

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIALS DIVISION

COMMONWEALTH	:	OCTOBER TERM, 1997
	:	BILL NO. 1031 1/2
	:	NO. 1 - MURDER
	:	NO. 2 - ROBBERY
VS.	:	NO. 3 - CARR FIREARMS W/O LIC
	:	NO. 4 - CARR FIREARMS PUB ST/PL
	:	NO. 5 - THEFT UNL TAK/DISP
	:	NO. 6 - THEFT REC STOL PROPERTY
	:	NO. 7 - POSS INSTRU CRIME
JIMEL LAWSON	:	NO. 8 - CRIMINAL CONSPIRACY

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JEHMAR GLADDEN	:	NO. 8 - CRIMINAL CONSPIRACY

COMMONWEALTH	:	JANUARY TERM, 1998
	:	BILL NO. 0869 1/1
	:	NO. 1 - MURDER
	:	NO. 2 - ROBBERY
VS.	:	NO. 3 - CARR FIREARMS W/O LIC
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TERRENCE LEWIS	:	NO. 8 - CRIMINAL CONSPIRACY

JURY TRIAL

MAY 21, 1999

COURTROOM 701, CRIMINAL JUSTICE CENTER
PHILADELPHIA, PENNSYLVANIA

BEFORE: THE HONORABLE JAMES A. LINEBERGER, J.

APPEARANCES:

JOHN DOYLE, ESQ.
ASSISTANT DISTRICT ATTORNEY
FOR THE COMMONWEALTH

DONALD M. PADOVA, ESQ.
FOR DEFENDANT JIMEL LAWSON

NINO V. TINARI, ESQ.
FOR DEFENDANT JEHMAR GLADDEN

THOMAS W. MOORE, JR., ESQ.
FOR DEFENDANT TERRENCE LEWIS

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P R O C E E D I N G S

THE COURT: ALL RIGHT. MR. FULLER, BRING THE JURY IN.

THE TIPSTAFF: YES, SIR.

(THE JURY ENTERED THE COURTROOM.)

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN.

THE JURY: GOOD MORNING.

THE COURT: LADIES AND GENTLEMEN, BEFORE I SEND YOU OUT TO DELIBERATE ON THIS CASE, THERE ARE A FEW MORE ISSUES I'D LIKE TO HIGHLIGHT WITH REGARD TO YOUR ROLE IN THIS MATTER.

REMEMBER IT'S MY RESPONSIBILITY TO DECIDE ALL QUESTIONS OF LAW AND IT'S YOUR OBLIGATION TO FOLLOW MY INSTRUCTIONS ON THE LAW. I REMIND YOU, HOWEVER, THAT I'M NOT THE TRIER OF FACTS. YOU AND YOU ALONE ARE THE JUDGES OF THE FACTS. MY INSTRUCTION TO YOU WILL BE THAT YOU SHOULD APPLY THE LAW AS I'VE GIVEN IT TO YOU TO THE FACTS AS YOU FIND THEM IN THIS CASE IN

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2 RENDERING A DECISION WITH REGARD TO THE GUILT
3 OR INNOCENCE OF EACH OF THESE INDIVIDUALS
4 SEPARATELY.

5 AS I TOLD YOU BEFORE, VERDICT COMES FROM
6 THE LATIN TERM VERE DICTUM, WHICH MEANS TO
7 SPEAK THE TRUTH. AND IN ORDER FOR YOU TO FIND
8 A DEFENDANT GUILTY OR NOT GUILTY IN THIS CASE,
9 IT MUST BE UNANIMOUS, WHICH MEANS THAT ALL 12
10 OF YOU MUST AGREE. THERE'S NO FRACTIONAL WAY
11 THAT YOU CAN REACH A VERDICT IN THIS CASE. SO
12 CONSEQUENTLY, YOU SHOULD GO IN WITH AN ATTITUDE
13 TOWARDS REACHING A VERDICT. AND AS I SAID TO
14 YOU YESTERDAY AND I SAY IT AGAIN, BECAUSE IT'S
15 TERRIBLY IMPORTANT, EACH OF YOU MUST MAKE UP
16 YOUR OWN MIND. EACH OF YOU SHOULD NOT HESITATE
17 TO CHANGE YOUR INITIAL THINKING IF YOUR FELLOW
18 JURORS CONVINCED YOU THAT YOUR INITIAL THINKING
19 WAS ERRONEOUS. HOWEVER, YOU SHOULD NOT
20 SURRENDER AN HONEST OPINION MERELY TO GO ALONG
21 WITH THE CROWD, PARTICULARLY IF IT WOULD, IN
22 FACT, DO VIOLENCE TO YOUR INDIVIDUAL JUDGMENT.

23 AS I SAID BEFORE, FROM YOUR RANKS YOU
24 WILL SELECT ONE INDIVIDUAL WHO'LL BE THE
25 FOREPERSON, AND THAT PERSON WILL BE RESPONSIBLE

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2 FOR COMMUNICATING WITH THIS COURT AND
3 ANNOUNCING IN OPEN COURT A VERDICT ONCE YOU
4 HAVE REACHED A VERDICT IN THIS CASE. NOW, YOU
5 SHOULD KEEP YOUR DELIBERATIONS FREE OF BIAS OR
6 PREJUDICE, BECAUSE THE COMMONWEALTH AND THE
7 DEFENSE EXPECT YOU TO BE FREE OF ANY BIAS OR
8 PREJUDICE IN ARRIVING AT A VERDICT. I GO ON TO
9 TELL YOU THAT IN ARRIVING AT A VERDICT, YOUR
10 VERDICT MUST BE AS A RESULT OF THE EVIDENCE OR
11 THE LACK THEREOF AS IT PERTAINS TO EACH
12 INDIVIDUAL SEPARATELY.

13 YOU SHOULD NOT CONCERN YOURSELF WITH WHAT
14 THE CONSEQUENCES SHOULD OR WILL BE SHOULD YOU
15 FIND THE DEFENDANT GUILTY OR NOT GUILTY. THE
16 QUESTION OF GUILT AND THE QUESTION OF PENALTY
17 ARE DECIDED SEPARATELY.

