I have been, because you, yourself,

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have seen, you have heard things that are going on and you have heard testimony of things that are going on as to what is lawful and what is not lawful, and actions, arrogance, reactions against the law, law and order.

So, ladies and gentlemen, we then will simply make the response, at least ask yourselves the question, are we going to live in a society with law and order, and are we going to enforce the laws consistent with the intention of law and order, or are we going to decide our own rules and then act accordingly? That's really what we are talking about. Because, Daniel Faulkner on December the 9th, 1981, in very plain view was wearing his officer's uniform and Daniel Faulkner, as was brought to my attention last night by the assigned detective, Detective Bill Thomas who worked with me constantly during this, and I didn't realize this, but it is true, Daniel

Faulkner, ladies and gentlemen, actually wore his hat, you may not think -- he wore his hat when he got out of his car. This hat right here. (indicating by illustrating) How many

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police officers wear their hat -- wear their hat when they get out of the car? They should, but they get out. What is the reason? What is he doing? Why is he doing this?

Ladies and gentlemen, in plain view of everybody at 13th and Locust Streets, clearly with the simple -- with the manifestation, with the presence of law and order in that section of the city, from head to toe that man was a police officer, able to be seen and maintaining order and not only walking over and maintaining order with his uniform, but also in a police car that was marked in plain view.

What does that mean? Ladies and gentlemen, this is our core, our unity of any kind of order, and that is individuals that are trying to enforce it. Why is it so important? Because, once we have the opportunity presented that anybody can kill a cop and it doesn't matter, you may as well forget about law and order just throw it right out.

I might mention the fact, it was true this morning, and this is really what this is all

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about. This morning before I left -- actually, my mother actually called me up and we were talking about the case a little bit and before went down there, she said this to me. She simply said, you know, and I won't go into some of the other things that she said about this case, but she specifically said this "Joe, if you can come up --" and this is a lady who is in her seventies, she said, "Joe, if you can come up and kill a police officer who is going to protect me?"

That's what she said and then, she goes off and that was it. But, that, ladies and gentlemen, is really what it is all about. Because, that is what our system and the kind of constant battleground that we have during the course of every day in this city. The only symbol of people that are attempting to enforce the law, to control and protect people are police officers. And, if you can at will kill police, ladies and gentlemen, you then make that extra step towards the area which is without law enforcement, which is an outright jungle. We are one step from the jungle without the opportunity

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of individuals to enforce the law.

Law and order. That's what this case is about and that is what the legislators view that particular aggravating circumstance. So important that it lists number one. Those legislators are not police officers, all part of a fraternity. They want to put that aggravating circumstance number one that was it, order.

Order, ladies and gentlemen, that you may not have seen; order that this defendant has decided is not good enough for him. Order that he says, I don't care about standing, I have no respect for him. I don't care if Justice McDermott is going to walk away. I don't care if Judge Ribner says things, I'm just going to curse at him and say it because I don't have to agree with him. I don't agree with this. So, I'm going to do this. Completely in violation of any law and order is what you have seen and what you have seen in this very courtroom.

The arrogance, the defiance all present the grandiose defiance continuously present.

Interesting to note that one reason in a

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situation which is truly amazing to you is the kind of situation where an individual from the outset who has actually represented this defendant almost on a daily basis for a six month period, constantly and with all the ability he has and with extreme competence is not only criticized by the defendant continuously, but all the people that are supporting him, yelling and screaming --

MR. JACKSON: Objection.

MR. MCGILL: -- in fighting for his life.

MR. JACKSON: Objection Your Honor.

MR. MCGILL: And I'll tell you, ladies and gentlemen, - -

THE COURT: It's noted.

MR. MCGILL: I will tell you, ladies and gentlemen, about that is this, Justice McDermott himself when he was walking out made a decision and

he affirmed Judge Sabo's decision.

MR. JACKSON: Objection, Your Honor.

THE COURT: Overruled. Go ahead.

MR. MCGILL: And he affirmed Judge Sabo's

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decision, which says you have to have a lawyer which happens to be the law of this Commonwealth to be present with you, and that is the situation, and, you have to do this.

No, again, I don't want this. Again, he is viewed as some sort of an individual who's a traitor because he is doing what -- following the law. The law of Judge Sabo, the law of the Supreme Court. Again, this is what this is all about, law and order. How do we avoid it if we don't like it, we don't just accept it, and we don't try to change it from within, we just rebel against it. And maybe that was the siege all the way back then with political power, power growing out of the barrel of a gun. No matter who said it, when you do say it and when you feel it, and particularly in an area when you're talking about police or cops or shootings and so forth, even back then, this is not something that happened over night.

Ladies and gentlemen, there is one thing, that is to kill an individual, that is atrocious, another thing, to kill a police officer who

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obviously and presently is attempting to protect, attempting to assist us to live on a daily basis and yet, there is that one other thing about all of this, and that one other thing is the manner in which you execute and you saw that and you heard all that testimony. And you can almost see, I am sure, how it was done with the arrogance that has been displayed in front of you over this period of time. An individual who defiantly will do it and then, defiantly brag after it, and it is not completely in character. Maybe not so as the individual who wrote a forward to the book that actually praised another individual by the name of Joanne Chesamar (sic). I mean, that person thinks that that character is good and all, but that happens to be the subject of that individual who herself was convicted of killing a police officer.

MR. JACKSON: Objection. Objection Your Honor.

May we see you at side-bar? Objection, objection.

MR. MCGILL: Of killing a police officer,

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a state trooper in New Jersey who had stopped a car, who had actually stopped a car.

MR. JACKSON: Your Honor, objection. Your Honor, may I see you at side-bar? Your Honor --

THE COURT: It's noted. Let him finish.

MR. MCGILL: Ladies and gentlemen, that is the kind of individual who says that character is okay. All right, ladies and gentlemen, let us take a look at what we're talking about and if we are talking about so much in reference to individuals that will constantly violate whatever law there might be, whether it be the law of the court or the law of Judge Sabo, or just refuse to abide at all, let's again take a look at the act itself, and I think that you will find two things. Let's look at this as we're talking about the individual who executed a police officer as you saw. What else did he do besides that?

You know, ladies and gentlemen, if you look at that, you can see in that act an extreme amount of cowardice. Because, in order to be sure we're

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going to kill and shoot him in the back when he's not even looking at us; we'll get him in the back.

Ladies and gentlemen, these are the facts and those -- that is the evidence that is the evidence that you heard in the execution of a man fully uniformed, a police officer, Daniel Faulkner.

Ladies and gentlemen, there has been much said about individuals' philosophies. Anybody can grasp or hold any kind of philosophy you want, that's fine. That's what this country happens to be all made of. But, one thing that cannot be tolerated is constant abuse of authority, defiance of authority, and daily law breaking. That simply is not permitted. And, ladies and gentlemen, I ask no one, even indirectly, to enforce any such thing.

Ladies and gentlemen, you are not asked to kill anybody. You are asked to follow the law. The same law that I keep on throwing at you, saying those

words, law and order. I should point out to you it's the same law that has for six months provided safeguards for this defendant. The same law, ladies and gentlemen,

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The same law that will provide him appeal after appeal after appeal.

MR. JACKSON: Objection.

THE COURT: Go ahead.

MR. MCGILL: The same law, ladies and gentlemen, --

THE COURT: (To spectators)

Quiet; quiet, please or you'll go out.

Please. Go ahead.

MR. MCGILL: The same law, ladies and gentlemen, that has made it so because of the constant appeals, that as Mr. Jackson said, nobody at all has died in Pennsylvania since 1962 for an incident that occurred in 1959. Who, by the way, and it's only by the way, in fact he also was a white man, Elmo Smith was the name; remember that going way back, 1959 incident? The rape and murder of Mary Ann Mitchell. The last one who was executed and that's over 20 years; appeal after appeal after appeal. That law should be that way and that law should be followed, and he should have every

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appeal. But, the same law that permits this, ladies and gentlemen, let us -- let me urge you to consider and enforce that law today because the law is not -- or, the law is, rather, a double edged saw, it works for both sides. It works for both sides.

So when you are determining in reference to the evidence only, and that evidence would be aggravating and mitigating circumstances, nothing more. In considering those, only consider the evidence you heard, the age, the age of Daniel Faulkner. You heard no evidence of the --

MR. JACKSON: Objection, Your Honor. Objection, Your Honor.

THE COURT: Go ahead.

MR. MCGILL: You heard also the mention, the age, he did mention the circumstances surrounding his mental frame of mind, which is no evidence whatsoever. That's not evidence. Because it was not there. The other evidence, and you heard from individuals in terms of mitigation; those are the factors, but on the

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other side, you have the aggravating circumstances that I mentioned and in particular, in particular the primary one, the police officer in the line of duty.

And I ask you to consider that because that is what the law and order is all about. Not the fact of who represented him, not the fact whether John Africa, the name John Africa, who I have never seen in this courtroom for some reason, never testified as to character or anything like that, this individual who is constantly called and so forth, that is not the relevant issue. The issue is the evidence that is presented before you and where you have aggravating and mitigating circumstances, and where you weigh them. Where you weigh them.

Ladies and gentlemen, there have been a number of cases where such situations have occurred and individuals have listened to evidence and then, made up their minds. As a matter of fact, in one particular case I can recall and even before, even before they themselves, the individuals on the jury came back with their

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verdict, they prefaced their -- they asked the Judge if they could preface their verdict with "In accordance with the law." They asked that could they say it that way because they wanted it. It was clear then what was in the minds of those individuals. They're not condoning this or that action, or saying -- but, they're saying we will follow the law and because it is the law, we will follow it and do it, "In accordance with the law," we find. That is how the situation is.

Now, ladies and gentlemen, I would ask you to consider that after deliberations, you could if you wish, you could consider that particular phrase. That of course, would be up to you because that is in fact what we're talking about, not speculation and not anything else.

Ladies and gentlemen, I'll point out as Mr. Jackson stated several times, the business about the black people are the only people that are in death row. Ladies and gentlemen, it should be considered that, because in this

particular Commonwealth and over a period of even

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of just one year, the fact of the matter is that black Philadelphians are close to eighty percent of the victims of most of the crimes, of all of the violent crimes, and particular homicides in the City. Those people, those people are as much and if not more victims than actually any case being directly involved with the law as perpetrators. It may have been because of the fact that since so many of those homicides involve victims, that many of the individuals happen to have been arrested happened to be black Philadelphians. All right, because of that and numerically only would be the reasons why over the course of the nation that any such statistic would have any relevance at all. And, I suggest to you it is not relevant. The only relevance is what you find, not what the moans and groans of individuals over there can constantly refuse to obey order --

MR. JACKSON: Objection.

MR. MCGILL: --of the court would in any way intimidate you. Ladies and gentlemen, I would ask you to

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continue if you would having the courage that you have had before, and I thank you for that. I thank you for the time that you spent, and I thank you for the responsibility that you have shown, and that responsibility and that courage no matter what your finding would be, I shall always appreciate, particularly, the time that you spent over the two week period. I truly thank all of you for that.

(Whereupon the District Attorney peruses his personal notes.)

Finally, ladies and gentlemen, and this is only -- this is all it will be and that's it.

Please consider in a common sense fashion the evidence that you heard. The evidence that you heard in this case is not just the evidence that you heard in the sentencing hearing. You heard me move for the incorporation of the evidence of the trial. Take all the evidence from the trial and the evidence of the sentencing Hearing and in considering that make your determination. But I would ask you -- the reason why I ask you very seriously, make a

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decision without in any way being intimidated. I ask all of you to make a decision on the facts and weigh it. If you find mitigating circumstances, whether you would think the age, or whatever, they were -- that he has mentioned -- and only those that the court will say as to what mitigating circumstances you would be able to find. Weigh the mitigating circumstances and the aggravating circumstances, and I would ask you to consider the importance of law and order, which this entire trial is all about.

The manner in which a uniformed officer was executed. The manner in which the facts have been related to all of you. The way and manner of this defendant easily imagining how that act was perpetrated. First in the back and then right over him. (Illustrating) In uniform, he is shot between the head, law and order is what I ask of you. I ask of you to follow that law and reach a decision solely based on that law and nothing else. Nothing else.

MR. JACKSON: Objection.

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MR. MCGILL: Just the aggravating circumstances.

THE COURT: Go ahead.

MR. MCGILL: And, the mitigating circumstances, nothing else. What they do in countries anywhere else is not important, it's here today, the Commonwealth of Pennsylvania, this courtroom, whatever evidence you heard.

Thank you very much.

(At 12:10 P.M. The assistant District Attorney concluded his summation to the jury.)

(The following colloquy occurred at side-bar.)

MR. JACKSON: Your Honor, I understand your honor has made a ruling. I know that Mr. McGill in his comments, making comments that you told me and so, I would object and when I did object, you said nothing to it at that time, even of my objections as if he can say all of the things he can say.

The court: Well, I didn't want to interrupt him during his summation. You could come to the bar and put it on record now what

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you're objecting to.

MR. JACKSON: I understand, your honor but i was making an objection. You admonished me.

MR. MCGILL: You were going too far.

THE COURT: You were going too far. You see, this is what I'm saying, you were going too far afield. I have to leave him go as far as you did. I didn't want to do that --

MR. MCGILL: He went into countries and the killing of individuals and how it is done.

MR. JACKSON: I understand that but it was my objection --

MR. MCGILL: I didn't --

THE COURT: There are other objections that he made and I did not rule on them. The only time he said something was when you were going too far afield. I'm not interested in that. And, I just told you, you were just going too far, I didn't say anything to admonish you. I just wanted you to steer clear and I didn't know where you were going and I wanted you to concern yourself with the issues here.

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MR. JACKSON: Your Honor, my objection is he made a comment on Sonia, S-o-n-i-a, Sonches, S-o-n-c-h-e-s, he made that comment about her. Again, I noted with regard to testimony, Your Honor allowed him to cross-examine and impeach her with respect to the fact that she wrote a book about that, it wasn't about the killing of a police officer. We don't know when it was written, but here it was written after the time of the shooting, but the jury didn't know and I'm suggesting that this woman just goes around and testifies and gives good comments about who kills police officers. That's what's left in the jury's mind about her testimony. And I think without basing as to whether she wrote this book, or the forward to the book and what it is about --

MR. MCGILL: As a matter of fact, on cross-examination she stated why she did that and that was part of it. She claimed that she was writing, only about what she said in her writing and the only concern was about black persons or something about the depression and you went into

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the other things she had written.

MR. JACKSON: But, it was clearly given to the jury as if she was writing it in support of someone who kills police officers.

MR. MCGILL: Well, she was definitely doing that and it was after the individual had fled and was a fugitive, she agreed with that. It was right after she had fled after having killed a police officer and after that particular act of which she wrote, that was the only relevancy.

MR. JACKSON: Again, it's the -- she identified that person as the one who killed the police officer, so why did you talk about the forward? She wrote about that mickey mouse story. I'm only suggesting you did it because you wanted to inflame the jury.

MR. MCGILL: No, no.

MR. JACKSON: She killed a police officer.

THE COURT: Mr. Jackson both of you were getting emotional, too.

MR. JACKSON: But, I didn't say that.

THE COURT: Well?

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MR. JACKSON: I understand.

THE COURT: How can I condone what he's doing when you're both doing the same thing? I wish you both would stick to the aggravating and mitigating circumstances. You brought up the issue and I've got to let him answer it. Just can't let him stay in the middle of the air.

MR. JACKSON: Well, I never said anything about her.

THE COURT: Not about her, but some of the other things were justified.

MR. MCGILL: You talked about character --

MR. JACKSON: Good character but that's --

MR. MCGILL: That was character witnesses.

THE COURT: Well, that goes into the character thing so --

MR. JACKSON: I understand, Judge. The other comment he said was something about appeal after appeal after appeal, and I think he did that to suggest to this jury that their deliberation may overturn --

THE COURT: Well --

MR. JACKSON: That he has an appeal after

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appeal after appeal suggesting that it's not going to happen.

THE COURT: Well, you went -- you brought in the same thing.

MR. MCGILL: You went into the actual killing.

THE COURT: Life imprisonment is life imprisonment, you know that. Depends on what happens, the governor if he wants to commute it --

MR. JACKSON: Well, that's as to sentencing, I mean --

THE COURT: Well, you see, you're going into areas and he's going into the same areas and you were the one that brought it up. I don't think it's my duty to stop him when he's answering what you already brought up. You brought this issue up and I can't tie his hands.

MR. JACKSON: Very well, Your Honor. Your Honor, with regard to the instructions to the jury, you have indicated that you want to do that after you gave your instructions and I just -- Mr. McGill and I --

THE COURT: What instructions do you want?

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Mr. Jackson: Well, I've never heard Your Honor's instructions.

THE COURT: It's just taken from the form book.

MR. MCGILL: I would object to anything additional. I'm not going to ask for anything, just what you read.

MR. JACKSON: Well, will it be -- I'm sure that you're going to explain the preponderance of evidence?

THE COURT: That's about all, whatever is in the suggested form that we use.

MR. MCGILL: It's just binding instructions with regard to if you find there are mitigating circumstances that outweigh the aggravating circumstances, you must --

THE COURT: No, I don't. I explain to them what they have to do, you know, and what happens if they're -- for instance, the only way they can get to the death penalty, they must, you know, find some aggravating circumstances.

MR. JACKSON: Fine.

THE COURT: If they find aggravating

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circumstances and mitigating circumstances, they have to weigh and decide the weight. As a matter of fact, I put it on the sheet that I give them. I give them the penalty sheet.

MR. JACKSON: Do you tell them that they have to --

THE COURT: They indicate on there which ever ones they find.

MR. JACKSON: Which ones they find? Okay. I just wanted to make sure.

MR. MCGILL: They mark it on the sheet.

MR. JACKSON: Okay.

THE COURT: The only thing I intend to explain to them is the policeman is in fact a peace officer. You brought it up and I think that I have an obligation to explain that to the jury.

MR. JACKSON: But, it doesn't say police officer.

THE COURT: Well, as far as I am concerned it does.

MR. MCGILL: It's in the book.

THE COURT: I know.

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MR. MCGILL: It's in the crimes code.

THE COURT: I know that. I will explain that. There is no question about that.

MR. MCGILL: All right.

THE COURT: In fact, it places him in the performance of his duties in a special class that would not apply if he was like on vacation or some social affair.

MR. JACKSON: But, Judge, what you're doing in fact by --

THE COURT: Well, wait a while, you brought it up. You should have asked me first and I would have told you.

MR. JACKSON: But, Judge, what you're doing is in effect, Mr. McGill has already read --

THE COURT: Well, I will give them the law. I will read it. I will give them the law and they will take the law from me. They may think that he is reading it wrong.

MR. JACKSON: Then, why can't I --

THE COURT: Mr. Jackson, I'm sorry, you didn't have to bring it up, but you did. I have a duty to inform them since you brought it up.

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I have to do it.

MR. JACKSON: Well, I thought it was just fair argument.

THE COURT: Because, you're leaving them to decide who is a peace officer.

MR. JACKSON: No.

THE COURT: As a matter of law, I'm telling them who a peace officer is. It's not only peace officers, it is state troopers, deputy sheriffs, all peace officers. So, I have to explain it to them. I didn't want to explain it to them, but you brought it up. You leave me with no choice. I don't like to go into these things.

MR. JACKSON: That means anything Mr. McGill has said, some

comments on the law --

THE COURT: No, no I don't care what he said on the law. They don't have to take it from him. They have to take the law from me.

MR. JACKSON: Right.

THE COURT: You brought it up. You gave your version, he gave his version. I now have to tell them what the law is. You made an issue.

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You brought it up, saying the legislators didn't say who a peace officer is and I have to explain that to them. I have to explain that to them.

MR. JACKSON: Well, they didn't specifically -

THE COURT: I don't care. I have to tell them, Mr. Jackson. You brought it up and I have to tell them.

MR. MCGILL: Let's go.

(The above concluded the side-bar conference.)

(In open court)

COURT CRIER: Anyone wishing to enter or leave the courtroom must do so now. No one will be permitted to enter or leave while the Court is charging the jury.

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CHARGE OF THE COURT

HON. ALBERT F. SABO, J.

(CHARGE COMMENCED 12:22 P.M.)

THE COURT: Members of the jury you must now decide whether the defendant is to be sentenced to death or life imprisonment. The sentence will depend upon your findings concerning aggravating and mitigating circumstances. The crimes code provides that a verdict must be a sentence of death if the jury unanimously finds at least one aggravating circumstance and no mitigating circumstance, or if the jury unanimously

finds one or more aggravating circumstances which outweigh any mitigating circumstances.

The verdict must be a sentence of life imprisonment in all other cases.

The crimes code defines aggravating and mitigating circumstances. I will not go into detail on them because I will later explain to you this penalty sheet which will go out with you that lists all of the aggravating and mitigating circumstances.

I must, however, at this time instruct you as a matter of law that a policeman in the city of Philadelphia is in fact and in law a peace officer.

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Every state trooper throughout the Commonwealth of Pennsylvania, every police officer throughout the Commonwealth of Pennsylvania, and every deputy sheriff throughout the Commonwealth of Pennsylvania is in fact and in law a peace officer. A peace officer is one whose duty and obligation is to maintain order or peace, and who has the legal duty and obligation to make arrests. Therefore, a policeman in the city of Philadelphia is in fact and in law a peace officer.

I should note that that section indicates that he must be in the line of duty in the performance of his duties. Therefore, that section would not apply to a peace officer who might be on vacation or off duty socializing. It applies only if he is killed in the performance of his duties. That means he must be in uniform and actually on duty at the time.

The Commonwealth has the burden of proving aggravating circumstances beyond a reasonable doubt. The defendant has the burden of proving mitigating circumstances, but only by a preponderance of the evidence. This is a lesser burden of proof than beyond a reasonable doubt. A preponderance of the evidence exists where one side is more believable than the other

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side. All the evidence from both sides, including the evidence you heard earlier during the trial-in-chief as to aggravating or mitigating circumstances is important and proper for you to consider. You should not decide out of any feelings of vengeance, or sympathy, or bias towards the defendant.

Now, the verdict is for you members of the jury. Remember and consider all of the evidence giving it the weight to which it is entitled. Remember

that you are not merely recommending a punishment. The verdict you return will actually fix the punishment at death or life imprisonment. Remember again that your verdict must be unanimous. It cannot be reached by a majority vote or by any percentage, it must be the verdict of each and everyone of you.

Remember that your verdict must be a sentence of death if you unanimously find at least one aggravating circumstance and no mitigating circumstances. Or, if you unanimously find one or more aggravating circumstances which outweigh any mitigating circumstances. In all other cases, your verdict must be a sentence of life imprisonment. You will be given a verdict slip upon

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which to record your verdict and findings. I am holding in my hand that verdict report which will go out with you. You will see it has three pages. The first page says:

"We, the jury, having heretofore determined that the above-named defendant is guilty of murder of the first degree, do hereby further find that:

(1) "We, the jury, unanimously sentence the defendant to --"

And you have two blocks; one block says death, the other block says life imprisonment. Whichever unanimously you decide on, you will put an "X" in that block.

Now, under (2), it says:

"(To be used only if the aforesaid sentence is death.)"

That means, under number one, you have indicated death and you will put an "X" in there, you would then have to fill out the number two portion. And that reads as follows:

"We, the jury, have found unanimously --"

And the first block there says:

"At least one aggravating circumstance and no

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mitigating circumstance."

If that is the block, you put an "X" there and then, it says:

"the aggravating circumstance(s) is/are --"

And what you do, you go to page 2. Page 2 lists all the aggravating circumstances. They go from small letter (a) to small letter (j). Whichever one of these that you find you put an "X" or check mark there and then put it in the front. Don't spell it out, the whole thing, just what letter you might have found.

Now, the second block there says:

"One or more aggravating circumstances which outweigh any mitigating circumstances."

And then, it goes on to say:

"The aggravating circumstance(s) is/are --"

And then, you would as I said before, on the second page indicate which ones they were and put it on the front here, like a small number or (a) or (b) or (c) or whatever one you might find. And then underneath that, there are:

"The mitigating circumstances(s) is/are --"

"And those mitigating circumstances appear on the third page here. They run from a little (a) to a little

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letter (h). And whichever ones you find there, you will put an "X" mark or check mark and then, put it on the front here at the bottom, which says mitigating circumstances. And you will notice that on the third or last page, it has a spot for each and every one of you to sign his or her name on here as jurors and date it down on the bottom, the date that you reach the verdict, and return it to the court with this verdict report.

(At 12:27 P.M. The court concluded its charge to the jury on the aggravating and mitigating circumstances.)

COURT CRIER: Everyone remain seated until the jury leaves the room.

(At 12:27 P.M. The jury exited the courtroom to begin its deliberations.)

(Whereupon the verdict report slip was examined by  
counsel for the defense and the District Attorney.)

MR. JACKSON: Your honor may we see you at side-bar?

(The following colloquy occurred at sidebar.)

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THE COURT: What do you want to say?

MR. MCGILL: I think it's --

MR. JACKSON: I think it's suggestive.

THE COURT: What, this?

MR. JACKSON: With section (D):

"The youth or advanced age of the defendant at the time of the crime."

THE COURT: Well, that was when --

MR. JACKSON: The statute says --

MR. MCGILL: What's the date on your reading?

MR. JACKSON: Well, it's just a Xerox from the --

THE COURT: Wait a while, what does it say?

MR. JACKSON: It says the age of the defendant at the time of the crimes.

THE COURT: Yes, that was put under the new statute. That was put in,  
even if it is advanced age, one who's -- even a guy whose 80 years old, or  
76 years old, they can consider that just as they can consider the  
youthfulness of the defendant. They can consider his old age

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and the advanced age.

MR. MCGILL: That wasn't in the old statute.

THE COURT: No, no, no. It wasn't in the old statute. You can check it.

MR. JACKSON: Fine.

THE COURT: All right

(At 12:30 P.M. The court was recessed until the call of the crier.)

(Later)

(At 4:00 P.M. The assistant District Attorney entered into the courtroom.)

(At 4:06 P.M. Counsel for the defense entered into the courtroom.)

(at 4:19 P.M. The defendant entered into the courtroom.)

(At 4:20 P.M. The jury was seated in the the court  
being reconvened, all parties present.)

COURT CRIER: Quiet, please, the court is in session. May I take the  
verdict, your honor?

THE COURT: Yes.

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COURT CRIER: (To jurors) Jurors have you agreed upon a verdict and  
penalty?

JURORS: Yes.

COURT CRIER: Do all twelve agree?

JURORS: Yes.

COURT CRIER: Will the foreman please rise?

(Whereupon Juror NO. 9, rises as jury foreman.)

BY THE COURT CRIER: (To Jury Foreman)

Q. Having found the defendant, Mumia Abu-Jamal, guilty of murder in the  
first degree on Bill of Information NO. 1358, January Term 1982, what is  
your verdict as to penalty?

A. Death.

COURT CRIER: Please be seated, sir.

MR. JACKSON: Would you poll the jury your honor?

THE COURT: Poll the jury.

COURT CRIER: Jurors, defense counsel wishes you to be polled. When your name and number is called, you will please rise and in a full, clear, audible voice announce your verdict.

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BY THE COURT CRIER: (To Juror NO. 1)

JUROR NO. 1: Guilty.

COURT CRIER: Wait a minute, Sir.

BY THE COURT CRIER: (To Juror NO. 1)

Q. Jennie Dawley, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 2)

Q. James Mattiace, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: you may be seated.

BY THE COURT CRIER: (To Juror NO. 3)

Q. Richard Tomczak, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

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BY THE COURT CRIER: (To Juror NO. 4)

Q. Joseph Mangan, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 5)

Q. Maurice Simovetch, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 6)

Q. Mirian Adelman, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 7)

Q. Savanna Davis, having found the defendant,

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Mumia Abu-Jamal, guilty of murder in the first degree on bill of Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 8)

Q. Lois Pekala, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 9)

Q. George Ewalt, JR. having found the defendant Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 10)

Q. Basil Malone, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is

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your verdict as to penalty?

A. Death

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 11)

Q. Domenic Durso, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term. 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

BY THE COURT CRIER: (To Juror NO. 12)

Q. Louis Godfrey, having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982, what is your verdict as to penalty?

A. Death.

COURT CRIER: You may be seated.

(At 4:24 P.M. The jury was polled of record.)

COURT CRIER: Your Honor, the jury has been polled each individually as to the verdict on penalty and all twelve agree. May the verdict be recorded?

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THE COURT: Record the verdict.

COURT REPORTER: Yes sir.

(At 4:24 pm the verdict was molded of record.)

COURT CRIER: Jurors, harken to the verdict as the court hath recorded.

Having found the defendant, Mumia Abu-Jamal, guilty of murder in the first degree on Bill of Information NO. 1358, January Term, 1982 you set the penalty at death and so say you all?

JURORS: Yes.

THE COURT: Ladies and gentlemen of the jury, the Code of Judicial Ethics prevents me from commenting one way or the other on your verdict and that is the way it should be, because as I told you initially on this trial, you are just as much a judge as I am in this case. I was the judge as to the law and you were the judges as to the facts. If this had been a trial without a jury, I would have had to perform both functions. Therefore, you can see that the function that you have performed was very important to the administration of justice.

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There is nothing in the Code of Judicial Ethics that prevents me from

extending to you, each and every one of you, my sincere thanks for your services. I know that you have served away from your family for over two weeks and I really appreciate it, and I want to extend to you my sincere thanks on behalf of the entire board of judges of the court of common pleas, the people of Philadelphia, and myself. We extend to you our sincere thanks. You are discharged from any further service, in this case. Thank you very much. Everyone remain seated while the jury leaves the room.

(At 4:26 P.M. The jury was discharged of record.)

(The following colloquy occurred in open absent the discharged jury.)

THE COURT: All right, Mr. Abu-Jamal?

(Whereupon the defendant remains seated at defense counsel's table.)

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BY THE COURT CRIER: (To defendant)

Mumia Abu-Jamal, also known as Wesley Cook, you have been found guilty of Possession Instrument of Crime generally under Bill NO. 1357, January Term, 1982. You have also been found guilty of murder in the first degree and the penalty has been set at death by a jury under Bill NO. 1358, January Term, 1982. This court wishes to advise you that you have an automatic appeal to the supreme court of Pennsylvania.

However, before that appeal can be taken, certain post trial motions must be filed and disposed of. They are motions for new trial and an arrest of judgment. These motions must be filed in writing within 10 days of today. The reasons for those motions must be spelled out with specificity at this level, otherwise this court cannot or will not be in a position to answer those reasons, nor will the appellate court. So, it is very important that they be filed in writing within 10 days of today and spelled out with specificity the reasons why you should be granted a new trial or an arrest of judgment.

The court will defer formal sentencing pending

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disposition of these motions, and will set as the time, date, and place for the disposition of these motions for Monday, September 13th, 1982 at 3:30 P.M. in courtroom 253.

In the interim, the court will order a pre sentence and psychiatric examination to be performed by Dr. Camiel.

Anything else, gentlemen?

(Whereupon the defendant sits there and laughs.)

MR. MCGILL: Nothing, no, sir.

THE COURT: Of course, if there is any bail, it is automatically revoked because this is a first degree case, a conviction.

All right. The court stands adjourned.

(At 4:28 P.M. The court was adjourned.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COMMON PLEAS COURT OF PHILADELPHIA  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION

- - -

		January Session 1982
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

- - -

Wednesday, May 25, 1983  
Courtroom 253, City Hall  
Philadelphia, Pennsylvania

- - -

POST-TRIAL MOTIONS  
SENTENCING  
(DEATH PENALTY)

- - -

Before: HONORABLE ALBERT F. SABO, J.

- - -

APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney  
For the Commonwealth of Pennsylvania
- ANTHONY E. JACKSON, ESQUIRE  
Court-Appointed Counsel  
Attorney for the Defendant

- - -

Page 2.

MR. JACKSON: Good afternoon, Your Honor. We, of course, are here for post-trial motions that were timely filed on behalf of Mumia Abu-Jamal.

The motion that was originally filed and received by this Court back on July 9, 1982 has been supplemented by a memorandum that I believe Your Honor may have received a copy of. I delivered one also to Mr. McGill's office but, apparently Mr. McGill did not receive it. I have handed him one just today.

The memorandum merely supplements the allegations that were made in the motions for post-trial motions. I have summarized them to some extent. Although there were 34 originally listed, they have not been enumerated as such and they would be combined in the argument that I wish to make to the Court today.

