

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

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COMMONWEALTH	:	OCTOBER TERM, 1997
	:	BILL NO. 1031 1/2
	:	NO. 1 - MURDER
VS.	:	NO. 2 - ROBBERY
	:	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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	:	NO. 7 - POSS INSTRU CRIME
JEHMAR GLADDEN	:	NO. 8 - CRIMINAL CONSPIRACY

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COMMONWEALTH	:	JANUARY TERM, 1998
	:	BILL NO. 0869 1/1
	:	NO. 1 - MURDER
VS.	:	NO. 2 - ROBBERY
	:	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
TERRENCE LEWIS	:	NO. 8 - CRIMINAL CONSPIRACY

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JURY TRIAL  
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MAY 24, 1999  
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COURTROOM 701, CRIMINAL JUSTICE CENTER  
PHILADELPHIA, PENNSYLVANIA  
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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

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4 THE COURT: LADIES AND GENTLEMEN, AS YOU  
5 PROBABLY KNOW, THE JURY HAS REACHED A VERDICT  
6 IN THIS MATTER AND WILL RETURN TO THIS  
7 COURTROOM SHORTLY TO ANNOUNCE THE VERDICT. I  
8 ASK ALL OF YOU, RESPECTFULLY, PLEASE DO NOT  
9 MANIFEST ANY JOY OR DISPLEASURE OUT OF THE  
10 ANNOUNCEMENT. NATURALLY, THERE ARE BOTH SIDES  
11 REPRESENTED IN THE AUDIENCE, SO I'M TALKING TO  
12 BOTH SIDES. PLEASE DO NOT IN ANY WAY ACT OUT  
13 SO THAT IT IN ANY WAY DISRUPTS OR AGGRAVATES OR  
14 FRUSTRATES THIS COURT.

15 BRING IN THE JURY, MR. FULLER,

16 THE TIPSTAFF: YES, SIR.

17 EVERYONE REMAIN SEATED WHILE THE JURORS  
18 ENTER THE ROOM.

19 -----

20 (THE JURY ENTERED THE COURTROOM WITH A  
21 VERDICT AT 10:45 A.M.)

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23 THE COURT: GOOD MORNING, LADIES AND  
24 GENTLEMEN.

25 THE JURY: GOOD MORNING.

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THE COURT: LADIES AND GENTLEMEN, IT HAS BEEN BROUGHT TO THIS COURT'S ATTENTION THAT YOU HAVE REACHED A VERDICT; AM I CORRECT?

THE JURY: YES.

THE COURT: WOULD THE FOREPERSON PLEASE RISE.

THE FOREPERSON: (COMPLIES WITH REQUEST.)

THE COURT: ALL RIGHT. MR. FULLER.

THE TIPSTAFF: MR. LAWSON, SIR, PLEASE RISE, FACE THE JURY.

DEFENDANT LAWSON: (COMPLIES WITH REQUEST.)

THE TIPSTAFF: MA'AM, HAVE THE JURORS REACHED A VERDICT?

THE FOREPERSON: YES.

THE TIPSTAFF: HAVE ALL THE 12 JURORS AGREED?

THE FOREPERSON: YES.

THE TIPSTAFF: THEN TO THIS BILL OF INFORMATION NO. 1031, OCTOBER TERM, 1997, 1 OF 2, CHARGING JIMEL LAWSON WITH MURDER, THE VICTIM BEING HULON HOWARD, PLEASE STATE YOUR FULL VERDICT, MA'AM.

THE FOREPERSON: GUILTY OF FIRST DEGREE MURDER.

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THE TIPSTAFF: ALSO, TO THIS BILL OF INFORMATION NO. 1031, OCTOBER TERM, 1997, CHARGE NO. 2, CHARGING JIMEL LAWSON WITH ROBBERY, HOW SAY YOU, MA'AM?

THE FOREPERSON: GUILTY.

THE TIPSTAFF: ALSO, TO THIS BILL OF INFORMATION NO. 1031, OCTOBER TERM, 1997, CHARGE NO. 8, CHARGING JIMEL LAWSON WITH CRIMINAL CONSPIRACY, HOW SAY YOU, MA'AM?

THE FOREPERSON: GUILTY.

THE TIPSTAFF: THANK YOU. PLEASE BE SEATED, MA'AM.

THE FOREPERSON: (COMPLIES WITH REQUEST.)

THE TIPSTAFF: YOUR HONOR, THE JURY FINDS JIMEL LAWSON GUILTY OF FIRST DEGREE MURDER, GUILTY OF ROBBERY, GUILTY OF CRIMINAL CONSPIRACY.

SHALL THE VERDICT BE RECORDED?

THE COURT: ANY OBJECTION, MR. PADOVA?

MR. PADOVA: I ASK FOR A POLL, YOUR HONOR.

THE COURT: POLL THE JURY.

THE TIPSTAFF: YES.

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(THE JURY WAS POLLED AS TO DEFENDANT JIMEL

1  
2 LAWSON AND INDICATED UNANIMOUS AGREEMENT.)

3 -----

4 THE TIPSTAFF: YOUR HONOR, THE JURY HAS  
5 BEEN POLLED, THEY HAVE ALL AGREED ON THE JIMEL  
6 LAWSON MATTER.

7 SHALL THE VERDICT BE RECORDED?

8 THE COURT: RECORD THE VERDICT.

9 THE TIPSTAFF: JURORS, HARKEN TO YOUR  
10 VERDICT, AS YOU SAY, YOU FIND JIMEL LAWSON GUILTY  
11 OF FIRST DEGREE MURDER, GUILTY OF ROBBERY, GUILTY  
12 OF CRIMINAL CONSPIRACY, AND SO SAY YOU ALL?