18 IN CLOSING I WOULD LIKE TO SUGGEST THAT
19 IT WILL BE A LOT EASIER AND MORE COMFORTABLE IN
20 YOUR DELIBERATIONS IF YOU WOULD RESPECT THE
21 FEELINGS OF YOUR RESPECTIVE COLLEAGUES DURING
22 THE DELIBERATIONS, AND YOU SHOULD KEEP IT AS
23 CORDIAL AS YOU CAN POSSIBLY DO SO.

24 WILL JUROR NO. 13 STEP DOWN, PLEASE.

25 -----

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2 (ALTERNATE EXCUSED.)

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4 THE COURT: LADIES AND GENTLEMEN OF THE
5 JURY, BE PATIENT AND DELIBERATE. DO NOT BE
6 HASTY IN YOUR ARRIVING AT A VERDICT IN THIS
7 CASE. LADIES AND GENTLEMEN OF THE JURY, YOU
8 MAY RETIRE TO BEGIN TO DELIBERATE.

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10 (THE JURY RETIRED TO DELIBERATE AT
11 10:16 A.M.)

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13 THE COURT: ALL RIGHT. GENTLEMEN, IT'S
14 10:15. I REALIZE YOU HAVE BUSY SCHEDULES, AND
15 I KNOW THAT ONE JUDGE IS SPECIFICALLY WAITING
16 FOR ONE OF YOU. MY INSTRUCTION IS YOU SHOULD
17 NOT BE MORE THAN 15 MINUTES AWAY.

18 MR. PADOVA: YES, SIR.

19 THE COURT: WHICH MEANS THAT IF YOU'RE
20 TRAVELING BY SURFACE TRANSPORTATION, I'M
21 EXPECTING YOU HERE IN 15 MINUTES. SO IF YOU
22 CAN DO THAT AND GO TO NORTHEAST AIRPORT, THAT'S
23 FINE WITH ME, OR YOU CAN CAMP OUT DOWN IN THE
24 LOBBY.

25 WERE THERE ANY DOCUMENTS? NOTHING WAS

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INTRODUCED? WHAT DID YOU INTRODUCE?

MR. DOYLE: ONLY THING I ENDED UP
INTRODUCING --

THE COURT: ONE DOCUMENT IN WRITING.
THAT DOES NOT GO OUT.

MR. DOYLE: NO PHOTOGRAPHS. THERE'S
NOTHING THAT GOES OUT.

THE COURT: THEY DON'T HAVE TO WORRY
ABOUT IT.

THE TIPSTAFF: OKAY.

(RECESS TAKEN.)

THE COURT: ALL RIGHT. GIVE ME THE NOTE,
MR. FULLER.

GENTLEMEN, I TAKE IT YOU HAVE REVIEWED
THE QUESTIONS POSED BY THE FOREPERSON IN THE
MATTER DATED 5/21, 11:20. IT STARTS WITH,
"YOUR HONOR, SUBPARAGRAPH 1, WHAT HAPPENED TO
THE PIECE OF EVIDENCE, BLOODY ANTENNA? WHOSE
BLOOD WAS IT? WHY WASN'T THAT PRESENTED AS
EVIDENCE?"

I DON'T KNOW WHAT THEY'RE TALKING ABOUT.
NUMBER ONE, THERE'S NO EVIDENCE PRESENTED WITH

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REGARD TO ANY ANTENNA. THERE WAS AN ALLUSION MADE ABOUT SOME STRAIGHT PIPE THAT YOU SMOKE CRACK WITH.

MR. TINARI: MAY I, RESPECTFULLY, SPEAK TO THAT, YOUR HONOR? THERE WAS CROSS-EXAMINATION AS TO THE ANTENNA WHEN THEY -- THE POLICE OFFICER WAS PLACED ON THE STAND.

THE COURT: WHAT WAS THE QUESTION?

MR. TINARI: THE QUESTION WAS, DID YOU HAVE AN OPPORTUNITY TO LOCATE AN ANTENNA? YES. DID YOU PLACE IT ON A PROPERTY RECEIPT? YES. AND WHERE EXACTLY DID YOU FIND IT? AND THAT WAS THE ENTIRE AREA OF EXAMINATION IN THAT REGARD.

MR. DOYLE: IT WAS NOTHING ABOUT BLOODY.

MR. TINARI: NOT BLOODY, BUT RATHER DUSTED FOR LATENT PRINTS. IF YOU RECALL, IT'S A METAL PIECE OF OBJECT, SOMETHING THAT IS EASILY AMENABLE TO PRINTS. THAT'S THE TESTIMONY THAT EVOLVED.

MR. DOYLE: SOMEBODY MISHEARD IF THEY'RE ASKING ABOUT WHOSE BLOOD. THERE WAS NO BLOODY ANTENNA.

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2 THE COURT: WELL, I AM NOT PRESENTING ANY
3 EVIDENCE IN THIS CASE. I CAN'T TELL THEM WHAT
4 THERE WAS OR WAS NOT. NOW THAT MR. TINARI HAS
5 MENTIONED THAT THERE WAS, IN FACT, A QUESTION
6 REGARDING AN ANTENNA, THE ANSWER TO THE
7 QUESTION IS, NUMBER ONE, THAT THERE WAS NO
8 ANTENNA PHYSICALLY PRESENTED IN THIS TRIAL.

9 MR. TINARI: MAY I SPEAK TO THAT,
10 YOUR HONOR? PERHAPS THE BETTER WAY, MAYBE THE
11 COURT WOULD RECONSIDER, THAT THE ANSWER TO THAT
12 QUESTION, THAT THEY MUST RELY UPON THEIR OWN
13 MEMORIES AS TO EVIDENCE CONCERNING AN ANTENNA.
14 AND I THINK THAT THAT KEEPS IT NEUTRAL BOTH FOR
15 THE COMMONWEALTH AND FOR --

16 THE COURT: ALL RIGHT. OKAY. ALL RIGHT.
17 I'LL DO IT THAT WAY.

18 MR. DOYLE: I WOULD, YOUR HONOR, I WOULD
19 RECOMMEND -- I HAVE JUST A LITTLE BIT OF A
20 SLANT. I DON'T HAVE A PROBLEM WITH THAT
21 SUGGESTION. WHAT I WOULD SAY, YOU ARE NOT TO
22 SPECULATE ABOUT --

23 THE COURT: I'M NOT GOING TO GET INTO ANY
24 SPECIFICS.

25 MR. DOYLE: JUST EVALUATE THE EVIDENCE IN

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FRONT OF YOU AND RELY ON YOUR RECOLLECTION.