Initially, I would point out to Your Honor that some time after Mr. Jamal was arrested but before the preliminary hearing, in fact, on January 5, 1982, we made a request to Judge Ribner at that time requesting a lineup. That lineup was founded upon the

Page 3.

representations that were made by the district attorney essentially alleging that the eyewitnesses, the alleged eyewitnesses, could in fact and did, in fact, identify Mr. Jamal as being the very same person that they saw shoot the police officer and when they subsequently saw him in the wagon, he was that same person.

At that time there were representations made by counsel that they never lost sight of him. I think the testimony was that, and I believe Your Honor is certainly familiar with the testimony of those eyewitnesses that testified, they did in fact lose sight of him. At various times they saw various aspects of someone who committed some act.

During the time of the alleged shooting, Cynthia White, as an example, said that she saw someone running across the street. First the person had a

hat on and then later, she said that the person had dreadlocks. And at some point in time, she said that she lost sight of the man who was supposed to have committed the shooting. She said that she was some distance away and later moved forward.

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But, in any event, later on the police officers took her to the back of the wagon, along with some of the witnesses and they identified Mr. Jamal.

We, of course, asked that a lineup be conducted to support and corroborate the reliability of that eyewitness testimony. When balanced against the inconvenience and burden to the Commonwealth, under those circumstances, I don't think it was at all an unreasonable request.

Throughout the motion to suppress, throughout the representations made by counsel as well, we have heard that, of course. Each and every one of the eyewitnesses has given contradictory information with regard to the description of the person who allegedly committed the shooting. Based on that, we feel that the Court was in error in not granting our request for a lineup, and I would ask Your Honor to order a new trial based on that and that alone.

I would ask Your Honor also, and it is pointed out in the memorandum, in United States

Page 5.

versus Wade, where, in fact, Justice Brennan noted that, "the vagaries of eyewitnesses identification are well known; the annals of criminal law are rife with instances of mistaken identification."

The reason for that, Your Honor, Justice Brennan recognized that eyewitnesses are whatever they are, they are eyewitnesses. They can certainly be mistaken. If, in fact, the Commonwealth has faith and confidence that their witnesses are indeed able to identify whoever it was that committed the act, it seems to me that it is little burden upon the Commonwealth to bring in those witnesses, and to select the defendant out of a lineup.

That is particularly true, I believe, in this case where we have a man who has been charged and convicted and now, of course, sentenced to death. That certainly would not have been an unreasonable burden on the Commonwealth and certainly no inconvenience to the Commonwealth to be offered as an argument against that. I would ask, for that reason, that the

Court order a new trial.

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THE COURT: You cited no cases.

MR. JACKSON: U.S. v. Wade, Your Honor.

THE COURT: What does Wade say?

MR. JACKSON: With regard to the eyewitnesses?

THE COURT: What were the facts of the case?

MR. JACKSON: In U.S. v. Wade, the facts and circumstances are completely different. There is no question about that. I am citing it simply for the proposition that eyewitness testimony is oftentimes mistaken.

THE COURT: That is common knowledge. Everybody knows that.

MR. JACKSON: I understand that.

THE COURT: That is for the jury to decide. That is a factual issue.

MR. JACKSON: It may be a factual issue to determine --

THE COURT: Did anybody say that you must have a lineup?

MR. JACKSON: No, there is absolutely no constitutional right to a lineup, I would agree. There is no constitutional right to a

Page 7.

lineup.

THE COURT: In that case, there is no precedent for what you are arguing.

MR. JACKSON: I disagree with Your Honor, in that I am not suggesting that there is indeed a constitutional right to a lineup. There is indeed a constitutional right to a fair trial. I am saying that the refusal to grant that lineup caused Mr. Jamal to have an unfair trial.

THE COURT: Is there any case to support that?

MR. JACKSON: That he is entitled to a fair trial?

THE COURT: I am sure he got a fair trial. I mean the point that you are talking about, about the lineup?

MR. JACKSON: The Courts could point out circumstances where a lineup would be ordered. The Courts leave it within the discretion of the Trial Judge as to whether or not a lineup ought to be ordered and it points out several factors that the Court should consider, as to

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whether or not a lineup should be ordered.

THE COURT: Did Judge Ribner consider those factors?

MR. JACKSON: Yes, Judge Ribner did indeed.

THE COURT: Did he make a decision?

MR. JACKSON: Yes, he did.

THE COURT: All right. Why is he wrong?

MR. JACKSON: Because it was an arbitrary and capricious decision based on, primarily, the representations made by counsel.

THE COURT: What factors did he consider? You said that he considered them.

MR. JACKSON: Yes, sir.

THE COURT: Why do you say --

MR. JACKSON: The offer that was made to Judge Ribner was in fact that the eyewitnesses never lost sight of the person who allegedly shot the police officer.

What I am proposing and suggesting to Your Honor is that there were several phases to this incident. One is that the witnesses claim that they saw a man run across the street, and

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there was a break between that time and the time that they allegedly saw a man shoot the police officer. After the shooting of the police officer --

THE COURT: How much time?

MR. JACKSON: I don't know, Your Honor.

THE COURT: Hours?

MR. JACKSON: Not hours. Certain the entire incident took no more than two minutes, Your Honor.

THE COURT: The whole incident?

MR. JACKSON: The whole incident.

THE COURT: Therefore, he considered that factor. Go ahead.

MR. JACKSON: Well, he didn't have the benefit, Your Honor, of the entire testimony, and that is the point.

THE COURT: Nobody, no Judge ever has the benefit of the entire testimony until the trial comes.

MR. JACKSON: Absolutely, Your Honor. But what the Judge did was base his ruling on the representation of counsel that, in fact,

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they never lost sight of the man.

THE COURT: True, if he had been arrested ten hours later, what you are saying would make sense.

MR. JACKSON: I am saying, even in this instance, in that Mr. McGill represented that the witnesses never lost sight of him, and that is not a fact. If that fact was brought to the attention of the Judge, his ruling may have been otherwise, Your Honor.

THE COURT: You mean even if I bring my eyes?

MR. JACKSON: That may be sufficient, Your Honor. That may be a ridiculous extreme that you are suggesting --

THE COURT: I am sticking specifically, strictly to the facts in this case.

MR. JACKSON: I understand that. Your Honor, if you consider the fact that we had allegations or representations made that there were at least two people there, Mr. Jamal and Mr. Cook, who had dreadlocks. And we had

other testimony that there were --

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THE COURT: Mr. Cook, you are talking about his brother?

MR. JACKSON: Yes, sir.

THE COURT: That is in the evidence.

MR. JACKSON: I understand that, but it is also in the evidence that there were other people who were there. There is a question as to what each individual did, whether they were talking about Mr. Jamal or Mr. Cook. And there was other evidence that there was at least one or several other people there.

We have the testimony of Veronica Jones who originally gave a statement to the police indicating that there were some other people, there. We have a statement from Debbie Kordansky who indicated that after the shooting, she saw some other people running. There was another witness who indicated that he saw somebody else running. We had Dessie Hightower who indicated that he saw someone else running from the scene.

THE COURT: And a jury had all of those

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facts.

MR. JACKSON: Your Honor, no question. The jury had most of those facts.

The jury did not have the benefit of Debbie Rordansky, and I will get to that issue with regard to her testimony a little later. The jury, of, course, is the judge of the facts. I am saying that, as a matter of law, a lineup should have been ordered in the first place.

THE COURT: Why? Show me the reason why. If I gave you an example, where someone is picked up ten hours later or even an hour later --

MR. JACKSON: Because of the opportunity for mistake, Your Honor.

THE COURT: There was an opportunity for mistake?

MR. JACKSON: Yes, absolutely, if you consider that indeed there were

not just two people there, but several people.

THE COURT: If he had not been shot and wounded, and had fled the scene, what you are saying would make sense.

MR. JACKSON: No, Your Honor. I think

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it is that very point that makes all of this argument sense.

Your Honor, he was shot. He was at the scene. No one saw him shot and remain there at the scene. That is all the more reason that makes it relevant that a lineup should have been requested. If in fact he was there, if in fact he was shot --

THE COURT: The fact that you are arguing is that they would have to have a lineup in every case.

MR. JACKSON: Your Honor, personally, I feel that it wouldn't be a burden, but I am only arguing this case right now. I don't think that is a burden to the Commonwealth.

THE COURT: I am not saying whether it is a burden or not. I am asking you whether he is entitled under the Constitution or under any state law or decision by the Supreme Court that would guarantee him a lineup and, in fact, guarantee every defendant a lineup in every case?

MR. JACKSON: Obviously, there is not, Your Honor. There is no guarantee to a lineup.

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There is only a guarantee to a fair trial.

THE COURT: When Judge Ribner made his decision, he based it solely on what information he had in front of him at that time.

MR. JACKSON: That's right. If that information was incorrect, then his ruling was incorrect. I am saying that based on that representation, and I made similar argument to Judge Ribner at that time, that he was mistaken and that the Commonwealth made inaccurate representations to the Court to bring about the ruling that the Court made.

THE COURT: Do you want to answer these individually or do you want to

wait until he is finished?

MR. MC GILL: Whatever Your Honor would wish.

THE COURT: Maybe you could do it each time he brings up a point.

MR. MC GILL: Is that the way Your Honor wishes?

THE COURT: Yes.

MR. MC GILL: That's fine.

THE COURT: Would you answer his point.

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MR. MC GILL: Yes, sir. Your Honor, in reference to the lineup question, there were various factors that were considered by Judge Ribner. We both were present at the hearing, obviously, Mr. Jackson and myself.

In considering, of course, Your Honor, sitting as a court en banc at this point, as a post-trial Motions Judge, will have to make a ruling on the appropriateness of that ruling. Your Honor, the primary consideration that was urged to Judge Ribner was, in fact, accurate. The underlying basis, which stated, in considering the facts, that is, in consideration of the factors, the cases such as Commonwealth v. Sexton, a Superior Court case, as well as the progeny of Sexton, certainly gave an outline of the type of situation where lineups are really required.

In that particular case, we had a situation where it was a robbery. An individual came into a store. No one in the store ever saw that individual. It was a matter of a very short time before the individual took the money. And

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before this individual fled, a person in the store saw that defendant, Mr. Sexton, for a very short period of time, as a matter of fact, a number of seconds. That man then fled, ran down the block and left.

Also, the other cases that follow Sexton would indicate that in such a situation, a lineup would indeed be appropriate and it may well be in the police's discretion not to grant a lineup under those circumstances.

In the case of Mr. Jamal, I would state to Your Honor that this is an entirely different matter. The individuals involved, the identification

witnesses, one being Cynthia White, which was the primary concern of Mr. Jackson, and also Mr. Robert Shobert (sic), as well as Mr. McGillton (sic), the situation or the facts surrounding their identification was entirely different. Whereas Cynthia White, while at the corner, saw the defendant running across the street, she then watched this entire incident at this point. Your Honor perhaps remembers the testimony well.

As Mr. Jamal was running across the

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street, running and then shooting the officer in the back as he turned around and fell down. Then he went over and continued his shooting, after having been shot himself in between the first shot and his final shots. Ms. White then looked and kept her view right on that particular factual occurrence. At that point, the defendant, having been shot, moved over to the side and eventually fell down onto the sidewalk and remained there.

Almost immediately thereafter, the police officers arrived. Ms. White did not leave. Mr. Jamal did not leave. As a matter of fact, Ms. White then moved toward the incident, walking toward the incident from the corner to about two and a half car lengths east. Ms. White moved toward there because she wanted to let the police know that she saw this. Mr. Jamal, having been wounded and weakened, did not move at all.

When the police arrived, the first battery of police ran around him and stationed behind him. One stopped his brother at the corner, at the wall, and the other kept a

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loaded gun on Mr. Jamal, after having kicked the gun that was near him out of the way.

The next portion or segment of this was when the police officers arrived and arrested Mr. Jamal. During this time, Ms. White is moving toward them and actually being told to stay back because of this, because they were trying to secure the scene of this incident.

Mr. Jamal is then carried from where he was to a wagon which was on Locust Street, facing east, and he was immediately taken to the hospital. Ms. White has this in view as he is being taken from where he was seated or at the curb to the wagon. During that period of time, she moved up close to the wagon and observed the defendant. So during that period of time, if there was a moment where she lost that view, it truly would have been a

matter of seconds.

This, Your Honor, was a far, far cry from the cases which support the position of Mr. Jackson, that a lineup would be appropriate. And since the standard is that it would have to be an abuse of discretion for the ruling Court's

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decision, there was certainly none here, based on the factual scenario that I have just presented to this Court.

One does not need a lineup when the person is staying there. It is reminiscent of the many cases where you have the on-the-scene identification, where, for example, an individual having shot or robbed someone is observed for the first time by somebody and then they stay there. The defendant flees. He is caught by the police some four or five minutes afterwards. The police then pick him up, take him back to the scene and show him to the person who is right there and he says, "Yes, that's the person." The reason why that is so reliable and the reason why there is no identification needed then, is because it was so prompt.

The key in reliability, the key in the basis for the identification was the promptness of the on-the-scene identification, and there are a legion of cases which support that on-the-scene type of identification. So, indeed, it is a far cry from even that on-the-scene identification case where a lineup is

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certainly not needed than this case that we have before us, because he didn't flee at all. He was always there to be identified.

So I would say, Your Honor, rather than an abuse of discretion, which would be the standard, it was a most appropriate ruling under all the case law.

MR. JACKSON: Your Honor, briefly, again I cite you to the Sexton case. That is in the brief. I would just point out to the Court that Mr. McGill makes a bootstrap argument, saying that he never left the scene and that is why it was appropriate. That presumes and assumes that, in fact, he was the one who committed the act.

THE COURT: That is, in fact, a question for the jury to decide.

MR. JACKSON: Very well, Your Honor. With regard as to when and what

standard the Court is to use when a lineup is appropriate, again, I accept and acknowledge the fact that there is no requirement that a lineup be given. But there are certain factors that the Court must look to, that is, in deciding whether or

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not to grant a defendant's request for a lineup, identification must be a substantial and material issue. I don't think there is any question that identification is a substantial and material issue in this case.

The second reason would be that there must be a reasonable likelihood that a lineup would be probative, of some value. I think it is probative of the ability of the eyewitnesses to, in fact, make that identification.

The third reason would be in the defendant's motion, that it should be as soon after the arrest or arraignment as is practical, and I don't think there is any question that it was not timely.

THE COURT: What about what he said, where somebody commits a robbery and flees. Five or ten minutes later he is apprehended and is brought back to the scene and the person says, "Yes, that's him." Is a lineup needed in that case?

MR. JACKSON: Under most circumstances, the Court has ruled no, it is not necessary. But it goes to how much time did the

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person have to observe the person in the first place. We can't ignore that, Your Honor.

THE COURT: Let's say, for a few minutes.

MR. JACKSON: The question is, was there, in fact, sufficient time for the person to have made that observation. That is the very issue.

THE COURT: You have argued individual things, but you have to encompass the entire case.

MR. JACKSON: Certainly, Your Honor, there is no question. Generally, an on-the-scene identification is one of the most reliable identifications that can be made, depending upon the facts, of course, in each and every case. I am suggesting that, in this case, the eyewitness --

THE COURT: The young lady met the police officers and said, "I saw him

shoot that cop." Isn't that an on-the-scene identification?

MR. JACKSON: That is an on-the-scene identification. I differ with you as to the facts as to how it was made though, Your Honor.

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That is my very point.

THE COURT: That went to the jury. You brought out the factors as to how it was made, how much time she had to observe and everything else.

MR. JACKSON: I concede that there are issues which lie within the jury's province.

THE COURT: I am talking strictly law now. This witness said, "I saw that man run across the street and shoot that cop. He is the guy right there." It is an on-the-scene identification, isn't it?

MR. JACKSON: In the context that Your Honor places it, yes. But that isn't the way it happened in this trial.

THE COURT: Okay, go on to your next point.

MR. JACKSON: Your Honor, obviously, the next issue goes to whether in fact Your Honor should have denied the motion to suppress those identifications. The factual argument would be pretty much the same reasons, the reasons offered as to the lineup would be the

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reasons for the argument in the motion to suppress.

I remember and recall specifically that Your Honor suggested that it was an issue of fact as to whether or not their eyewitness testimony was reliable or not. I won't burden the Court with that argument again, but I am suggesting that by virtue of the Court not granting the lineup to rule out --

THE COURT: You mean my ruling when the case was brought to trial?

MR. JACKSON: Yes, when we went to the motion to suppress before you, Your Honor.

THE COURT: You asked for a lineup at that time?

MR. JACKSON: Yes, we did -- no, no, no; I am not saying that we asked

for a lineup at that time. We had a motion to suppress before you.

I am saying that the same reasons that we have argued for the lineup were many of the same reasons we have argued that Your Honor should have granted our motion to suppress.

THE COURT: A motion to suppress what?

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MR. JACKSON: Essentially, that the eyewitness testimony was unreliable. Your Honor, of course, indicated that that is an issue of fact and not of law.

At that time, I suggested again that if, in fact, the Court had promptly considered the materiality of the eyewitness testimony and the need for a lineup --

THE COURT: But that had already been decided by Judge Ribner.

MR. JACKSON: The lineup, yes.

THE COURT: Right, that is what I am talking about. I can't reverse him.

MR. JACKSON: But you can suppress an identification.

THE COURT: I can't overrule him at that stage. I have to wait until the end of the trial.

MR. JACKSON: Judge Ribner never ruled on the identification. He just ruled on the lineup request. There was a separate request made by the defense that a lineup be granted. He denied that motion, fine.

Before you, during the motion to

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suppress, among other issues that we had argued before Your Honor, and this was after a motion to suppress hearing, was, in fact, the in-court identification.

We argued that the only identification that Cynthia White, or any of the other alleged eyewitnesses made that was of any value was the one that was made in this courtroom during the motion to suppress, and we suggested that that was not a proper identification procedure.

THE COURT: No, that is not true. The identification they made was at the

scene.

MR. JACKSON: All of the witnesses didn't make an identification at that time.

THE COURT: She made one.

MR. JACKSON: She was one of the witnesses that allegedly made an identification at the scene. Again, Your Honor feels that it is a factual question. I felt that it was a legal question.

Your Honor made your ruling, and I know I have a copy of Your Honor's opinion. That was dated the 4th of --

THE COURT: Are you talking about the

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findings of fact?

MR. JACKSON: Yes, your findings of fact and conclusions of law. I have a copy of it and I am well aware of Your Honor's feelings with regard to it. I simply point out to the Court that I disagree.

The next issue, Your Honor, would be the Court's denial of the defendant's request for the respective names, addresses, and whereabouts of the witnesses. I intimated earlier that the issue with regard to Debbie Kordansky would be presented to you.

As you know, Your Honor, in Courtroom 613, Judge Ribner is the Assignment Judge for homicide cases. Judge Ribner has this policy where he will request, during discovery, that the district attorney present the names and the statements of the witnesses. However, he deletes or cuts out the addresses. That is his policy and most times, I would imagine, it does not work to the detriment of the defendant.

We have it in the notes of testimony, during this trial, that one witness in

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particular, and perhaps Officer Wachell (sic) as well, but one witness in particular, Debbie Kordansky, we had her statement during the same time that all the other statements were given to us. However, we were never provided with her address.

During the trial we asked Mr. McGill to produce that witness, since we

certainly had no means of doing that ourselves. He indicated that they had lost contact with the witness. Eventually, we were able to get Detective Morton and, I believe, another detective who were able to get a phone number, and back in Your Honor's Chambers, I called Debbie Kordansky and she said a number of things. Among other things, she said, "I am not coming into court, and I am not going to give you my address."

Her statement was consistent with the argument that we made before this Court that indeed there were other persons on the scene and other persons who were seen running away. Her statement says that. However, because we, were never given the address of

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that witness, we were denied the opportunity to compel her appearance in court, not because of anything that Mr. Jamal did or his counsel did but because the Commonwealth had access to that witness and knew her whereabouts certainly at the time that the statement was taken.

They had access to that information. It wasn't given to the defense, and it has now worked to the detriment of the defendant. I am saying that based on the Commonwealth's allowance of Judge Ribner to follow that policy, it has worked to his detriment. I am suggesting to the Court that, as a result of that, it may have been one of the most crucial and important facts for witnesses on behalf of Mr. Jamal, and we were denied that information.

Conveniently, the Commonwealth was able to maintain contact with all of its witnesses that it presented. Of course, not only did we have a problem with Debbie Kordansky, but we had some problems with some of the other witnesses as well, but we were just talking about Debbie Kordansky at this point.

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I am suggesting that if, in fact, the Commonwealth accepts that policy, that, "Yes, we will not give you that address, but we will provide it at the time of the trial if the Judge so orders," they have already then prejudiced the rights of the defendant.

If again we have a situation like Debbie Kordansky, where at the time of trial she is gone, we are not able to conduct a separate and independent investigation. We have to then rely upon the district attorney. We certainly can't introduce her statement; it is an unsworn statement.

THE COURT: Well, you finally did contact her.

MR. JACKSON: We contacted her by phone.

THE COURT: And she refused to come in?

MR. JACKSON: Yes, sir, and I couldn't compel her appearance.

THE COURT: Do you want to answer that?

MR. MC GILL: Yes, sir.

Your Honor, first of all, the purpose for the deletion of the addresses of Witnesses

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is for their protection and privacy, but particularly the protection of the witnesses.

Judge Ribner, who handles all of the homicide cases through the Calendar Room, channels the cases through different courtrooms. There have been various specific incidents, one in which I was actually trying a case and a specific eyewitness, during the course of voir dire, received visits during the night and the door of the witness' premises was shotgunned and almost blown off. This is the primary purpose of that.

And during the course of this case, particularly, there also is a concern, naturally, because of the volitive nature and highly controversial aspects of this trial. Even I myself at times have received rather unfriendly phone calls and correspondence, et cetera, during the course of the trial. So there is indeed a good-faith basis for the deletion of such addresses.

With respect to this particular witness, this witness by the statement itself does not indicate on its face any direct assistance for

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this defender, for example, as stated in the brief, speaking about, "saw a man run from the scene of the shooting after hearing the shots, the gunshots."

In the statement, the individual saw nothing at all in relation to the shooting itself. But even if you were to take the statement solely on its face, all it says is that, "a man run from the scene." In what direction, where, or at what time, or having anything in the person's hand or anything, none of this is part of the statement, simply because, if judging

from the statement itself, this was not observed.

Going further than that though, at the request of the Court, as well as Mr. Jackson at the time when we did hear from him, despite the apparent irrelevance of the statement itself, of what this individual could offer, we offered to attempt to locate her. The address that was on the statement was not a good address. It was a bad address, meaning that it was an inaccurate address. We attempted at that address to have her brought in, but there was

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no one there by that name. That individual was not there. We further, through various means, attempted to get a phone number. This was for the defense.

We finally did get a phone number of this witness provided to Mr. Jackson. As a matter of fact, as he has already stated, he was able to talk to her. I would also state that the police officers themselves in attempting to contact her were met with considerable opposition on her unwillingness to come in. We did not know where she was residing. We had a phone number without an address on it.

So from the time that we heard the information, that is, the request by the defense attorney, we immediately -- and I believe the Court may have also ordered us to try to find the witness for the defense, and we did, unsuccessfully. She had simply moved. Much like many times in cases, it is of extreme difficulty in getting witnesses in but we were ready, willing, and able. As a matter of fact, we even gave the phone number to Mr. Jackson.

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The previous phone number was also wrong.

And, lastly, the evidence itself was not of a substantial basis, particularly as stated by the woman when she was finally contacted.

MR. JACKSON: Your Honor, I would only say that the Commonwealth still hasn't answered the question. That is, he points out limitations, if any, to the statement that the witness made. What direction the person would have run, if she was on the stand we could have found out what direction. How long she saw him, we could have found out if she were on the stand. We were denied the opportunity.

THE COURT: Is that statement part of the record in this case?

MR. JACKSON: No, it is not, sir, because we couldn't introduce it.

THE COURT: Maybe you would let the Court have a look at it.

MR. MC GILL: Yes, sir. I would be very glad to make that available, Your Honor. We will make that C-1. I don't have it

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right now, but I will include it at Your Honor's request.

THE COURT: We will make it a court exhibit.

MR. MC GILL: Yes, sir.

THE COURT: Okay, the next one.

MR. JACKSON: The next issue, Your Honor, is a denial of adequate compensation to the defendant to retain the resources of experts. Your Honor knows the complexity of the case with regard to the scientific information that was explored, the forensic pathological testimony that was given by the medical examiner.

We will recall that the, medical examiner had not been certified at the time that he conducted the post-mortem on the officer. In addition to which, the medical examiner at that time, I believe, had been on the job for about one year and had not been certified at the time that he conducted the post-mortem.

We requested, and this, of course, was before Judge Ribner, compensation or at least an order to pay for the services of several

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experts, among them investigators, photographers, forensic pathologists, and persons of that sort. Specifically, Your Honor, we requested an order to hire a pathologist. Judge Ribner signed an order for \$150.00.

I talked personally to six forensic pathologists. The cheapest forensic pathologist that I spoke to indicated that there would be an initial fee of \$300.00, up front, before he would do anything else. That amount did not include any examination, nor did it include any testimony.

For that reason, Your Honor, we are saying simply that by virtue of Mr. Jamal's being indigent, he was denied due process of law. In addition to which, Your Honor, again, consistent with the argument that was made

with regard to Debbie Kordansky, I retained the services of an investigator, Robert Greer. Again, Judge Ribner approved an order for \$150.00.

THE COURT: That is the initial amount. When you want to go for more, you go for more.

MR. JACKSON: Yes, sir. I am going to

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get to that.

THE COURT: I have approved your bill for more than that.

MR. JACKSON: Yes, sir.

THE COURT: I have approved your bill for everything you have submitted.

MR. JACKSON: Your Honor, in order to pay the money to the forensic pathologist, there would be a \$300.00 initial consultation fee and there would be a fee for the examination or whatever would be done, as well as a fee for testifying. I went back to Judge Ribner and made that indication to him.

I understand what Your Honor is saying, that maybe you can get the expert and say, maybe your fee will be paid and maybe it won't. I could not find a pathologist who would accept that, sir. That is my point.

THE COURT: All I can say is that I approved your bill. Whether you get it or not, I don't know. It is a substantial bill. How much are the taxpayers to pay?

MR. JACKSON: Your Honor, I don't know. How much is a man's life worth? I can't answer

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that question.

THE COURT: How much is a man's life worth?

MR. JACKSON: It is worth at least the cost of a pathologist.

THE COURT: I agree with that one hundred percent. That is true of

everybody that is charged with a crime.

MR. JACKSON: Your Honor, if Mr. Jamal had been a wealthy person -- I am saying that he is being denied the due process of law simply because he is indigent.

THE COURT: You are not a millionaire, and I doubt that you could afford the fees that you have submitted here.

MR. JACKSON: No, I could not, Your Honor. You are right. I have paid money out of my pocket. I could not afford to pay the other money as well as a pathologist.

THE COURT: What would a pathologist have shown?

MR. JACKSON: Your Honor, we could have gotten, I believe, at least some more specific testimony with regard to the entry of the wound,

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and what happened to the bullets. He was the Commonwealth's witness, Your Honor.

THE COURT: You mean, he is prejudiced?

MR. JACKSON: I don't know if he is prejudiced, Your Honor.

THE COURT: You had a chance to cross-examine him.

MR. JACKSON: Yes, with my limited --

THE COURT: What would we have been able to do, exhume the body so that the pathologist could now look at the time of trial?

MR. JACKSON: Your Honor, I don't know. That's just the point.

THE COURT: I have to know what you are arguing about. You are asking me for certain things and I told you that I gave you everything you had asked for. What did you want me to do, exhume the body so that a pathologist could look at it?

MR. JACKSON: It wasn't you that made the denial. It was Judge Ribner that denied it. It was before the trial.

THE COURT: Even at the time that Judge

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Ribner heard this matter, the man had already been buried. So what is a pathologist going to do, exhume the body?

MR. JACKSON: Your Honor, if there is reason to do that, yes. If a pathologist, one who is trained in forensic science, if in his reading, he reads the medical examiner's report --

THE COURT: Why didn't you let him read the medical examiner's report?

MR. JACKSON: Because he said I would have to give him \$300.00 before he even talked to me.

THE COURT: To even read it?

MR. JACKSON: Yes, sir. I went back to Judge Ribner, and he said, "That is up to the Trial Judge." By the time we get to trial and the medical examiner's test, it is too late.

We had another issue, Your Honor with regard to the ballistics. At first, Judge Ribner approved it, Your Honor.

THE COURT: You asked for \$350.00.

MR. JACKSON: Yes. He came back and

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his bill is \$750.00.

THE COURT: That is what you put here. I can't help what his bill is now.

MR. JACKSON: What his actual bill is, is not the point. It goes to my ability, and I am not wealthy at all. It goes to my ability to go out and separately and independently pay for these persons to provide their services.

A part of the ballistics's money, I did pay. We have an investigator whose bill is approximately \$900.00. Judge Ribner approved \$150.00.

I know what Your Honor has done, but that is after the fact.

THE COURT: Let me say this: I didn't even see this investigator and you put in a bill for \$562.50.

MR. JACKSON: Yes, sir.

THE COURT: I don't know what he did, if he did anything.

MR. JACKSON: I understand, Your Honor. I am certainly prepared to present the results of his investigation.

THE COURT: We have a Photographer

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here for \$400.00, which I approved. I didn't even see him in the courtroom. I don't know what he did.

MR. JACKSON: There were two orders for the photographer; one was a forthwith order where he took some photographs of Mr. Jamal and later, he took photographs of the scene as well.

THE COURT: The only thing I see, you have to socialize the entire legal profession; otherwise, I don't know how I am going to answer your questions.

MR. JACKSON: Your Honor, that very well may be the answer. In the meantime, the case at Bar, I am arguing that Mr. Jamal has been denied an equal protection of the law simply by virtue of his indigence.

THE COURT: Show me a case that says he is entitled to all of this.

MR. JACKSON: The due process clause, Your Honor.

THE COURT: That doesn't say that to me. Show me a case. You show me a case that says what I have given to you in this case is not

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adequate.

MR. JACKSON: Your Honor, there obviously is no case that says Your Honor is required --

THE COURT: There is no case. If there is no case, I am not even going to consider it.

MR. JACKSON: Very well, sir.

THE COURT: Unless you can show me some cases, we are just going to

stay here and argue all day for nothing.

MR. JACKSON: Very well, sir.

THE COURT: I don't know what more I can give you than what I have already okayed for you.

MR. JACKSON: But, Your Honor, what you did is not the point, because what you did is approve after the fact. That's my point. It is what was done initially. I don't need to pay the investigators and the pathologist after the fact.

THE COURT: You are saying that the Supreme Court ought to change the rules.

MR. JACKSON: Absolutely.

THE COURT: Okay. You argue that to them, that we should give you x-number of

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dollars.

MR. JACKSON: Because his constitutional rights are violated.

THE COURT: How are they violated?

MR. JACKSON: Your Honor, if they say, "We won't come in and do anything until you pay us," and you say, "We will pay you after the fact, if they will wait." I choose, as court-appointed counsel, to wait for a year or so to be paid, but you try telling that to an investigator or a photographer or a pathologist.

They say, "Not on your life."

They won't do it. They have no obligation. They have no canons of ethics that require that they do that.

THE COURT: How about all of the money that was collected for him by this group?

MR. JACKSON: That was not for any defense purposes that I know of, sir.

THE COURT: What was it for, then?

MR. JACKSON: Let me beg your pardon. One fee for the photographer was paid out of that, \$300.00, sir.

THE COURT: So we were also paying in

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addition.

MR. JACKSON: Yes, that is an additional fee.

THE COURT: What did that photographer do? Why didn't you use that money for your pathologist?

MR. JACKSON: Your Honor, if there was a reason to use --

THE COURT: What did he do? What did that photographer do that we paid him so much of the taxpayers' money? I didn't see anything he did.

MR. JACKSON: If Your Honor please, I have the results of what he did. I don't know in advance, Your Honor, what photographs --

THE COURT: What did he do?

MR. JACKSON: He took photographs, Your Honor. He diagrammed the scene.

THE COURT: For this kind of money?

MR. JACKSON: Yes, sir. He also took photographs of Mr. Jamal as well.

THE COURT: He took photographs of him, what for?

MR. JACKSON: In the hospital, while

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he was in the hospital. This was, I believe, even before the preliminary hearing.

THE COURT: And this is the kind of money they get paid?

MR. JACKSON: Your Honor, I am not a photographer; I guess so.