13 THE JURY: YES.

14 THE TIPSTAFF: MR. LAWSON, PLEASE BE  
15 SEATED.

16 DEFENDANT LAWSON: (COMPLIES WITH REQUEST.)

17 THE TIPSTAFF: MR. LEWIS, SIR, PLEASE RISE,  
18 FACE THE JURY.

19 DEFENDANT LEWIS: (COMPLIES WITH REQUEST.)

20 THE TIPSTAFF: WILL THE FOREPERSON PLEASE  
21 RISE?

22 THE FOREPERSON: (COMPLIES WITH REQUEST.)

23 THE TIPSTAFF: MA'AM, HAVE THE JURORS  
24 REACHED A VERDICT ON COMMONWEALTH VERSUS TERRENCE  
25 LEWIS?

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THE FOREPERSON: YES.

THE TIPSTAFF: HAVE ALL THE 12 JURORS  
AGREED?

THE FOREPERSON: YES.

THE TIPSTAFF: THEN TO THIS BILL OF  
INFORMATION NO. 0869, JANUARY TERM, 1998,  
CHARGING TERRENCE LEWIS WITH MURDER, THE VICTIM  
BEING HULON HOWARD, PLEASE STATE YOUR FULL  
VERDICT.

THE FOREPERSON: GUILTY OF SECOND DEGREE  
MURDER.

THE TIPSTAFF: TO THIS BILL OF INFORMATION  
NO. 0869, JANUARY TERM, 1998, CHARGE NO. 2,  
CHARGING TERRENCE LEWIS WITH ROBBERY, HOW SAY  
YOU?

THE FOREPERSON: GUILTY.

THE TIPSTAFF: ALSO, TO THIS BILL OF  
INFORMATION NO. 0869, JANUARY TERM, 1998, CHARGE  
NO. 8, CHARGING TERRENCE LEWIS WITH CRIMINAL  
CONSPIRACY, HOW SAY YOU, MA'AM?

THE FOREPERSON: GUILTY.

THE TIPSTAFF: YOU MAY BE SEATED.

THE FOREPERSON: (COMPLIES WITH REQUEST.)

THE TIPSTAFF: YOUR HONOR, THE JURY FINDS

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2 TERRENCE LEWIS GUILTY OF SECOND DEGREE MURDER,  
3 GUILTY OF ROBBERY, GUILTY OF CRIMINAL CONSPIRACY.

4 SHALL THE VERDICT BE RECORDED?

5 THE COURT: ANY OBJECTION, MR. MOORE?

6 MR. MOORE: I ASK THE JURY BE POLLED.

7 THE COURT: POLL THE JURY, MR. FULLER.

8 -----

9 (THE JURY WAS POLLED AS TO DEFENDANT  
10 TERRENCE LEWIS AND INDICATED UNANIMOUS  
11 AGREEMENT.)

12 -----

13 THE TIPSTAFF: YOUR HONOR, THE JURORS HAVE  
14 BEEN POLLED. THEY ALL AGREE. SHALL THE VERDICT  
15 BE RECORDED?

16 THE COURT: RECORD THE VERDICT.

17 THE TIPSTAFF: JURORS, HARKEN TO YOUR  
18 VERDICT, AS YOU SAY THE COURT HAS RECORDED IT.  
19 YOU SAY YOU FIND TERRENCE LEWIS GUILTY OF SECOND  
20 DEGREE MURDER, GUILTY OF ROBBERY, GUILTY OF  
21 CRIMINAL CONSPIRACY, AND SO SAY YOU ALL.

22 MR. GLADDEN, SIR, PLEASE, RISE, FACE THE  
23 JURY.

24 DEFENDANT GLADDEN: (COMPLIES WITH  
25 REQUEST.)



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THE TIPSTAFF: FOREPERSON PLEASE RISE ONCE AGAIN, MISS.

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THE FOREPERSON: (COMPLIES WITH REQUEST.)

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THE TIPSTAFF: HAVE THE JURORS REACHED A VERDICT AS TO JEHMAR GLADDEN?

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THE FOREPERSON: YES.

8

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THE TIPSTAFF: HAVE ALL THE 12 JURORS AGREED?

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THE FOREPERSON: YES.

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12

THE TIPSTAFF: THEN TO THIS BILL OF INFORMATION NO. 1031, OCTOBER TERM, 1997, CHARGING JEHMAR GLADDEN WITH MURDER, THE VICTIM BEING HULON HOWARD, PLEASE STATE YOUR FULL VERDICT.

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THE FOREPERSON: GUILTY OF SECOND DEGREE MURDER.

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THE TIPSTAFF: ALSO TO THIS BILL OF INFORMATION NO. 1031, OCTOBER TERM, 1997, CHARGE NO. 2, CHARGING MR. GLADDEN WITH ROBBERY, HOW SAY YOU, MA'AM?

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THE FOREPERSON: GUILTY.

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THE TIPSTAFF: ALSO TO THIS BILL OF INFORMATION NO. 1031, OCTOBER TERM, 1997, CHARGE NO. 8, CHARGING JEHMAR GLADDEN WITH CRIMINAL

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CONSPIRACY, HOW SAY YOU?

THE FOREPERSON: GUILTY.

THE TIPSTAFF: THANK YOU. PLEASE BE SEATED.

THE FOREPERSON: (COMPLIES WITH REQUEST.)

THE TIPSTAFF: YOUR HONOR, THE JURY FINDS JEHMAR GLADDEN GUILTY OF SECOND DEGREE MURDER, GUILTY OF ROBBERY, GUILTY OF CRIMINAL CONSPIRACY.

SHALL THE VERDICT BE RECORDED?

THE COURT: YES.

MR. TINARI: IF THE COURT PLEASE, MAY THE JURY BE POLLED?