MR. TINARI: YES.

THE COURT: "CAN WE HEAR BACK THE
TESTIMONY OF LENA LAWS REGARDING WHERE
MR. HOWARD WAS SHOT?"

THE ANSWER TO THAT QUESTION IS ALSO NO.
THEY MUST RELY ON THEIR RECOLLECTION,
COLLECTIVE RECOLLECTION OF THE EVIDENCE.

"CAN WE SEE THE POLICE OFFICER'S DIAGRAM
OF THE HOUSE?"

NO. IT WAS NOT INTRODUCED AS EVIDENCE.

MR. DOYLE: YOUR HONOR, I WOULD SAY, NO,
YOU MUST RELY ON THE EVIDENCE BEFORE YOU.

THE COURT: I DON'T KNOW WHAT THEY'RE
ASKING FOR. THEY MAY WANT TO KNOW WHO LIVES
NEXT DOOR. I'M NOT GOING TO SPECULATE AS TO
WHY THEY'RE ASKING. ALL I'M GOING TO SAY IS
NO. IT WAS NOT INTRODUCED.

MR. DOYLE: JUST SAY -- WELL, THE ANSWER
SHOULD BE JUST NO.

MR. TINARI: WE CAN ACCEPT THAT,
YOUR HONOR.

THE COURT: "CAN WE SEE PHOTOGRAPHS THAT
JIMEL LAWSON'S LAWYER WAS LOOKING AT ON MONDAY

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MORNING?"

MR. TINARI: YOUR HONOR KNOWS MY REQUEST.

THE COURT: THE ANSWER TO THAT QUESTION IS NO. THEY MUST DECIDE THIS CASE BASED ON THE EVIDENCE AS IT EMANATED FROM THE WITNESS STAND.

MR. PADOVA: OR LACK OF EVIDENCE.

THE COURT: WHAT?

MR. PADOVA: OR THE LACK OF EVIDENCE.

THE COURT: THE LACK OF EVIDENCE WOULD NOT EMANATE FROM THE WITNESS STAND.

MR. DOYLE: JUDGE, I WOULD ASK YOU MERELY ANSWER THE QUESTIONS NO.

THE COURT: I'M SURE HAPPY I'M DOING THIS OUT OF COURTESY. I'M GOING TO DO WHAT I WANT ANYWAY.

BRING THEM IN, MR. FULLER.

THE TIPSTAFF: YES, SIR.

THE COURT: OFF THE RECORD.

(DISCUSSION OFF THE RECORD.)

(THE JURY ENTERED THE COURTROOM WITH A QUESTION AT 11:58 A.M.)

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2 THE COURT: LADIES AND GENTLEMEN, I HAVE
3 NOTES FROM THIS JURY IN GENERAL. I WILL TELL
4 YOU THIS BEFORE I ADDRESS A SPECIFIC QUESTION.
5 IN PENNSYLVANIA WE DO NOT PERMIT JURIES OR
6 JURORS TO TAKE NOTES. WE ARE INSTRUCTED TO
7 INSTRUCT THE JURY THAT THEY MUST RELY ON THEIR
8 COLLECTIVE RECOLLECTION OF THE EVIDENCE AS IT
9 EMANATES FROM THE WITNESS STAND. THAT YOU MUST
10 DO. YOU MUST NOT SPECULATE ABOUT SOMETHING
11 THAT'S NOT IN EVIDENCE.

12 NOW, "WHAT HAPPENED TO THE PIECE OF
13 EVIDENCE, BLOODY ANTENNA?"

14 YOU HAVE TO RELY ON YOUR RECOLLECTION AS
15 TO WHETHER OR NOT THERE WAS SUCH A THING. IT'S
16 YOUR RECOLLECTION THAT'S CONTROLLING IN THE
17 CASE. AND THE QUESTION, "WHY WASN'T IT
18 PRESENTED IN EVIDENCE" IS ASSUMING THAT THERE
19 WAS SOMETHING.

20 SECOND. "CAN WE HAVE READ BACK THE
21 TESTIMONY FROM LENA LAWS REGARDING WHERE
22 MR. HOWARD WAS SHOT?"

23 NO. THIS IS A RELATIVELY SHORT TRIAL.
24 IT'S ONLY BEEN A COUPLE DAYS AGO THAT MISS LAWS
25 TESTIFIED, AND SOMEBODY THERE SHOULD BE ABLE TO

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REMEMBER IT AND CAN REFRESH THE OTHERS'

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RECOLLECTION.

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"CAN WE SEE POLICE OFFICER'S DIAGRAM OF
THE HOUSE?"

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NO.

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"CAN WE SEE PHOTOGRAPHS THAT JIMEL
LAWSON'S LAWYER WAS LOOKING AT ON MONDAY
MORNING?"

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HE MIGHT HAVE BEEN LOOKING AT PHOTOGRAPHS
OF INDIVIDUALS FROM DELILAH'S, FOR ALL YOU
KNOW. SO IT'S NONE OF YOUR BUSINESS. IT'S NOT
EVIDENCE IN THE CASE, SO DON'T SPECULATE AND
LOOK FOR THINGS THAT ARE NOT THERE.

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"WAS HEROIN DISCUSSED AT ALL IN LENA'S
TESTIMONY?"

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IT'S YOUR RECOLLECTION WHAT LENA'S
TESTIMONY WAS THAT'S CONTROLLING IN THE CASE,
NOT MINE, NOT THE LAWYERS'. YOURS.

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"SHOULD YOUR DECISION AS TO A VERDICT OF
GUILTY OR NOT GUILTY BE BASED SOLELY ON
EVIDENCE PRESENTED OR STATED?"