THE COURT: You are not moonlighting on the side. This is the taxpayers'

money. There is only so much I could do with it.

MR. JACKSON: Mr. Jamal is a taxpayer too, Your Honor.

THE COURT: I know, and so is everybody else. We have x-number of crimes committed a year. If every one of them had to be paid the money that you are getting paid, I don't know where the money is going to come from.

MR. JACKSON: Your Honor, I don't think it is the fault of an individual defendant that the criminal justice is expensive.

THE COURT: It is not my fault either.

MR. JACKSON: I am not suggesting that it is your fault.

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THE COURT: I can only go so far.

MR. JACKSON: Your Honor, my fault with regard to this issue is not with Your Honor.

THE COURT: What you are saying is that everybody should at least get \$50,000.00 to start off with.

MR. JACKSON: No, I am saying, Your Honor, we are pretrial, and you are sitting to make a determination whether or not I need a pathologist --

THE COURT: How much money did this group collect for him in advance?

MR. JACKSON: I have no idea, Your Honor.

THE COURT: What did they do with the money?

MR. JACKSON: I believe it was used to benefit his family who were without funds, once he was incarcerated, but I do not know. I do not have control over those funds, Your Honor.

THE COURT: Go on. I have heard enough about the funds.

MR. JACKSON: Very well, sir. The next issue, Your Honor, would be the Court's denial of the defendant's request

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for reasonable trial assistants, which was a violation of his constitutional due process.

Your Honor, we know that Mr. Jamal asked for John Africa to defend him, and Your Honor denied that. Mr. Jamal then asked for John Africa to be --

THE COURT: Wait a minute. What happened to that, for the record? It went up to the Supreme Court, didn't it?

MR. JACKSON: Pardon me?

THE COURT: Didn't it go up to the Supreme Court?

MR. JACKSON: Yes, sir.

THE COURT: What did the Supreme Court say?

MR. JACKSON: Your Honor, with regard to what the Supreme Court said, it is part of another issue.

THE COURT: What did the Supreme Court say?

MR. JACKSON: The Supreme Court made that you made that decision and --

THE COURT: The Supreme Court said that my decision was valid, that John Africa can't

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represent him.

MR. JACKSON: Yes, that he could not represent him. There is no question about that. I am saying that Mr. Jamal initially asked for John Africa to represent him. Then he asked for John Africa to be his counsel, to assist him, not to be his lawyer.

THE COURT: Well, the Superior Court recently ruled on that fact, a case in front of Judge Guarino, where a third year law student, an intern, wasn't permitted to sit in as defense counsel, and that was upheld. Do you want the citation on that?

MR. JACKSON: Yes, sir.

THE COURT: I have it here.

MR. JACKSON: I can distinguish that, I believe, Your Honor, but I will take the citation first.

THE COURT: He is not a third year law student, is he?

MR. JACKSON: Can I have one moment, Your Honor.

(PAUSE)

MR. MC GILL: Your Honor, I just asked

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Mr. Jackson if he would take a look at the notes of testimony for a moment.

MR. JACKSON: Just one moment, Your Honor. I have to find some notes.

MR. MC GILL: Would Your Honor mind if we have one minute? If I can get a certain volume of notes which is referred to in the brief that I have just received today, I would like to look at them now during the course of the argument. It may save a recess later.

THE COURT: Yes.

MR. MC GILL: Thank you, Judge.

MR. JACKSON: Your Honor, you were about to give me the citation.

THE COURT: It is Commonwealth versus Michael Pinder, which was filed January 28, 1983.

MR. JACKSON: 1973?

THE COURT: No, 1983. January 28, 1983, and you will find that in 456 A2d 179, a 1983 case.

MR. JACKSON: Your Honor, I would agree, and I have no argument at this point.

THE COURT: That will apply to my ruling

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dealing with Theresa Africa, was it?

MR. JACKSON: Yes, sir.

THE COURT: It is the same thing. That is right on point.

MR. JACKSON: Your Honor, at the risk of being wrong, I would make the argument that a Trial Judge has the discretion as to how a trial is conducted, as to who sits at counsel table and who does not.

Your Honor, it is certainly within your discretion to make that determination, and the issue would be whether or not you have abused your discretion. If there was in fact no one sitting at the prosecution's table, I think that Your Honor, quite frankly, may have more foundation to your ruling.

If Your Honor recalls, there was, in fact, a non-lawyer sitting at the prosecution's table who was permitted to do that automatically, without even a request.

THE COURT: During the course of the trial?

MR. JACKSON: During the course of the trial.

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THE COURT: He said there was somebody sitting at your table with you, Mr. McGill.

MR. JACKSON: Yes, sir.

MR. MC GILL: Your Honor, at my table was Police Officer Gwen Thomas during the course of jury selection.

THE COURT: And that was the only time?

MR. JACKSON: No, sir.

MR. MC GILL: Yes, that was the only time that I can recall. Perhaps Mr. Jackson has better recollection than I.

Perhaps at the beginning of the trial Detective William Thomas may have been present in order to try to facilitate the volumes of material that I had.

THE COURT: I don't remember anybody sitting at your table during the trial, because we had had a side-bar conference and you agreed that nobody

would sit there.

MR. MC GILL: Yes, I did sit, if not the complete trial -- as a matter of fact, I never usually sit with anyone anyway. But I think in that particular trial, Your Honor, almost the entire trial, I was alone. because

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that is what we had agreed to.

THE COURT: As a matter of fact, I had allowed Theresa Africa to talk with him in the morning and in the afternoon.

MR. JACKSON: I have no disagreement with that, Your Honor. I am saying that that does not correct the problem.

THE COURT: I don't think she was entitled to sit there. I made that decision.

MR. JACKSON: I understand Your Honor made that decision.

THE COURT: Because, actually, all the trouble that I had with the defendant was at her instigation.

MR. JACKSON: Your Honor, I don't know that for a fact.

THE COURT: I know that for a fact, because when I asked if he would behave himself, he wouldn't give me an answer until he talked to her. After I gave him permission to talk to her, he came back and said, "I will behave myself." And he only did that after speaking to her.

MR. JACKSON: Your Honor, without

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knowing the specifics of such, I can only argue that that may have been because of the Court's erroneous ruling.

THE COURT: I didn't make any erroneous ruling.

MR. JACKSON: With all due respect, Your Honor, if you had ruled that she could sit there, we don't know what would have happened throughout the rest of the trial. And I will get to that point where the Court --

THE COURT: Show me a case that says she has a right to sit there. If you have one, fine. If you are just going to argue without it, I stand by my

decision.

MR. MC GILL: Just for one moment, Mr. Jackson. I will not interrupt you again. May we have a brief side bar, sir?

THE COURT: Sure.

(A discussion takes place at side bar, off the record.)

(The following takes place on the record:)

MR. JACKSON: Your Honor, in summary of that argument, I would point out factually, that

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Officer Gwen Thomas sat throughout the jury selection process. Mr. Jamal made his request prior to the jury selection process. So again, the Commonwealth was permitted to have a non-lawyer at counsel table. The defense was not. There were times during the trial, as Mr. McGill correctly stated, where Detective William Thomas, who was a non-lawyer, sat at counsel table.

THE COURT: I don't remember such.

MR. JACKSON: Your Honor, I have specific recollection of that fact.

THE COURT: Unless it is in the record. You can show me where it is in the record and you called it to my attention. I have no such recollection. I know you brought it up, about that fact during the board hearing, but never during the trial. I think if you look at the record, in our side-bar conference, Mr. McGill agreed that no one would assist him at the trial.

MR. JACKSON: Your Honor, whether it is pointed out in the record -- my reading of the record doesn't reflect it.

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THE COURT: That is all the Appellate Court looks at, what is on the record.

MR. JACKSON: Your Honor, for the basis of my argument, I don't think there necessarily needs to be a distinction between the voir dire and the trial itself. Both aspects of this trial are substantial.

THE COURT: I am saying that because that is the only thing on the record

that can be substantiated. You are stating that somebody sat at that table during the trial, and that is not substantiated by the record and will not be considered by the Supreme Court. I am telling you that it will not be considered by the Appellate Court either because you can say one thing. He can say another thing. I can say something. If it is not in the record, they are not going to consider it.

MR. JACKSON: Very well, sir. I won't argue that during the trial, for the moment, that someone was there because I am not conceding that it is not in the record. But I will say, Your Honor, that during the voir

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dire, which is obviously a significant and material stage of these proceedings, it was granted to the Commonwealth and denied to the defense. And I am saying that that constitutes a violation of his constitutional rights and it was just wrong, Your Honor.

Your Honor, I am sure, as well aware of the fact that we had investigators, social workers, experts, all kinds and numbers of persons sitting at counsel table from time to time, depending upon the circumstances.

And I think, particularly given the fact that Mr. Jamal at least at the voir dire stage was granted the right to defend himself, with no cost to the Commonwealth, he asked a reasonable request, that he be given the assistance of John Africa or Theresa Africa or anyone else, but it was denied. However, the Commonwealth says, "I need Officer Gwen Thomas," and Your Honor said, "Fine. That is okay."

I am saying that he has been denied equal protection of the law and for that reason, Your Honor was in error.

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MR. MC GILL: Does Your Honor want me to respond to that?

THE COURT: Yes, if you wish.

MR. MC GILL: Just very briefly, Judge, I really cannot say that I do recall Bill Thomas staying for any length of time at all at my table. I know occasionally during the recesses he would come in, in case I needed some assistance, but I certainly, recall Officer Gwen Thomas. I believe it was during the voir dire.

The primary objection was that Mr. Jamal wanted John Africa to represent him. But irrespective of that, Your Honor had made a decision, so I will

move on. However, I might add, Your Honor, not only the decision that Mr. Africa would not represent him as a lawyer, that was made before Judge McDermott in the Supreme Court, but also the issue of whether or not he could sit at the table was brought up to the extent that it was raised in front of the Supreme Court and Justice McDermott, as I recall, and the answer was that that is a Trial Court decision. So the ball, so to speak,

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was back in your court in reference to that.

I will point out, for the record, and it is all over the record that the Commonwealth did not object to many things in reference to Mr. John Africa and Ms. Theresa Africa, or anyone else that he wanted.

Your Honor, I believe, did agree and allow the following things: We at no time said that John Africa could not see him, advise him, or talk to him or whatever. We suggested, as a matter of fact, that Mr. John Africa, who incidentally never appeared, would be permitted to sit in the audience. He would be permitted to go up to the cellroom, consistent with the regulations of the Sheriff Department.

That he would be permitted to consult with Mr. Jamal before the trial, during any time of the recesses, whether it be at lunch time or afterwards, and he could be in the trial if he wanted to. He could have sat in the first seat during the course of the entire trial. All of this was permitted.

It was not permitted and we did object to the fact that he would sit at counsel table

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as a legal representative, as one who would represent him legally, because he was not a lawyer.

Secondly, and this was the primary concern of the Commonwealth in this case, in reference to Mr. John Africa, and as stated in the record: The reason for our decision to object to that was and still is the fact that during the course of the trial in a case of such magnitude and importance, that the fact of the matter would be that since Mr. Africa represents, to say the least, a controversial lifestyle, and I make no comment about its value, but it is indeed controversial -- and he certainly represents it by his name as well as by his doctrine, and has many followers of it -- to put that individual at counsel table, as far as the Commonwealth was concerned, and I believe the Court agreed that by doing that there was a fear of the Commonwealth that jury in listening to the evidence may well change the

issue from the facts of the case to the lifestyle, sociology or philosophy of one individual, that being John Africa.

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By doing that, we have said from the beginning and throughout that that changed the focus of what the twelve people were supposed to consider, and that was the facts as they hear them, based on the law as given to them by Your Honor.

Where there was possibly, at any time, a possibility that those jurors would change the focus from what their job was, which was the facts and the law to the controversial nature of Mr. Africa, and it may well have gone against Mr. Jamal, it was the Commonwealth's view then and it still is, that such a change of focus would not be fair to either party in this case.

We, however, have no objection if Mr. Africa wants to be here today or do anything, since a jury at this point in time will not change its focus. The Court, with its knowledge of the law, would certainly know how to handle the issues as they come up.

Thank you, sir.

MR. JACKSON: Your Honor, in brief response to that, with regard to another

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argument I am going to make with regard to self representation. In United States versus Dougherty, Malone, and a progeny of cases, where the issue presented to the Court at that time was that there was a potential that the defendant may cause some disruption in the courtroom. There had been a request by the state that certain precautions be taken.

The United States Supreme Court said that there is the possibility that reasonable cooperation may be withheld by the defendant and the right later waived, meaning that later on he may be disruptive is not reason for denying the right of self-representation at the start, because something may happen later on may be the reason for the initial erroneous ruling.

So to say that something happened later on, that is a bootstrap argument. To say, "Well, there was disruption, so that was the reason why we shouldn't have done it in the first place." But maybe if the right decision had been made in the beginning, there may not have been any disruption.

I will just go into the next argument,

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Your Honor.

THE COURT: Do you want to answer that?

MR. MC GILL: Your Honor, may I speak to Mr. Jackson for a minute?

THE COURT: Yes.

(PAUSE)

MR. MC GILL: Your Honor, it is a discretionary decision as to who would be at counsel table or for how long, and for what reason. I don't think there has to be an abuse of discretion to determine that. There may have been for whatever good reasons the Court would have, as I have mentioned before, that would certainly be valid and not be viewed as an abuse of discretion. I will point out that Your Honor permitted such assistance by individuals before trial and during the recesses and constantly during the trial.

Whether or not things occurred during the trial of a disruptive nature, you still continued allowing such a dialogue between Mr. Jamal and his supporters at any recess

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that he wished consistent, of course, with the regulations of the Sheriff Department.

MR. JACKSON: Your Honor, the next argument would be with regard to the purported admissions of Mr. Jamal. I would like to initially direct Your Honor's attention to the motion to suppress stage where Inspector Giordano testified, among other things, that Mr. Jamal made purported statements to him. Your Honor's decision, written findings of fact and conclusions of law, addresses the issue with regard to Inspector Giordano.

Essentially, the Commonwealth argued and Your Honor accepted the argument that, in fact, Inspector Giordano was there to neutralize the situation. To the extent that Inspector Giordano, as a matter of law, was there to neutralize the situation, one must necessarily so look at the factual scenario.

At the time that Inspector Giordano arrived on the scene, the officer was on his way to the hospital. Mr. Jamal was in the wagon, handcuffed behind his

back. He was

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shot. The officers were busying themselves, preserving the scene, talking to witnesses and dispatching witnesses to 8th and Race.

Nevertheless, Inspector Giordano comes to the scene, opens the locked door, questions Mr. Jamal, and purportedly or allegedly gets a response from him.

I submit to the Court that if ever there was a situation that was already neutralized, it certainly had to be there when Inspector Giordano arrived. What was he neutralizing? There was nothing that he did other than ask a question, at best. The officers had taken the names and addresses of all the witnesses. The injured officer was already off to the hospital. Mr. Jamal was handcuffed, unarmed, in the back of a locked wagon.

To say that Inspector Giordano was there neutralizing the situation, I believe is straining the facts, Your Honor. There was nothing to neutralize. And, of course, if there was no circumstance for Inspector Giordano to neutralize, then, certainly, and

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I think perhaps the Court could even concede that, certainly, anything that Inspector Giordano may have inquired about was certainly unconstitutional by virtue of his not giving Mr. Jamal any warnings.

So, Your Honor must look at the factual situation. And I think that I am correctly stating the factual scenario of when Inspector Giordano arrived there, and he certainly wasn't neutralizing the situation there at that time.

THE COURT: How about the rest of the statements?

MR. JACKSON: Your Honor, with regard to the security officer, Priscilla Durham, I am suggesting to the Court that if, in fact, the statement was made, "Yes, I shot the mother-fucker, and I hope he dies," that, if in fact, it was made, it was in response to a question; otherwise, the statement does not make sense.

"Yes, I shot the mother-fucker, and I hope he dies;" it sounds, it speaks of, it smacks of a response to a question and not something that someone would say. If he wanted

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to say it, he would say, I shot -- and go on, yes, I shot him. That is what she says. The other person who says that that admission was made is Officer Bell.

We had requested and received discovery from the District Attorney's Office within the appropriate time for discovery. We then, on behalf of the defendant, requested that the police department conduct a separate and supposedly an independent investigation of the police misconduct allegation of Mr. Jamal, and there were a number of interviews taken pursuant to that.

At no time were we told that Officer Bell ever heard any statement made, whatsoever. And obviously, if, in fact, the Commonwealth intends to use a statement by any witness, they must bring them at the time of the motion to suppress, all statements, identifications, and things of that sort.

At the time of the motion to suppress there was no indication, whatsoever, that Officer Bell was going to testify that he heard an admission. And, of course, Officer

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Bell testified at the time of trial, over my objection, that, in fact, he was there with Security Officer Durham and heard the statement, "Yes, I shot the mother-fucker, and I hope he dies."

Assuming arguendo that the statement was made, that statement was not given to the scrutiny of a pretrial hearing and, for that reason, it should have been inadmissible. It was admitted into evidence, over my objection, and I suggest to the Court that it was erroneous and constitutionally invalid, Your Honor.

THE COURT: Mr. McGill.

MR. MC GILL: First of all, Your Honor, the statement of Inspector Giordano that Mr. Jackson remembers, as part of his argument, Inspector Giordano was not used at trial, so that statement was not admitted into evidence at trial. Even if there were some error in the motion to suppress ruling, it was indeed harmless because the statement was simply not used.

In reference to the statement of Officer

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Gary Bell also, first of all, I would correct one thing: Although the original statement of Officer Bell did not go into the facts at the hospital, his original statement was solely dealing with the possible connection of the defendant or his brother with other situations. So that had nothing to do directly with the facts of the case.

At the request of the defendant, there was an investigation by the Internal Affairs Bureau of the Police Department, which investigation was independent of the District Attorney's Office investigation which later also occurred. The results of both investigations clearly stated that there was absolutely no misconduct on many grounds, nonetheless yielded many statements, an additional 100 statements that were taken again at the request, basically, initially of defense counsel.

These 100 statements, at my request were given to the defense. The defense had asked several times for the investigation results, and I had offered all of those statements. Even though the statements did

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not have to be given over until the investigation was completed, under the rules of the executive order which permitted the Internal Affairs investigation, it was still my belief, and our office's belief that those statements should be made available. We did not object that they be made available to the defense.

Judge Ribner then received all of the material and directed that it be zeroxed and given to the defense. Those statements included Gary Bell's statement which had the statement, the volunteered statement of the defendant, that was introduced at trial. So that at least one month before the trial started, he was in possession of that particular statement.

In reference to the motion to suppress, Your Honor will recall the testimony of Priscilla Durham. The statement that we were talking about, which is the statement, quote, "I shot the M.F.'er, and I hope he dies." That was testified to, as part of the motion to suppress, by Priscilla Durham. That specific volunteered statement was the statement of

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issue at the motion to suppress and the statement that was introduced at trial.

There was no subsequent time period in which Mr. Jamal had stated that, other than a few seconds or minutes later as he was being taken away into another area awaiting treatment. He had said it twice. But the first time that

he had stated that, present were Priscilla Durham and Gary Bell, among other officers.

Priscilla Durham testified to that and it was litigated at a motion to suppress. Gary Bell was there.

MR. JACKSON: That is not fact. Gary Bell did not testify at the motion to suppress.

MR. MC GILL: I did not say that. That statement itself was litigated through the witness Priscilla Durham.

Much like any kind of statement which is taken by the police -- let's say it was a specific statement taken by the police, there may very well be two or three detectives present at the time that hear the statement. However, each and every individual who hears the

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statement given at one time would not have to testify at a motion to suppress, because you are talking about the same statement. So you have one detective to testify to that, if that meets the burden.

The statement involving Gary Bell and Priscilla Durham was the exact same statement as he was taken in and then placed at the area where the doors were. So that, in fact, that statement was litigated. It just so happens that besides Priscilla Durham, Gary Bell was also there.

The final grounds for its admission, Your Honor, would be the volunteered nature of it, as can be seen by the evidence at trial. The evidence, in fact, did show it to be a volunteered statement and, as such, it would be harmless inasmuch as it was actually testified to by Priscilla Durham herself at the trial. So the fact that another individual was present besides Priscilla Durham really, merely makes it harmless since she, in fact, was litigated and it was the exact same statement.

The primary reason is that when you

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have more than one person, the issue at the motion to suppress is whether or not you satisfy your burden to show by a preponderance of the evidence that it was a volunteered statement in that particular case. And the fact that you have two, three, four, or ten people there that heard that exact same statement at that exact same time, you do not put all ten on, nor are you

precluded from putting all ten on at trial.

MR. JACKSON: Your Honor, in brief rebuttal, there are two things with regard to counsel's harmless error argument with respect to Inspector Giordano's purported admission:

The fact that he did not use it at trial does not correct the error and does not make it a harmless error. If, in fact, it was erroneous not to suppress the statement, then whether counsel as a trial strategy or not uses it at the trial does not cure the error, and I don't think the error is harmless.

With regard to Priscilla Durham, Your Honor, the same standing, the same issue. The issue is different with regard to the

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statement when we have a Police Officer Bell and a Security Officer Durham. Assuming for a moment, your Honor, that in fact there were a lot of officers there, counsel didn't bring any other Philadelphia police officer to testify as to the legality of the statement.

We have only Priscilla Durham, a security officer. Whether in fact she may have been operating under the control and direction of the police department is another question. But the issue is, whether a Philadelphia police officer, who is constitutionally required to, gave warnings to a defendant. I can go to a defendant and ask him questions. The defendant tells me. There is nothing wrong with it, and I don't think any argument is required to that.

Priscilla Durham is a civilian. She is a security guard. She is not constitutionally required to give warnings to a defendant. So for counsel to say that Priscilla Durham comes in and says it, so it is all right for Gary Bell. He is in a different position; he is a police officer.

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THE COURT: I thought he said that that was a voluntary statement.

MR. JACKSON: Your Honor, that is his argument, that that was a voluntary statement.

THE COURT: If it is a voluntary statement, even if the policeman is there, so what?

MR. JACKSON: I am saying, if you bring a police officer in to say, "Yes, I heard that statement," we have to scrutinize it at a pre-trial hearing to

determine whether or not it was a legal statement.

THE COURT: That would be true even with Priscilla Durham.

MR. JACKSON: Your Honor, I don't argue that it wouldn't be true with Priscilla Durham. I am saying that we did not have the benefit of determining how the statement was heard.

Counsel argues that it was the same time that Priscilla Durham heard it. That may be. But I am saying that by virtue of his being a police officer, he is required to take the stand at a pretrial hearing to determine whether or not that statement was legally obtained, and

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counsel did not submit him.

My motion to suppress went to statements by anybody to anyone at any time relevant to this case. That is what my motions went to, sir.

Your Honor, the next question goes to the Court's denial of our submission of a voir dire questionnaire. I have samples of the questionnaire. I believe I submitted them to both counsel for the prosecution as well as to Your Honor prior to the trial.

At that time Mr. Jamal had been granted the right to represent himself and, indeed, Mr. Jamal was representing himself. Your Honor ruled that the questionnaire could not be submitted. But, in fact, we had some discussions back in the jury deliberating room prior to the selection of the jury. At that time there were a number of questions that are on the questionnaire that we felt were pertinent and necessary in order to disclose the potential bias, prejudice, and other attitudes of the prospective jurors. Your Honor denied that.

I understand and acknowledge that in

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fact there is no constitutional or statutory requirement that says that a jury is to be given a questionnaire. There is no constitutional or statutory requirement that the specific questions offered by the defense be asked.

What I am suggesting though, is that the Constitution requires that Mr. Jamal be given a fair trial by impartial jurors. The only way in which we can begin to determine whether or not those jurors are impartial is to ask

questions that are probative of that issue.

I submit to the Court that each and every one of those questions as offered by then defense were, in fact, directed at disclosing those biases, prejudices, and adverse attitudes of those prospective jurors, and the Court's denial of that questionnaire violated Mr. Jamal's rights.

I have argued that to some extent as well in the pretrial memorandum and suggested to the Court that by the Court's failure to submit the questionnaire, as well as, in the alternative, the Court's refusal to allow

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certain questions denied Mr. Jamal the right to disclose the potential bias and prejudice of the veniremen.

THE COURT: Mr. McGill.

MR. MC GILL: Your Honor, I believe, very briefly, in the voir dire questioning, Your Honor gave considerable time actually to the defendant, Mr. Jackson, and myself, in fact, in going over each and every question.

Your Honor limited certain questions. Your Honor at any time can limit or extend the voir dire during the course of the proceeding itself, in the interest of justice, in the interest of expediting the matter, and in the interest of making sure that there is an orderly fashion and a reasonably prompt progression of the trial. I think Your Honor has that discretion and there was no abuse.

I think the primary issues that certainly were presented at trial were explored extensively. As I count them, there were ten volumes of notes of testimony alone, which constituted the voir dire and over 150 venire persons were questioned extensively by Mr.

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Jackson, very extensively, on three, four, five pages, maybe even six pages, at times, per venire person.

MR. JACKSON: I would like to now direct the Court's attention to Mr. Jamal's right to defend himself.

Your Honor, we start off with the United States Supreme Court decision in *Faretta v. California*. In that case, Your Honor, the issue of self-representation, to some extent, was put to rest. That says, essentially, "if a defendant can satisfy the Court that he is knowingly and intelligently

waiving his right to counsel, then he can, in fact, represent himself."

This has been before Judge Ribner as well as before Your Honor, and both of you satisfied yourselves that indeed Mr. Jamal was making a knowing and intelligent waiver of his right to counsel and that, indeed, he could represent himself.

The Court went on as well, in the Faretta decision, indicating that if in fact a defendant is given the right to represent

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himself, he is the lawyer; he is not co-counsel.

The Faretta decision goes on to say, Your Honor, that counsel cannot be forced on a defendant, that he has a right to decline representation. There was dictum in the Faretta decision that suggested that under certain circumstances back-up or amici counsel can be appointed.

This decision was then taken up in the decision of Michael Dougherty versus the United States. In the Dougherty decision, if I can direct Your Honor's attention, is a decision that pretty much outlines where we are.

Just to direct Your Honor to the factual scenario, before the voir dire process was begun, Your Honor questioned Mr. Jamal and apparently satisfied yourself that again, he was qualified to represent himself, or at least that he was making a knowing and intelligent decision. He sat in the back, along with counsel, and we had a discussion. There was no disruption, no disturbance.

We began the voir dire. Your Honor decided that the process of voir dire would be

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conducted, that counsel for the prosecution would conduct the questions for the state and Mr. Jamal would conduct the questions for himself. The jury was advised that, in fact, Mr. Jamal would conduct his own voir dire, that Mr. Jamal would question the witnesses, and that Mr. Jamal would give the opening statement and the closing argument.

At some point during the voir dire questioning, one witness indicated that she was unsettled by being questioned by Mr. Jamal. As Your Honor well knows, the purpose of voir dire is to disclose any bias, prejudice, or adverse attitudes of the prospective witness or the venireman.

The fact that a witness was unsettled is no indication that Mr. Jamal was doing anything that was inappropriate. There is no indication that if Your Honor was doing, the questioning that the witness wouldn't be unsettled, or if Mr. McGill or I conducted the voir dire, that it wouldn't unsettle the witness.

But, indeed, Your Honor, that was the reason that Your Honor decided that at that

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point Mr. Jama1 should no longer represent himself, because he was unsettling the witness.

But, indeed, that is not even the question. Whether Mr. Jamal should continue as counsel or not, as the United States Supreme Court said in the Dougherty decision, it is whether or not he is being deliberately disruptive, not whether he is unsettling a witness.

At that time, and I know for a fact there was no allegation by the Commonwealth or by Your Honor that Mr. Jamal was in any way being disruptive, certainly not doing anything deliberately wrong.

If, in fact, Your Honor felt that his questions were wrong or inappropriate, the Court, I believe, in this instance had an obligation to say, "The line of questioning is inappropriate. The questions are wrong. You have to do something to correct it or, in the alternative, I am going to terminate your right to self-representation," because, later on, in Your Honor's view, Mr. Jamal becomes disruptive is not reason to say, in the first place, that the Court was right to deny him the right to

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represent himself.

Going on to the Dougherty decision, and for purposes of counsel, the Dougherty decision is cited at 154 U.S. App. D.C. 76 473 F2d 1113. So that Your Honor will understand the factual background, this was a case in Washington D.C., the so-called Washington, D.C. Nine, where there were several defendants.

There were nine defendants originally, and some of them, before it went to trial, had some non-trial disposition of their case. There were six defendants brought to trial. Three of the defendants wanted to defend themselves, and three of them wanted to use their own counsel. Judge Pratt, who was the Trial Judge, was concerned that those defendants who

were representing themselves might cause some adverse inferences on those persons who were being represented by counsel. There was a lot of discussion.

Eventually, all of the defendants decided that they would represent themselves. Then the Judge indicated and the state indicated similar arguments of Mr. McGill. There were indications that the defendants had committed

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some deliberate acts against the Dow Chemical Company, that they had broken in and done a lot of vile acts.

For that reason, they felt that the issues were complex and that the defendants were potentially disruptive and violent and for that reason, Judge Pratt ought not to let them represent themselves. Judge Pratt said, "Yes, you are right. If they are violent, we are going to have a problem."

I have indicated to you earlier, Your Honor, that the Supreme Court said that you can't decide after the fact of disruption that they would have, in fact, been disruptive. My argument to you earlier, the Supreme Court adopted, saying that if, in fact, their right to self-representation was granted in the first place, there may not have been any disruption.

There were disruptions in that trial. The disruptions were all associated with their right to self-representation. The Court said that if, in fact, they were given the right to self-representation in the first place, there would be no reason for them to later disrupt

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the trial, because they were representing themselves.

The disruptions, if any, that Your Honor considered Mr. Jamal committed were because his right to self-representation was denied. He, of course, requested, required, and demanded that I not be his counsel. He had previously requested that John Africa represent him. But throughout, any and all of those disruptions were associated with his right to self-representation.

If, in fact, the Court had properly ruled that he could represent himself, these disruptions may never have occurred, Your Honor.

The Supreme Court reversed and remanded the trial of Dougherty and the others, saying that, in fact, their right to self-representation was denied;

that the Court could not bootstrap its argument saying that there was potential harm, potential violence, and that is why they could not represent themselves.

With regard to back-up counsel, the Court, in Dougherty also addressed that issue. The Court said that there may be two reasons

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for appointing back-up counsel. One of the reasons for appointing back-up counsel would be that the Court may wish to inquire of a witness or if the defendant because he was not articulate or because he just decided not to question a witness, the Court may use its back-up counsel, meaning back-up counsel to the Court in an amici role. I don't think that my appointment was that appointment.

The other appointment was the appointment for back-up counsel to the defendant, where the defendant requested specific assistance from the lawyer. If there was some wording, some ruling or interpretation that the defendant needed or wanted, he could use that back-up counsel to provide that information.

The Court pointed out that it was important that the defendant be the lawyer and not an extension of back-up counsel, that it is the defendant's defense and not simply a defense that must be presented to the jury. By virtue of the defendant being denied the right to represent his own case, he then had a defense presented but not his own defense.

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The Court specifically pointed out, Your Honor, in this case when the defendant stood before the jury, that he should stand there alone if he is representing himself. There was no need for back-up counsel to sit at counsel table even, because his role was only as an assistant. It was only as a back up for the defendant to call upon, when and if he saw fit. If, in fact, the defendant felt no need to call upon back-up counsel, then there was no role to play for back-up counsel.

The Court pointed out as well that if, in fact, the suggestion of disruption occurred as the state suggested, then back-up counsel could then be called upon to serve as a lawyer but only when that disruption occurred, not before. In this situation, as I have pointed out to Your Honor, he was denied the right to represent himself, not through any deliberate disruption.

The Court and I believe that those are words of art, "deliberate disruption." If, in fact we say that he was inarticulate, that is not deliberate and, of

course, there was no

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allegation that he was inarticulate. If we say that he was asking inappropriate questions, that is not deliberate disruption. If we say that he was taking too long to question the witnesses, that is not deliberate disruption.

One can begin to characterize deliberate disruption as very many things. But I think if one does not take a reasonable approach as to what is deliberate disruption, then I think that it would then be an obligation of the Court to say, "If you question a witness for five or six pages, I would consider that to be deliberate disruption."