THE COURT: POLL THE JURY, MR. FULLER.

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(THE JURY WAS POLLED AS TO DEFENDANT JEHMAR GLADDEN AND INDICATED UNANIMOUS AGREEMENT.)

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THE TIPSTAFF: YOUR HONOR, THE JURY HAS BEEN POLLED, THEY HAVE ALL AGREED. SHALL THE VERDICT BE RECORDED?

THE COURT: RECORD THE VERDICT.

THE TIPSTAFF: JURORS, HARKEN TO THE

1  
2 VERDICT, AS YOU SAY THE COURT HAS RECORDED IT.  
3 YOU SAY YOU FIND JEHMAR GLADDEN GUILTY OF  
4 SECOND DEGREE MURDER, GUILTY OF ROBBERY, GUILTY  
5 OF CRIMINAL CONSPIRACY, AND SO SAY YOU ALL?

6 THE JURY: YES.

7 THE COURT: PASS OUT THE CERTIFICATES.

8 LADIES AND GENTLEMEN, I WISH TO THANK YOU  
9 PERSONALLY, EACH AND EVERY ONE OF YOU FOR THE  
10 OUTSTANDING JOB YOU'VE DONE. I NOTICED THAT  
11 THROUGHOUT THIS TRIAL YOU WERE ATTENTIVE AND  
12 YOU OBVIOUSLY TACKLED YOUR CHORES DURING THIS  
13 DELIBERATION WITH DELIBERATENESS.

14 MR. DOYLE: JUDGE, ANOTHER HEARING.

15 THE COURT: WHAT?

16 MR. DOYLE: THERE'S ANOTHER HEARING.

17 THE COURT: OH. THAT'S RIGHT. HOLD IT A  
18 MINUTE. HOLD IT A MINUTE. MY MISTAKE. PICK  
19 THOSE BACK UP. I'M JUST A LITTLE AHEAD OF  
20 MYSELF. YOU'RE ABSOLUTELY RIGHT. SORRY ABOUT  
21 THAT.

22 THE TIPSTAFF: QUITE ALL RIGHT.

23 THE COURT: YOU HAVE FOUND ONE OF THESE  
24 DEFENDANTS GUILTY OF FIRST DEGREE MURDER. AND  
25 AS I TOLD YOU DURING THE SELECTION PROCESS, THE

1  
2 COMMONWEALTH WAS SEEKING A FIRST DEGREE MURDER  
3 CONVICTION, AND IF, IN FACT, YOU FOUND ONE OR  
4 MORE OF THESE DEFENDANTS GUILTY OF FIRST DEGREE  
5 MURDER, THE COMMONWEALTH WOULD THEN ASK YOU IN  
6 A SEPARATE HEARING, ONE THAT WE CALL A PENALTY  
7 PHASE, TO SENTENCE THE DEFENDANT TO DEATH. SO  
8 WE WILL, IN FACT, HAVE WHAT WE CALL A PENALTY  
9 PHASE OF THE TRIAL. WE WILL START THAT PENALTY  
10 PHASE OF THE TRIAL TOMORROW. I WILL GIVE YOU  
11 THE REMAINDER OF THE DAY OFF. WE WILL START  
12 THAT EVIDENCE PRESENTATION, AND HOPEFULLY  
13 CLOSING ARGUMENTS AND MY INSTRUCTIONS TOMORROW.

14 I CAUTION YOU THAT WHILE YOU HAVE REACHED  
15 A VERDICT IN THIS MATTER, YOU STILL SHOULD NOT  
16 DISCUSS THE PENDING PENALTY PHASE OF THIS  
17 TRIAL. AND AS YOU CAN APPRECIATE, ONLY ONE OF  
18 THE DEFENDANTS WILL BE TRIED IN THAT PENALTY  
19 PHASE. THAT'S THE ONE THAT YOU FOUND GUILTY OF  
20 FIRST DEGREE MURDER. THEY HAVE BROUGHT THAT TO  
21 MY ATTENTION AS I WAS ABOUT TO DISMISS YOU, AND  
22 IT HAS NOTHING WHATSOEVER TO DO WITH MY FEELING  
23 TOWARDS THE PENALTY PHASE. IT'S JUST THAT, MY  
24 LONGEVITY, I FORGOT ABOUT IT. IT HAPPENS, I'M  
25 TOLD, LIKE SOME PEOPLE LOSE THEIR HAIR.

1  
2 I'M GOING TO ASK YOU TO RETIRE BACK TO  
3 THE DELIBERATION ROOM, AND SHORTLY THEREAFTER I  
4 WILL DISMISS YOU FOR THE DAY. I ASSUME  
5 SOMEBODY WOULD BE RATHER BE OUTSIDE DOING  
6 SOMETHING ELSE OTHER THAN DELIBERATING OR  
7 LISTENING TO ME, SO WE'LL DO THAT TOMORROW.

8 ALL RIGHT. MR. FULLER.

9 THE TIPSTAFF: EVERYONE PLEASE REMAIN  
10 SEATED AS THE JURORS EXIT THE ROOM.

11 -----

12 (THE JURY LEFT THE COURTROOM.)

13 -----

14 THE COURT: MR. MOORE, WOULD YOU AND YOUR  
15 CLIENT STAND, PLEASE, TERRENCE LEWIS.

16 DEFENDANT LEWIS: (STANDING.)

17 THE COURT: MR. LEWIS, HAVING BEEN FOUND  
18 GUILTY OF SECOND DEGREE MURDER BY THIS JURY,  
19 THE LEGISLATURE HAS MANDATED THAT I IMMEDIATELY  
20 SENTENCE YOU TO LIFE IMPRISONMENT.