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WHAT ELSE COULD IT BE BASED ON? ON THE
FACT THAT MY HAIR IS GRAY? OR THE FACT THAT I
WEAR A ROBE? YOUR DECISION WITH REGARD TO THE

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2 GUILT OR INNOCENCE OF EACH OF THESE INDIVIDUALS
3 SEPARATELY MUST BE BASED ON THE EVIDENCE AS IT
4 WAS PRESENTED AND NOTHING ELSE. MUST BE BASED
5 ON THE EVIDENCE THAT'S PRESENTED. COMMONWEALTH
6 HAS THE BURDEN OF CONVINCING YOU OF THEIR GUILT
7 BEYOND A REASONABLE DOUBT. IT MUST BE
8 UNANIMOUS FOR YOU TO FIND THEM GUILTY OR NOT
9 GUILTY. YOU HAVE FOUR OPTIONS FOR EACH.
10 GUILTY, NOT GUILTY, OF FIRST DEGREE, SECOND
11 DEGREE MURDER, OR THIRD DEGREE MURDER. THOSE
12 ARE YOUR FOUR OPTIONS FOR EACH OF THESE
13 INDIVIDUALS. I CAN'T THINK OF ANYTHING ELSE
14 THAT I CAN TELL YOU UNDER THE CIRCUMSTANCES.
15 DO NOT GO OUTSIDE OF THE EVIDENCE THAT HAS BEEN
16 PRESENTED IN THIS CASE IN TRYING TO REACH SOME
17 COMPROMISE.

18 YOU MAY RESUME YOUR DELIBERATIONS.

19 MR. MOORE: COULD WE SEE YOU AT SIDE BAR?

20 THE COURT: HOLD IT. THESE GENTLEMEN
21 WANT TO SECOND-GUESS ME.

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23 (DISCUSSION IN ROBING ROOM AS FOLLOWS:)

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25 THE COURT: WE'RE BACK HERE AT THE

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REQUEST OF THE DEFENSE.

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WHAT IS IT?

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MR. TINARI: YOUR HONOR, MR. PADOVA

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RAISED THE QUESTION. NOT ONLY MUST THEY

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CONSIDER THE EVIDENCE AS PRESENTED BUT ALSO THE

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LACK OF EVIDENCE. I THINK IN THIS INSTANCE

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WHAT IS OCCURRING, IF I MAY, WITH ALL DUE

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RESPECT TO THE COURT, THIS JURY IS CONCERNED

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ABOUT THE LACK OF EVIDENCE HERE, NOT SO MUCH

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THE EVIDENCE PRESENTED. AND I THINK, YOUR

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HONOR, THAT IN RESPONSE TO THE JURY, THAT IN

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ALL FAIRNESS TO THE DEFENDANT, WE WOULD ASK

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THAT YOUR HONOR RECONSIDER THAT PORTION OF

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YOUR INSTRUCTIONS TO THEM WHEN YOU WERE

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ADDRESSING THOSE PARTICULAR QUESTIONS. IT

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APPEARS, EVEN THE LAST QUESTION YOUR HONOR

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RECEIVED FROM THEM, IT IS A QUESTION OF FAILURE

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TO PRESENT EVIDENCE. IT'S PART OF YOUR CHARGE.

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THE COURT: ALL RIGHT. I'LL DO THAT.

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MR. MOORE: THAT'S MY REQUEST AS WELL.

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THE COURT: YOU HAVE AN OBJECTION?

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MR. MOORE: NO. I SAID THAT WAS MY

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REQUEST.

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THE COURT: YES. I'LL DO THAT.

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2 MR. TINARI: OFF THE RECORD.

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4 (DISCUSSION OFF THE RECORD.)

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6 THE COURT: LADIES AND GENTLEMEN OF THE
7 JURY, WITH RESPECT TO THE EVALUATION OF THE
8 EVIDENCE IN THIS MATTER, I NEGLECTED TO USE THE
9 WORD EVALUATE THE EVIDENCE OR THE LACK THEREOF
10 IN THE MATTER. SO YOU WEIGH IT. AND IF
11 THERE'S ENOUGH EVIDENCE TO CONVINCCE YOU BEYOND
12 A REASONABLE DOUBT, YOU CONVICT. AND IF IT
13 DOES NOT CONVINCCE YOU BECAUSE OF THE LACK
14 THEREOF, THEN YOU DON'T CONVICT. IT'S JUST
15 THAT SIMPLE. I'M NOT TRYING TO GIVE YOU ANY
16 HINTS IN ANY WAY IN WHICH DIRECTION I THINK YOU
17 SHOULD GO, BECAUSE THE BALL IS IN YOUR COURT,
18 IF I MAY USE A TENNIS METAPHOR.

19 YOU MAY RESUME DELIBERATIONS.

20 THE TIPSTAFF: WATCH YOUR STEP, FOLKS.

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22 (THE JURY RESUMED DELIBERATIONS AT

23 12:05 P.M.)

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2 (THE JURY ENTERED THE COURTROOM WITH A
3 QUESTION AT 3:35 P.M.)

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5 THE COURT: GENTLEMEN, I HAVE A NOTE FROM
6 THE JURY DATED 3:15, 5/21, WHICH READS,
7 "YOUR HONOR, CAN YOU PLEASE BRIEFLY DEFINE THE
8 DIFFERENCE BETWEEN FIRST, SECOND, AND THIRD
9 DEGREE MURDER," IS THEIR SIMPLE REQUEST.

10 BRING THEM IN, MR. FULLER.

11 THE TIPSTAFF: YES, SIR.

12 -----

13 (THE JURY ENTERED THE COUTROOM WITH A
14 QUESTION AT 3:37 P.M.)

15 -----

16 THE COURT: FOREPERSON RISE, PLEASE. I
17 HAVE A NOTE FROM YOU WHICH READS, "CAN YOU
18 PLEASE BRIEFLY DEFINE THE DIFFERENCE BETWEEN
19 FIRST, SECOND, AND THIRD DEGREE MURDER?"