Of course, that was not done in this case, because I don't think that Mr. Jamal was causing any deliberate disruption. What Mr. Jamal was doing, was exercising his right to disclose the bias, prejudice, and adverse attitudes of the veniremen that appeared before this Court. And until that witness said, "I am unsettled," the issue of Mr. Jamal's right to represent himself was not at all at issue.

His denial of self-representation, unfortunately, created another issue, and that

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is that the jury was told that he would represent himself. We conducted the voir dire in a certain manner, that is, they would be questioned by the respective counsel, Mr. McGill and Mr. Jamal.

Because Your Honor was concerned that Mr. Jamal was not doing it the way in which Your Honor felt was appropriate, Mr. Jamal was stopped. Mr. Jamal was then still his own lawyer. Your Honor then said, "Mr. Jackson, you conduct the voir dire, because either you do it or I am going to do it." What that does, Your Honor, is change the method of jury selection within one trial.

The Court has already addressed that issue, and again, it is also cited in my memorandum. That is *New York v. Mancuso, et al*, cited at 26 AD2d 292. The Court said in that case, "A change in the method of jury selection prejudiced the defendant because the jury would reasonably believe that the defendant has been deprived of the right to participate in the voir dire because of some misconduct."

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I think that that is the only reasonable assumption that a juror would make, that there was some misconduct on the part of the defendant. And, again, there was no allegation by the Commonwealth, no allegation by Your Honor or holding by Your Honor, that he was being deliberately disruptive or that there had been any misconduct, only that a witness said, "I feel unsettled; the questions are unsettling to me."

In the Mancuso case, the Court said that the defendant was denied his right because the method of jury selection was changed in a manner that adversely reflected on the defendant. For that reason, Your Honor, as well, we argued that his right to self-representation was denied and it had its impact upon the jury when they had to view Mr. Jamal not being the lawyer later on.

Your Honor, if I could direct you again back to Dougherty versus United States, just to flush out some more of the points that were made earlier with respect to the defendant's right to self-representation, particularly dealing with the possibility of disobedience

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or disruption as a basis for denying his pro se defense.

The Court said, and I quote specifically, at page -- unfortunately, the pages have not been xeroxed. I don't know if counsel has a copy of it, but under the section of possible disruption as a basis for denying a pro se defense, the Court said that he may claim, with some merit, that his pro se rights include his right to appear before the jury in the status of one defending himself. That this is defeated if too conspicuous a role is played by an attorney, unless it clearly appears to the jury that he does not have the status of defense counsel.

What the Court was talking about in that instance, Your Honor, was the role of back-up counsel. What does the jury reasonably infer my role to be, defense counsel or something else? If, in fact, the jury believes that my role is indeed defense counsel, then that is defeating Mr. Jamal's right to self-representation, because he has the right to stand as one to defend himself.

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The fact that I was required to participate along with him defeated the right that the Court bestowed upon him. And, again, the case was remanded for a new trial, just on that issue alone, the right of self-representation.

I have read earlier, Your Honor, with regard to the Court's denial of trial assistants sitting at counsel table, that the Court said, if the possibility that reasonable cooperation may be withheld -- because there was some discussion as to whether or not the defendants in the Dougherty case, whether or not they were going to cooperate with the Court and defense counsel -- and the right later waived; meaning the defendants would do something to waive their right to self-representation, is not a reason for denying the right of self-representation.

I think that is what we have here, where the Court, I believe, in violation of the due process clause denied him that right before there was any reason to do so. Your Honor, again, it goes along with my role as back-up counsel, in the Adams versus U.S. case.

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It was also corroborated and confirmed in the ex rel McCann case, dealing with the right of a defendant to dispense with his lawyer's help.

That case says, essentially, that that decision rests with the defendant alone and could not be usurped by the Court. It says also that an accused has a fundamental right to confront his accusers and his country to present himself and his position to the jury, not merely as a witness or as a mouthpiece, but as a man on trial who elects to plead his own case. Mr. Jamal was denied that right to plead his own case.

With regard to the arguments I made earlier with regard to the representations made to the jurors as to Mr. Jamal's role, the Court, again in Dougherty said, and I am reading: "Presentation of closing statements by the defendants was originally promised and then taken away because of their disruptions. But the vast bulk of the incidents cited in the government's brief as such disruptions, 81 out of 89 were essentially colloquies in which the defendants were asserting their pro se rights."

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Out of all of those disruptions, and they counted 89 disruptions, 81 of the 89 disruptions went back to the fact that the Judge had originally denied them the right to represent themselves in the first place, similar to the situation of Mr. Jamal.

"That one cannot fairly reason backward from the conduct of a defendant at a trial, where he was denied the right to represent himself, to what his conduct would have been if at the outset the Trial Judge recognized that right and at the same time clarified the responsibilities of representation."

Your Honor, with regard to the clarification of representation, to the extent that this unsettled venireman created a problem, according to this decision, there would have been a need of the Court to inform Mr. Jamal as to what, if anything, was particularly and specifically wrong with his inquiries. That was not done.

It was simply a decision made summarily and, I submit, arbitrarily and capriciously that, "You will not continue," and it was taken

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away from him. The Supreme Court said that you cannot do that, Your Honor, and it was done in this case. For that reason, Mr. Jamal, in and of itself, ought to be granted a new trial.

On that issue, I rest.

MR. MC GILL: Your Honor, I would like to handle that issue on two phases, one being the voir dire portion of the trial, and then also the trial portion of the trial.

First of all, Your Honor had made it very clear to the defendant as well as Mr. Jackson, and it is all on record, in the colloquy, that although he would be permitted to represent himself, that he would be removed if the Court felt, based on the facts, that disorderly behavior and disruptive actions took place, at which point he would not be allowed to come back and represent himself again. This was made very clear in the colloquy to Mr. Jamal, who did recite, "yes," to the words that he, understood that that was the situation.

From that time, from the motion to suppress, which he was permitted to litigate throughout and argue, as our office, myself,

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the Commonwealth certainly urged also Mr. Jackson to be able to argue at any time during that motion to suppress, which point he actually argued extensively at the end of the motion to suppress. So that throughout, he was able to represent himself.

During the course of many of the rulings, there were many responses made by Mr. Jamal that could very well be viewed as bordering on contemptuous acts. The Court, however, permitted everything to continue. Starting with the jury selection, again he was permitted to ask questions of jurors. He also had asked for John Africa and made a very big point of it to the Court and continually, even during that time before he stopped asking questions

of the venire persons, made extensive argument.

The Court continually told him that you had ruled and again and again indicating, which he later would say, "The rulings were not to my satisfaction." No matter how often you said that you had ruled, he would go on and on. Still, the Court permitted that to continue.

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During the course of the voir dire, at one stage, after seeing several different venire persons obviously in some discomfort, some anxiety, and some fear, I then went over to side bar and asked Your Honor -- Mr. Jamal was not asked to be removed at that time nor was he removed. I asked that, according to the Rules of Criminal Procedure, if the Court would take over the voir dire.

You did, initially, take over the voir dire questions at that point, because Your Honor had noticed, number one, that the voir dire questioning was dragging on, that it was unduly long. And it was clear to you from your own observations of many of the venire persons, who were to make a judgement in this case, not only discomfort and anxiety but a great deal of concern.

In the interest of justice, you did not at that time remove Mr. Jamal. However, you did take over the voir dire and you stated that any questions he wanted to have asked, he could submit them to you or his attorney could, submit them to you and you would ask them. You then said,

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"Rather than have me do it, Mr. Jackson may ask the questions," because Your Honor was concerned about the progression of the voir dire.

In attempting to get a fair jury in a very highly controversial case, it was important for the Court to exercise very keen judgment and discretion in determining that the jurors picked would be fair to both sides.

Your Honor, under the authority of the Rules of Criminal Procedure, did not remove Mr. Jamal, but simply at that point took over the voir dire and eventually had Mr. Jackson take over the voir dire, since that would appear to be even more appropriate and helpful, you felt, for the defense that you stayed out of it. I asked questions and Mr. Jackson asked questions.

I will also state to the Court that originally, at side bar when it was requested that you take over the voir dire, that meant the Commonwealth

wasn't able to ask questions of the venire persons either.

So for at least a few venire persons, you asked the questions and neither the Commonwealth nor the defendant had an opportunity to ask questions.

This is

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done in many trials.

In a number of trials where there are two attorneys, where the Court believes it is either going too slowly or too many irrelevant questions are being asked, the Court takes over the voir dire. This has been done, and it has nothing to do with removal of counsel, nor does it have anything to do with an individual representing himself. It has to do with the ways in which, in the interest of justice, to get a fair juror in a reasonable amount of time.

Your Honor then permitted Mr. Jackson to ask questions in all of the areas that were covered, in the general areas that were covered in the back room. So there indeed was no prejudice, whatsoever, to counsel or to Mr. Jamal.

The next segment comes to the removal of the defendant. Keeping in mind, of course that the colloquy stated initially to him, that he was well aware throughout that he could be removed for disruptive and disorderly behavior. Your Honor can pick almost any page in the

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record, at various portions, to see the conduct and actions of the defendant, even before he was removed as counsel.

There were multiple examples of direct contemptuous actions to the Court before he was removed, such as Mr. Jamal actually stating to the Court, "You want a conviction. You want me executed like Mr. McGill does. You are not giving me a fair trial." I can only imagine if counsel in any other courtroom would have said that, or a defendant in any other courtroom would have said that to another Judge, what would have happened to him. Your Honor permitted it.

I think that there has to be a real distinction made between a question of removal of counsel because of a specific example or a series of examples of disruptive behavior and the actions of a Court who showed an unbelievable, an incredible amount of patience throughout the motion to suppress and the voir dire and the side-bar conferences of the conduct and actions, which is of record, and I don't want to burden the record now with

reciting it. It is

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throughout the record, before he was removed. The fact that he was not removed sooner is one more example of the Court's patience in hearing such accusations from a defendant that would anger the most patient of any Judge.

Finally, Your Honor, in receiving various questions and comments and accusations of the Court's conduct made by this defendant, statements which, if not directly, by clear inference indicated that he was not going to abide by your laws, that he was not going to abide by your rulings because he didn't agree with them. After all of that, you at least on five occasions, told him, "Are you being disruptive? Do you realize what will happen to you?"

It just didn't sink in, which made me seriously wonder whether the whole thing from the beginning was a design to gain some sort of sympathy because he wasn't being granted his desire to represent himself. Granted the difficult facts which he had to overcome from the evidence, which he was well aware of for many, many months, one would wonder whether

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that was not a neat trick in terms of an intended example of getting removed in order to gain sympathy that he would certainly make clear to the jury in one way or another, which he did throughout.

Your Honor, at that final point, after a series of disruptive actions, and, I would say to this Court, downright contemptuous behavior, the Court removed counsel. It is clearly within the propriety of the law, within the ambit of the Court's decisions, many of them could be cited and the Court is well aware of them, at any rate, where a defendant, whether it is even viewed that he may in the future but where he has clearly made it, as a matter of record, before this Court, that he is not about to follow laws because he doesn't know rules, because he doesn't agree with it, he is not about to do anything that he doesn't feel is right for him.

Unfortunately, for a state of mind like that, that is not the context in which this Court, any court, and certainly not the Supreme Court viewed as the conduct which is appropriate

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in a proceeding where justice is to be considered and meted out. So, on the

reference of that, after Your Honor's final warning to this defendant, he was removed.

If Your Honor desires, I would gladly give the record as presented, on its own, to the Supreme Court where they can so readily see a patient Judge being constantly berated by someone who refused to follow the rules and who only demonstrated almost physically, later on, as to his unwillingness to follow rules.

From the very beginning, he wouldn't even stand, as he doesn't do today. One would think that a minor point but, if anything, it is symbolic of this man's view of the system. But, unfortunately for him, the system is the one who is making the decision in this particular case, as in all cases, as to whether, and as to what extent a man's rights have been violated or not.

So, Your Honor, I would suggest to this Court and offer the record as examples of disruptive behavior that justifiably produced the ejection of the defendant.

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It is also interesting to note that even after the removal of the defendant, although Your Honor was not required to do this, you constantly permitted the defendant to come back to the courtroom. Even after a physical resistance of two sheriffs by this defendant, who is no weak individual but rather strong, you still permitted him to come back. You asked him if he would behave himself, and he continually violated the Court's orders: He wouldn't sit down, and he wanted to address the jury when he wasn't supposed to after having been removed. Judge, I just don't want to go through them all. You are well aware of them and the record is replete.

I would only say, Your Honor, that in my experience, which is over ten years in this criminal justice system, there is no Judge in City Hall that I could even remember or know of certainly today that would have allowed the activity that you did for as long as you did before ejecting an individual who may very well have wanted to be ejected from the beginning. But even if he didn't, he certainly deserved it

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based on his behavior, the actions on the voir dire, consistent with the Rules of Criminal Procedure, the actions before trial, and the removal of Mr. Jamal, brought on by his own conduct.

MR. JACKSON: Your Honor, I am sure that Mr. McGill and I can argue the facts as to when it took place. I think it is very clear as to when Mr.

Jamal's right to self-representation was denied.

And even if we don't argue when he was declared or removed as the lawyer, we could say, well, at the time that Mr. Jamal was denied the right to continue to conduct the voir dire and the option was given that I conduct the voir dire, that flies in the face of the Dougherty decision. That says, if he is representing himself, then he is going to do it. If I am conducting the voir dire, then it certainly appears as if I am defense counsel.

The Supreme Court said, in that decision, that means I am representing him. So it seems to me by words, deeds, and actions at that time that certainly, clearly to me, Mr. Jamal was

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not his own lawyer. If he was not conducting the voir dire, then, clearly, according to the Dougherty decision, he was not his own lawyer.

But, I think, with regard to when he was later declared by you not to be representing himself, again it was not as a result of any disruptions. The disruptions that Mr. McGill talked about were long since the time that he was denied the right to represent himself.

I would only point out to you, as well, and I implore Your Honor, and invite you to read the Dougherty decision. In that case, Justice Bazelon pointed out that Judge Pratt had a very difficult decision to make, and that their decision was not an indictment of the Judge or what the Judge had to do during the trial. It was a very exciting time. It was a time when the Judge apparently was looking out for the interest of the defendants and felt that it was not in their best interest to allow them to represent themselves.

Mr. McGill has indicated that Your Honor has exercised patience and other virtues of that sort. That is not the point, as the

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Court pointed out. And Judge Pratt exercised a lot of patience, a lot of tolerance, and virtues of that sort. They nevertheless overruled the Judge and said, "We know that you tried to do good, but you did wrong." I am suggesting to the Court that that is the instance that we have here in this case.

Your Honor, I am going to now direct my attention with regard to a challenge for cause to John Fitzpatrick and Edward G. Courchain. I am not going to take up the Court's time with regard to John Fitzpatrick, because his challenge for cause was during the time that we still had peremptory

challenges on the jury.

Edward G. Courchain was an alternate who ultimately became one jury member. At the time that Mr. Courchain was selected we had no peremptory challenges left to excuse him from the jury. Without getting into the specifics, and I certainly can from the notes of testimony, during the initial questioning of Mr. Courchain, he was asked whether or not he had some bias or whether or not he could be fair and he, essentially, said, "No."

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After that, Mr. McGill questioned him: "If the Judge were to tell you that you are to do this, that and the other, could you do it?" He eventually said, "Yes. I could do it."

We are suggesting to the Court that when Mr. Courchain gave us that, and he said it several times on cross-examination and on direct examination, he didn't think that he could be fair, and after being told that he would be ordered to be fair, he then said, "I feel that I can be fair;" I am suggesting to the Court that he should not have been allowed to sit as a juror.

It has been pointed out, Your Honor, in many studies and I don't mean studies conducted by Mr. Jamal and Mr. Jackson, but studies conducted by the American Bar Association, as well, and it is pointed out in several advisory committee reports that I have cited in the memorandum, which says essentially that a juror's good faith efforts to lay aside those beliefs cannot be determinative.

After you tell a juror that it is your duty and I am ordering you to be fair, even

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though you think that you can't be fair, we don't know whether or not the juror can then follow the Court's order, whether or not the juror can, in fact, put away their personal feelings. And I am saying that with regard specifically to Edward G. Courchain that the Court was in error in not allowing our challenge for cause.

MR. MC GILL: Your Honor, in reference to Edward G. Courchain, that was one of the last group of jurors we spoke to.

That particular juror started out by saying that he had some opinion in reference to guilt, as I recall, but that it was based upon the newspaper articles. As the juror was continually questioned, it developed through

questions by Mr. Jackson, myself, and finally by the Court to make sure, and he stated that even though he had an opinion based upon the newspapers, that he could set that aside and give the defendant as well as the Commonwealth a fair trial.

He was specifically asked whether or not anything that he read at all would in any way lend him to convict this defendant, or in

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words of such a nature, and, he said, "No," and he explained why. After it was explained to him both by the Court and also questions by myself, he said, "Well, I just knew that something had been done. Something had been done, but I don't know who did it. I don't know who did it. Right at this point, it would have to be proven to me."

It is clear that based on the record, he did not have a fixed opinion of guilt but, rather, was able to be fair and impartial, as stated on the record, and I just refer you to the record for that which would be clear.

The same with Mr. Fitzpatrick; he was an earlier individual who was questioned and he himself made it very clear that he could be fair and impartial. So I just refer the Court to the record and I will not argue longer on that point, that despite opinions that he may have had or whatever, he did not have a fixed opinion of guilt and could give both sides a fair trial.

MR. JACKSON: I invite Your Honor to read the record as well, so that we don't have

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to get into splitting hairs about what the testimony is.

Your Honor, I would like to next direct your attention to what I consider to be --

THE COURT: Just one question: When was Mr. Fitzpatrick on the jury?

MR. MC GILL: I should have made that known. He was not on the jury.

MR. JACKSON: I used a peremptory for him.

THE COURT: Was he on the opening?

MR. MC GILL: No, he was not. He exercised a peremptory challenge.

THE COURT: You exercised all of your peremptory challenges.

MR. JACKSON: On the main jury, I didn't use them up.

THE COURT: You only used 18.

MR. JACKSON: I didn't use them up. That is why I didn't argue. For Mr. Courchain, I didn't have a peremptory left for Mr. Courchain. And to the extent that I think the State Supreme Court is wrong on the issue, with regard to whether or not you use up your peremptory

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challenges, that is the only reason I stated to preserve it as an issue, Your Honor.

I would like to direct the Court's attention with regard to the examination of Veronica Jones. If the Court recalls, Veronica Jones was an associate of Cynthia White. She was a street-walker, a prostitute.

We had a statement given to us during the time, and all the other statements that were given to us by the District Attorney, that said, among other things, that Veronica Jones was in a position to observe some of the activities that took place at the scene of the shooting.

She said, among other things, that she saw some people run from the scene and she gave some descriptions, the specifics of which aren't important at this point. Nevertheless, I never talked to her and she got on the stand and began to contradict those things that were in the statement. I claimed surprise, as the law requires. I don't think there was vary much argument by the Commonwealth, and indeed Your Honor declared her a surprise witness which allowed me to cross-examine her.

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Cross-examination provided me with a situation or a story where she contradicted her position. She contradicted what she saw on the scene and things of that sort. Your Honor told me that I could cross-examine her with regard to what she was saying on the stand as opposed to what was in the statement.

What I suggested to the Court at that time, as well as what I am suggesting to the Court now, and I think page 139 of the notes of testimony on June 29th goes to what she was saying -- that once I claim she is declared a surprise witness, and once I am permitted to cross-examine her, I should

also be allowed to cross-examine why she changed her story.

Your Honor refused me the right to go into her bias or her motive for changing her story. To some extent, she gave us an indication of why she changed her story, or surely that would be our argument, where she says on the record that a officer said, "If you back up Cynthia, we will allow you to work just like her." I think she used another name, "If you back up Cynthia, we will allow you to

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work the street just like Lucky is working the street." But we do know, from what she said, that the police were allowing her to work the street.

Now, Veronica Jones said that. I know counsel for the Commonwealth objected but, nevertheless, the words were spoken. But Your Honor said that I couldn't get into that, that I couldn't cross-examine her on her motivation. It seems to me that that is the very essence of her testimony.

If you have a witness who says one thing to the police and then they come in and say something else, I can find out, "Yes, I said day was night yesterday, and I am saying night is day today." I should be allowed to find out why she changed her testimony.

Your Honor said that I could not do that but, I think, more importantly, Your Honor, it is not only permissive but required. If I am suggesting there is a prior inconsistent statement, I am not only permitted but required to show there was indeed a prior inconsistent statement.

I requested that the police officers who took the statement be placed on the stand so that I

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could establish that in fact she gave the statement. Your Honor ruled that I could not bring those police officers in.

THE COURT: Yes, because the law is that those prior statements are not substantive evidence. The only thing you can use them for is to show that the witness is not to be believed. That is the only purpose for which you can use them. But you can't bring a detective in to say that she gave us the statement, as if they were true.

MR. JACKSON: I understand that. We understand the Waller case--

THE COURT: She admitted that she signed the statement. She didn't deny

that.

MR. JACKSON: Your Honor, that is the point. She said that she signed her name one time. We had perhaps six sheets of paper, where I asked her significantly, "Is that your signature?" "Yes." "Is that your signature?" "Yes. " But she said, "I only signed the one time."

THE COURT: She could have made a mistake. She thought she signed it once but she signed it

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more.

MR. JACKSON: Your Honor, I am saying that those police officers would not be placed on the stand to provide substantive evidence of that statement being true but to prove, in fact, that there was another statement.

I have not had the opportunity to show that there was, in fact, another statement. As far as the jury was concerned, I was holding up a blank piece of paper. I have to be allowed to show that there was a prior inconsistent statement through the police officers, because she said that she didn't say it. So where is the prior inconsistent statement, if I can't show it through the police officers?

Your Honor denied me the right to bring in the police officers. I can't testify, Your Honor; all I can do is bring the police officers in and ask them if she said X, Y, or Z.

When Your Honor denied me the right to put the police officers on the stand to say she said X, Y, or Z, I have no prior inconsistent statement. I have only what she said on the statement.

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THE COURT: The police officers can't testify as to what she said.

MR. JACKSON: As to the statement?

THE COURT: That's right.

MR. JACKSON: We do it all the time. He took a statement. "Did you take a statement of Veronica Jones?" And the reason that she is called as a witness, Your Honor --

THE COURT: To say that, but there was no dispute as to whether that was

her statement. Sure, it was her statement. She is now refuting that.

MR. JACKSON: We know that, because you had to make a ruling on my motion of her being a surprise witness. But what I am saying, as far as the jury is concerned, there is no prior inconsistent statement that the jury knows about.

THE COURT: You asked her the question.

MR. JACKSON: I simply said, did you say so and so to the police.

THE COURT: That's right. So they knew that she had made a statement by your question.

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MR. JACKSON: Your Honor, I could have been reading from something that I typed.

THE COURT: You could have been reading from anything, but they knew if I allowed it in this courtroom, that it was a statement she had previously made.

MR. JACKSON: Your Honor, I don't think we can presuppose that.

Your Honor, the point is, I don't believe that it is a matter of the Court's discretion. The law requires that if you are going to claim surprise and should there be a prior inconsistent statement, that you prove there is a prior inconsistent statement.

THE COURT: That is the reason for the surprise and that is why I allowed you to cross-examine her.

MR. JACKSON: But I didn't prove it.

THE COURT: You were trying to use that statement as substantive evidence. You can't do that.

It is true under the Waller decision, that was the decision for awhile. The Supreme Court has said no, you cannot use it. It is

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not substantive evidence.

MR. JACKSON: Your Honor, I did not want to do that.

THE COURT: That was the whole point.

MR. JACKSON: No, sir.

THE COURT: Why would you do it?

MR. JACKSON: To show her reason for changing her story.

THE COURT: Because that prior statement was the truth?

MR. JACKSON: No, sir. It didn't matter what the truth was?

THE COURT: Sure, it does.

MR. JACKSON: Your Honor, the point is, I realize that I am not going to use the statement as substantive evidence. I called the witness because I can't use the statement, and then she says something else. At that point, I didn't care whether what she said on the stand is true or what she said in the statement is true, but only to bring out the fact that she was motivated to change her testimony.

THE COURT: You said it came out that the police officers said to her, "We are going

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to let you work the street." The jury heard it.

MR. JACKSON: I have never had the opportunity to prove to the jury that, in fact, she made the statement.

THE COURT: Because the statement itself was not admissible as substantive evidence.

MR. JACKSON: It wasn't being offered as substantive. It was offered as a prior inconsistent statement, Your Honor. I could not offer it as a prior inconsistent statement, until I bring the police officers in.

THE COURT: No, that is not true.

MR. JACKSON: That is the law. The law, as I understand, requires you to prove a prior inconsistent statement by that person or persons who took the statement in the first place; otherwise, Your Honor, I could have written the statement myself and said, "Didn't you tell that to the police?" So the

law requires me to bring in the police officers.

Your Honor differs with me on the law, but I suggest to the Court that that is in fact the law, that it requires me to bring in the police officers to determine whether, in fact,

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she made the statement.

MR. MC GILL: Your Honor, very briefly, I think it should be remembered that that was not a Commonwealth witness. This was a defense witness that was called.

Now, the Court permitted surprise and cross-examination. The Court also, of course, permitted questioning which brought out a statement which was based on no statement at all about the police allowing Lucky or somebody like that to work the street.

We are obviously implying that there was some sort of bias or some sort of benefit in order to get testimony. This was brought out but nowhere in any record does any kind of statement like that exist. We have a situation really where counsel is placing a witness on the stand and, for whatever reason, this witness then comes out with things, many things which hurt the Commonwealth's position. Obviously testifying that there was some motive for one of our witnesses, who was one of our primary witnesses, really hurt the Commonwealth's position, if believed.

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Defense counsel was permitted cross-examination as well as I was permitted cross-examination. The degree of cross-examination is within the discretion of the Court. It is clear from the record and my recollection of the testimony that the cross-examination of his own witnesses by Mr. Jackson, as well as his own statements, and my cross-examination essentially showed the lack of credibility in that individual.

Now, whether or not one would be able to use some prior statements, to one extent he did by saying, "Didn't you sign something?" "No, I just signed one time or something," he was in the position of offering a witness who hurt the Commonwealth and wanted to cross-examine the witness by getting some sort of testimony in that, in its own right, again wouldn't even marginally assist the defendant if it were permitted in because again, she didn't really see anything of significance that occurred.

But no matter what that was, Your Honor has the ability to limit cross-

examination.

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Certainly through both direct and cross, as well as my own cross of that witness, showed her lack of credibility, I would suggest.

I would suggest to the Court that it is within Your Honor's discretion in limiting examination by counsel of his own witness on cross-examination. I think the end result did occur; she was shown to be incredible.

If this is what he wanted, it was done. Whether he wanted to compound it by trying to present evidence, which may have been in the guise of impeachable testimony, which could actually be viewed as substantive, rather than have that confusion occur, Your Honor allowed the cross-examination to rest on what it was that rendered her incredible.

MR. JACKSON: Your Honor, I now direct your attention to what I consider to be the error of the Court in allowing Mr. McGill to cross-examine the character witnesses presented by the defense.

There are several grounds, Your Honor.

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The first, and without extensive argument, would be the fact that he exceeded the scope of direct examination with regard to the character witnesses. I think that that in and of itself would be enough. But, Your Honor, specifically, and I have them listed in the memorandum, starting with Sonia Sanchez:

Sonia Sanchez testified as any character witness would when you ask them the questions that you ask on direct examination. After that, Mr. McGill began to ask a litany of questions and I am suggesting to the Court that they were improper.

Mr. McGill attacked, in fact, the character of the witness herself. He questioned her about her writings, about her sympathies toward other persons. He questioned her about subject matters which were perhaps similar to those subject matters that were within this trial. So, clearly, it was beyond the scope of direct examination.

But, beyond that, as the Court, in *United States versus Jubert*, said, "Since the questions called not for evidence of the defendant's reputation but for the witness'

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opinion, it could not have elicited proper character evidence, and the Court was right to exclude it." The Court, in this case, excluded the evidence of the witness' opinion.

What are character witnesses offered for? We know that in the law that is a misnomer; character witnesses are reputation witnesses. Character witnesses come in to attest to the reputation of a defendant. They are not permitted to give their opinion of the defendant, because that is not the question. It is what is his reputation.

So that when Mr. McGill asked whether or not this witness wrote the foreword in someone else's book dealing with Joanne Chesimard, when this witness is asked whether or not she has written sympathetic treatises on other persons in this country, that has nothing to do with Mr. Jamal.

Whether the character witness in her opinion feels that Mr. Jamal is a good person, a bad person or whatever, is not at all relevant or permissive. The question for that character witness and for all character witnesses is what

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is the reputation that you know of from the people that you know who know him, simply and solely.

Again, your Honor knows that in the State of Pennsylvania, if the Commonwealth wishes to attack the reputation of a defendant, the Commonwealth can present contra reputation witnesses, because it is only the reputation of the defendant and not the opinion of the witness.

Counsel was permitted to ask Sonia Sanchez almost anything that he wanted to. They certainly elicited, at best, her opinion. They were not relevant to the defendant's reputation. That is what was presented. He asked about specific writings, specific individuals.

He asked about Joanne Chesimard. He asked about three or four other specific people. He named those specific acts, those specific persons, of the character witness, Sonia Sanchez, who we knew were not at all relevant to this

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trial.

In the State Supreme Court, the United States Supreme Court, in dealing

with the issue of character witnesses, it says consistently, unequivocally, it is the reputation of the defendant that is at issue, not the reputation of the witness, nor the character of the witness that is at issue. And you are not ever, ever to question about specific acts.

I can only refer you to the record of the character witnesses to show you the length and breadth of the questions permitted by Mr. McGill, and I am suggesting to the Court that that was improper.

So that I can complete all of the character witnesses, we also had a character witness, Allen Lawson, a Del Jones, and John Skief. Essentially, Your Honor, these witnesses, again, testified as most typically character witnesses would do, and I would like to run through the questions to frame the questions:

"Do you know Mr. Jamal?"

"How long have you known him?"

"How was it that you come to know him?"

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"Do you know people who know him?"

"Among those people that you know that know him, what is his reputation?"

We got various answers, "excellent, fine, good," whatever.

Mr. McGill's cross-examination:

"What is your definition of law-abiding?"

That requires an opinion of that witness. If that witness, as an example, says, "I think a law-abiding citizen is one who shoots all short people," that may be that witness' opinion. That is the witness' definition, but that has nothing to do with the reputation that he is testifying about.

Your Honor, just to close with regard to character witnesses, I would only point out, and again, the memorandum cites a number of cases, but I would just like to extract a few phrases from some of those cases:

In Michaelson versus United State, 335 U.S. 469, "The character reputation and proclivities of a character witness are not at issue, but rather the

reputation of the defendant."

There is another case that also confirms

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that case: United States versus Bright, 588 F2d 504; it is a 5th Circuit opinion in 1979.

I have selected these character witnesses only, and there are five character witnesses. I am suggesting to the Court that even if the questions were asked of one witness, it would be error, not harmless error but, in fact, constitutional error and thus reversible error.

It is not just a statutory requirement that the prosecution is barred from inquiring as to specific acts, as to opinions, but, indeed, the United States Supreme Court has said that, as a matter of constitutional right, the Commonwealth or the state should not make those inquiries with regard to a defendant.

Once the Commonwealth opens that door itself, it cannot use that as a bootstrap argument and say that it is only exploring that which the witness has then responded. Because it is the Commonwealth in each and every instance that I have presented to the Court, with regard to these character witnesses, the Commonwealth exceeded the scope of direct

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examination and then went on to explore specific acts and opinions of the witness. That is the specific scope of examination that the Courts have consistently ruled against and said that that, in fact, was not at all permissible.

With that, I conclude with the character witnesses, Your Honor.

MR. MC GILL: Your Honor, in reference to the character witness' testimony, I will start from the back part, where you have an individual who testifies to the character of another. You specifically are asking the question: What is his reputation for being peaceful and law-abiding?

Just assuming that that was the only question asked, and then the individual says, good or great, or wonderful, whatever that is; that is fine. But if the individual goes on and says other things, it is going to open up various doors.

Certainly, if someone who is testifying in English and in response to a

question, what is the reputation of this individual as to being a peaceful and law-abiding citizen, even

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though the response of a hearsay response from other people in a community or people that the individual knows or hears about, a jury should certainly be apprised of that individual's knowledge of what she or he is responding to. The question was: What is his reputation for being peaceful and law-abiding?