21 NOW, YOU HAVE TEN DAYS FROM TODAY TO  
22 PETITION THIS COURT AND ASK THIS COURT TO  
23 ARREST JUDGMENT AND TO GRANT YOU A NEW TRIAL.  
24 YOU HAVE 30 DAYS FROM TODAY TO FILE AN APPEAL  
25 WITH THE SUPERIOR COURT. EITHER OR BOTH MUST

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2 BE IN WRITING. AND IF FOR REASONS BEST KNOWN  
3 TO MR. MOORE HE'S UNWILLING OR UNABLE TO DO SO,  
4 IF I'M CONVINCED THAT YOU ARE, IN FACT,  
5 INDIGENT, I WILL THEN APPOINT SOMEONE TO  
6 REPRESENT YOU.

7 DO YOU UNDERSTAND?

8 DEFENDANT LEWIS: YES, SIR.

9 THE COURT: NOW, I HAD ALSO ASKED  
10 MR. FULLER, THE COURT CRIER, TO GIVE YOU A  
11 WRITTEN COLLOQUY ON WHAT YOUR RIGHTS ARE. I  
12 ASK YOU TO GO OVER THAT WITH MR. MOORE AND SIGN  
13 ACKNOWLEDGING RECEIPT OF YOUR RIGHTS.

14 DID YOU GIVE HIM THAT, MR. FULLER?

15 MR. MOORE: HE DID, YOUR HONOR.

16 THE COURT: VERY WELL. ALL RIGHT. ONE  
17 OF YOU PICK IT UP AND HAND IT TO ME IF IT'S  
18 BEEN SIGNED.

19 MR. MOORE: IT HASN'T BEEN SIGNED. I  
20 HAVEN'T GONE OVER IT WITH HIM.

21 THE COURT: HAVE A SEAT. GO OVER IT WITH  
22 HIM, MR. MOORE, AND THEN ASK HIM TO SIGN IT,  
23 PLEASE.

24 THE COURT: OFF THE RECORD FOR A MINUTE,  
25 MS. SMITH.

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2 (DISCUSSION OFF THE RECORD.)

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4 MR. DOYLE: I HAVE MOVED TO ADD ANOTHER  
5 AGGRAVATING FACTOR. I HAVE DISCUSSED IT WITH  
6 COUNSEL.

7 YOUR HONOR, THE REASON FOR THE LATE  
8 FILING AND LATE AMENDMENT, THE RULE 352 NOTICE  
9 WAS FILED CITING TWO AGGRAVATING CIRCUMSTANCES.  
10 THE MURDER OCCURRED IN THE PERPETRATION OF A  
11 FELONY AND THE RISK TO ANOTHER. AT NO TIME IN  
12 THE DISCOVERY, IN THE PRELIMINARY HEARING, WAS  
13 THERE ANY EVIDENCE, UNTIL THIS TRIAL, THAT THE  
14 VICTIM WAS INVOLVED IN THE SALE OF CONTROLLED  
15 SUBSTANCES AND THAT HIS DEATH RESULTED FROM THE  
16 SALE OF CONTROLLED SUBSTANCES AND HIS  
17 ASSOCIATION IN THE SALE OF CONTROLLED  
18 SUBSTANCES WITH THIS DEFENDANT. THEREFORE, I  
19 WOULD MOVE TO AMEND AND CITE THE AUTHORITY OF  
20 THE SUPREME COURT CASE COMMONWEALTH VERSUS  
21 ZOOK. AND I WILL HAVE THAT CITE AT THE  
22 APPROPRIATE TIME TOMORROW. UNDER THE  
23 CIRCUMSTANCES, I JUST WANT TO LET YOU KNOW I  
24 HAVE ADVISED COUNSEL OF THAT AND I WILL BE  
25 READY TO ARGUE THE MERITS OF THAT AMENDMENT.

1  
2 MR. PADOVA: YOUR HONOR, FIRST OF ALL, WE  
3 OBJECT TO THEIR ATTEMPT TO ADD ANOTHER  
4 AGGRAVATING CIRCUMSTANCE AT THIS LATE DATE.  
5 THE RULES CLEAR. THEY HAD THEIR WITNESSES  
6 PRIOR TO TRIAL. HAD THEY INTERVIEWED THEIR  
7 WITNESSES PRIOR TO TRIAL, THEY WOULD HAVE KNOWN  
8 WHAT THE WITNESSES WERE GOING TO SAY. THE  
9 WITNESS THAT TESTIFIED, I SUBMIT, I DON'T KNOW  
10 WHETHER OR NOT THIS KILLING -- THEIR THEORY OF  
11 THE CASE WAS IT WAS SOME TYPE OF ROBBERY TO GET  
12 MONEY BACK THAT, PERHAPS, WAS OWED FOR SOME  
13 PAST DRUG DEAL. THAT'S NOT WHAT THE  
14 AMENDMENT -- THAT'S NOT WHAT THE AGGRAVATING  
15 CIRCUMSTANCE ADDRESSES. THAT AGGRAVATING  
16 CIRCUMSTANCE, I SUGGEST TO THE COURT, IS FOR  
17 THE COMMONWEALTH TO PERHAPS SEEK THE DEATH  
18 PENALTY IN SITUATIONS WHERE THERE ARE PEOPLE  
19 COMPETING OVER DRUG CORNERS OR IN THE DRUG  
20 TRADE.

21 ADDITIONALLY, THAT IS BASED ON HEARSAY AS  
22 TO WHY THE KILLING TOOK PLACE. THERE'S NO  
23 EVIDENCE THAT THIS WAS OVER SOME TYPE OF  
24 INVOLVEMENT OR PARTICIPATION, A JOINT  
25 PARTICIPATION BETWEEN THIS DEFENDANT AND THE



1  
2 DECEASED OVER THE SALE OF DRUGS IN ORDER TO  
3 FURTHER EACH OTHER'S BUSINESS. THERE'S NO  
4 TESTIMONY AS TO THAT.