20 I WILL GIVE YOU THE DEFINITION OF FIRST,
21 SECOND AND THIRD DEGREE MURDER, AND YOU SHOULD
22 BE ABLE TO DISCERN THE DIFFERENCE ALL RIGHT.
23 VERY WELL. THANK YOU VERY MUCH.

24 AS I TOLD YOU EARLIER, THE DEFENDANTS IN
25 THE CASE ARE CHARGED WITH TAKING THE LIFE OF

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2 ANOTHER HUMAN BEING WITHOUT LEGAL
3 JUSTIFICATION. THERE ARE FOUR POSSIBLE
4 VERDICTS THAT YOU MIGHT REACH IN THIS CASE.
5 NOT GUILTY, GUILTY OF ONE OF THREE TYPES OF
6 MURDER, FIRST DEGREE, SECOND DEGREE, OR THIRD
7 DEGREE. BEFORE DEFINING THE SPECIFIC MURDER
8 CHARGES, IT'S NECESSARY FOR ME TO TALK ABOUT
9 THE WORD MALICE, M-A-L-I-C-E.

10 MALICE, AS I'M USING IT, HAS A SPECIAL
11 LEGAL MEANING. IT DOES NOT MEAN SIMPLE HATRED,
12 SPITE, OR ILL WILL. MALICE IS A SHORTHAND WAY
13 OF REFERRING TO ANY OF THE THREE DIFFERENT
14 MENTAL STATES THAT THE LAW REQUIRES AS BEING
15 BAD ENOUGH TO MAKE A KILLING MURDER. THUS, A
16 KILLING IS WITH MALICE IF THE KILLER ACTS WITH,
17 FIRST, THE INTENT TO KILL, OR AN INTENT TO
18 INFLECT SERIOUS BODILY INJURY, OR THIRD, A
19 WICKEDNESS OF DISPOSITION, HARDNESS OF HEART,
20 CRUELTY, RECKLESSNESS OF CONSEQUENCE, AND A
21 MIND REGARDLESS OF SOCIAL DUTY INDICATING AN
22 UNJUSTIFIED DISREGARD FOR THE PROBABILITY OF
23 DEATH OR GREAT BODILY HARM AND AN EXTREME
24 INDIFFERENCE TO THE VALUE OF HUMAN LIFE. A
25 CONSCIOUS DISREGARD OF AN UNJUSTIFIED AND

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2 EXTREMELY HIGH RISK THAT HIS ACTION MIGHT CAUSE
3 DEATH OR SERIOUS BODILY HARM.

4 THERE IS A SPECIAL RULE FOR HOW MALICE
5 CAN BE PROVED IF SECOND DEGREE MURDER IS
6 SOUGHT. I'LL GIVE THAT DEFINITION AND POINT
7 THAT OUT TO YOU WHEN I GET TO SECOND DEGREE
8 MURDER. NOW LET'S GO TO FIRST DEGREE MURDER.

9 IN ORDER TO FIND ONE OR ALL OR TWO OR
10 MORE OF THESE DEFENDANTS GUILTY OF FIRST DEGREE
11 MURDER, YOU MUST BE SATISFIED THAT THE
12 COMMONWEALTH HAS PROVEN BEYOND A REASONABLE
13 DOUBT THAT THE KILLER, THE KILLER ACTING AS AN
14 INDIVIDUAL OR AS A CO-CONSPIRATOR OR AS AN
15 ACCOMPLICE KILLED HULON HOWARD. FIRST IS THAT
16 HOWARD IS DEAD, SECOND IS THAT THE DEFENDANT,
17 ACTING AS AN INDIVIDUAL OR CO-CONSPIRATOR OR AN
18 ACCOMPLICE, AND I HAVE REFERENCED TO EACH ONE
19 SEPARATELY, KILLED HIM, AND THAT THE DEFENDANT
20 DID SO WITH THE SPECIFIC INTENT TO KILL.
21 THAT'S THE KEY TO FIRST DEGREE MURDER AND HOW
22 IT DIFFERS FROM THIRD DEGREE MURDER. A PERSON
23 HAS THE SPECIFIC INTENT TO KILL IF HE HAS A
24 FULLY FORMED INTENT TO KILL AND IS CONSCIOUS OF
25 HIS OWN INTENTION.

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2 AS MY EARLIER DEFINITION OF MALICE
3 INDICATES, A KILLING BY A PERSON WHO HAS THE
4 SPECIFIC INTENT TO KILL IS A KILLING WITH
5 MALICE, PROVIDED IT IS ALSO WITHOUT
6 CIRCUMSTANCES REDUCING THE KILLING TO VOLUNTARY
7 MANSLAUGHTER OR ANY LAWFUL JUSTIFICATION OR
8 EXCUSE, WHICH IS NOT APPLICABLE IN THIS CASE.

9 STATED DIFFERENTLY, A KILLING IS WITH THE
10 SPECIFIC INTENT TO KILL IF IT'S WILLFUL,
11 DELIBERATE, AND PREMEDITATED. THE SPECIFIC
12 INTENT TO KILL INCLUDED IN THE PREMEDITATION
13 NEEDED FOR FIRST DEGREE MURDER DOES NOT REQUIRE
14 PLANNING OR PREVIOUS THOUGHT OR ANY PARTICULAR
15 LENGTH OF TIME. IT CAN OCCUR QUICKLY. ALL
16 THAT IS NECESSARY IS THERE BE TIME ENOUGH SO
17 THAT THE DEFENDANT CAN AND DOES FULLY FORM AN
18 INTENT TO KILL AND IS CONSCIOUS OF THAT
19 INTENTION.