Obviously, it is not improper for a jury to find out what this individual means as to "law-abiding," because he or she is responding to a question of what is his reputation for that. If anything, it goes to the competence of the character witness to testify as to what he or she heard.

For example, and I am using a ridiculous situation, but to try to prove the point: If he or she heard that Mr. Jamal happens to like standard poodles, and her response is, from, what is his reputation for being peaceful and law-abiding, and she says wonderful, great; it is terrific. Maybe to that individual law-abiding means that he likes animals, for that matter. We don't know.

But, certainly, it is not incorrect to

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try to go into the knowledge and the competence of that witness to respond to the exact question that is asked. It is not asking her for specific incidents. It is asking her for her very competence in using her understanding of the word "law-abiding". We at least are allowed to go to that degree.

Your Honor, in reference to Allen Lawson, a character witness who was cross-examined about his criminal record, the only crimes that were used were crimen falsi crimes. Certainly, it is appropriate that he be examined on crimen falsi crimes because that goes to his credibility of his saying, "This is what I heard." So that would be appropriate under the law.

Lastly, in reference to Ms. Sanchez, MS. Sanchez said a great deal on her direct testimony as well as her redirect testimony, and Ms. Sanchez's individual character at no time was attacked. But Ms. Sanchez's potential bias, which is an appropriate cross-examination area, was approached.

For example, if an individual was asked

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on cross-examination, in reference to her being a character witness: "Have you been a character witness for about 150 defendants in the last year? Don't you, as a matter of course, go into the prisons as a character witness?" That would be an appropriate question on cross-examination because it goes to bias. Bias is always a legitimate cross-examination tool.

Ms. Sanchez is obviously a dedicated individual who is very forceful and definite in her opinions and writes according to her own opinions about individuals. The fact that she, on cross-examination, was asked questions concerning her writings in reference to individuals who are charged, who were charged with crimes involving the shooting of police or just crimes generally, was offered, as said at side bar, for the sole purpose of bias.

As a matter of fact, with the examination on direct by Mr. Jackson, as well as the redirect examination by Mr. Jackson, such an opened door, which I provided through a bias, enabled Ms. Sanchez to go into, to some degree, about her writings, what she believes,

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and how she believes that people are mistreated, and that she is against the brutality or any kind of abuse whatsoever.

So, if anything, in questioning her bias in writing a foreword to a book which was about an individual, an escaped murderess, who was convicted of killing a police officer, simply, if anything, it added to her position or her opportunity to say what she believed, obviously, with the implication that this man perhaps was in some way unjustly handled or treated, which was irrelevant to her initial testimony.

But, even assuming that it was not helpful to Mr. Jamal in what appeared to be his defense, at least bias is an appropriate area to go through and that was the limited area in which I did enter. When she opened up other areas on redirect, they were pursued to some degree. However, the bias was the primary area, about that foreword, that writing.

MR. JACKSON: your Honor, again, in rebuttal, I can only say that, again, the opinion of the witness of what law-abiding means is irrelevant. If, in fact, assuming *arguendo*

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that you could ask for a definition of law-abiding, the witness should have been inquired: "What do those people that you know who know Mr. Jamal,

what do they mean by law-abiding," because what the witness thinks is irrelevant.

Your Honor understands that we are not asking the witness what is your feelings, what is your attitude towards Mr. Jamal. So how can you then say, well, we still need to know what that witness' definition of law-abiding is. It doesn't mean anything. It doesn't mean anything at all, because that is not the inquiry.

Specifically, with regard to Sonia Sanchez, Your Honor, I want to read the direct examination of Sonia Sanchez completely.

THE COURT: I have already read that.

MR. JACKSON: Your Honor, it is just a half-page.

THE COURT: I have already read that.

MR. JACKSON: Fine. You understand then, Your Honor, the only things that I asked her were the standard questions: "Do you know people that know him? Among those people that you know

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who know him, what is his reputation?" That was it, period. Closed.

It is Mr. McGill that opened the page. I asked her less than a full page of questioning on direct examination. Mr. McGill then asked her questions for another number of pages. I am not going to go into the specifics of it. So if anyone opened it up, it was certainly Mr. McGill, and I will leave that to rest, Your Honor.

The next issue, Your Honor, would be the prosecutorial misconduct, and I have elicited two issues with regard to prosecutorial misconduct. The first issue deals with an unfair comment on Mr. Jamal's right, number one, not to take the stand. And, of course, he has no burden whatsoever to present anything at trial.

During Mr. McGill's closing argument, and I direct you to page 171, his closing argument on July 1st, Mr. McGill said, and I quote: "And although they have no burden to do anything of all that they had, all that was presented to them over that period of time,

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you saw what the defense put on," close quotes.

Before making that comment, Mr. McGill began to talk about those same statements that he mentioned earlier. We had 100-odd statements from witnesses and then we got more statements from the Police Department's internal investigation and we had forensic studies. We had all kinds of reports, this, that, and the other.

Mr. McGill correctly pointed out to the jury that Mr. Jamal has no burden whatsoever of presenting any evidence. But what he then did, was to say, well, he has that right but I am going to comment on it. And he says, well, they got a lot of things, but all they presented was thus and such. I am suggesting to the Court that that is certainly unfair comment.

You can't say that he has a right not to do something and because he chooses not to exercise that right in the way that he sees fit, then there ought to be something wrong with it. What it suggests to the jury is that with all of those statements that were given to him, why didn't he put everything on?

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Now, of course, I made that argument, in summation, that the Commonwealth didn't present all of its evidence, but I am permitted to do that. It is not the rights of the state that is being protected; it is the rights of the defendant. When Mr. McGill makes that comment, he then makes an unfair comment of Mr. Jamal's rights.

I don't think it is necessary for me to go on, because it is just that one instance where he makes that comment. I objected during the time of Mr. McGill's comments with regard to that. In fact, it appeared that he was about to say more, and I think that my objection was indeed timely at that time.

If you don't mind, I will go on with the other prosecutorial misconduct. The other issue had to deal with Priscilla Durham, in Mr. McGill's closing argument, again on page 173, July 1, 1982. Mr. McGill says: Priscilla Durham. "Present was also LeGrande as he comes in and makes that statement," close quotes.

The statement of James LeGrande was never offered into evidence, and Mr. LeGrande

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never testified at this trial at all. He never testified in any trial as far as I

know. But, certainly, for the Commonwealth to deliberately misstate what the evidence is, to deliberately mislead the jury as to what the facts are is certainly prosecutorial misconduct.

MR. MC GILL: Your Honor, in reference to that first comment, there are two comments on page 17 of the brief that Mr. Jackson alluded to. I think Your Honor has them.

THE COURT: Yes, I have them.

MR. MC GILL: In reference to the first comment, on page 171, I believe, with the Court's permission, I would like to read that paragraph, followed by another paragraph on the next page which will explain, I think, clearly what the Commonwealth's intent was in the summation. This is after a rather lengthy summation:

"Ladies and gentlemen, the reason he was arrested, the reason he is prosecuted, the reason why you sit there as a finder of fact in this is a culmination of the investigation of what you saw.

"And although they have no burden to do

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anything, of all that they had, of all that was presented to them over that period of time, you saw what the defense put on, and they don't have any burden. That is true.

"But -- then there is an objection. Then I go on -- are they suggesting that there was a third man, a fourth man or is he doing this all for his brother? I ask you to look through all of this as well as any other strategy or tactics you have seen during the course of this whole particular trial and recognize it for what it is. You make the decision."

Now, from that, Your Honor, it is clear, the focus and sometimes a sentence taken out of context may possibly mislead in reading. The defense was a few things, as I recall it. The defense was one really of reasonable doubt on the Commonwealth's case, with the thought that, A, it was probable or reasonable to suggest that a third person or possibly even a fourth person with another had performed this act.

Also, there was a hint both in summation as well as some part of the evidence by inference by counsel that perhaps his brother may have

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been in some way involved and he was being the hero in protecting his brother. This, one could possibly glean from the summation of Mr. Jackson as well as the defense evidence, and as well as the extensive cross-examination by Mr. Jackson.

It is clear from the record, even from Mr. Jamal's comments, that he was here to be found not guilty. There was no way that he would compromise for any other verdict. It was not guilty or nothing; all or nothing, clearly was his approach at trial as, of course, it may very well have been his approach during his life.

However, as one can see then, the importance for me as the prosecutor presenting the evidence and arguing to this jury was to attempt to undercut the defense, which not only was limited to the cross-examination extensively of Commonwealth witnesses but it was the introduction of defense witnesses, not the character witnesses, but the actual fact defense witnesses, a number of them for the purposes to indicate that there was this other

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person. One witness referred to him as a Jamaican with a hair style similar to the defendant's.

It was clear where the defense was going. So the focus of these comments to the jury that I again said, you are the finder of fact, was to say that with the evidence that you have heard and, clearly, the defense that you have heard through the evidence and argument by Mr. Jackson, let us focus in on what they are really saying in the defense to see whether you will accept it.

You have heard all of the Commonwealth's evidence. You have heard all of that. And I even added it twice in the record to them, in literally taking away the Court's function just for that second. But that is the reason I said it twice in that paragraph to be sure that the jury knew that he had no burden whatsoever to do anything. So I repeated it in that same paragraph, that same seven or eight lines.

By saying it, the purpose was to show them, focus in on the defense, to see if it is credible and leaving it, of course, up to them

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to make that decision. That is the meaning of those words, not taken out of context but in context with the paragraph before, the paragraph where it is

included, and the last paragraph.

Certainly, not any comment on his burden, but rather a question posed to the jury to take a look at what the defense presented and what we presented and you decide, based on the credibility of what you see, who to believe. That was the meaning, I believe, the reasonable interpretation and certainly, the intent of my words.

In reference to the last argument, on page 173, Your Honor, it does state -- I am trying to find out where it is, Judge.

THE COURT: You said page 173.

MR, MC GILL: Yes, I was looking at page 174. I am getting tired, I guess.

Page 173, yes. At the beginning of page 173, I state that Priscilla Durham present -- no, no.

In talking about the evidence, the evidence is manifold, whether it be photographs. We have shown charts, statements made right after

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the fact by individuals who have nothing to gain and not even involved with the police department.

Priscilla Durham. Present was also LeGrande as he comes in and makes that statement. Now, first of all, it is clear from that that I am talking about as he comes in and makes that statement, I am referring to the defendant. I don't think there is any contention that I am referring to anybody else.

MR. JACKSON: I am sorry; I didn't hear you.

MR. MC GILL: When I am saying, "Present was also LeGrande as he comes in and makes that statement," I am referring to the defendant as coming in and making that statement, not to anyone else. This is preceded by comments and also succeeded by comments referring to what the statement was. On page 174, the statement is clearly reiterated as to what the statement was. His point is that in mentioning another individual: "I state that Priscilla Durham was there. Present was also LeGrande."

Your Honor, in fact, I am not really

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sure, and I would have to take a look at the notes of testimony, whether or

not Priscilla Durham said that James LeGrande was present or in the general area. She may have said that in her testimony. It is true that Mr. LeGrande was available and I did attempt to get his testimony in, and Your Honor ruled against it. It does not state here that Mr. LeGrande heard anything. It says, "was present."

As a matter of fact, there were a number of people present, also; Gary Bell, who did hear things and other officers who did not hear things, depending on where they stood or what was occurring. So the fact that there is a statement that an individual was there present, that alone is quite harmless, even if it is not a matter of record.

Since I just got the brief today, I didn't have a chance to take a look at Priscilla Durham's testimony. It may well be in there that he was present or through some other witness anyway; however, assuming that it is not, I submit to the Court that it is harmless because it does not say that he said or heard anything.

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It just said, "LeGrande present." That is a word coming out. They don't know what that is but they do know what Priscilla Durham, who did testify, said.

You do recall, Your Honor, that you had two witnesses testify to hearing that statement. If you take those two witnesses that heard the statement, and you take a simple one sentence where it only says that another individual was present, even if it was inaccurate, it is hardly the type of error that would in any way deprive an individual of a fair trial, because it doesn't say that he heard anything. If anything, it is innocuous. He was there. What does that mean?

No reasonable jury could really think that that meant anything else. And even if they did, they had two other witnesses that heard it anyway. So I would state to the Court that it was harmless, if inaccurate.

MR. JACKSON: Just briefly to rebut, Your Honor. The reason it is offered, LeGrande is offered, is to corroborate the testimony of Priscilla Durham.

If it is harmless, then why even do it

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in the first place? It is obviously directed to support the statement of Priscilla Durham. Mr. McGill suggests that all he is saying is that he was

present, because he is explaining to us now what he really meant when he said, he makes the statement.

But in reading and what I heard, and I certainly made an objection at the time the argument was made, and when I read it again, it still sounds like, when he says he makes the statement, it sounds like he is referring to LeGrande.

MR. MC GILL: Your Honor, if that is the case, it has no meaning at all. Because if I am, as a prosecutor, suggesting that some guy named LeGrande came in and made a statement, maybe the jury can say that he made the statement and Jamal didn't make the statement. So, if anything, that would help him out.

MR. JACKSON: Your Honor, I don't know how to respond to it because I didn't quite understand that.

Your Honor, in summary fashion, before I get to the death penalty, I would also offer

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without argument that the verdict is contrary to the evidence, that the verdict is contrary to the weight of the evidence and the verdict is contrary to the law, as I have indicated before.

I would like to address now the death penalty itself, your Honor. This is the death penalty, of course, of September 13, 1978. I am suggesting, number one, that the death penalty is unconstitutional, in that it requires a standard less weighing of aggravated circumstances as against mitigating circumstances in that such weighing process, A, it is too vague to be constitutionally valid; B, the defendant has no burden of proof and, C, it forced upon the defendant the risk of non-persuasion.

What am I saying by all of that? The act itself suggests that the jury, once a conviction of murder one is imposed, the jury is then to deliberate, whether or not the Commonwealth has presented aggravating circumstances beyond a reasonable doubt, or whether it finds aggravating circumstances beyond a

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reasonable doubt. Then it must also determine whether or not mitigating circumstances have been presented by a preponderance of the evidence.

Certainly, those of us who are trained in the law know very quickly and very easily what the difference between beyond a reasonable doubt and

preponderance of the evidence, what that distinction is. I am suggesting to the Court that the jury was never given any indication of what preponderance of the evidence is.

THE COURT: Yes, it was.

MR. JACKSON: Your Honor, I understand that a definition was given. What I am saying is that no standard as distinguished to reasonable doubt - - let me back up, beyond a reasonable doubt. The standard was given for that, of course, when we had to determine guilt. Once we get to the sentencing phase, it is given again, reasonable doubt as well as preponderance of the evidence.

What I am saying is, the jury then doesn't know how to weigh preponderance of the

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evidence against beyond a reasonable doubt.

THE COURT: They had already been instructed on what reasonable doubt is. And they have been instructed that that is the Commonwealth's burden in proving aggravating circumstances.

MR. JACKSON: Yes, sir.

THE COURT: They were also instructed as to preponderance of the evidence, what that meant.

MR. JACKSON: Yes, sir.

THE COURT: And they also had the mitigating evidence as you gentlemen argued it to them.

MR. JACKSON: Yes, sir.

THE COURT: There is nothing wrong with that.

MR. JACKSON: I think so, Your Honor.

THE COURT: If what your argument is, is that there is no way to determine, having weighed aggravating against mitigating, that is a different factor.

MR. JACKSON: That is what I am arguing.

THE COURT: But the definition was given.

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In this case, they found that the aggravating factor was the killing of the policeman. The mitigating factor was that the defendant had no substantial history in his background. Now, they have to take those two and weight them to see whether or not killing a policeman outweighs the fact that someone has a good background.

MR. JACKSON: Yes, sir.

THE COURT: And that is what they did.

MR. JACKSON: Yes, sir. My point is how do they do that? You just tell them, "You weigh it." There has to be a standard.

THE COURT: It doesn't have to be a standard. They sat as a jury. They say to themselves, "We found him guilty of killing a policeman. We also know that he has a good background. We have to weigh that. Does his background outweigh the fact that he killed a policeman?"

MR JACKSON: In all due respects, there wasn't just one mitigating --

THE COURT: That is all it was.

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MR. JACKSON: No, Your Honor.

THE COURT: I have a copy of it here.

MR. JACKSON: That is not the only one I argued, sir.

THE COURT: You might not have argued it. I am talking about what they found. This is what the jury found on their sentencing report. They found those two factors, one aggravating and one mitigating. And now they have to weigh them, all twelve of them have to weigh it.

I know that that is the argument that Justice Nix has about it. He doesn't think that it is a proper thing, and that is okay. It has been already upheld by the Supreme Court.

MR. JACKSON: By the State Supreme Court in that particular factual situation, I would agree.

Your Honor, to the extent that I disagree with the State Supreme Court on that issue and agree with Justice Nix, and I am sure that the issue will be eventually taken to the United States Supreme Court, because there was a similar Statute in Florida, I believe, that

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is going to go to the United States Supreme Court. But, again, it is the very issue that I am arguing now that is presented in the memorandum, that Justice Nix has already agreed with and I think the -- excuse me one moment. No, it is the New Mexico statute. I said Florida. Forgive me. It is the New Mexico statute, which is very similar to that in Pennsylvania, with regard to what I called the standard less weighing process.

It is not a novel argument and Your Honor is well familiar with it. And I am suggesting to the Court that if, in fact, the jury is to find, and that is what they are asked: If you find an aggravating circumstance and a mitigating circumstance, you have to weigh it. They don't tell you how to weigh it.

THE COURT: Well, the thing is, they can even find one aggravating and two mitigating, and yet the jury can say, "This one aggravating is so severe, it outweighs the two mitigating circumstances."

MR. JACKSON: But, we don't tell them how to do that weighing process.

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THE COURT: There is no way to tell them, there is no way in the world. I can't say to them, "If you find one aggravating and two mitigating, the two mitigating outweigh the aggravating."

MR. JACKSON: Well, Your Honor, if we can't tell them, then we ought not to let them make that decision. That is the point.

THE COURT: The Supreme Court has already ruled on that and I am bound by their decision.

MR. JACKSON: Your Honor, that completes my argument.

THE COURT: Do you have anything on that?

MR. MC GILL: No, Your Honor. I rest on the decisions of the Court.

THE COURT: Let me ask you one thing: Going back to your bill that you submitted, did you submit a petition to Judge Ribner for additional

expenses for a pathologist?

MR. JACKSON: I did, yes, but I never used him. I think I asked for a pathologist and an investigator, but he never approved the

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increase. I submitted it, but he never approved it.

THE COURT: What did he do with it; do you know?

MR. JACKSON: He said, "Give it to Judge Sabo." But at that point, it was too late.

I have the petitions back at the office. I asked him to increase the amount that he would allow me, so that I could go and do it. Then he said, "When you go to trial, ask Judge Sabo." I said, "It is too late then." He said, "Well, I don't know what to do." So, in effect, it just made the whole issue moot.

There were none other than that which I submitted, sir. I think the one that he did increase was for Mr. Fashnecht (sic). I think he increased Mr. Fashnecht's to maybe \$600.00; I think, a total of maybe \$600.00 -- no, \$350.00, I think. I don't have the petition with me, Your Honor, but Mr. Fashnecht has given me a bill for \$750.00. I think he allowed \$350.00.

THE COURT: As I understood it, he told you to file a petition and he would rule on it.

MR. JACKSON: I filed it, for the increase.

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And then he said to let the Trial Judge decide. Then he gave me the standard story, "We only allowed so much because we don't have any money, and there is nothing further that I can do."

I have a copy of the petition to increase. That is the petition, the additional, because there was only one. I filed a series of petitions for compensation for an investigator, the pathologist, ballisticsian, and investigator.

Then when I ran into the problem, I then filed a petition to increase. It may have been with some of them or all of them; I don't recall specifically, but that is the one where he says, "That is all that I can allow now, with the exception of Mr. Fashnecht."

THE COURT: He increased the ballistician?

MR. JACKSON: Yes, sir, that is the only one he did increase.

THE COURT: But you only asked for \$350.00 for him, and you said he gave you \$600.00.

MR. JACKSON: No, he only gave me \$350.00. I made a mistake when I said \$600.00, sir. It was \$350.00, because at that time I thought that all I needed Mr. Fashnecht to do was to provide

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some information, but he did something more, sir.

THE COURT: Your fee petition is a little confusing because you don't conclude in that one spot. You have Keystone --

MR. JACKSON: That is Fashnecht. Keystone is Fashnecht.

THE COURT: He is the ballistician?

MR. JACKSON: Yes, he is the ballistician.

THE COURT: All right, I had the benefit of your brief all day today, and since I was in Chambers I had an opportunity to go over it pretty thoroughly.

In my opinion, the rulings that I made at the time of this trial were correct at that time and I think they are still correct. The motions for a new trial and arrest of judgment are denied.

MR. JACKSON: Very well, sir.

MR. MC GILL: Your Honor, the Commonwealth moves for sentencing.

THE COURT: Gentlemen, I will give you the pre sentence reports that I have and the

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psychiatric, but I don't think it is going to be any good because both of them indicate that the defendant wouldn't cooperate with them. So they don't really have anything in it.

MR. JACKSON: Yes, sir.

MR. MC GILL: I am not sure I understand.

THE COURT: The psychiatrist indicated that the defendant would not cooperate with him. If you want to see them, I can let you see them.

MR. MC GILL: No, whatever Your Honor says. Is that both the pre sentence investigation and --

THE COURT: The pre sentence said the same thing, so that they really don't have anything. I have them here, but they don't really say anything.

MR. MC GILL: Could Your Honor at least make them a matter of record, so it can be shown that they were at least attempted to be done, according to the rules.

THE COURT: Yes, but he would not cooperate with them.

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MR. JACKSON: Very well. I have no objection to moving to sentencing, Your Honor.

THE COURT: Is there anything to be said about sentencing?

MR. JACKSON: I have no argument, Your Honor.

THE COURT: All right.

Mr. Wesley Cook --

MR. MC GILL: I would suggest to the Court -- excuse me.

First of all, I would certainly state that the Commonwealth's position in this case is that we would -- may I state our position at sentencing?

THE COURT: He hasn't said anything. Do you have anything to say to this?

MR. JACKSON: No, I have nothing.

THE COURT: Mr. McGill.

MR. MC GILL: What I would like to do, Your Honor, is to ask the Court if before sentencing, and perhaps the Court is going to do it anyway, would

you ask the defendant if he has anything to say.

THE COURT: He said he has nothing. I

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am assuming then that Mr. Jackson has spoken to the defendant, and he doesn't wish to say anything.

MR. JACKSON: I have not spoken to him, Your Honor.

THE COURT: Will you see if he has anything to say.

MR. JACKSON: Mr. Jamal, do you want to say anything?

There is no response, Your Honor.

THE COURT: I am assuming that if he didn't say anything to the pre sentence investigator or to the psychiatrist, more than likely he doesn't have anything to say to the Court either.

MR. MC GILL: Even if he does not stand or appear not to listen, would Your Honor apprise him of his right to say something at this time, that he has a right to say something to the Court at this time if he wishes.

THE COURT: I assume that counsel has, but I will say it once again.

Mr. Mumia Abu-Jamal, also known as Wesley Cook, before this Court enters sentence

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in this matter, you have an absolute right to say whatever you want to say to the Court in this situation and, of course, the defense attorney has the right to argue also, on the sentencing, if he wishes.

MR. MC GILL: I will just state, for the record, Your Honor, that I am standing beside Mr. Jackson and I have no problem at all hearing what you are saying.

THE COURT: Do you have anything to say, Mr. Jackson, on the sentencing?

MR. JACKSON: I have nothing to say, Your Honor. I have made the argument with regard to the death penalty and my argument speaks for itself. That is contained in the brief. With regard to the sentencing on any

other bills, I have no argument.

THE COURT: Mr. Mumia Abu-Jamal, do you have anything you wish to say to the Court before the Court passes sentence?

THE DEFENDANT: I think that this motion for arrest of judgment, motion for a new trial, the trial itself, and the motion

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to suppress, has supported my argument from the first day that I appeared before you, that your intention from day one was execution. Your intention from day one was conviction. And this shyster to the left of me has proven, numerous times, his inability, his incapability of defending me.

I have demanded from day one the assistance of John Africa. You have denied him. I have told you that I have no faith and no trust in this man. I think, if anything, he has proven that. You have defended him. Mr. McGill has defended him. It is very clear that you have faith in him, because he is working for you. He is the same as the D.A.; he is not working and has not worked for me.

For instance, I have had several days of this trial. I have not seen the motions, motions of testimony, the notes of testimony. I have not seen that motion he just filed before you, that motion for arrest of judgment, and motion for --

THE COURT: That was a brief, he submitted.

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THE DEFENDANT: That brief, whatever it is, I have not seen it.

It is clear that Mr. Jackson is working for you, for the Commonwealth, for the City of Philadelphia. He has never worked for me. You have defended him because he has done your will, not mine.

This trial, from the very beginning, is a farce and a sham. I told you what the outcome would be. I told the jury what the outcome would be.

THE COURT: Is that it? All right.

Mr. Wesley Cook, also known as Mumia Abu-Jamal, the sentence of the Court is that you, under Bill #1358, January Term of 1982, in accordance with the jury's verdict of guilty of murder in the first degree and the jury's further deliberation as to punishment, that the sentence of death be

imposed upon you.

And that being a mandatory sentence provided by law, it is hereby ordered that you will hence be taken by the Sheriff of Philadelphia County to the State Correctional Institution at Graterford and thereafter in

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due course to the State Correctional Institution at Rockview, or any other state correctional institution or place designated by law, and that you shall suffer death during that week affixed by the Governor of the Commonwealth of Pennsylvania, in the building erected for that purpose on land owned by the Commonwealth, and that the time, place, and circumstances of your execution, in accordance with the law, shall be in accordance with the Governor's warrant as prescribed by law.

That such punishment be inflicted by either the warden or deputy warden at the State Correctional Institution at Rockview, or any other state correctional institution prescribed or designated by law, and that the execution be by such person as the warden of said institution shall designate, by causing to pass through your body a current of electricity of intensity sufficient to cause death and the application of such current of electricity to be of such intensity and volume and of such continuity that you are to expire or until you are dead. May God in His Infinite Wisdom have mercy on your soul.

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THE DEFENDANT: Long live John Africa.

I am going to tell you one thing: You have sentenced yourself, just like Judge Malmed, just like Malcolm, just like Merna Marshall, and every Judge who dares to sit up there and act like you got some justice. You are wrong. You have just been sentenced to death. You have just been convicted.

THE COURT: Under Bill #1357, January Term, 1982, you have been found guilty of possession of an instrument of crime generally.

The Court sentences you to the State Correctional Institution at Graterford for a period of no less than two and a half and no more than five years, to run consecutive to Bill #1358.

In addition, the Court assesses a fine in the sum of \$10.00 for the Victims Compensation Fund.

The Court wishes to advise you that your death sentence will automatically be appealed to the Pennsylvania Supreme Court. In due course, you will be notified of the procedure to follow in order to have the

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sentence under Bill #1357, possession of an instrument of crime generally, transferred to the Supreme Court.

In the event that you do not receive such a notice, the Court wishes to advise you that you have 30 days within which to appeal to the Superior Court on Bill #1357, January Term of 1982, dealing with the conviction of possession of an instrument of crime generally.

Is there anything else, gentlemen?

The Court wishes to advise you that you have Court-appointed counsel and, apparently, Court-appointed counsel will be --

THE DEFENDANT: I do not have Court-appointed counsel. I have a Court-appointed baboon.

THE COURT: -- necessary for your appeal.

THE DEFENDANT: Your Honor, I have a Court-appointed shyster.

MR. MC GILL: You mentioned 30 days for appeal to the Supreme Court too.

THE COURT: No, that is automatic on the death sentence.

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MR. MC GILL: All right, sir.

THE COURT: I am just concerned about #1357, the possession of an instrument of Crime generally. But there is a procedure in which counsel will receive notification. Once this matter hits the Supreme Court, the Prothonotary of the Supreme Court will send you a notice as to how that matter will be turned over to the Supreme Court, so that they can both be decided on at the same time.

MR. JACKSON: Your Honor, to the extent that the Supreme Court has dealt with the issue of my continued representation, it was my understanding that my representation would be terminated at this stage, since this was considered part of the trial stage and if, in fact, Mr. Jamal

wished another lawyer or wished to proceed himself, he would do that at the termination or at the conclusion of the post-trial motions.

THE COURT: You have to file your petition before the Supreme Court.

MR. JACKSON: It is just that I have never been appointed to represent him during

Page 168.

the appeal, only at the trial stage.

THE COURT: If you look at your appointment sheet, you will see that you are appointed all the way up to the Supreme Court.

MR. JACKSON: Very well, sir.

THE DEFENDANT: He can do as good as he has done, nothing. Long live John Africa. On the move. Fuck you, Judge. Fuck you.

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(MATTER CONCLUDED)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Judge

IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION

COMMONWEALTH :  
: January Term, 1982  
VS. :  
: :  
MUMIA ABU-JAMAL :  
: :  
aka :  
: No. 1357-1358  
WESLEY COOK :

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PCRA Hearing

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Monday, July 17, 1995  
Courtroom 653, City Hall  
Philadelphia, Pennsylvania

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BEFORE: THE HONORABLE ALBERT F. SABO, J.

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APPEARANCES:

- CHARLES GRANT, ESQUIRE
- HUGH BURNS, ESQUIRE  
Assistant District Attorneys  
For the Commonwealth
  
- JONATHAN PIPER  
Council for the Defendant

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Page 2.

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(At 10:25 a.m. the hearing was convened  
in the presence of the Court and the attorneys.)

- - - - -

MR. PIPER: Good morning, Your Honor. Jonathan Piper on behalf of the  
Petitioner Mumia Abu-Jamal.

I have presented to Your Honor and to Mr. Banks Petitioner's emergency  
motion to reconsider the order scheduling a hearing date to certify orders  
for interlocutory appeal and to stay a hearing pending appeal.

Mr. Banks I think would like a moment to read it?

MR. BURNS: I think Your Honor would perhaps also.

THE COURT: I don't want to even read it because we don't have the  
Defendant here. We didn't make arrangements to have him brought down  
today and I am not going to go into any proceedings without him.

MR. PIPER: Your Honor, we will --

THE COURT: We will take that up tomorrow when he is going to be here.

Page 3.

MR. PIPER: Your Honor, one of the problems that we've had is that we  
haven't been able to meet with the Defendant over the weekend.

THE COURT: Well, that is your problem, Counselor.

MR. PIPER: What I would suggest is that we continue the hearing at least  
one day.

THE COURT: Well, I said tomorrow because he is going to be brought in

tomorrow.

MR. PIPER: Then we should continue the evidentiary hearing at least one day so that this motion could be presented.

THE COURT: You could present it first thing in the morning, I will take it up.

MR. PIPER: We would also then plan to appeal to the Supreme Court.

THE COURT: I don't know how you are going to appeal it. I am not certifying anything.

MR. PIPER: Would you continue the hearing for at least one day, the evidentiary hearing?

THE COURT: I don't know, take it up tomorrow. Tell me what your problems are

Page 4.

tomorrow, okay.

MR. PIPER: Would you stay these proceedings while we take our appeal?

THE COURT: Counselor, will you bring it up tomorrow when we could have the Defendant present? That's all I am going to do now. Since he is not here, I am not going to hear it.

MR. PIPER: Your Honor, we will be appealing. Would you stay these proceedings while we appeal?

THE COURT: You could do anything you want. If the Supreme Court wants to listen to you, that's fine. I can't tell you what to do, Counselor. I am not here to represent you or anybody else. I'm here to make a decision. And I have already made a decision in this matter. But I said if you can give me any cases that would justify my reversal of that decision, I'd do it. If you have cases, give them to me and I will read them today. If you don't have them, too bad.

MR. BURNS: Thank you, Your Honor. May it please the Court: My name is Burns, not Banks. That's all. Thank you, Your Honor.

THE COURT: Counselor, do you want to

Page 5.

put your name down too for the record.

MR. GRANT: I believe he knows my name, Your Honor.

MR. BURNS: Thank you, Your Honor.

THE COURT: Okay.

MR. PIPER: Your Honor, one other housekeeping matter which is really just a presentment of the order you granted Friday appointing a spiritual advisor from the --

THE COURT: Yes. And I waited all day Friday for you.

MR. PIPER: We called Friday afternoon and we were advised that --

THE COURT: You did not call.

MR. PIPER: Yes.

THE COURT: We were here until 4:30. Don't give me that.