5 GETTING BACK TO THE AMENDMENT, THE  
6 COMMONWEALTH REFERS TO THE ZOOK CASE. THE ZOOK  
7 CASE HAS NOTHING AT ALL TO DO WITH THIS. THE  
8 ZOOK CASE THEY ALLOWED THE AMENDMENT, I THINK  
9 IT WAS ABOUT A WEEK OR TWO WEEKS PRIOR TO TRIAL  
10 BECAUSE THAT WAS THE SECOND TRIAL. AND THEY  
11 SAID THAT THE DEFENSE AT THE SECOND TRIAL KNEW  
12 WHAT THE COMMONWEALTH'S THEORY OF THE CASE WAS  
13 AT THE FIRST TRIAL. ALL THE EVIDENCE CAME OUT  
14 ABOUT RECKLESSLY ENDANGERING ANOTHER PERSON,  
15 AND THE DEFENSE SHOULD HAVE HAD -- SHOULD HAVE  
16 KNOWN WHAT THE AGGRAVATING CIRCUMSTANCES WERE  
17 GOING TO BE.

18 SO IT HAS NOTHING TO DO WITH ON THE EVE  
19 OF THE DEATH SENTENCE HEARING THE COMMONWEALTH  
20 BEING ABLE TO COME IN FRONT OF THE COURT AND  
21 SAY, WELL, LET US ADD ANOTHER AGGRAVATING  
22 CIRCUMSTANCE. THE DEFENSE WOULD BE PREJUDICED  
23 BY THAT. WE HAD NO NOTICE OF THAT. HAD WE  
24 KNOWN THAT WAS AN AGGRAVATING CIRCUMSTANCE, IT  
25 COULD HAVE BEEN AN AGGRAVATING CIRCUMSTANCE, WE

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2 COULD HAVE INVESTIGATED WHETHER OR NOT THERE  
3 WAS A DRUG TRANSACTION OR SOME TYPE OF BUSINESS  
4 DEALINGS BETWEEN MY CLIENT AND THE DECEASED.  
5 AND I SUBMIT THAT THEY SHOULD NOT BE ABLE TO  
6 AMEND ANYTHING AT THIS POINT IN TIME.

7 THE COURT: ALL RIGHT. I'M TAKING THIS  
8 ARGUMENT UNDER ADVISEMENT. I'LL TAKE A LOOK AT  
9 THE CASES THE COMMONWEALTH HAS CITED IN THAT  
10 REGARD, AND DECIDE SOMETIME BETWEEN NOW AND THE  
11 TIME WE START THIS PENALTY PHASE HEARING AS TO  
12 WHETHER OR NOT THE COURT WILL PERMIT THE  
13 ADDITION OR MODIFICATION OF THE AGGRAVATING  
14 CIRCUMSTANCE.

15 MR. DOYLE: JUDGE, I BELIEVE -- I HAVE TO  
16 CHECK THE BILL. BUT YOUR HONOR WILL INDULGE ME  
17 JUST A MOMENT.

18 -----

19 (PAUSE)

20 -----

21 MR. DOYLE: COMMONWEALTH WOULD ALSO BE  
22 MOVING TO AMEND TOMORROW, OR WE CAN MOVE TO  
23 AMEND RIGHT NOW AS TO AGGRAVATING CIRCUMSTANCE  
24 NO. 9, SIGNIFICANT HISTORY. REALLY, THERE WAS,  
25 I WILL ARGUE --

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MR. PADOVA: JUDGE --

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THE COURT: I'M LISTENING. GO AHEAD.

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MR. DOYLE: THE LAW UNDER THE SUPREME

4

COURT --

5

THE COURT: TELL ME WHAT YOU'RE ASKING.

6

MR. DOYLE: SIGNIFICANT HISTORY.

7

THE COURT: I UNDERSTAND WHAT THE WORD

8

MEANS. TELL ME WHAT YOU'RE ASKING TO DO BASED

9

ON, NOT THE LAW, BASED ON THE EVIDENCE --

10

MR. DOYLE: BASED --

11

THE COURT: -- THAT YOU HAVE.

12

MR. DOYLE: BASED ON THE ROBBERY

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CONVICTION THAT HE WAS JUST CONVICTED OF, NOW

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HE HAS A SIGNIFICANT HISTORY, BECAUSE HIS PRIOR

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SIGNIFICANT HISTORY WOULD INCLUDE AS A JUVENILE

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IN 1990 TWO CONVICTIONS OF ATTEMPTED ROBBERY

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ARISING OUT OF ONE INCIDENT. IF YOU ADD THAT

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CONVICTION, THOSE TWO CONVICTIONS ARISING OUT

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OF ONE INCIDENT TOGETHER WITH THE ROBBERY

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CONVICTION IN THE INSTANT CASE, NOW HE HAS A

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SIGNIFICANT HISTORY, WHEREAS, ARGUABLY, A HALF

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HOURLY AGO, HE DID NOT.

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MR. PADOVA: TWO POINTS, YOUR HONOR.

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ONCE AGAIN, WE'RE AT THE EVE OF A PENALTY PHASE

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2 HEARING. I WOULD AGAIN OBJECT TO THEIR BEING  
3 ABLE TO AMEND.