20 WHEN DECIDING WHETHER A DEFENDANT HAD THE
21 SPECIFIC INTENT TO KILL, YOU SHOULD CONSIDER
22 ALL THE EVIDENCE REGARDING HIS WORDS AND
23 CONDUCT AND THE ATTENDING CIRCUMSTANCES THAT
24 MIGHT SHOW HIS STATE OF MIND. IF YOU BELIEVE
25 THAT THE DEFENDANT -- NOW, WHEN I SAY THAT, I

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2 REMIND YOU THAT I'M TALKING ABOUT THE
3 DEFENDANTS -- AS AN INDIVIDUAL OR AS AN
4 ACCOMPLICE OR CO-CONSPIRATOR USED A DEADLY
5 WEAPON ON A VITAL PART OF THE VICTIM'S BODY,
6 YOU MIGHT REGARD THAT AS AN ITEM OF
7 CIRCUMSTANTIAL EVIDENCE FROM WHICH YOU MAY, IF
8 YOU CHOOSE, INFER THAT THE DEFENDANT HAD THE
9 SPECIFIC INTENT TO KILL.

10 IF YOU WERE TO FIND THAT ONE INDIVIDUAL
11 CAUSED THE DEATH OF THE DECEDENT IN THE CASE,
12 YOU MUST BE CONVINCED BEYOND A REASONABLE DOUBT
13 THAT THE OTHERS SHARED THE INTENT TO KILL IN
14 ORDER TO FIND THOSE WHO DID NOT GUILTY OF FIRST
15 DEGREE MURDER. NOW, IT DIFFERS FROM SECOND AND
16 THIRD, BUT THE KEY TO FIRST DEGREE MURDER AND
17 THE THING THAT SETS IT APART IS THE SPECIFIC
18 INTENT TO KILL.

19 SECOND DEGREE MURDER IN PENNSYLVANIA IS
20 OFTEN REFERRED TO AS FELONY MURDER. FOR
21 EXAMPLE, ROBBERY IS A FELONY, FOR EXAMPLE,
22 KIDNAPPING IS A FELONY, ARSON IS A FELONY, AND
23 A NUMBER OF OTHERS, RAPE, AND SOME MORE. WHEN
24 THERE IS A DEATH CAUSED IN THE FURTHERANCE OF A
25 FELONY, IT'S OFTEN CALLED FELONY MURDER. AND I

1
2 GAVE YOU AN EXAMPLE, YOU MIGHT RECALL, ABOUT
3 THE INDIVIDUAL WHO BURNED THE HOUSE DOWN AND
4 THE MOTHER-IN-LAW WAS SLEEPING IN THE BACK AND
5 NO ONE KNEW SHE WAS THERE. THE ARSON WAS THE
6 FELONY AND THE DEATH THEN MAKES IT RISE TO
7 SECOND DEGREE MURDER. THE FELON NEED NOT
8 INTEND TO KILL ANYONE OR ANTICIPATE THAT ANYONE
9 WILL BE KILLED. THE PERSON KILLED CAN BE
10 SOMEONE OTHER THAN THE VICTIM OF A FELONY. HE
11 NEED NOT DIE IMMEDIATELY, HE MAY DIE LATER AND
12 AT A DIFFERENT PLACE.

13 NOW, YOU MAY FIND THE DEFENDANT, I'M
14 TALKING ABOUT THEM INDIVIDUALLY, GUILTY OF
15 SECOND DEGREE MURDER, THAT IS, THE FELONY
16 MURDER, IF YOU'RE SATISFIED THAT THE FOLLOWING
17 THREE ELEMENTS HAVE BEEN PROVEN BEYOND A
18 REASONABLE DOUBT. I REMIND YOU AGAIN, YOU'RE
19 NOT TRYING THIS COLLECTIVELY, YOU'RE TRYING
20 THIS INDIVIDUALLY. SO THE EVIDENCE MUST BE
21 WEIGHED AGAINST EACH SEPARATELY. FIRST, THAT
22 THE DEFENDANT OR A CO-CONSPIRATOR OR AN
23 ACCOMPLICE KILLED HULON HOWARD. SECOND, THAT
24 THE DEFENDANT DID SO WHILE COMMITTING A FELONY
25 OR ATTEMPTING TO COMMIT A FELONY OR FLEEING

1
2 AFTER HAVING COMMITTED A FELONY. COMMONWEALTH
3 IS ALLEGING THAT THE FELONY IN THE CASE WAS A
4 CERTAIN ROBBERY. THIRD, THAT THE DEFENDANT WAS
5 ACTING WITH MALICE.

6 NOW, HERE WE GO. YOU CAN INFER THAT THE
7 DEFENDANT WAS ACTING WITH MALICE IF YOU'RE
8 SATISFIED BEYOND A REASONABLE DOUBT THAT THEY
9 COMMITTED OR ATTEMPTED TO COMMIT THE ROBBERY.
10 BECAUSE ROBBERY IS A CRIME INHERENTLY DANGEROUS
11 TO HUMAN LIFE, THERE DOES NOT HAVE TO BE ANY
12 OTHER PROOF OF MALICE. NATURALLY, I HAVE
13 DEFINED FOR YOU, AND YOU MIGHT RECALL MY
14 DEFINITION OF A ROBBERY.

15 WHEN TWO PEOPLE OR MORE ARE PARTNERS IN A
16 SUCCESSFUL OR UNSUCCESSFUL ATTEMPT TO COMMIT A
17 ROBBERY AND ONE OF THEM KILLS A THIRD PERSON,
18 BOTH PARTNERS MAY BE GUILTY OF FELONY MURDER.
19 NEITHER PARTNER HAS TO INTEND TO KILL OR
20 ANTICIPATE THAT ANYONE WILL BE KILLED. THE
21 PERSON KILLED CAN BE SOMEONE OTHER THAN THE
22 VICTIM OF THE FELONY. HE NEED NOT DIE
23 IMMEDIATELY. HE MAY DIE MUCH LATER AND AT A
24 DIFFERENT PLACE.