MR. PIPER: I called at 4:00 o'clock and there was --

THE COURT: Well, yes, that's not true, Counselor. You should have had it over. See how small that is (displaying)? You could have had that over at ten o'clock in the morning, eleven o'clock in the morning, any time.

Page 6.

MR. PIPER: Your Honor, the order was not even granted until after twelve o'clock and we called your office and you were not there.

THE COURT: You have one paragraph, roughly one paragraph here? Do you see how small it is. What's the big deal, why didn't you get it to me? You could have probably seen him over the weekend.

I will sign that right now. I have no problem doing that. Today's the 17th?

THE COURT CLERK: That is correct, Your Honor.

THE COURT: But I didn't even know why you need it because he has already been appointed spiritual advisor to the Defendant. And you told

me it was in Greene Prison, out in Western Pennsylvania there.

MR. PIPER: Your Honor, I don't know the details. Mr. Weinglass would. But you did indicate --

THE COURT: You mean he didn't tell me the truth?

MR. PIPER: I said I am not familiar with that.

THE COURT: You were there, weren't

Page 7.

you?

MR. PIPER: That's what he said, yes.

THE COURT: That's wrong?

MR. PIPER: Whatever he said is true. Whatever you granted the order based on is what is true.

THE COURT: It is based on his telling me the truth, and I assumed that's what he was doing.

MR. PIPER: Exactly.

THE COURT: Okay. Now, it reads as follows: And now this 17th day of July, 1995, upon consideration of Petitioner's motion for Steve Wisner to be appointed spiritual advisor to Petitioner, and Respondent 's lack of objection thereto, it is hereby ordered, adjudged and decreed that the Petitioner's motion is granted.

Is there anything wrong with that, gentlemen?

MR. GRANT: No, Your Honor.

THE COURT: Okay. See that.

MR. PIPER: Your Honor, if we could have copies of the orders we would appreciate it.

THE COURT: Well, I will tell you what

Page 8.

I will do: I will sign your copies for you.

MR. PIPER: Thank you.

THE COURT: But if they have to be certified you better take it to the Clerk.

MR. PIPER: Thank you, Judge.

THE COURT: Let me give copies to the D.A. also so that they know what I'm doing.

MR. GRANT: Thank you, Your Honor.

THE COURT: Give this to the D.A. so he will have his copy.

THE COURT OFFICER: (Handing.)

THE COURT: Here is a copy for the defense. And I am going to keep a copy for myself and I am going to hand the original to the Clerk of Court. This is the original for the Clerk of Court.

Okay, that's all for today, gentlemen.

Do I have to sign these?

THE COURT CLERK: Yes.

THE COURT: All right, we will adjourn.

THE COURT OFFICER: There being no further business, this Court now stands adjourned.

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THE COURT: Until tomorrow morning, gentlemen.

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(The hearing was concluded at 10:45 a.m.)

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# FIRST DAY OF TRIAL

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

		January Sessions, 1981
COMMONWEALTH	:	NOS. 1357 Poss Instru of Crime
	:	Gen
VS.	:	Poss Instru of Crime
	:	Weap
MUMIA ABU-JAMAL	:	1358 Murder
	:	Voluntary
aka	:	Manslaughter
	:	
WESLEY COOK	:	1359 Involuntary
	:	Manslaughter

Philadelphia, Pa., June 17, 1982

Courtroom 253, City Hall

Before: HONORABLE ALBERT F. SABO, J. and Jury

## APPEARANCES:

- JOSEPH MCGILL, ESQUIRE  
Assistant District Attorney for the Commonwealth
- ANTHONY E. JACKSON, ESQUIRE  
Backup Counsel for the Defendant
- MUMIA ABU-JAMAL  
pro-se

1.2

(The following took place at sidebar on the record as follows:)

THE COURT: What do you want to see me about?

MR. MCGILL: I think Mr. Jamal has some comment and I also had some comment with reference to procedure I want to find out.

THE COURT: Whoever wants to go first.

MR. MCGILL: Do you have any objections?

MR. JAMAL: Go ahead.

MR. MCGILL: Your Honor, in terms of procedure, as I understand it, the defendant is still representing himself and, consequently, will be opening and examining, cross-examining, etcetera. I would just state to the Court and also, of course, remind Mr. Jamal -- and it may very well not be intentional -- but, of course, the only thing that we can really state in an opening, is he chooses to open or deal with in terms of procedure in this trial is evidence, and anything outside the record, opinions, anything that is outside the scope of the relevant evidence, for the trial would be inappropriate.

I normally would not say this at the

1.3

beginning of the trial but only because of the fact that Mr. Jamal has never really tried a case. He is not a lawyer. Of course, I would consequently object if there were other things that are occurring. I would hope there wouldn't be constant objections, and I would ask the Court at times to instruct Mr. Jamal to stick with evidence or what he intends to show or whatever, however he wishes to present himself.

Secondly, Your Honor, I have a request to make of the Court, that is because of the volume of material in this particular case I would ask that Detective William Thomas be in the courtroom. He does not have to be beside me. As a matter of fact, he will not be beside me but there may be times when I will have to consult with him particularly because of the number of statements, and to expedite the trial as opposed to my looking around for something that I may not be able to find, it may be a lot easier for him to find out. I will make that request.

THE COURT: Is he going to testify?

MR. MCGILL: He may testify but not to any facts, sir. Of course it's within the Court's discretion to permit some individuals

1.4

in the Court connected in the case for purposes that are reasonable. This man is an assigned detective and I just -- I may physically find it a little difficult to find something in a minute's notice because of the volume of the material. That's the only thing.

Of course, Mr. Jamal will assist Mr. Jackson one way or the other. I, of course, have no objection. It's a Court order requirement of law.

He, of course, will not be sitting at my table unless it will be absolutely necessary. But at least he will be aware of where different things are and how to get it. I make that request.

Also, Mr. Jamal has made a request to view the photographs in this case. I have shown my entire file during the course of discovery matters to Mr. Jackson and he recognized that. However, Mr. Jamal now is representing himself and wants to see photographs. I am prepared to show him these photographs right now, Judge. We should take about five or ten minutes. I'm quite sure that he's familiar with some of them, most of them, but I'll show him all the photographs that I have. I believe I have the

1.5

full set with me and I will show him that.

He's also asked to hear a tape of witnesses. I also have no objection that he hear the tape of the witness. That tape, however, practically speaking would not be -- I don't think I should show or have Mr. Jamal hear it at this time now. He may at the end of the day, however, hear it when the jury is out. We can perhaps leave at 4:00 o'clock or whatever the Court wants.

THE COURT: I want to alert you that we may have to break at 3:00 o'clock for the simple reason that one of the jurors would have to be escorted by one of our tip staff to a settlement at 3:30.

MR. MCGILL: Okay.

THE COURT: And, of course, the Court officer will be with that juror at all times during the course of that settlement and then bring him back immediately.

MR. MCGILL: Okay. Well, that would give me an opportunity then if they were to leave to have a tape played for Mr. Jamal as he wished.

In as much as I will probably be putting on the Crime Lab early in the evidence I could

1.6

show him the photographs now. He, of course, has already seen the sketch, just a big sketch, of the same area that he's seen that is associated

with all the statements.

THE COURT: All right.

MR. MCGILL: Let's see what else.

THE COURT: The only thing is you say that Thomas -- I want to hear the Position about Thomas sitting in the courtroom since he will be a potential witness.

MR. MCGILL: Potential, Judge, I guess, yes. Search warrant, he's not a fact witness. Certainly not an eyewitness. He didn't take a statement. The defendant --

THE COURT: The only testimony will concern the search warrant.

MR. MCGILL: Judge, he's the assigned detective.

THE COURT: I know that.

MR. MCGILL: I can't be limited to that. The reasons I can't tell you is because I don't know. It may become of importance at a later time. I also might add, I have no objection that Mr. Jamal's relatives stay in the courtroom

1.7

except potential witnesses. For example, his brother is a potential witness. I don't think he should be in the courtroom. If he has a strong objection I may withdraw that, but at any point -- as a matter of fact, if he does want both of his brothers in the courtroom I will not object to that. His entire family may stay in the courtroom whether they testify or not, whether they testify as to facts or not. I think, Judge, that probably covers it. I'm hopeful that I don't have anything else unless Mr. Jamal --

THE DEFENDANT: Okay. An omnibus motion filed before Judge Ribner, one of the things we were looking for were the criminal police records --

MR. MCGILL: That's right.

THE DEFENDANT: -- of all witnesses --

MR. MCGILL: That's right.

THE DEFENDANT: That was promised but yet to be delivered and it was promised before trial. I didn't think it was five minutes before trial. We

also were supposed to hear those

1.8

tapes. I haven't heard them yet. I mean, if you're suggesting that we listen to them after you begin your opening, you know, again, the agreement was to have them heard before trial. I haven't seen those photographs.

MR. MCGILL: Photographs?

THE DEFENDANT: Yeah.

THE COURT: He said he is going to show them.

MR. MCGILL: Now.

THE DEFENDANT: We're talking about police records of witnesses, we're talking about tapes, we're also talking about photographs. I haven't seen any of those.

MR. MCGILL: All right. Now the fact of the matter is, it is true that he -- I assume he has probably seen something or talked with Mr. Jackson over a period of six months that he's been representing him. However, Mr. Jamal is correct about the criminal records and I do have the criminal records and I could, in fact, and will show the criminal, records to -- and it is an updated criminal record. I checked that out and he will receive that before

1.9

the witness takes the stand.

THE DEFENDANT: The agreement was before trial not before the witness took the stand.

MR. MCGILL: It is my view --

THE DEFENDANT: The difference is having that information now --

THE COURT: Just a minute. What's the difference in giving it to him now? Is that what the agreement was?

THE DEFENDANT: Before trial.

THE COURT: I don't want to be held up on lousy technicalities. If you're going to give it to him, give it to him. What do I care?

MR. MCGILL: Fine. For the sake of the witnesses, Judge, until they take the stand it was my concern that, again, because of the press he may just send it out to the press for all I know, with what's been going on.

THE COURT: What difference does it make? Who cares if he sends it out to the press? The jury is sequestered. I don't really care.

MR. MCGILL: It's an embarrassment and surprise to the individual involved.

1.10

THE COURT: Why didn't you contend his order? Is this his order?

MR. MCGILL: I don't know specifically if that was his order, but if Your Honor feels that he should receive it then I'm not going to argue with it.

THE COURT: I don't know.

MR. MCGILL: I'll give it to him.

THE COURT: They're saying to me you had an order or agreement, or whatever you had. I don't know what you did. I'm coming into this case cold. I don't know anything.

MR. MCGILL: I think I do recall Judge Ribner saying, one, with the criminal records, due privacy -- I believe I did say before trial.

THE COURT: Okay. Then give it to him.

MR. MCGILL: I will.

THE COURT: No problem.

MCGILL: If he wishes I will.

DEFENDANT: What about the tapes?

Mr. MCGILL: There was never an agreement as to when they would be played. I don't see any problem at all with them being

1 . 11

played this afternoon because the witness will not go on the stand, the witness will not be on the stand before the tape.

THE DEFENDANT: Well, the agreement was, again, that we set up some procedure where I could hear those tapes and view the photographs before trial. You remember very clear, this is not new to you.

MR. MCGILL: Well --

THE DEFENDANT: That agreement was made before Judge Ribner.

MR. MCGILL: There was no agreement made before Judge Ribner about that.

THE DEFENDANT: Sure.

MR. MCGILL: The first time I heard about your desire to see the photographs and the tape was through Mr. Jackson after you made the decision to represent yourself. He said that to me maybe ten days ago, maybe a week ago. I don't remember exactly when. That was the first time I heard that. Up until the last hearing we had was the first time you said you were going to represent yourself. There was no need to show you tapes and photographs at the hearing with Judge Ribner. All of them

1. 12

were shown and Mr. Jackson had listened to them. It had to happen after that.

I am prepared to show them to Mr. Jamal now. I am saying as of time the witness won't go on until tomorrow or Saturday or Sunday, whatever the Court wants. And he will hear the tape this afternoon. There's no problem with that. There's no specific agreement and he will hear it. In fact, I'll get the photographs now. You want to go back there?

THE COURT: You can show them here. I don't care.

MR. MCGILL: Okay.

THE COURT: What's this tape say? What they said in writing? Is it the same thing?

MR. MCGILL: No. The tape is Cynthia White's statement.

THE COURT: It wasn't put down in writing?

MR. MCGILL: It was not a written thing. The writing was a different statement she made and I also had a tape of her made. But I'm going to

play it. It's just a question of whether it's now or I'll do it after court today.

THE COURT: But you are not going

1.13

to use that witness and you are not going to --

MR. MCGILL: Right.

THE COURT: You are going to play that tape today?

MR. MCGILL: Right.

THE COURT: But you will play the tape for him this afternoon?

MR. MCGILL: That's correct.

(A discussion was held off the record.)

THE DEFENDANT: Obviously, what's necessary is to hear that tape and to examine the information on that tape. I don't know what's on that tape. I have absolutely no idea. There's no transcript existing. So to suggest that I should hear the tape when everyone else in court hears the tape is absurd.

MR. MCGILL: No. No. No. I'm sorry. I did not mean to say that to you if that's what you thought.

THE DEFENDANT: You suggested I should hear it after the trial.

MR. MCGILL: After it begins. No one's going to be there. Everybody here is going to leave at 3:00 o'clock because court will be

1.14

recessed. It will just be you, me, Mr. Jackson and the detective. At that point we will play the tape so we'll hear it before everybody else hears it. That's all it is. It's much to-do about nothing.

THE DEFENDANT: Easy for you to say.

MR. MCGILL: Not really, Mr. Jamal, because you will hear it alone. That's it. You will hear it alone or with your counsel.

(A discussion was held off the record.)

THE COURT: Is there anything else, gentlemen?

MR. MCGILL: Let me show the photographs to him.

THE COURT: It's 10:45. If you're going to show photographs --

THE DEFENDANT: The point about the tape is I don't know what's on the tape, I don't know what information at all is on the tape. To suggest that I read certain statements that the tape should be consistent with, that is -- I mean, you know, I don't want to make that assumption, obviously. I think you had ample time and opportunity to have that tape played.

1.15

THE COURT: You can play the tape if you want to during the lunch hour.

THE DEFENDANT: Before trial. I'm talking about before trial so that I can analyze that information.

THE COURT: The only thing before trial now is going to be my opening remarks to the jury, your pleading to the charges, his opening remarks, your opening remarks, if you want to give them now or you can wait until after the District Attorney finishes his case completely, and before you present any of the evidence you can have your opening. You can reserve your right to open. Do you understand what I'm talking about? Mr. Jackson will explain it to you so that that's no problem. And he's evidently just going to go into some background information.

MR. MCGILL: I will put the Crime Lab man on first for identification of the body.

THE COURT: And things of that nature, background, which is not really material to what you want. And during the lunch hour, if you want to, you can play the tape. You can eat lunch at

1.16

3:00 o'clock. It doesn't make any difference to me.

(A discussion was held off the record.)

THE DEFENDANT: Could I speak with Mr. Jackson?

THE COURT: Yes.

(A discussion was held off the record.)

THE DEFENDANT: Tony Jackson wants to make a message of a technical violation in regard to that tape thing.

MR. JACKSON: Your Honor, I had spoken to Mr. McGill at least ten days ago with regard to Mr. Jamal's request for the tape. He agreed that he would hear that tape, review the photographs in evidence prior to trial. I've talked to him several times subsequent to that and I think that there's no contradiction of that. I believe in the spirit of the discovery rules consistent with the discovery rules, notwithstanding the fact that I may have heard the tape, Your Honor well understands that Mr. Jamal represents himself. Mr. McGill indicates now that he's going to put on some background people

1.17

like the Crime Lab and things of that sort. This tape of an alleged eyewitness will contain information relative to positions, activities and things of that sort. To say that you're going to give the tape to Mr. Jamal after several, one or several, witnesses testify will deny him that information that may be pertinent and relative.

THE COURT: Let me ask you this: Is there an order? Is there a Judge's order on this?

MR. JACKSON: There is an order that the tapes and statements and all be turned over to counsel. The problem is that it was turned over to me and not Mr. Jamal.

THE COURT: You were counsel at that time?

MR. JACKSON: That's right. The only thing, photographs and tape he could not hear them and he could not view the photographs. He's been given all the statements, Your Honor. I'm saying just as the statements have been turned over to Mr. Jamal the tape and photographs can be as well since he is counsel, Your Honor. And to deny him that I think is going to put him at a disadvantage.

1. 18

THE COURT: Well McGill, what do you want to to? It's 20 minutes of 11:00.

THE DEFENDANT: Also the criminal records.

THE COURT: You're going to give it to him? Not criminal records?

THE DEFENDANT: We also want the criminal records.

THE COURT: I don't know anything about this order. As far as I am concerned it can wait until lunch time. Whatever you want to do but let's do something. I have a jury waiting out there, there are people in this courtroom.

MR. MCGILL: Judge, I'm ready to proceed. There was no definite agreement with Mr. Jackson. He couldn't very well find an order since it was based on what he's talking about is --

THE COURT: He says he's got some kind of written order from the Judge. I don't know. I don't know what people have. I don't understand. Why didn't you say something yesterday?

MR. JACKSON: Judge, I said it to him

1. 19

yesterday. He said, "We'll do it at the end of the day or tomorrow morning." I've been telling him.

MR. MCGILL: I said the end of the day or tomorrow morning. In terms of the tape, I don't know, the photographs, yes. However, Judge, there's definitely no order because Judge Ribner was not even involved in it.

THE COURT: Where is the original order?

MR. JACKSON: There's no order saying prior to the trial. It was in the omnibus motion.

THE COURT: What did it say?

MR. MCGILL: That referred to when he was counsel and he heard everything.

MR. JACKSON: I understand --

MR. MCGILL: You're not saying you didn't hear the tape?

MR. JACKSON: Yes, I heard it. I'm not denying that. It was pursuant to the omnibus motion, Judge.

THE COURT: How long does it take to play the tape?

MR. MCGILL: Let me see if it's here. If it's not here it's a different problem.

1.20

(A discussion was held off the record.)

THE COURT: What's the situation, Mr. McGill?

MR. MCGILL: The tapes are over at the office. He can go get them. If you want to, Judge, we can play it now, but unfortunately it's a delay. But we can do it. He may be looking in an omnibus motion but this, however, was filed when Mr. Jackson was counsel and was complied with. So the only thing we're talking about is Mr. Jackson's statement after the last hearing when Mr. Jamal indicated he was going to represent himself.

THE COURT: I have to cut the cord. Why don't we show him the pictures now that you have --

MR. MCGILL: Right.

THE COURT: -- play the tape for him at lunch time -

MR. MCGILL: Right.

THE COURT: -- and we'll move ahead.

MR. MCGILL: What I'll do is I'll

1.21

have -- during the course of the morning session, however it is, you give an opening, my opening --

THE COURT: He may not want to open now.

MR. MCGILL: Whatever. Whatever, Judge. Thomas will go over and get it and we'll then have it. I'll have a record.

THE DEFENDANT: Okay. I still haven't gotten the criminal records and that was part of it.

THE COURT: He will give it to you. One other thing, the Court Crier wants to know how does he want to be arraigned. Under Mumia Abu-

Jamal, or the other name down there?

MR. JACKSON: Yes.

MR. MCGILL: Yes.

THE COURT: You don't want to say also known as? No?

MR. JACKSON: It was formally changed, the Bill of Information was formally changed.

THE COURT: Mr. Jamal has indicated that he wants to be arraigned under Mumia Abu-Jamal. We won't use the Wesley Cook.

1.22

What Bills are we proceeding on? There's only two Bills, Murder, Possession of Instrument count.

MR. MCGILL: First count only.

THE COURT: You can't proceed on the other one anyway.

MR. MCGILL: Judge, it might be better, if Your Honor wouldn't mind, if we could have the three of us or at least two plus maybe Thomas in the room looking at the photographs. Could we do that?

THE COURT: Well, the jury's there. I think it's better not going in chambers. The jury's right next to me.

MR. MCGILL: Your chambers?

THE COURT: Yes, they're right back there. There is a room in here, or you can sit at the table.

MR. MCGILL: Is there a room in there?

THE COURT: There is a room here. You can take a look.

MR. MCGILL: Fine.

THE COURT: You can go in there,

1.23

take a look at the pictures, and do what you want. Let's try to push it. It's

quarter of 11.

(Side-bar conference ended.)

(A short recess was taken.)

(A side bar conference was held on the record as follows:)

THE COURT: All right. Gentlemen, can I see you over here a minute. Please, let's get moving.

MR. MCGILL: Your Honor, I've shown the photographs to Mr. Jamal. I've also given him a copy of criminal records of the witnesses that I may call. I don't have the criminal records of any other person, I think he may call -- I don't know whether he will or not -- Hightower or Pickford, Robert Pickford, I have to find them. I think they have one. Michael Marscarland does not have a record so there's none there. As far as I know, Your Honor, I would ask the Court to make an order to counsel as well as the defendant that those records should not be made public. Irrespective of the jury, Your Honor, I think in the privacy of the

1.24

witnesses --

THE COURT: I agree. I will make such an order that those records are to be sequestered and not to be shown to anybody else and not to be publicized in any way except what may come out in this courtroom of course, Jackson knows what he can advise Mr. Jamal, what convictions can be used for impeachment purposes, if that's what he intends to do. But under no circumstances are those records to be given to anybody.

MR. MCGILL: I will have a side bar before I call them so that we can clarify on the record the extent to which the law permits cross-examination.

THE COURT: All right. But in the meantime, they should not be shown to anybody else. I agree. I don't think that's fair. I think Mr. Jackson and Mr. Jamal will agree to that.

MR. MCGILL: Do you agree, Mr. Jackson?

THE COURT: Criminal records are not public information.

1.25

MR. MCGILL: It's an order.

MR. JACKSON: You understand that there is no secret about Cynthia White's record. There is no secret about that so if it comes out tomorrow --

THE COURT: I just want to make sure that you are not the one disseminating this information because a person's criminal record is their own and should be used only in official business. It's no one else's right to know.

THE DEFENDANT: These are my copies?

MR. MCGILL: Yes.

THE COURT: It was brought to my attention, though, that you have engaged a private stenographer. Who is that?

MR. JACKSON: Judge, she is a student up at Temple School. We're attempting to accommodate Mr. Jamal's wishes. On Monday we would have a motion for Your Honor to allow two certified stenographers who would be able to provide him daily copy. She is --

THE COURT: All I want to know is, who is paying for this. The Court is not going

1.26

to pay for it. In other words, the City is not paying for this.

THE DEFENDANT: At all?

THE COURT: This is coming from Mr. Jamal's funds.

MR. JACKSON: She's right there.

THE COURT: He just wants that for his own?

MR. JACKSON: It wouldn't be used to contradict; it's only for a daily study.

THE COURT: I don't know. What is your position? Do you know any law on this? Anybody have any law on this?

MR. MCGILL: Whether or not is strictly within the discretion of the Court, I'm convinced. I don't think there's any law prohibiting counsel to have such things presented. There are problems and I think Mr. Jackson

recognizes them. For one reason, we've already basically agreed that it cannot be used for purposes of impeachment since it's not official. As a matter of fact, unless the Court here would permit the actual court certified stenographer in

1.27

this particular room only those stenographers and what they have on their machines can be used for purposes of impeachment.

THE COURT: There's no doubt about that.

MR. MCGILL: I'm just putting it on the record, Judge.

MR. JACKSON: Sure.

MR. MCGILL: Secondly, if he wants, Mr. Jamal wants something, in order words, to have his daily evidence, the evidence of the Commonwealth or his own recalled for his benefit, and he's providing them at his own expense, I don't know that the Commonwealth can prevent that. It's within the discretion of the Court. There may be some feelings with the stenography staff as far as being a precedent and so far, it might be considered. However, I cannot say, Judge, that we have an objection to that because we're --

THE COURT: The only thing I can say, since you don't know the law about this, that's all, I'll take it up with President Judge Bradley.

1. 28

MR. MCGILL: Fine.

THE COURT: That's the only thing I can say at this time as far as I'm concerned.

THE DEFENDANT: What about in the meantime?

THE COURT: What do you mean, "In the meantime?"

THE DEFENDANT: I mean, you know, today?

THE COURT: You should have let me know this in advance and I could have checked it out and we could have been ready for it.

THE DEFENDANT: It's been several weeks.

THE COURT: I don't particularly care if somebody's taking notes. They are not official. The only official notes is what the official stenographer takes.

THE DEFENDANT: Judge --

MR. JACKSON: Judge, I think technically you could characterize whatever she does on the machine being the very same on everyone else's machine taking notes in the courtroom.

1.29

THE COURT: That's the status of it.

MR. JACKSON: There's only one true copy and I don't think anybody's debating that.

THE COURT: I think for the record we ought to have her name.

MR. JACKSON: Patricia Draper.

THE COURT: Do you know where she lives?

THE DEFENDANT: Student at Temple University.

THE COURT: Why don't you find out? Let her come up here. Tell her to come up here. It's easier to let her put it on the record.

Will you give us your name and address for the record?

TEMPLE STUDENT: Pat Draper, 1936 Independence Street.

THE COURT: And you are the stenographer, or are you learning?

TEMPLE STUDENT: I'm a Temple student at this time.

THE COURT: You're a student?

1.30

TEMPLE STUDENT: Yeah.

THE COURT: And you're learning how to take down the dictation?

TEMPLE STUDENT: Dictation, yeah.

THE COURT: All right. Okay.

TEMPLE STUDENT: Is that all, sir?

THE COURT: Yes. What year are you in?

TEMPLE STUDENT: Pardon me? I'm in my fourth semester at this time.

THE COURT: It's your second year?

TEMPLE STUDENT: Yeah.

THE COURT: And how long have you been taking this?

TEMPLE STUDENT: Two years.

THE COURT: For the two years. All right. You may have a seat. I'll try to reach Judge Bradley during the luncheon recess and find out if there's any problems that I have. See, this is the first time anybody has brought anybody else in. I'm not familiar with her violating any union contracts or something of that nature.

1. 31

I don't want to get involved in that if we are, you know what I mean.

MR. MCGILL: Really, in a sense it constitutes having like a secretary at your table. That's basically what it constitutes.

THE COURT: I'm not worried about that. I don't want to get any flack about any unions that we're somehow violating their contract with the courts or something. I'm not that familiar with it because I've never had this before. But I will check with Judge Bradley during the noon recess and we'll find out what the status is. Anything else we have?

MR. MCGILL: That's all, Judge.

(Side bar conference ended.)

(The following took place in open court in the presence of the jury:)

THE COURT: Good morning.

THE COURT CRIER: Swear the jury, Your Honor?

THE COURT: Yes, please.

1. 32

MR. MCGILL: Your Honor, the Commonwealth formally moves to trial, Commonwealth versus Mumia Abu-Jamal, 8201, Number 1358 charging this defendant with Murder, also 6210, Number 1357 charging this defendant with Possessing Instruments of Crime generally. Your Honor, the Commonwealth is prepared to proceed.

THE COURT CRIER: Swear the jury, Your Honor?

THE COURT: Yes, please.

(The jury was duly impaneled and sworn.)

THE COURT CRIER: May I arraign the defendant, Your Honor?

THE COURT: Yes, please.

THE COURT CRIER: Mumia Abu-Jamal, on Bill of Information Number 1358, January Term, 1982 charging you with Murder, victim Police Officer Daniel Faulkner, to this Bill of Information how do you wish to plead, sir?

THE DEFENDANT: (No response.)

THE COURT CRIER: No response,

1.33

Your Honor.

THE COURT: The Court will enter a response of not guilty to that charge.

THE COURT CRIER: On Bill of Information Number 1357, January Term, 1982 charging you with Possessing Instruments of Crime generally, to this Bill of Information, sir, how do you wish to plea?

THE DEFENDANT: (No response.)

THE COURT CRIER: No response, Your Honor.

THE COURT: All right. The Court will enter a response of not guilty.

MR. MCGILL: Your Honor, may I see you at side bar?

THE COURT: Yes.

(A side bar conference was held on the record  
as follows with the defendant present:)

MR. MCGILL: I think we should put of record that the defendant was plainly in view and in hearing range of Judge Sabo as well as the Crier who, in fact, was almost right next to Mr. Jamal, and I clearly heard him some ten

1.34

or 15 feet away. He was arraigned on both of the charges and Mr. Jamal failed to respond. Under the law it is appropriate under these circumstances for the Judge to enter a plea of not guilty but I wanted the record to reflect clearly that Mr. Jamal in no way was in a position of not being able to hear what the Crier stated. And if there is any objection to what I just said, Mr. Jamal has an opportunity to respond to that since he is right beside me. There is no response to that, Your Honor. I'm prepared to proceed.

THE COURT: Did you know he was not going to respond, Mr. Jackson?

MR. JACKSON: I did not.

MR. MCGILL: I am not sure Mr. Jackson really knows what's going on.

THE COURT: You did this of your own volition, you know.

THE DEFENDANT: I need a microphone, Judge.

THE COURT: What's that?

THE DEFENDANT: I need a microphone.

1.35

THE COURT: You don't need a microphone to plead --

THE DEFENDANT: I'm talking about speaking --

MR. MCGILL: Judge --

THE DEFENDANT: -- so that everyone can hear me.

MR. MCGILL: He doesn't have to willingly do that. He's made his decision. There's no question about it. He's allowed to do that.

(Side bar conference ended.)

(A discussion was held off the record.)

THE COURT CRIER: Jurors, to these Bills of Information Numbers 1358 and 1357 a plea of not guilty has been entered by the Judge. Mr. Jamal, how do you wish to be tried, by a Judge without a jury or by a jury, sir?

THE DEFENDANT: (No response.)

THE COURT CRIER: No response, Your Honor.

1.36

MR. MCGILL: Your Honor, under those circumstances, Your Honor, he has an absolute right to a jury and that, I think, is preserved at this point.

THE COURT: Yes. Go ahead. Proceed.

THE COURT CRIER: Jurors, to these Bills of Information 1357 and 1358 a plea has been entered by the Judge of not guilty and Mr. Jamal is being tried by a jury. If you find the defendant at the bar of the court guilty, you will say so. If you find the defendant at the bar of the court not guilty, you will say so and no more. Jurors, good and true, stand together and harken to the evidence. Please be seated.

THE COURT: Ladies and gentlemen of the jury -- you may sit down -- you have been selected to perform one of the most solemn duties of citizenship. You are to sit in judgment upon criminal charges made by the Commonwealth against one of your fellow citizens. The services you render as jurors in this case

1.37

are as important to the administration of justice as those rendered by me as Judge and by the attorneys.

You should pay close attention to what is said and to what occurs throughout the trial so that you can faithfully perform your sworn duties as jurors. I shall describe in a general way what will take place. First, the District Attorney may, if he wishes, make an opening statement in which

he outlines the Commonwealth's case against the defendant. The defendant may make a statement outlining the defense either immediately following the District Attorney's statement or later in the trial.

Second, the District Attorney will present evidence. He may call witnesses to testify and he may offer exhibits such as documents or physical objects. The defendant has a right to cross-examine witnesses called by the Commonwealth in order to test the truthfulness and accuracy of their testimony.

1. 38

At the close of the commonwealth's case the defendant may present evidence for the defense. The defendant has no obligations to offer evidence or to testify himself. Under the law every defendant is presumed innocent and has the right to remain silent. The burden is on the Commonwealth to prove him guilty beyond a reasonable doubt. The District Attorney may, of course, cross-examine any witnesses called by the defense.

Third, after all the evidence has been presented, the attorney for each side will have an opportunity to address arguments to you. I shall then give you my final charge which will include instructions on the rules of law pertinent to this case and whatever additional guidance I think you need for your deliberations. You will then retire to the jury room to deliberate and decide what your verdict will be. It is the responsibility of the Court to decide all questions of law. I am not, however, the Judge of the facts. It is not for

1.39

me to decide what are the true facts concerning the charges against the defendant. You, the jurors, are the sole judges of the facts. It will be your responsibility to weigh the evidence, to find the facts and apply the rules of law which I give to the facts as you find them to decide whether the defendant has been proven guilty. I am likely to give other instructions during the trial in addition to these preliminary instructions and my final charge. You should consider all of my instructions as a connected series. Taken together they constitute the law which you must follow. You are not permitted to take notes on the testimony nor on anything said by me or by counsel. When you deliberate on your verdict you will have to rely on your own memories of what was said in the courtroom. We have a court reporter who will make a record of the testimony. If you fail to hear a question or an answer while a witnesses is testifying, please raise your hand immediately. The court reporter

1.40

can read back whatever you missed. You are the judges of the credibility and weight of all the evidence including the testimony of witnesses. By credibility of testimony or other evidence I mean its truthfulness and accuracy. In judging credibility and weight you should use your understanding of human nature and your common sense. Observe each witness as he testifies, be alert for any thing in his words, demeanor or behavior on the witness stand, or for anything in the other evidence in the case which might help you to judge the truthfulness, accuracy and grade of his testimony. I shall give you further instructions on this subject later in the trial. Each of you must keep an open mind throughout the trial. In the oath you just took you swore to do so. You should avoid forming opinions about the guilt or innocence of the defendant or about any other disputed questions until you begin your deliberation. You should not talk with each other about the evidence or any other matter relating

1.41

to whether the defendant has been proven guilty until I send you to the jury room to deliberate on your verdict. Only then will you know enough about the evidence and the law to discuss the case intelligently and fairly.