4 THE COURT: UNLESS YOU CAN SHOW ME SOME  
5 LAW THAT I CAN HANG A HAT ON, SOME PEG, LEGAL  
6 PEG, I HAVE NO CHOICE BUT TO GO ALONG WITH THE  
7 COMMONWEALTH'S AMENDMENT. NOW, IF YOU CAN SHOW  
8 ME SOME LAW THAT WOULD PRECLUDE IT, THEN I WILL  
9 NATURALLY CONSIDER THAT, ALSO. BUT HE'S  
10 TALKING ABOUT A SIGNIFICANT HISTORY NOW, AND  
11 THE COUP DE GRACE WAS THE CONVICTIONS IN THE  
12 CASE. SO TO IGNORE THE CONVICTION IN THIS CASE  
13 WOULD BE FOR ME TO TURN MY DEAF EAR TO THE  
14 VERDICT IN THIS REGARD.

15 SO MOTION TO AMEND THAT PART OR ADD THAT  
16 TO THE AGGRAVATING CIRCUMSTANCES IS GRANTED. I  
17 HAVE, AS I SAID, A PROBLEM, AS WE SPEAK, WITH  
18 PERMITTING THE INFORMATION REGARDING SOME DRUG  
19 COMPETITION IN BECAUSE I PERSONALLY DO NOT  
20 RECALL ANY TESTIMONY THAT INDICATED THAT THESE  
21 INDIVIDUALS WERE IN COMPETITION WITH EACH OTHER  
22 AND I DO NOT BELIEVE THAT THE LAW STATES THAT  
23 INDIVIDUALS CONVICTED OF DRUG DEALINGS FALL  
24 INTO THAT CATEGORY UNLESS IT IS A COMPETITION.

25 MR. DOYLE: LANGUAGE IS MORE BROAD THAN

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THAT.

THE COURT: WELL, I'LL TAKE A LOOK AT IT.  
YOU BRING IT TO ME, AND I'LL TAKE A LOOK AT IT.  
AND I WILL RULE IN THE MANNER IN WHICH I THINK  
IS APPROPRIATE.

MR. DOYLE: YOUR HONOR, MAY I SEE YOU  
WITH MR. TINARI AND MR. MOORE JUST FOR A SHORT  
TIME OFF THE RECORD AT SIDE BAR, IT DOESN'T HAVE  
TO BE IN CHAMBERS, BEFORE YOU CONCLUDE WITH THEIR  
TWO CLIENTS?

THE COURT: BEFORE I FINISH WITH  
MR. TINARI'S CLIENT?

MR. DOYLE: AND MR. MOORE'S CLIENT. JUST  
BRIEFLY, IF I MAY.

THE COURT: YES.

MR. DOYLE: THANK YOU.

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(DISCUSSION AT SIDE BAR OFF THE RECORD.)

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MR. DOYLE: JUDGE, I'LL LET YOU CONCLUDE  
THE SENTENCE, AND THEN I WILL MAKE MY  
REPRESENTATION.

THE COURT: ALL RIGHT. MR. LEWIS, STAND UP  
AGAIN, PLEASE.

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DEFENDANT LEWIS: (COMPLIES WITH REQUEST.)

THE COURT: MR. LEWIS, YOU RECALL THAT I  
HAVE SENTENCED YOU TO LIFE IMPRISONMENT?

DEFENDANT LEWIS: YES, SIR.

THE COURT: AND THERE'S CERTAIN  
POST-SENTENCE RIGHTS THAT YOU HAVE, AND I HAVE A  
COPY OF THE POST-SENTENCE PROCEDURES THAT ARE  
AVAILABLE TO YOU.

DID YOU, IN FACT, IN THIS COURTROOM GO OVER  
THESE WITH YOUR ATTORNEY?

DEFENDANT LEWIS: YES, SIR.

THE COURT: THERE ARE INITIALS AT THE  
BOTTOM OF THE PAGE OF THREE PAGES.

ARE THOSE YOUR INITIALS?

DEFENDANT LEWIS: YES.

THE COURT: YOU AFFIXED IT ON HERE  
FOLLOWING YOUR SIGNATURE ON THE THIRD PAGE? IS  
THAT YOUR SIGNATURE? IS THAT YOUR SIGNATURE?

DEFENDANT LEWIS: YES.

THE COURT: ANYONE FORCE YOU TO DO THAT?

DEFENDANT LEWIS: NO, SIR.

THE COURT: OKAY. DID YOU UNDERSTAND  
MR. MOORE'S ASSISTANCE AND INSTRUCTIONS WITH  
REGARD TO YOUR POST-SENTENCE RIGHTS?

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DEFENDANT LEWIS: YES.

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THE COURT: NOW, HAVING SENTENCED YOU TO LIFE IMPRISONMENT ON THE MURDER, SECOND DEGREE MURDER CHARGE, I NOTE FOR THE RECORD THAT THE ROBBERY CHARGE MERGES WITH THE SECOND DEGREE MURDER CHARGE, THAT IS, THE FELONY THAT MAKES THAT MURDER A FELONY MURDER. SO YOU WILL NOT BE SENTENCED ON THAT. HOWEVER, THERE IS A CRIMINAL CONSPIRACY CHARGE. IF YOU AND MR. MOORE WAIVE A PRESENTENCE REPORT AND PSYCH, I WILL SENTENCE YOU ON THAT NOW, ALSO, UNLESS THE COMMONWEALTH HAS SOME OBJECTION.

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MR. DOYLE: THE COMMONWEALTH HAS NO OBJECTION TO AN IMMEDIATE CONCURRENT SENTENCE ON THE CRIMINAL CONSPIRACY CONVICTION.

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MR. MOORE: YOUR HONOR, I'VE DISCUSSED THE MATTER WITH MY CLIENT, AND WE WOULD WAIVE PRESENTENCE AND PSYCH AND ASKED HE BE SENTENCED AT THIS TIME.

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DEFENDANT LEWIS: (NODDING HEAD.)