25 YOU MAY FIND THE DEFENDANT GUILTY, AND I

1
2 MEAN EACH AS AN INDIVIDUAL, OF SECOND DEGREE
3 MURDER, THAT'S FELONY MURDER, IF YOU'RE
4 SATISFIED THAT THE FOLLOWING FOUR ELEMENTS HAVE
5 BEEN PROVEN BEYOND A REASONABLE DOUBT. FOUR
6 ELEMENTS. WE'LL GO THROUGH ALL OF THEM. ONE
7 IS THAT ONE OF THE DEFENDANTS CAUSED THE DEATH
8 OF HULON HOWARD. SECOND, THAT THIS DEFENDANT
9 DID SO WHILE HE AND THE OTHER DEFENDANTS WERE
10 PARTNERS IN THE COMMISSION OF A CERTAIN
11 ROBBERY. THIRD, THAT ONE OF THEM DID THE ACT
12 THAT KILLED OR CAUSE THE DEATH IN FURTHERANCE
13 OF THE ROBBERY. FOURTH, THAT THE DEFENDANT WAS
14 ACTING WITH MALICE. AND AS YOU KNOW, YOU CAN
15 INFER THE DEFENDANT WAS ACTING WITH MALICE IF
16 YOU'RE SATISFIED BEYOND A REASONABLE DOUBT THAT
17 HIS RELATIONSHIP WITH OTHERS WAS THAT OF
18 PARTNERS IN A ROBBERY. BECAUSE ROBBERY IS A
19 CRIME INHERENTLY DANGEROUS TO HUMAN LIFE, THERE
20 DOES NOT HAVE TO BE ANY OTHER PROOF OF MALICE.

21 I INSTRUCT YOU THAT THEY WERE BOTH
22 PRINCIPLES OR ONE OF THEM WAS A PRINCIPLE AND
23 THE OTHERS WERE ACCOMPLICES. A PERSON IS A,
24 QUOTE, PRINCIPLE, IF HE ACTUALLY COMMITS THE
25 CRIME OR MAKES THE ATTEMPT HIMSELF. A PERSON

1
2 IS AN ACCOMPLICE IF HE AIDS OR ENCOURAGES THE
3 PRINCIPLE TO COMMIT OR TO ATTEMPT THE CRIME AND
4 HE DOES SO INTENDING TO GET THE PRINCIPLE TO
5 COMMIT THE CRIME OR INTENDING TO MAKE IT EASIER
6 FOR THE PRINCIPLE TO COMMIT IT.

6
7 I INSTRUCT YOU THAT THEY WERE PARTNERS IF
8 THEY CONSPIRED TO COMMIT THE ROBBERY.

9 TWO PEOPLE, QUOTE, CONSPIRE TO COMMIT A
10 CRIME IF THEY SHARE THE INTENT THAT THE CRIME
11 IS TO BE COMMITTED AND THEY AGREE THAT ONE OR
12 BOTH OF THEM WOULD COMMIT IT OR ONE OF THEM
13 WOULD HELP THE OTHER TO COMMIT IT. THEIR
14 AGREEMENT MAY BE EXPRESSED AND VERBAL. THEY
15 MAY ACTUALLY TALK ABOUT IT, OR THERE MAY BE AN
16 UNSPOKEN, TACIT AGREEMENT THAT CAN BE INFERRED
17 FROM THEIR WORDS AND CONDUCT AND THE
18 SURROUNDING CIRCUMSTANCES. IF EACH KNOWS WHAT
19 THE OTHER IS THINKING, THEY DO NOT HAVE TO TALK
20 ABOUT IT.

21 WE TALKED ABOUT IN THE FURTHERANCE OF THE
22 CRIME, THAT ELEMENT. A PARTNER'S ACT THAT
23 KILLS IS NOT IN FURTHERANCE OF THE FELONY IF
24 THE PARTNER DOES THE ACT FOR HIS OWN PERSONAL
25 REASONS WHICH ARE INDEPENDENT OF THE FELONY. A

1
2 PARTNER'S ACT THAT KILLS IS IN FURTHERANCE OF
3 THE FELONY IF HE DOES THE ACT WHILE FLEEING THE
4 SCENE AND IF THERE IS NO BREAK IN THE CHAIN OF
5 EVENTS BETWEEN THE FELONY AND THE ACT.

6 HOWEVER, EVEN THOUGH A PARTNER'S ACT THAT KILLS
7 MAY SEEM TO MEET THAT REQUIREMENT, IT IS NOT IN
8 THE FURTHERANCE OF THE CRIME IF THE PARTNER
9 DOES THE ACT FOR HIS OWN PERSONAL REASONS WHICH
10 ARE INDEPENDENT OF THE FELONY AND THE EFFORTS
11 TO FLEE.

12 IT IS YOUR RECOLLECTION, NATURALLY, OF
13 THE EVIDENCE AS IT HAS BEEN PRESENTED IN THE
14 CASE CONCERNING THE INVOLVEMENT IN THE KILLING
15 BY THE DEFENDANTS IN THE CASE.

16 THIRD DEGREE MURDER IS A KILLING WITH
17 MALICE THAT'S NOT FIRST OR SECOND DEGREE
18 MURDER. YOU MAY FIND THE DEFENDANT, THAT'S
19 ONE, TWO, OR THREE OF THEM, GUILTY OF THIRD
20 DEGREE MURDER IF YOU'RE SATISFIED THAT THE
21 FOLLOWING THREE ELEMENTS HAVE BEEN PROVEN
22 BEYOND A REASONABLE DOUBT. ONE IS THAT HULON
23 HOWARD IS DEAD, SECOND IS THAT THE DEFENDANT
24 ACTING AS AN INDIVIDUAL OR A CO-CONSPIRATOR OR
25 AN ACCOMPLICE KILLED HIM, THIRD, THAT THE

1
2 DEFENDANT, ACTING AS AN INDIVIDUAL OR
3 CO-CONSPIRATOR OR ACCOMPLICE, DID SO WITH
4 MALICE.