During the trial you must not talk with anyone about the case, or listen to others talk about the case including members of your own family. There are some persons with whom you must avoid even casual conversations having nothing to do with the case. These persons are the defendant, counsel for both sides and the witnesses. Do not read newspapers or other stories about the trial or about the defendant. You should also avoid radio or television broadcasts which might refer to the trial or the defendant. Your only information about this case should come to you while you are all present together acting as a jury in the presence of the Court, the attorneys and the defendant.

As I told you earlier, although you must follow my instructions regarding rules of law, you are the sole judges of the facts. It

1.42

is your recollection of the evidence and not mine or counsel's on which you must rely during your deliberations.

You are not bound by any opinion you might think counsel or I have expressed concerning guilt or innocence, credibility of witnesses, weight of evidence, facts proven by the evidence or inferences to be drawn from the facts. Even though statements and arguments of counsel are not

binding on you and are not evidence, you should consider them carefully. It is proper for you to be guided by them if the statements and arguments are supported by the evidence and appeal to your reason and judgment.

The questions which counsel put to witnesses are not themselves evidence. It is the answers of witnesses which provide evidence. You should not speculate that a fact may be true merely because of the lawyers asked questions which assume or suggest that the fact is true.

I may question some of the witnesses

1.43

myself. The questions will not reflect any opinion on my part about the evidence or about the case. My only purpose will be to inquire about matters which counsel may not have fully explored.

The admission of evidence at a trial is governed by rules of law. It is my duty to rule on objections to the evidence made by counsel. If I overrule an objection that means you are entitled to consider the evidence. If I sustain the objection then you will not be entitled to consider it. You must not concern yourselves with the objections or with the reasons for my rulings. You must disregard evidence or any other matter to which I sustain an objection or which I order stricken from the record.

Counsel and I are required by law to take up certain matters out of your hearing. We may do that at the bench, or in my chambers or I shall ask you to leave so that we may do this in the courtroom. You should not concern yourselves with any such proceeding.

1. 44

Remember, a jury's verdict must be unanimous to be valid. In the jury room you will discuss the case among yourselves but ultimately each of you will have to make up his or her own mind.

After the verdict is announced in open court you may be called on individually to say whether you agree with the verdict. Each of us has a responsibility as a juror which you cannot shirk. You must do your best throughout the trial to fulfill this great responsibility. Now I'll call upon the District Attorney for his opening remarks.

THE DEFENDANT: Judge, I have a statement.

THE COURT: If you have anything to say you say it at side bar.

(A side bar conference was held with the defendant present on the record as follows:)

THE DEFENDANT: I need the microphone at the table.

THE COURT: I don't have one.

THE DEFENDANT: You get one.

1. 45

THE COURT: You should have asked for one before.

THE DEFENDANT: I need one now.

THE COURT: You have to speak up and if you can't speak up then I may have to remove you and put Mr. Jackson in.

THE DEFENDANT: I don't care.

THE COURT: You can do whatever you want.

THE DEFENDANT: You can do whatever you want.

(Side bar conference ended.)

THE DEFENDANT: I need a microphone.

THE COURT: I do not have a microphone.

THE DEFENDANT: You can get one, Judge.

THE COURT: Let's go.

THE DEFENDANT: I need a microphone, Judge.

THE COURT: I'm sorry.

THE DEFENDANT: You're sorry?

THE COURT: Mr. McGill, please.

1. 46

MR. MCGILL: Yes, Your Honor.

THE DEFENDANT: I'm not finished.

THE COURT: Mr. McGill, please.

THE DEFENDANT: I need a microphone.

THE COURT: You don't need a microphone now.

THE DEFENDANT: I do need one.

THE COURT: You're speaking loud enough. I can hear you.

THE DEFENDANT: I need everyone in the courtroom to hear me. I want everyone on the jury to hear me.

THE COURT: Speak loudly.

MR. MCGILL: Your Honor, may I see you at side bar with Mr. Jamal and Mr. Jackson?

(A side bar conference was held on the record with the defendant present as follows:)

MR. MCGILL: I will request, Judge, that any remarks that Mr. Jamal will make other than what is his opening and objections and cross-examination be made at side bar.

THE COURT: I told him that.

MR. MCGILL: Not before this jury.

1. 47

THE COURT: I told you that if you have anything to say to me you go at side bar.

THE DEFENDANT: I need a microphone.

THE COURT: I don't care if you need a microphone.

THE DEFENDANT: You don't care. I care. I speak softly.

THE COURT: You should have told me yesterday.

THE DEFENDANT: I want to be heard.

THE COURT: I'm telling you now, the case has already started.

THE DEFENDANT: We can stop now.

MR. MCGILL: Your Honor, I have no problem hearing what Mr. Jamal is saying and the jury will have no problem.

THE DEFENDANT: That's four feet away from me.

MR. MCGILL: The jury will have no problem.

THE DEFENDANT: I want to make sure everyone in this courtroom hears me.

MR. MCGILL: That's the point, Judge.

1.48

This trial is not a political platform for all the people and the media to hear what Mr. Jamal has to say. The purpose for a public trial is that this man get a fair trial and people be able to observe it.

THE DEFENDANT: This is not a fair trial. I haven't had the counsel of my choice.

MR. MCGILL: Your Honor, I would state to this Court respectfully that what Mr. Jamal clearly wants is a way in which he can speak to the jury that is in a position to judge his guilt or innocence --

THE DEFENDANT: How can he assume what I'm going to be speaking to? I want to be heard.

MR. MCGILL: Once the law or procedure is changed and those people out there become the jury, that's something else. But right now he has no right to speak generally to people.

THE DEFENDANT: I'm not talking about speaking generally to the people. I want to speak to the jury and I do want to be heard. I do speak softly.

1.49

THE COURT: You get up to the jury and go up to the box. You can speak as softly and --

THE DEFENDANT: And I want a microphone and counsel of my choice.

THE COURT: I'm sorry. I have ruled to all those points.

THE DEFENDANT: You have ruled, Judge? This is not to my satisfaction.

THE COURT: I don't care.

THE DEFENDANT: This is my life and my trial.

THE COURT: If you step out of line --

THE DEFENDANT: Judge, that warning doesn't mean anything to me. If you want to find me in contempt -- I'm on this trial for my life. You know those warnings mean nothing to me.

MR. MCGILL: I think it's now at the point where I think that he may be attempting to get ejected from this courtroom so Mr. Jackson can take over for him.

THE DEFENDANT: I'm attempting to

1.50

get counsel of my choice. I'm attempting to get John Africa.

MR. MCGILL: And I feel --

THE COURT: I'm telling you, Mr. Jamal, if you disrupt the proceedings, I'm warning you --

THE DEFENDANT: Judge, your warning means nothing to me. Do you understand that?

THE COURT: And I'm telling you, you may very well be removed as counsel.

THE DEFENDANT: You do whatever you have to do.

THE COURT: And Mr. Jackson will be put in.

THE DEFENDANT: Do whatever. It's not your choice, not his choice or Jackson's choice. I want my own counsel of my choice, someone I have faith in, someone --

MR. MCGILL: Is that Mr. Africa that he's referring to?

THE COURT: John Africa he's talking about.

THE DEFENDANT: That's right. You

1.51

haven't ruled to my satisfaction trial. This is my trial.

THE COURT: I don't care about your satisfaction.

THE DEFENDANT: Listen, I do.

THE COURT: There's satisfaction --

THE DEFENDANT: I do.

THE COURT: -- in Appellate Court.

THE DEFENDANT: Your satisfaction, your own rights.

THE COURT: No. No. If I don't satisfy the Appellate Court that my ruling is right and proper --

THE DEFENDANT: Right and proper. This is my only trial.

THE COURT: -- they will reverse it.

THE DEFENDANT: This is my only trial. You can make that decision now.

THE COURT: I've made it. I've made it five, six times.

THE DEFENDANT: I don't want that man as my defense.

THE COURT: I don't care what you

1.52

want.

THE DEFENDANT: Damn what you want. This is my trial. It's my life on the line. You're talking about procedure.

MR. MCGILL: May I make a suggestion at this time? I would suggest a

recess of about ten or 15 minutes. I think if the situation were called right now perhaps the jury can be led from the courtroom at this time.

THE COURT: All right.

(The jury was excused.)

(Side bar conference continued as follows:)

MR. MCGILL: All right, Judge. I made a request the jury leave the room so that we can conduct the proceedings at this point out of the hearing of the jury. My hope, Judge -- and I'm sure the Court's --

THE COURT: I want to correct it. It has been out of the hearing of the jury.

MR. MCGILL: Excuse me. Yes.

THE COURT: I don't want you to get the opinion that this has been in the hearing

1. 53

of the jury. We've been at side bar out of the hearing of the jury but rather than have them sit there and look at us at side bar indefinitely --

MR. MCGILL: You're right, Judge.

THE COURT: -- indefinitely, so as not to prejudice Mr. Jamal here -- and I think that he should know that his conduct may not very well fit well with the jury, and if he wants to act that way that's so at his own peril. That's what happens when you represent yourself.

THE DEFENDANT: I want John Africa.

THE COURT: I ruled on that.

THE DEFENDANT: You did not rule.

THE COURT: Yes, I have.

THE DEFENDANT: What does that rule mean to me?

MR. MCGILL: My hope, not my hope but my thought is that perhaps Mr. Jamal is if not the most, I would say the most intelligent defendant by far

that I have ever run across, and I'm quite sure that everything he's doing,

1.54

and in particular right now, is purposes of strategy. I believe not only "A" the political philosophy that he wishes for us to espouse or the anti establishment -- and I just note --

THE COURT: Please, don't.

MR. MCGILL: -- he raised his right hand and fist up in the air which I think is a power sign during the course of this proceeding. Which leads me again to believe, Judge, that this is becoming more of an attempted diversion from the important decision that the jury is trying to make. I think perhaps Mr. Jamal is attempting to not only divert their minds from guilt or innocence and to some sort of the condition that he believes he is in unjustifiably, but that he may well wish to have himself ejected so that learned counsel would be in a position to try a case, and since he has a great deal of experience in it, and gain some sort of sympathy from the jury. Because of that I would not put it past him one moment with what I've seen going on in the last couple of weeks.

1.55

Judge, I would ask the Court to instruct one more time Mr. Jamal that he is and I believe he still wants to be his own counsel, unless that has changed. Now that has not changed to anybody's knowledge unless you're telling me now that he doesn't want to be his own counsel, that he wants somebody else. If it just means the request he has made before about John Africa, that's one thing. If he wants to remove himself, well that's another. If he wants to stay in himself -- can we find out what he wants first?

THE DEFENDANT: Let me respond to what he had to say about your assumptions, Mr. McGill's assumptions about political reasons are purely his own assumptions. I could care less. It's not important to me what Mr. McGill assumes. What is important to me and the point I'm making and trying to make to you is that I want counsel of my own choice no matter whether he's a member of ABA, because members of the ABA have represented people that are at Holmesburg Detention Center and, you know, prisons

1.56

throughout the country. That's not important to me. I want a representative of my choice, and that is John Africa.

Now, whether you choose to believe that, that's unimportant to me. Whether you call it a political statement, that's, again, horse shit to me. I have a right to counsel of my choice and whether you agree with it, whether you disagree with it, and whether you like it or dislike it is not important to me because my life is on the line.

THE COURT: Mr.--

THE DEFENDANT: You can't tell me this man is representing me if he doesn't want to represent me or if he doesn't want to function as backup counsel for me or if I don't want him to work for me. He can't make any promises of qualifications to me. I want who I want and that is John Africa, and I don't care if the jury hears it. I don't care if everyone on the planet hears it because it is true, it is true. This is no political game. It's my life at stake and John Africa is the only

1.57

representative I would have faith in and trust in; not paid by the Court, not paid out of the same pocket as the D.A. , not court appointed. I want John Africa in this trial as backup counsel for me and I will defend myself.

MR. MCGILL: Judge, the Court is pledged and duty bound to follow the law of this Commonwealth. Even if the Court wanted to set a procedure up which would be different than the law allows it would be itself violating the law which would be a mockery of the law and the justice system. The law is clear that a non-attorney cannot be backup counsel. The law, is clear that Mr. Jamal has a right to represent himself, does not have a right to the backup counsel of his choice from the State, but rather has the right and, as a matter of fact, the Court, I believe, has the duty to see that his backup counsel is a member of the legal profession, is aware of the laws and certified to practice in this Commonwealth.

Therefore, by permitting Mr. Africa to be not co-counsel but backup counsel violates

1.58

the law in itself. We're here to be judged -- strike that. Mr. Jamal is here to be judged by this jury under the laws of the Commonwealth. And until they change -- and perhaps he can try to do that in his own way at another time. But, Judge, we are required to follow the laws as they are today, and it is clear that Mr. Africa is not a counsel and has not been conceded, excuse me, which has been conceded, and any further discussion as to his being backup counsel would be inappropriate for this Court to consider.

THE COURT: Well, I have ruled before and I rule the same way today that John Africa cannot be backup counsel. You have an exception to that ruling and if and when it ever becomes necessary to contest that ruling the Appellate Court --

THE DEFENDANT: I contest it now.

THE COURT: I know that.

THE DEFENDANT: You know that?

THE COURT: I know that.

THE DEFENDANT: I contest it now.

1.59

I do not want to be backed up or represented by Attorney Jackson or any other lawyer of the ABA anywhere in America. I want John Africa as my counsel.

THE COURT: I'm sorry, but the Court is bound by the law just as you are. I can't change that.

THE DEFENDANT: Well, I'm telling you that I cannot participate without John Africa, not in this trial. It's my life on the line.

MR. MCGILL: That surprises me. I didn't think he would pull this one.

THE DEFENDANT: Pull what? Pull what?

MR. MCGILL: Pull out of the case. You're saying you want to be tried, you want to be tried.

THE DEFENDANT: Did you hear what I said?

MR. MCGILL: Why don't you do it?

THE DEFENDANT: Did you hear what I said?

1.60

MR. MCGILL: You said you don't want to participate.

THE DEFENDANT: Unless John Africa is here. Did you hear the whole

statement?

MR. MCGILL: I heard what you said.

THE DEFENDANT: Don't put words in my mind.

MR. MCGILL: Let's see. You stay here and represent yourself and don't try to chicken out.

THE DEFENDANT: I'm not chickening out. That's unimportant for me. What I want is a representative of my choice, not of your choice, not of his choice, he's court appointed.

THE COURT: You don't understand I'm bound by the law as well as you are, and the law is clear on this; that John Africa cannot represent you. You can represent yourself.

THE DEFENDANT: Sure he can.

THE COURT: Just as you can represent yourself but he cannot represent you.

THE DEFENDANT: Why can't he?

THE COURT: Because that's what the

1.61

law says. I don't make the law. The Supreme Court makes the law and ultimately they will decide the issue for you again if you want to raise it.

THE DEFENDANT: I'm raising it now.

THE COURT: I've ruled now. I'm just following the law as it is. If you are convicted you can always raise that issue on appeal and the Appellate Court will decide whether the law should be changed or not. But the law is pretty clear.

THE DEFENDANT: It's nonsense, man, because what is the appeal of a death sentence? Coming back to life? It's nonsense, man. I need a representative of my choice. That's how serious it is. This is a life and death matter. I can choose my own counsel.

MR. MCGILL: Let me just tell you -- I'm stating that Mr. Jamal wonders that if he has an appeal from the death sentence -- I assume he means that if he's dead he doesn't have an appeal. Well, the fact of the matter is that

on a death penalty case of all cases that

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is the most closely watched and as a result of that all the death penalties that have occurred in the last ten or 15 years, 20 years, the last person to actually die died in 1962, which is 20 years ago, which gives you an idea of what the appeal status is. So don't tell me that you don't have the right of appeal.

THE COURT: Not only that --

THE DEFENDANT: The point is --

THE COURT: -- it's an automatic appeal to the Superior Court.

THE DEFENDANT: The point is if I have counsel of my choice I don't need an appeal because there will be no conviction, I'm sure, I'm convinced. Obviously, that's what the Court is trying to do.

THE COURT: No, the Court is not trying to do anything.

MR. MCGILL: No.

THE DEFENDANT: Sure, it is. Sure, it is. When you denied the Motion to Suppress that was to support a conviction.

THE COURT: I'm ruling on the law.

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THE DEFENDANT: No. You're ruling on the conviction. You're ruling on the D.A.'s office --

THE COURT: I don't think --

THE DEFENDANT: Every time he comes up with something it's supported and defense is knocked to the side. I seen that and you act like it's not happening.

MR. JACKSON: May I say something, not on my behalf but Mr. Jamal's? I most respectfully request to be removed from this case.

THE COURT: You can't be removed. You know that, Mr. Jackson.

MR. JACKSON: I understand. Judge --

THE COURT: You --

MR. JACKSON: Judge --

THE COURT: You made the request before and you can understand that.

MR. MCGILL: Your Honor, may we proceed with the opening statements?

THE COURT: Yes, it's your turn.

MR. MCGILL: Yes.

1.64

THE COURT: It's not your turn.

THE DEFENDANT: Regardless, it's my trial. His turn, my turn, it's not important to me. Why should I proceed without counsel of my choice, counsel that I have faith in? Why should I proceed with a man who just stood here five minutes ago and said, "Can I get out of here, can I withdraw?"

THE COURT: He wants out because you want him out.

THE DEFENDANT: Let him speak. He knows his reason. Why do you want --

MR. JACKSON: The reasons are many fold, Your Honor. I feel uncomfortable in this position being backup counsel. I figured, number one, because my legal training I could probably be a better lawyer than Mr. Jamal; at the same time, I recognize Mr. Jamal's right to self-representation and his choice of his own counsel. I understand what the law says. I don't want to be in a position of interfering with his right or in his selection of counsel.

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It puts me in an unenviable position of being forced to do something that, number one, I don't feel qualified and comfortable to do and, number two, it's not being accepted by Mr. Jamal.

Your Honor, as you can well imagine, in any situation where you're representing someone, whether it's in this case or any other case, one of the keys to that defense is the cooperation of the client. But of course I don't

have a client in this situation in that Mr. Jamal is representing himself. And I think to force me to remain in this situation where Mr. Jamal has said in no uncertain terms that he doesn't want me puts me in a position of trying to force advice on someone who doesn't want that advice.

THE COURT: No. You don't have to force any advice on him. You're there to give him advice if he seeks it. If he doesn't seek it he does so at his own peril.

THE DEFENDANT: Yeah, right, but I don't want his advice.

MR. JACKSON: He has no faith in

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anything I say.

THE DEFENDANT: I want the advice of someone that I have respect in and that's John Africa.

MR. MCGILL: May I say something?

THE DEFENDANT: And you can --

MR. MCGILL: Your Honor, just a brief response. First of all in terms of competency as an attorney, Mr. Jackson is well known and has appeared before this Court as well as other Courts, also with me personally in other proceedings. That is unquestioned in this case.

Secondly, Your Honor, the fact of whether or not Mr. Jamal seeks to take advice from backup counsel is not the issue he is able to accept or reject. The purpose of backup counsel is to be sure that a defendant is represented within the law by someone who is familiar with the law. It is also set up so that there will be no delays, as for example possibly might appear to be occurring, and that the case would be continued or in a case where

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something should happen where Mr. Jamal would not be present or able to continue in accordance with the Court's instructions.

Lastly, in terms of Mr. Jackson's participation, as well as, the Motion to Suppress, as well as, jury selection, one would have to be deaf, dumb and blind not to see, number one, considerable times where advice was given, I don't know whether accepted but at least given. Number two, several times in questioning, in pointing out areas of concern for a defendant in the

selection of jurors, Mr. Jackson, with the allowance of the Court, questioned jurors for a very long time, each and every one of them and then conferred with the defendant. It is clear that we have had here an active representation with Mr. Jackson and Mr. Jamal.

I would suggest, Your Honor, that it appears to me based on what has occurred in the last proceeding, including jury selection and Motion to Suppress, that this is one more tactic to delay, to divert attention --

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THE DEFENDANT: No tactic.

MR. MCGILL: I would ask to continue.

THE DEFENDANT: No tactic to delay and divert.

MR. MCGILL: I would ask to continue.

THE DEFENDANT: It's been several weeks ago when I first raised the issue of John Africa. You could have approved that then. That would have been in my best interest. My interest is to have John Africa representing me. That was raised several weeks ago. This is nothing new to you. And as far as that Motion to Suppress is concerned, well, the motion was obviously denied. So, I mean, to say that was very competent and it was good, that's horse shit. In terms of jury selection that's because I was removed from selecting my own jury. That was your jury. It was your order. It wasn't my decision. It wasn't Mr. Jackson's. It was your order. I wanted to select my own so-called jury of my peers.

THE COURT: You did. You conferred with him.

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THE DEFENDANT: Confer is not selecting.

THE COURT: Yes, that's selecting.

THE DEFENDANT: No, it's not selecting. It's conferring. It's not the same thing. I wanted to do that. I wanted to ask questions of these people who are going to decide my life or my death.

THE COURT: We're going to have to proceed.

MR. MCGILL: Well, if he wishes to participate he can, if he doesn't I encourage him to do so. He said he was going to live up to that. I'm very

anxious to try a case with Mr. Jamal, but let's do it and don't try to get out of it.

THE DEFENDANT: No trying to get out of it. I want to try this case with John Africa as my backup lawyer, that's all. Not Anthony Jackson.

THE COURT: Do you want to make your opening statement?

MR. MCGILL: Yes, sir.

1.70

(The following took place in open court in the presence of the jury:)

THE DEFENDANT: I am going to renew my motion, Judge.

THE COURT: I already ruled on your motion.

THE DEFENDANT: You haven't ruled on it before I have spoken about it. I want John Africa to represent me.

THE COURT: I already ruled on that.

THE DEFENDANT: You have not ruled on it to my satisfaction, Judge.

THE COURT: That may be unfortunate. I ruled on it.

THE DEFENDANT: Say what?

THE COURT: I ruled on it.

THE DEFENDANT: You have not ruled on it to my satisfaction, Judge. This man can't represent me. I do not want him sitting there in a position of defense in defense of my life. I want you to speak to the issue, Judge. I want you to address the issue, Judge, about my right

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to counsel of my choice, not your choice --

THE COURT: Let's Proceed.

THE DEFENDANT: -- or the Commonwealth's choice.

MR. MCGILL: Your Honor, if it please the Court --

THE DEFENDANT: I'm not finished.

MR. MCGILL: Your Honor --

THE DEFENDANT: I'm not finished speaking, Judge.

MR. MCGILL: Your Honor, we've just had about a half hour, 20 minutes, anyway, of side bar conference and I believe Your Honor has ruled.

THE COURT: Yes, I have.

THE DEFENDANT: He has not ruled to my satisfaction. This is my trial. This is my trial and it isn't your trial. I need counsel of my choice, Judge.

THE COURT: Are you going to allow the District Attorney to address the jury?

THE DEFENDANT: Are you refusing to allow me counsel of my choice?

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THE COURT: I did rule on that before, yes.

THE DEFENDANT: I need counsel that I can have faith in, that I trust, that I respect --

THE COURT: This is --

THE DEFENDANT: -- that is not a member of this court, that is not an officer of this court --

THE COURT: Mr. Jamal, are you refusing to allow the District Attorney to proceed?

THE DEFENDANT: Are you refusing to give me counsel of my choice?

MR. MCGILL: Your Honor, as I understand it Your Honor has said that --

THE COURT: Take the jury out.

(The jury was excused.)

(The following took place in open court out of the presence of the jury:)

THE COURT: Mr. Jamal, it is quite evident to this Court that you are

intentionally

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disrupting the orderly procedure of this court. I have warned you time and time again that if you continue with that attitude that I would have to remove you as counsel in this case.

THE DEFENDANT: Judge, your warnings to me are absolutely meaningless. I'm here fighting for my life. Do you understand that? I'm not fighting to please the Court, or to please the D.A. I'm fighting for my life. I need counsel of my choice, someone I have faith in, someone I have respect for; not someone paid by the same pocket that pays the D.A., not a court-appointed lawyer, not a member of the ABA, not an officer of this court but someone I can trust and I have faith in. Your warnings are absolutely moot, they're meaningless to me.

MR. MCGILL: Your Honor, so the record could be clear I believe Mr. Jamal is speaking about a Mr. John Africa --

THE COURT: Yes.

MR. MCGILL: -- who is not a member of the Bar of the Commonwealth of Pennsylvania and is, therefore --

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THE COURT: Not a bar of any court.

MR. MCGILL: Of any. But specifically in the Commonwealth of Pennsylvania, Your Honor. As a result of this, Your Honor is not only obligated under the law to prevent a non attorney to represent the defendant even though the defendant wants that, literally the Court is required to do that to literally protect the defendant against himself. There are specific Commonwealth decisions, Supreme Court decisions on that.

Your Honor I believe has already mentioned to this Court but so the record can be clear, rather than denying the defendant, whose rights you're attempting to assure, that he is guaranteed his rights under the constitution and the law of this land. Furthermore, if Your Honor permitted such non-lawyer to represent a non-lawyer, Your Honor, you would be yourself violating the law. So it is clear that Your Honor in accordance with the law of this Commonwealth is acting appropriately. That I believe would be a response to what

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Mr. Jamal is attempting to do.

THE DEFENDANT: That may be a response but it is not true. This man has gone to law school, right, but he cannot guarantee me my freedom; he cannot guarantee me victory.

THE COURT: Nobody can do that.

THE DEFENDANT: Well, how do you know?

THE COURT: Well, how do you know?

THE DEFENDANT: I do know. I do know. John Africa can do that.

THE COURT: No, nobody can.

THE DEFENDANT: Well, you don't know that. I do know.

THE COURT: Neither do you.

THE DEFENDANT: Well, do you know John Africa?

THE COURT: I don't have to know him.

THE DEFENDANT: Well, I do.

THE COURT: I don't have to know him.

THE DEFENDANT: I do.

THE COURT: I don't want any comments from the audience.

1. 76

THE DEFENDANT: The point I am making, Judge Sabo --

THE COURT: You're very loud. You're doing good without a microphone now.

THE DEFENDANT: Well, I could use a microphone.

THE COURT: You don't need a microphone.

THE DEFENDANT: I could use a microphone.

THE COURT: Everybody can hear you. I can. I can hear you perfectly.

THE DEFENDANT: The point I am making is that if Mr. Jackson can guarantee me acquittal, can guarantee me freedom, or can tell me that every defendant he's representing won their case then fine, I have no problem with that.

THE COURT: There is no lawyer in the whole world that can guarantee that.

THE DEFENDANT: Then I don't want any lawyer in the whole world. I want John Africa as my counsel. You don't know what

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John Africa can guarantee.

THE COURT: Neither do you.

THE DEFENDANT: But I am telling you that I want counsel of my choice.

THE COURT: You know --

THE DEFENDANT: You're sitting here to protect my rights --

THE COURT: Mr. Jamal --

THE DEFENDANT: -- you --

THE COURT: Mr. Jamal, I'm only going to tell you one more time. If you do not wish to obey the order of this Court and you do not intend to conduct yourself as an attorney should, you leave me no other alternative but to remove you as counsel and to insist that Mr. Jackson proceed in your presence.

THE DEFENDANT: Do whatever you want to do, Sabo. What I am telling you is that he cannot represent me whether I am my own counsel or client of his.

THE COURT: And let me --

THE DEFENDANT: I don't want him to do anything, not to say a word or

do anything

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in my defense. I want John Africa here. That point's been made for several weeks to you but you've been rejecting as if you're doing it in my best interest.

THE COURT: I'm following the law.

THE DEFENDANT: My best interest is to have counsel I can have faith in and respect, not someone paid by the City, the same City that's trying to exterminate me.

MR. MCGILL: Your Honor, if I may respond? Again, the Court has already indicated it really has no other choice but to follow the law of this Commonwealth if the law means anything. Now perhaps what Mr. Jamal would like to do is change the law. He may some day have his opportunity to do that. As it stands right now this Court is governed by the law of the Commonwealth of Pennsylvania which specifically states that backup counsel must be an attorney.

Secondly, during the course of this time he had the court-appointed attorney, which Your Honor is well aware of as is Judge Ribner, that has strenuously and vigorously fought for

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his rights from the very beginning. I have seen Mr. Jackson in all of the hearings before Judge Ribner and this Court. I have seen a jury selection process go from six or seven days. I have yet to see anyone in my nine years to try more earnestly and to be more competent than Mr. Jackson in representing Mr. Jamal. Your Honor, I think that I have some kind of experience to speak of that. And I think Your Honor yourself has already seen Mr. Jackson in this Court before yourself. This leads me to believe plainly, Judge, that it appears to me that if Mr. Jamal is saying, "I don't want Mr. Jackson because he hasn't won all of his cases and he can't guarantee me that he's going to win," if he's saying that, Judge, what he is saying is that he simply does not want anymore to really represent himself; that he wants this Court to specifically hold him in contempt and eject him from this courtroom since he would continue deliberately violating this Court's law.

My suggestion is, Your Honor, that

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perhaps Mr. Jamal -- and he has an absolute right to have Mr. Jackson come in and take over. I recognize that, and the Court has encouraged that from the very beginning. It is my suggestion that perhaps Mr. Jamal is beginning to get a little cold feet in the situation of representing himself and hopes for the sympathy of the jury in order to be ejected from this courtroom. For anyone to require an attorney to represent him who will always win every one of his cases is purely illogical, at least in this world.

THE DEFENDANT: Well, speaking of illogical --

MR. MCGILL: So, Your Honor, I object to Mr. Jamal's comments and I object to Your Honor -- he's admitted to this conduct --

THE DEFENDANT: Well, I would object to his statement. In terms of lawyers it's very clear that there are 1300 people at Holmesburg Detention Center, House of Correction. All of them have lawyers, either private or Public Defenders and it's very clear for those

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1300 people that those lawyers have not served their needs in terms of obtaining freedom for them, in terms of finding them innocent of charges. And, you know, it doesn't matter to me that Mr. Jackson has gone to law school and has practiced for nine years and all of that. That's not important to me. This is my only trial. I have no criminal record. You see what I'm saying? I have never been before the bar of the Court before in terms of a defendant. So what's important to me to have is a representative that I have faith in, that I can trust; it's not Attorney Jackson, it's not Joe McGill, it's not Sabo. It is John Africa and that point has been made for several weeks now.

And in terms of him representing me in case I'm removed, I don't want him to do anything on my behalf. I don't want him to participate in any role if I'm removed, because it's my life at stake, not his. It's his career; it's my life.

THE COURT: Well, I take it --

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THE DEFENDANT: And I need and I am demanding a representative that I can have faith in for counsel and that counsel is John Africa.

THE COURT: What you're saying to me is, if you don't have John Africa

you are not going to proceed in any way with this trial; you're going to do everything within your power to disrupt the orderly proceeding. Is that what you're saying?

THE DEFENDANT: No. That's what you're saying to me.

THE COURT: Well, I'm observing that from your conduct.

THE DEFENDANT: I said that's what you're saying to me. You can ask the stenographer to read it back.

THE COURT: I have refused your John Africa because that's the law and I have to do that again.

THE DEFENDANT: What I'm saying to you --

THE COURT: Will you proceed with

1. 83

the orderly proceeding in this courtroom?

THE DEFENDANT: What I'm saying to you --

THE COURT: And I'm telling you if you don't you leave me no choice but to remove you as your own counsel and to direct that Mr. Jackson be put in as your counsel.

THE DEFENDANT: What I'm saying to you is that I have no faith --

THE COURT: I know that.

THE DEFENDANT: You're going to speak to me now?

THE COURT: I know. You said you have no faith and you said that several times over and over again.