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THE COURT: ALL RIGHT. ON BILL NO. 0869, 9801, CHARGING YOU WITH CRIMINAL CONSPIRACY, AND THE JURY HAVING FOUND YOU GUILTY THEREOF, I SENTENCE YOU TO FIVE TO TEN YEARS TO RUN

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2 CONCURRENTLY WITH THE SENTENCE THAT I IMPOSED ON  
3 THE MURDER BILL, WHICH, IN ESSENCE, MEANS THAT I  
4 DID NOT GIVE YOU ANY ADDITIONAL TIME. BUT YOU  
5 STILL HAVE THE SAME APPELLATE RIGHTS. TEN DAYS  
6 FROM TODAY TO PETITION ME TO ASK ME TO RECONSIDER  
7 THE SENTENCE, 30 DAYS TO APPEAL THIS COURT'S  
8 DECISION TO THE SUPERIOR COURT. ALL MUST BE DONE  
9 IN WRITING. IF, IN FACT, MR. MOORE IS UNWILLING  
10 AND UNABLE TO DO SO, THEN I WILL APPOINT A LAWYER  
11 TO REPRESENT YOU. SHOULD I BE CONVINCED ON THE  
12 RECORD THAT YOU ARE, IN FACT, INDIGENT.

13 YOU UNDERSTAND WHAT I'VE JUST SAID?

14 DEFENDANT LEWIS: YES, SIR.

15 THE COURT: DO YOU HAVE ANY QUESTIONS FOR  
16 THIS COURT?

17 DEFENDANT LEWIS: NO, SIR.

18 THE COURT: THANK YOU VERY MUCH, YOU MAY BE  
19 SEATED.

20 DEFENDANT LEWIS: (COMPLIES WITH REQUEST.)

21 THE COURT: ALL RIGHT. MR. GLADDEN, HAVING  
22 BEEN FOUND GUILTY OF MURDER IN THE SECOND DEGREE,  
23 BY LEGISLATIVE MANDATE, THIS COURT SENTENCES YOU  
24 TO LIFE IMPRISONMENT.

25 ON THE ROBBERY BILL, AS I SAID TO YOUR



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2 CO-DEFENDANT, IT MERGES WITH THE SECOND DEGREE  
3 MURDER BECAUSE IT'S A FELONY MURDER AND THE  
4 ROBBERY WAS THE FELONY IN QUESTION. SO YOU WILL  
5 NOT BE SENTENCED ON THAT.

6 AND ON THE CRIMINAL CONSPIRACY CHARGE I  
7 SENTENCE YOU TO 5 TO 10 YEARS TO RUN CONCURRENTLY  
8 WITH THE SENTENCE THAT I'VE IMPOSED ON THE MURDER  
9 BILL.

10 YOU UNDERSTAND WHAT I'VE SAID?

11 DEFENDANT GLADDEN: YES, SIR.

12 THE COURT: NOW, YOU HAVE TEN DAYS FROM  
13 TODAY TO PETITION THIS COURT AND ASK ME TO SET  
14 ASIDE THIS VERDICT AND GRANT YOU A NEW TRIAL OR  
15 MODIFY YOUR SENTENCE. IT MUST BE DONE IN WRITING  
16 WITHIN TEN DAYS. HOWEVER, YOU MAY GO DIRECTLY TO  
17 THE SUPERIOR COURT. YOU HAVE 30 DAYS TO GO TO  
18 THE SUPERIOR COURT AND ASK THEM TO OVERTURN A  
19 DECISION THAT THIS COURT MIGHT MAKE WITH REGARD  
20 TO YOUR APPELLATE STATUS.

21 IF YOU CAN'T AFFORD AN ATTORNEY AND I'M  
22 CONVINCED THAT YOU ARE INDIGENT AND THAT  
23 MR. TINARI WILL NO LONGER REPRESENT YOU, THEN I  
24 WOULD APPOINT SOMEONE TO REPRESENT YOU.

25 DO YOU UNDERSTAND YOUR POST-SENTENCE

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RIGHTS?

DEFENDANT GLADDEN: YES.

THE COURT: I HAVE HERE A FORM, SIGNED BY YOU ON THE THIRD PAGE WITH YOUR INITIALS ON THE OTHER TWO PAGES SIGNED BY YOU AND YOUR ATTORNEY.

ARE THERE ANY QUESTIONS CONCERNING YOUR POST-SENTENCING PROCEDURE THAT YOU'D LIKE TO ASK THIS COURT?

DEFENDANT GLADDEN: NO.

THE COURT: OR YOUR LAWYER ON THE RECORD?

DEFENDANT GLADDEN: NO.

MR. DOYLE: JUDGE, I KNOW THIS IS A MANDATORY LIFE SENTENCE, BUT I BELIEVE IN THE UTMOST OF CAUTION THAT BOTH DEFENDANTS SHOULD BE ASKED IF THEY WISH TO ADDRESS THE COURT AND SAY ANYTHING BEFORE SENTENCE IS IMPOSED.

THE COURT: ALL RIGHT. WE'LL BACK UP AND DO THAT.

EITHER ONE OF YOU WISH TO ADDRESS THE COURT?

DEFENDANT GLADDEN: WHAT YOU MEAN?

MR. MOORE: THE ONLY THING MY CLIENT WOULD INDICATE IS THAT HE HAS ASKED ME TO FILE AN APPEAL FOR HIM AND I HAVE AGREED TO DO SO.

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THE COURT: OKAY.

MR. TINARI: IF THE COURT PLEASES, MY CLIENT DOES NOT DESIRE TO ALLOCUTE AT THIS TIME.

THE COURT: VERY WELL. THANK YOU VERY MUCH.

MR. DOYLE: JUST ASK THE COURT TO REIMPOSE THE SENTENCE YOU ALREADY HAVE.