5 YOU MIGHT RECALL THE WORD MALICE AS
6 I'M USING IT HAS A SPECIAL LEGAL MEANING. IT
7 DOES NOT MEAN SIMPLE HATRED, SPITE, OR ILL
8 WILL. MALICE IS A SHORTHAND WAY OF REFERRING
9 TO THE THREE DIFFERENT MENTAL STATES THAT
10 THE LAW REQUIRES AS BEING BAD ENOUGH TO MAKE A
11 KILLING MURDER. THUS, A KILLING IS WITH MALICE
12 IF THE KILLER ACTED WITH, FIRST, AN
13 INTENT TO KILL, OR SECOND, AN INTENT TO
14 INFLICT SERIOUS BODILY HARM, OR THIRD, A
15 WICKEDNESS OF DISPOSITION, HARDNESS OF HEART,
16 CRUELTY, RECKLESSNESS OF CONSEQUENCE, AND A
17 MIND REGARDLESS OF SOCIAL DUTY INDICATING AN
18 UNJUSTIFIED DISREGARD FOR THE PROBABILITY OF
19 DEATH OR GREAT BODILY HARM AND AN EXTREME
20 INDIFFERENCE TO THE VALUE OF HUMAN LIFE. A
21 CONSCIOUS DISREGARD OF AN UNJUSTIFIED AND
22 EXTREMELY HIGH RISK THAT HIS ACTIONS MAY CAUSE
23 DEATH OR SERIOUS BODILY HARM.

24 YOU MIGHT RECALL I WENT ON TO SAY A
25 KILLING IS WITHOUT MALICE IF THE KILLER ACTS

1
2 WITH LAWFUL JUSTIFICATION OR EXCUSE OR UNDER
3 CIRCUMSTANCES THAT REDUCE THE KILLING TO
4 VOLUNTARY MANSLAUGHTER, WHICH IS NOT APPLICABLE
5 IN THIS CASE.

6 NOW, WHEN DECIDING WHETHER THE DEFENDANT
7 ACTED WITH MALICE, YOU SHOULD CONSIDER ALL THE
8 EVIDENCE REGARDING WORDS, CONDUCT, AND
9 ATTENDING CIRCUMSTANCES THAT MAY SHOW HIS STATE
10 OF MIND. IF YOU BELIEVE THAT THE DEFENDANT
11 INTENTIONALLY USED A DEADLY WEAPON ON A VITAL
12 PART OF HULON HOWARD'S BODY, YOU MAY REGARD
13 THAT AS AN ITEM OF CIRCUMSTANTIAL EVIDENCE FROM
14 WHICH YOU MAY, IF YOU CHOOSE, INFER THAT THE
15 DEFENDANT ACTED WITH MALICE.

16 GOT IT?

17 THE JURY: (NODDING HEADS.)

18 THE COURT: EITHER OF YOU NEED TO SEE ME
19 FOR ANYTHING?

20 MR. PADOVA: (SHAKING HEAD.)

21 MR. MOORE: (SHAKING HEAD.)

22 THE COURT: LET THE RECORD --

23 MR. TINARI: NO, YOUR HONOR.

24 THE COURT: LET THE RECORD REFLECT THAT
25 THEY ALL MOVED THEIR HEADS IN THE NEGATIVE.

1
2 YOU MAY RESUME YOUR DELIBERATIONS.

3 -----

4 (THE JURY RESUMED DELIBERATIONS AT
5 3:55 P.M.)

6 -----

7 THE COURT: MS. SMITH, YOU WANT TO ADD
8 THIS TO YOUR COLLECTION.

9 THE COURT REPORTER: THANK YOU,
10 YOUR HONOR.

11 -----

12 (RECESS TAKEN.)

13 -----

14 THE COURT: GENTLEMEN, I'M GOING TO
15 DISMISS THIS JURY UNTIL MONDAY MORNING AND
16 INSTRUCT THEM TO BE HERE NOT LATER THAN 9:30 ON
17 MONDAY MORNING, AND WE'LL INSTRUCT THEM THAT
18 THEY SHOULD IMMEDIATELY BEGIN TO DELIBERATE
19 ONCE ALL 12 ARE ASSEMBLED. YOU WILL HAVE 15
20 MINUTES FROM 9:30 TO BE AWAY FROM HERE. SO
21 THOSE OF YOU WHO ARE ON TRIAL, NATURALLY, WE
22 SHOULD KNOW WHERE YOU ARE SO WE CAN CALL IF WE
23 NEED YOU. THOSE OF YOU WHO ARE IN THE OFFICE,
24 MR. FULLER SHOULD KNOW HOW TO REACH YOU. IT
25 WILL NOT BE NECESSARY FOR YOU TO COME DIRECTLY

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HERE.

MR. PADOVA: JUST IN TERMS OF SCHEDULING, JUDGE, SHOULD THERE BE NECESSITY FOR A FURTHER HEARING, THEY COME BACK ON MONDAY, WOULD THE COURT HAVE THE HEARING ON TUESDAY?

THE COURT: YES.

MR. PADOVA: OKAY.

(THE JURY ENTERED THE COURTROOM AT 4:30 P.M.)

THE COURT: LADIES AND GENTLEMEN, IT'S 4:30 ON A FRIDAY AFTERNOON. I'M GOING TO DISMISS YOU FOR THE WEEKEND. I CAUTION YOU, PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT ASK FOR ANY ASSISTANCE FROM YOUR SPOUSES OR SIGNIFICANT OTHERS OR CLERGY OR ANYONE ELSE IN THE COMMUNITY. DO NOT MENTION THE FACT THAT YOU ARE INVOLVED IN DELIBERATIONS, AND YOU SHOULD NOT DISCUSS IT EVEN AMONG YOURSELVES UNTIL ALL 12 OF YOU ARRIVE BACK HERE ON MONDAY MORNING. PLEASE BE HERE NOT LATER THAN 9:30 AND BEGIN TO DELIBERATE IMMEDIATELY UPON ARRIVAL OF THE 12TH PERSON. ENJOY THE WEEKEND,

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AND I'LL SEE YOU ON MONDAY,

THE TIPSTAFF: WATCH YOUR STEP, PLEASE.

(THE JURY RETIRED FOR THE WEEKEND AT
4:31 P.M.)

THE TIPSTAFF: THIS COURT NOW STANDS
ADJOURNED UNTIL 9:30 ON MONDAY MORNING.

(COURT ADJOURNED)

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CERTIFICATE

I HEREBY CERTIFY THAT THE PROCEEDINGS AND TESTIMONY TAKEN BY AND BEFORE ME ARE CONTAINED FULLY AND ACCURATELY IN THE NOTES OF TESTIMONY, AND THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE SAME.

Bonnie Smith
BONNIE SMITH
COURT REPORTER

July 2, 1999
DATE