THE DEFENDANT: You keep asking me and I -- see, I'm telling you what I'm saying so you won't have to ask me anymore and you won't have to reinterpret my words into another sense. My interest is not disruption. My interest is freedom. That's my interest. And my freedom can best be served by having counsel of my choice that I have faith in.

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It's unimportant to me that, as you say, John Africa is not a member of

ABA. To me that's a badge of honor. That's something to be very proud because every inmate in every prison in the State of Pennsylvania has some lawyer who is a member of ABA who didn't do him a damn bit of good.

MR. MCGILL: Your Honor --

THE DEFENDANT: Now, my choice is my choice. My life is my life, and I want to be represented by counsel of my choice that I can have faith in for backup counsel. That is John Africa.

THE COURT: It seems I have to make a decision.

THE DEFENDANT: Well, so what, Judge?

MR. MCGILL: I can see Your Honor obviously has to make a decision on this and it does appear that Mr. Jamal will continue in the same vein. I know that Your Honor has specifically stated from the very beginning that you wished and hoped that he would recognize the

1. 85

importance of having counsel. This may be a way in which, as I said, Mr. Jamal feels he can have it both ways, a defense counsel present, competent to represent him and in some way a figure of sympathy before jurors. Perhaps this is another tactic.

I'll point this out again, Your Honor. As this man is without a doubt one of the most if not the most intelligent defendants I've ever had and everything he does is with a particular reason in mind. He's not just sprouting off philosophy. He knows exactly what he's doing.

Your Honor, I would suggest in order to make the record complete and I would ask this Court before you would make a decision that perhaps you could give -- and I realize that the time is a problem and that we started late -- perhaps you could give an early luncheon recess at this point and have Mr. Jamal and Mr. Jackson further confer before you make your final decision on this matter.

THE COURT: All right. I will recess

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court until 1:30 giving you, Mr. Jamal, time to talk to Mr. Jackson. And you know what my position is. Unless you want to proceed as your own attorney and put in Mr. Jackson, I will have no choice but to remove you

as your own attorney and direct Mr. Jackson to proceed in your behalf.

THE DEFENDANT: Can I respond? What you said about representation --

THE COURT: I'll give you an hour and a half to think about it.

THE DEFENDANT: That threat about removal, but again, that's unimportant to me. As far as him talking about tactics and stuff like that, that is not an issue here. My only reason -- there's no ulterior motive -- my only reason for asking for John Africa is, obviously, to have him here.

THE COURT: I've already told you.

THE DEFENDANT: I have more.

THE COURT: I already told you that under the law I cannot do that.

THE DEFENDANT: What I'm saying is

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that under law --

THE COURT: I told --

THE DEFENDANT: I'm speaking about satisfaction. I fighting for my life. This ain't no satisfaction. I'm fighting for my survival. Do you understand that? In terms of having someone there that I can have faith in.

THE COURT: I don't think you're fighting for your life.

THE DEFENDANT: Say what?

THE COURT: I don't think you're fighting for your life. If you were you wouldn't be using such tactics.

THE DEFENDANT: Again, you assume these are tactics. You're not on trial here. I am. So what you think and you assume, you know what I mean, that's moot.

MR. MCGILL: Judge --

THE DEFENDANT: The point I'm making is that I need counsel that I have faith in. This is not a tactic of some sort. He's talking about some ulterior reason. My reason is life.

THE COURT: I'll give you an hour

1. 88

and a half to think about it.

THE DEFENDANT: Can you give me an hour and a half to confer with John Africa? Can you have him come up to the cell room and, and come up to see me?

THE COURT: I don't have anything to do with him.

THE DEFENDANT: Sure you do. If you order the sheriff to have him come up and speak to me he can come up and speak to me. He would be my counsel. I'll tell you I don't want him --

THE COURT: I'm saying you cannot have John Africa as your attorney.

THE DEFENDANT: What I'm saying to you is you can issue an order to the Sheriff's Department so they can allow him to come up and speak to me up in the cell room.

THE COURT: What good is that going to do?

THE DEFENDANT: Conferring with me, isn't it? What is this time for but conferring with me for my defense.

1.89

THE COURT: Your decision as to whether or not you're going to proceed in an orderly fashion.

THE DEFENDANT: I'm proceeding in an orderly fashion.

THE COURT: No, you are not.

THE DEFENDANT: Yes, I am. I am not disrupting, there is no disruption.

THE COURT: All right.

THE DEFENDANT: You're disrupting my rights.

(A luncheon recess was taken until 1:30 p.m.)

1.90

## AFTERNOON SESSION

(The following took place in open court out of the presence of the jury:)

MR. MCGILL: Good afternoon, Your Honor.

THE COURT: Let the record indicate it's ten minutes after 2:00. We've been in recess for two hours to give Mr. Jamal an opportunity to think over what I said to him at the close of the morning session. Have you thought over what I said, Mr. Jamal?

THE DEFENDANT: Sure have.

THE COURT: Are you going to allow the Court to proceed in an orderly fashion?

THE DEFENDANT: I'm going to allow the Court to proceed in an orderly fashion with the understanding that I still have a right, a choice, to counsel of my choice. I am representing myself. That decision has been made before you even entered this case. I have a right to represent myself. What I have demanded of this Court time and time again is that I have the right of advice and counsel. It's very clear

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that Mr. McGill can have the advice of whomever he wishes; it can be Gwen Thomas, officer Thomas, Detective Thomas, it can be Brad Richman: from the D.A.'s office, it can be whomever he selects. As a matter of fact, this morning you heard him say that Detective Thomas will be assisting him. If he can have his assistance in prosecution why can't I have my assistance as my own counsel in my defense? And the issue that you've raised about being a member of the bar is not even germane, because I didn't say that I wanted him to represent me. I want him to assist me in my defense. And in that understanding that poses no problem to the Court. You don't have to pay John Africa.

THE COURT: It's not a question of paying anybody.

THE DEFENDANT: Right.

THE COURT: The only thing is I told you that Mr. Jackson will act as your back-up counsel. He is a member of the bar.

THE DEFENDANT: Mr. Jackson is a member of the bar. That point is not contested.

1.92

Again, what I said to you and what you cannot contest is that members of the bar have defended people in jails, jails are full of people that have been defended by members of the bar. If you --

THE COURT: People with money walk the street that are also represented by members of the bar and that doesn't mean anything one way or the other.

THE DEFENDANT: The point is not whether it moves you or not. The point is it's true. It can't be debated. If you want Mr. Jackson to stay there that will be your decision, obviously. It is not mine. I am saying that for my advice and counsel in this matter I'm demanding the representative of MOVE known as John Africa. Now, he can stay there.

THE COURT: What you do on the outside you can do on the outside.

THE DEFENDANT: I'm not talking about the outside. I'm talking about right here at this defense table.

1.93

THE COURT: Right here in this courtroom at this defense table the only one you will have is Mr. Jackson.

THE DEFENDANT: It's no problem when Theresa Africa was meeting with me the other morning.

THE COURT: Not during the course of the trial.

THE DEFENDANT: The course of the trial is obviously the most important matter that we're discussing. That matter has not been resolved.

THE COURT: Mr. McGill?

MR. MCGILL: Your Honor, may I respond to Mr. Jamal's comments and Your Honor's discussions with Mr. Jamal?

THE COURT: Yes.

MR. MCGILL: Your Honor, the Commonwealth's position in the case has always been that the Court must follow the law in having an attorney represent him, a backup attorney being present with him. Your Honor, as had occurred during the course of almost most

1. 94

of the jury selection, as well as the Motion to Suppress, I believe Miss Theresa Africa was here during most of the time. I believe Mr. Gerald Africa was here off and on during the course of both proceedings. There was a lot of traffic, so to speak, from the standpoint of individuals who support Mr. Jamal's defense and do have certainly their own philosophy which they are entitled, certainly, to have.

These individuals, Your Honor, have been out in court -- I don't really see some of them now, maybe I missed some of them but I don't see them now. But the Court -- excuse me. If I may say to the Court, the Commonwealth has no objection if Mr. Jamal wants to bring in John Africa, wants to bring in anyone who is not incarcerated, that is, into the courtroom and place them in the chairs back there behind the barriers there exactly where my officers are. Detective Bill Thomas, Officer Gwen Thomas, right here, I have stated to the court that I will be here at this table alone during the course of the trial. I have stated that

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Detective Bill Thomas will be in the room; however, he will be back where he is now, which is the second row or someplace there. I have no objection and unless the Court has an objection if John Africa or anybody sits in those chairs back there providing an opportunity for Mr. Jamal at recess or in between witnesses to go and discuss matters and that would include discussing matters before Court. We could have Mr. Jamal down here at quarter after nine instead of 9:30, or some kind of arrangement consistent with the administrative needs and procedures of the Sheriff's Department so that he can discuss with them there anything he wishes about his defense.

I also, Your Honor, would have no objection if along with Mr. Jackson there would be times when Mr. John Africa would go up to his cell room; that is, consistent with the needs of the Sheriff's Department. I do not want to go necessarily against the regulation's there. However, in the interest of expediting this matter, in the interest of justice of the

1.96

one issue in this case which is the guilt or innocence of the defendant, Mr. Jamal, in the shooting death of Officer Faulkner, that is our sole issue involved here.

In terms of the Court's procedures, in terms of following the law, which is necessary to this case, Mr. Jackson's presence as an attorney, we must

follow that. I will follow it. I ask Mr. Jamal to follow it. There will be no one up here. It may cause me a little problem in terms of getting all the exhibits but there will be no one here except me. Mr. Jamal can be there and bring in anybody. I have not seen Mr. John Africa for the ten days that we've been operating in both the Motion to Suppress and the jury selection. Perhaps he was here. I'm not even sure if I would know who he was. However, the fact of the matter is that he is welcome to come as part of the audience. But Your Honor must follow the law and also continue in expediting this case with present parties as assembled.

THE DEFENDANT: Judge, what you know

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is that there is no order or procedure to bar anyone from sitting at this table once that's agreed upon. Throughout the Motion to Suppress, throughout the jury selection, he kept someone assisting him in making decisions. He keeps saying that I was conferring with Mr. Jackson. He's spent hours conferring with several detectives --

MR. MCGILL: I spent hours conferring -- well, at least, yes, a number of hours with Officer Gwen Thomas. No question about it. She was at my table.

THE DEFENDANT: And the point is --

MR. MCGILL: This was agreed by the Court, Mr. Jamal, that there would be two people at the table during jury selection.

THE DEFENDANT: I have no objection to Mr. Jackson going back into the spectator section. I don't need anyone or Mr. McGill to suggest who I want in the spectator section. I'm saying I want an assistant at this defense table to help me with my defense and that someone is John Africa. And if there's any reason why

1.98

I can't have the assistance and advice of someone that I have faith in and that I have trust in -- now, you keep raising the point about Mr. Jackson being there. Mr. Jackson's told you a number of times that he wishes to withdraw; that he does not wish to function in the role that he's in right now. And, I mean, for me to have a defense attorney that doesn't want to function in that role, well, that's paramount to having no defense attorney at all. And it would be, again, no extra cost to this Court to have a chair right there so that he can sit and assist me in planning my defense.

THE COURT: Excuse me just a minute? I have a phone call I have to take.

MR. MCGILL: Yes.

(A short recess was taken.)

THE COURT: I've talked to the court administrator's office in reference to the, you know, the stenotype. There is no conflict with any union or anything like that. So if they want to take any notes, as far as I'm concerned, you can. There is nothing -- of

1.99

course, it's unofficial, it's not the official record. But there is no conflict with any union regulations or anything of that nature.

MR. MCGILL: Your Honor, for the record, there is no objection from the Commonwealth that that be done. So there is no problem with that at all.

THE DEFENDANT: Judge, she can't hear where she's at so could she come --

THE COURT: She can hear me.

THE DEFENDANT: She can't hear me.

THE COURT: I'm saying there is nothing to stop her --

THE DEFENDANT: I'm saying she can't hear me from where she is right now.

THE COURT: If she couldn't hear what you said you have to speak up louder. That's all. Don't be afraid just speak up louder.

THE DEFENDANT: I'm not afraid at all to speak.

THE COURT: Anything else about this other issue that I left you with?

1.100

MR. MCGILL: Your Honor, I don't know, again, the procedure, if the Court would obviously decide on -- if the defense wishes to have the individual whose name I've forgotten again, Miss Draper, or something, up here --

THE COURT: I don't want anybody up here except the official court

reporter.

THE DEFENDANT: Where those artists are.

THE COURT: Right where she is, she can be behind those artists right there.

MR. MCGILL: If she wishes to be on the side I have no objection to that.

THE COURT: I have no objection if she's on the side. It doesn't bother me one way or the other.

MR. MCGILL: Your Honor, in reference to the other matter, as far as Mr. Jamal's comments as to Mr. Jackson's not wanting to be here, well, Your Honor, in many cases an attorney may well have a client that may feel otherwise in reference to his representation. I will point out to this Court that, again,

1.102

Mr. Jackson has vigorously attempted to represent and has represented the defendant throughout many hearings which have been broadly publicized over the course of many months, going so far as the Supreme Court on the bail issue, going in many cases to presenting motions, filing motions and arguing extensively on various motions on the rights of the defendant. There is question that an attorney placed in a position where his own client wishes that he not be there obviously makes that individual, no matter how competent -- and in this case we happen to have a very competent attorney -- it places them in a position of, naturally, not wanting to be where they're not appreciated. However, there is a big difference from being in a position of not being appreciated and at the same time being in a position of actively and competently representing someone who happens not to appreciate or at least states that.

I may Point out to this Court again during the course of the entire Motion to Suppress as well as jury selection there has

1.103

been active consultation between Mr. Jackson and Mr. Jamal. As a matter of fact, several times during the Motion to Suppress where Mr. Jamal understandably was a little bit unsure of the legal areas to pursue or argue would turn and say, "I think Mr. Jackson has something to say on that issue," and Mr. Jackson promptly came up, and both in an articulate manner, expressed the defense position on that point. This also occurred throughout the jury selection where, obviously, Mr. Jackson put 150

percent effort in and questioned the jurors extensively. There was extensive conversation between Mr. Jackson and Mr. Jamal. At some points, Your Honor, I would go to side bar, point to the clock, and point out to this Court for purposes of the record that there was all of 15 minutes for one consultation after all the questions were done after which he either accepted or rejected that individual. Another time 12 minutes, placing on the record active participation, active conversation and agreement or disagreement, or whatever.

1. 104

So, number one, I would suggest that any kind of comment that there has not been active participation because Mr. Jackson does not wish to be here is an absolute sham. That is false from what we all saw.

Number two, the fact that an individual does not want to be there is quite distinguishable from an individual who competently represents a man because he is under the rule of Court and the law of Court and the Supreme Court of this Commonwealth that says whether or not they want you, you represent them to the best of your ability. A perfect example of this was the MOVE trial where all nine defendants were ejected. They didn't want their defense counsel to do anything. The Supreme Court ordered them, because of their oath as an attorney and as an officer of the Court, to represent them as best they could, and they did.

So, Your Honor, considering that I have to wonder with a great deal of skepticism the motives of Mr. Jamal and suggest once again that it may well be a decision where he wishes

1. 105

the best of both worlds; one, representation by competent counsel, and, two, perhaps the sympathy of a jury because he wants or doesn't have the non-attorney that the law does not permit him.

THE DEFENDANT: In response to Mr. McGill's comment, it's very clear that in the case he cited, the nine MOVE members with the nine backup attorneys, that all nine MOVE members got 3,200 years. I would hardly call that competent legal advice from competent counsel. It's very clear also that just because an attorney has gone to law school he's not to be followed in terms of his role as a backup counsel. He doesn't feel comfortable in that role. But because I am representing myself that's the role that the Court thrusts him into.

My issue before this Court is that I want someone to advise and counsel me. I still want to represent myself. You know, this is not the best of both

worlds, or whatever you said. I want to represent myself. It's my life

1.106

on the line here. This is my trial. I have said to you for several weeks during Motions to Suppress, during jury selection, that I wanted John Africa as advisor and counsel at the defense table. And I don't mean in the spectator section, I don't mean passing notes back and forth. I mean as an advisor and counsel. And, frankly, I don't see any reason why the Commonwealth or this Court should object to that other than fear. You know, it's very clear --

THE COURT: As I told you for the umpteenth time --

THE DEFENDANT: No, you said he was not a member of the ABA.

THE COURT: I don't care if he's not a member of the ABA.

THE DEFENDANT: You did say --

THE COURT: Member of the Bar of the Commonwealth of Pennsylvania, or member of the bar of any state, that's all I said.

THE DEFENDANT: Judge Sabo --

THE COURT: I don't care whether he belongs to the American Bar Association or not.

1.107

That's altogether something different.

THE DEFENDANT: What I'm saying to you is --

THE COURT: What I'm saying is --

THE DEFENDANT: What rule or statute --

THE COURT: The law --

THE DEFENDANT: For what reason?

THE COURT: The law of Pennsylvania says that you can only have backup counsel who is a member of the bar, and that's the way it's going to be.

THE DEFENDANT: What I'm saying to you, Judge, is that --

THE COURT: And I'm saying to you --

THE DEFENDANT: -- there is no rule or statute that you can point to --

THE COURT: If you think --

THE DEFENDANT: -- that says I can't have someone --

THE COURT: If you think that's wrong --

THE DEFENDANT: -- sitting at the

1.108

defense table?

THE COURT: -- all you have to do is go to the Supreme Court.

THE DEFENDANT: I'm before you now. Why should I go to Supreme Court? What I'm saying is, you have not ruled to my satisfaction on that.

THE COURT: Hey, that's not a matter --

THE DEFENDANT: It is a matter.

THE COURT: You may never --

THE DEFENDANT: My life is on trial.

THE COURT: You may never agree as to my rulings on the law as far as the law is concerned. But as I'm saying to you, during the course of the trial this Court will be making numerous rules on law dealing with evidence and other matters. I do not intend to spend all day arguing with you if you disagree with my rulings on law. And that's what I'm doing here. I made a ruling on the law. You must follow it.

THE DEFENDANT: You have made a

1.109

ruling on your procedure. You have not made -- there is no law that states why someone cannot assist me at that defense table, and you know it.

THE COURT: Mr. Jamal, that is a rule on the law.

THE DEFENDANT: That is not a ruling on the law.

THE COURT: If you don't like it, your attorney can tell you what you can do.

THE DEFENDANT: That is not a ruling on the law. It's a ruling on your procedure.

THE COURT: No, it isn't. It is a ruling on the law.

THE DEFENDANT: What law? What law can you state that I cannot have someone assist me at that table?

THE COURT: Mr. Jamal, I am not going to argue consistently throughout this trial. If you continue to act in this way --

THE DEFENDANT: In what way am I acting?

THE COURT: When I make a ruling you

1.110

have an automatic exception to that ruling. It will be reviewed by the Appellate Court. I don't want to stand here and argue with you all day long on every ruling I'm going to make throughout this trial.

THE DEFENDANT: Judge --

THE COURT: I'm telling you now that if you continue that way I will have no alternative but to remove you as counsel, and you can sit in here. Mr. Jackson will proceed. And if you continue to disrupt this court while you're sitting here I will then be forced to consider contempt proceedings against you.

THE DEFENDANT: Again, those warnings of contempt are meaningless to me.

COURT: I know that.

THE DEFENDANT: You are threatening me with death and you think contempt means something to me?

THE COURT: I don't care but I'm required by the law to advise you of this, what will happen. And if you keep acting that way you have to be

removed from the courtroom. The

1.111

Court --

THE DEFENDANT: Again, Judge --

THE COURT: -- the Court will have to proceed in your absence.

THE DEFENDANT: That's absolutely meaningless to me. I am not --

THE COURT: That's unfortunate that it's meaningless to you.

THE DEFENDANT: Let me make a point.

THE COURT: It's unfortunate --

THE DEFENDANT: Let me make a point.

THE COURT: I want it on the record so that you understand that I have advised you that our United States Supreme Court has spoken on this question, the Pennsylvania Supreme Court has spoken on this question, and I've ruled on the law and that's it. And if you don't like it take me up.

THE DEFENDANT: Judge, you have ruled on procedure. You have not ruled on law because there is no law.

THE COURT: I have no choice. As long as Mr. Jackson --

1.112

THE DEFENDANT: Mr. Jackson --

THE COURT: -- can represent you.

THE DEFENDANT: He cannot represent me because I'm representing myself.

THE COURT: All right. As far as counseling and anything else is concerned --

THE DEFENDANT: There is no law that you can point to, Judge.

THE COURT: All I want to know from you is, are you going to abide by the orders of this Court or not, because if you're not I must remove you as

counsel because we must proceed.

THE DEFENDANT: There is no law that you can point to that can say why --

THE COURT: I am not going to have you argue with me as to law --

THE DEFENDANT: I'm making a point.

THE COURT: -- and every decision I make.

THE DEFENDANT: I'm making a point.

THE COURT: I'm telling you that as far as you are concerned when I rule on the law that's it. You have an automatic exception.

1.113

The Appellate Court will review the record. If I am wrong they reverse me; if I'm right they affirm me. It's as simple as that.

THE DEFENDANT: If you wanted to do what's right you can do that right now.

THE COURT: Standing here and arguing with me all day is foolish.

THE DEFENDANT: No, it is not foolish.

THE COURT: I do what I believe is the law.

THE DEFENDANT: I don't care what you believe. What I'm saying, Judge, is, that there is no law that prohibits you from allowing someone to assist me at the defense table. This is done all the time. I cited cases during that Motion to Suppress, a number of cases, that happened right here in this City Hall where there was an assistance from non-lawyers at the defense table, and there's no reason --

MR. MCGILL: Your Honor --

THE DEFENDANT: -- and there's no reason for you or the Commonwealth to deny me access to assistance that I have stated a number

1.114

of times that I need in my defense.

MR. MCGILL: Your Honor, Your Honor has not really ruled as far as my, at least, suggestion was before.

THE COURT: Look, anybody can be in this courtroom.

MR. MCGILL: You have no objection?

THE COURT: He can get anybody he wants to.

MR. MCGILL: You have no objection John Africa be here?

THE COURT: During breaks and all. I have no objection to that.

MR. MCGILL: How about visiting upstairs?

THE COURT: Well, take it up with the sheriff. If he can visit up there and they are able to accommodate, fine, he can visit him in the prison. As far as I'm concerned he can visit anywhere he wants. I'm not holding back on that.

MR. MCGILL: You have no objection if his name was placed on a list for him to

1-115

be able to visit Mr. Jamal at the prison?

THE COURT: Certainly not. What difference does that make?

THE DEFENDANT: The issue here is not prison. The issue is right here at the defense table. This is the trial and for you to suggest I can visit with whomever I wish to visit, that's not the point. That's not the issue. For you to evade it and talk about up stairs --

THE COURT: I think Mr. Jackson ought to take some position --

THE DEFENDANT: There is no law that you can point to about how I couldn't have whom I wish to have --

THE COURT: Mr. Jackson --

THE DEFENDANT: -- whom I have confidence in to assist me at the defense table.

THE COURT: Mr. Jackson, you're doubtful about your position in this case. I would suggest that you read the Africa case or, if you wish, go to the Supreme Court this afternoon --

1.116

MR. MCGILL: Your Honor, I would be in a position --

THE COURT: And --

MR. MCGILL: Excuse me. I don't want to interrupt the Court.

MR. JACKSON: Most respectfully --

MR. MCGILL: Mr. Jackson, I don't mean to interrupt you. I would be in a position, at this time, Your Honor, to alert the Court I'm sure Mr. Jackson is aware of what had occurred in the MOVE case and, therefore, I could, at least, hopefully add some knowledge to these proceedings.

THE COURT: I'm pretty sure Mr. Jackson knows about that case. But if he wants further confirmation I have no objection to his going to the Supreme Court immediately.

MR. MCGILL: That has already been done.

MR. JACKSON: Yes, Your Honor. May it please the Court, I have, of course, asked on numerous occasions to withdraw from this matter, as Your Honor well knows, and Mr. Jamal

1.117

has indicated his desire for other counsel. Consistent with what I believe to be my fundamental allegiance to my client, I cannot, in all due conscience, but certainly with due respect in this court, I cannot proceed in this matter at this time without some further word from the Supreme Court of this State.

THE COURT: That's what I'm suggesting that you probably ought to take this afternoon to affect that and that will let you know exactly where you stand in this position and the Court. Whatever order the Supreme Court makes I certainly will abide by it.

MR. JACKSON: Your Honor, I think --

THE COURT: That's the easiest way to do it.

MR. JACKSON: The issue, of course, sir, so that I am clear, Mr. Jamal, as I understand, still represents himself.

THE COURT: At this point --

MR. JACKSON: I don't think I would have any standing to go --

THE COURT: You can go there asking

1.118

for guidance in the event -- you can say that the Court is on the verge of removing him --

MR. JACKSON: Your Honor --

THE COURT: -- as his own attorney.

MR. JACKSON: I don't wish to quibble with the Court but Your Honor well knows that the Supreme Court does not give advisory opinion in that there is no issue for the Court to resolve saying that he's on the verge of losing his self-representation.

THE COURT: Well, if you're asking me to remove him, I'll remove him. I'll make it easy for you.

MR. JACKSON: I'm not asking for you to remove him. I'm simply saying I cannot get the ruling of the Court because I have no standing. There is no issue for the Court to decide.

THE COURT: I thought you said that you wanted to talk to them to get advisory opinion.

MR. JACKSON: I thought Your Honor was appointing me to do something specifically.

1.119

I'm simply saying at this juncture, as I understand, Mr. Jamal still represents himself and I have no standing to go to the Supreme Court for advisory opinion.

THE COURT: As I said, the only way he's going to go before the Supreme Court is for me to make a decision, and I'm going to have to make a decision shortly.

MR. MCGILL: Well Your Honor, I understand the Court's position and also Mr. Jackson who wants, again, proof that he is aware of what is happening, and that is, I believe, that there may be some basis of concern as backup counsel petitioning the Supreme Court in terms of standing. Therefore, Your Honor, I would make a suggestion to the Court that if temporarily -- because I still feel that Mr. Jamal perhaps will, well, I hope will, listen to the Supreme Court, and he does wish to represent himself -- I would ask the Court to consider temporarily or at least entering an order of removal of Mr. Jamal from the case for the purposes -- and then appointing backup

1.120

counsel as primary counsel. We would understand that that order is done for the purposes that an attorney would be able to go directly to the Supreme Court and make a -- or file the needed papers. And I anticipate, Your Honor, if properly done this would be done in a matter of a short period of time, and at that point Mr. Jackson then as primary counsel would then have the standing. I would ask the Court to consider once the ruling is made, whatever the order is --

THE COURT: Whatever the order is I would follow the Supreme Court's ruling.

MR. MCGILL: Of course. And once that order is made and we are again before this Court in this trial that Your Honor consider moving Mr. Jackson and reappointing or for that matter allowing Mr. Jamal to represent himself again. I believe that maybe that's one way that we could do it. I can't imagine the Supreme Court not allowing a backup counsel who is primary counsel to approach it. Now he has a right to file, not necessarily a right

1.121

for a hearing but at least a right to file, and perhaps within a matter of one day there may be some ruling.

And the issue, as I understand it, is whether or not backup counsel must in fact be an attorney. Of course, if they say that's not needed, it's not necessarily true, well then, he can have whomever he wishes.

THE DEFENDANT: May it please the Court --

MR. MCGILL: I would encourage Your Honor no matter what the order is to continue having Mr. Jackson present so that the law could be or at least someone learned in the law would be able to advise Mr. Jamal throughout

the proceedings whether he wants them or not.

THE COURT: Do you want to say something?

MR. JACKSON: Yes, Your Honor. With all due respect to counsel's argument and Your Honor's position, my thought, at least with respect to the attempt to gain jurisdiction or the attempt to give me standing and go to

1.122

the Supreme Court -- I'm only suggesting and I don't want to be presumptuous as to go into the minds of Your Honor and counsel -- but clearly it's being put on the record that the only reason Mr. Jamal is being removed as counsel is to give me jurisdiction and standing to go to the Supreme Court.

THE COURT: No. No, that's not true.

MR. JACKSON: That's what I think counsel said.

THE COURT: That may be what Mr. McGill said but that's not my position.

MR. JACKSON: Fine.

THE COURT: My position is that Mr. Jamal has been intentionally disrupting the orderly progression of this trial --

THE DEFENDANT: How?

THE COURT: -- and what I said in the very beginning, when I make a ruling that's it, you don't argue with the Court about the ruling --

THE DEFENDANT: Judge, fine.

THE COURT: You have certain rights

1.123

but what I said is this: My position is that you have deliberately disrupted the orderly progression of this trial. Therefore, I am removing you as primary counsel and I am appointing Mr. Jackson to take over as primary counsel. And I am not doing it just to gain admission to the Supreme Court. I am doing it because I think it's the proper thing to do in this case. And Mr. Jackson, forget it, I'm not doing this just to get around a

technicality so you can go to the Supreme Court. I was willing to allow you to go to the Supreme Court before I made a ruling.

MR. JACKSON: I understand.

THE COURT: I'm advising you, or if you felt that you needed it, but I'm not doing this just because I want to go around a technicality. I'm doing it because I believe it's the right thing to do and that's the way we're going to proceed.

Now, you can go to the Supreme Court this afternoon forthwith. I am expecting you to go today immediately.

1. 124

MR. JACKSON: Your Honor, I believe the rules require that I file a written petition and I have to be allowed some time to do that. I'm familiar with the law in the area and I believe that I can have that completed in about an hour and a half or so. I need time to do that. I also need an issue clarified notwithstanding a question with respect to my obligations to Mr. Jamal, do I also hear Your Honor saying that I and also ask the Court the question of whether or not John Africa can sit at counsel table?

THE COURT: I can't tell you what to say --

MR. JACKSON: Fine, sir.

THE COURT: -- to the Superior Court.

MR. JACKSON: Very well, sir.

THE COURT: You say whatever you want to.

MR. JACKSON: Very well.

THE COURT: And whatever the Supreme Court wishes to answer they will answer.

MR. JACKSON: Very well, Your Honor.

1.125

THE COURT: It is not for me to make that decision. My only position now is removing Mr. Jamal as primary counsel and putting you in, Mr. Jackson, as the primary attorney.

MR. JACKSON: I understand, Your Honor.

THE COURT: That's all I'm doing. And what the Supreme Court will hear from you, what you will argue, whatever that ruling is, I will follow it.

MR. JACKSON: Very well.

THE COURT: I'm here to follow the law just like everybody else. All right. Now I see we have to adjourn until tomorrow morning at 9:30.

MR. MCGILL: I would suggest there's another issue to Mr. Jackson in making that petition and that is whether backup counsel is appointed as primary counsel that he has an obligation to represent the defendant even if he doesn't want to himself or the defendant doesn't want him.

THE COURT: I'm assuming that's what

1.126

Mr. Jackson wants to put in his petition. He's the one that keeps saying, "I don't want to represent Mr. Jamal if Mr. Jamal doesn't want me to represent him." So I'm assuming he's going to ask the Court for guidance on that part. I don't have to draw up this petition for Mr. Jackson. He's learned in the law, he knows the proper procedure.

MR. MCGILL: Yes, sir.

THE DEFENDANT: Judge, I don't want Mr. Jackson to do anything on my defense. I don't want him to participate in this trial.

THE COURT: Well, he has been ordered to.

THE DEFENDANT: You have removed me, because that's something you've been wanting to do for several weeks now.

THE COURT: No. I'm doing it because you're disrupting --

THE DEFENDANT: I am not disrupting the court. You've disrupted my right to defend myself.

THE COURT: Fine. We'll let the

1. 127

Supreme Court decide that.

MR. MCGILL: If Mr. Jamal doesn't want to maybe he wants to start the opening now.

THE COURT: Do you want the District Attorney to proceed?

THE DEFENDANT: I don't care if he proceeds or not. Do you want to let me have the choice of counsel as I want?

THE COURT: I'm telling you we can proceed as you want now.

THE DEFENDANT: No. I want choice of counsel.

THE COURT: He's not going to let you proceed.

THE DEFENDANT: You're not letting me proceed.

THE COURT: Let's get this resolved once and for all.

THE DEFENDANT: You are not letting me proceed.

THE COURT: We'll adjourn until tomorrow morning.

1.128

THE DEFENDANT: You are not letting me proceed.

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(Court adjourned until Friday,  
June 18, 1982, 9:30 o'clock a.m.)

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1.129

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause

is hereby approved and directed to be filed.

Judge