THE COURT: TO DO WHAT? REIMPOSE?

MR. DOYLE: REIMPOSE, BECAUSE NOW THEY'VE HAD THE OPPORTUNITY TO ALLOCUTE.

THE COURT: AND MR. TINARI AGREED TO WAIVE THE PRESENTENCE.

MR. DOYLE: I WOULD ASK THE --

MR. TINARI: THAT IS CORRECT.

MR. DOYLE: -- COURT REIMPOSE THE SENTENCE.

THE COURT: ALL RIGHT. OUT OF AN ABUNDANCE OF CAUTION, WE'LL DO THAT.

MR. GLADDEN, STAND, PLEASE.

DEFENDANT GLADDEN: (COMPLIES WITH REQUEST.)

THE COURT: ON BILL 1031, 2 OF 2, 9710, THE JURY HAVING FOUND YOU GUILTY OF SECOND DEGREE MURDER, IT'S THE SENTENCE OF THIS COURT THAT YOU SPEND LIFE IN PRISON. LIFE IMPRISONMENT IS THE SENTENCE.

ON THE ROBBERY BILL, IT MERGES FOR

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2 SENTENCING. AND I SENTENCE YOU TO 5 TO 10 YEARS  
3 ON THE CRIMINAL CONSPIRACY, WHICH IS TO RUN  
4 CONCURRENTLY WITH THE LIFE IMPRISONMENT.

5 YOU UNDERSTAND HOW YOU'RE SENTENCED? I'VE  
6 SENTENCED YOU TO LIFE IMPRISONMENT, AND THE 5 TO  
7 10 YEARS IS TO RUN ALONG WITH THAT. THAT IS WHAT  
8 CONCURRENT MEANS. AND I'M GOING TO TELL YOU  
9 AGAIN, YOU HAVE TEN DAYS FROM TODAY TO ASK ME TO  
10 RECONSIDER THIS SENTENCE. YOU HAVE 30 DAYS TO  
11 APPEAL THIS COURT'S DECISION TO THE SUPERIOR  
12 COURT. IT MUST BE DONE IN WRITING. IF YOU CAN'T  
13 AFFORD AN ATTORNEY AND MR. TINARI IS UNWILLING OR  
14 UNABLE TO REPRESENT YOU, IF I'M CONVINCED THAT YOU  
15 ARE, IN FACT, INDIGENT, I WILL THEN THE APPOINT  
16 SOMEONE TO REPRESENT YOU.

17 YOU UNDERSTAND ME, SIR?

18 DEFENDANT GLADDEN: YES.

19 THE COURT: THANK YOU VERY MUCH.

20 ALL RIGHT. MR. LEWIS.

21 DEFENDANT LEWIS: (STANDING)

22 THE COURT: MR. LEWIS, OUT OF AN ABUNDANCE  
23 OF CAUTION, I'M GOING TO SENTENCE YOU AGAIN ON THE  
24 MURDER BILL.

25 ON 0869, 9801, THE JURY HAVING FOUND YOU

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2 GUILTY OF SECOND DEGREE MURDER, IT'S THE SENTENCE  
3 OF THIS COURT THAT YOU SERVE A LIFE SENTENCE IN  
4 THE STATE CORRECTIONAL INSTITUTION.

5 ON THE ROBBERY, IT MERGES FOR SENTENCING  
6 BECAUSE IT WAS THE FELONY THAT BROUGHT ABOUT THE  
7 SECOND DEGREE CONVICTION.

8 ON THE CRIMINAL CONSPIRACY I SENTENCE YOU TO  
9 5 TO 10 YEARS. THE 5 TO 10 YEARS IS TO RUN  
10 CONCURRENTLY. AS YOU KNOW, THAT MEANS IT'S TO RUN  
11 TOGETHER WITH THE OTHER SENTENCE.

12 NOW, YOU HAVE 10 DAYS FROM TODAY TO PETITION  
13 THIS COURT, ASK ME TO ARREST JUDGMENT, SET ASIDE  
14 THE VERDICT, MODIFY THE SENTENCE. AND YOU DO NOT  
15 HAVE TO. YOU CAN GO DIRECTLY TO THE SUPERIOR  
16 COURT. IT MUST BE DONE IN WRITING. EITHER OR  
17 BOTH MUST BE DONE IN WRITING. MR. MOORE HAS  
18 INDICATED TO THIS COURT ON THE RECORD THAT HE  
19 PLANS TO APPEAL THE DECISION IN THE MATTER.

20 DO YOU UNDERSTAND THAT?

21 DEFENDANT GLADDEN: YES.

22 THE COURT: VERY GOOD. THANK YOU VERY MUCH.

23 OFF THE RECORD.

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25 (DISCUSSION OFF THE RECORD.)

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2 THE COURT: ALL RIGHT. THE MATTERS OF THE  
3 COMMONWEALTH VERSUS TERRENCE LEWIS AND JEHMAR  
4 GLADDEN, THE CASES ARE FINISHED. OVER.

5 MR. MOORE: YOUR HONOR, THAT CONCLUDES MY  
6 BUSINESS. MAY I BE EXCUSED?

7 MR. TINARI: LIKEWISE, YOUR HONOR, MAY I BE  
8 EXCUSED?

9 THE COURT: YES.

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11 (DISCUSSION OFF THE RECORD.)

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13 THE COURT: AMEMDMENTS GRANTED. FOURTEEN  
14 MAY ALSO BE GRANTED.

15 MR. PADOVA: YOUR HONOR --

16 THE COURT: READ IT, MR. PADOVA.

17 MR. PADOVA: I READ IT. IN THAT CASE -- I'M  
18 STILL GOING TO RAISE A CHALLENGE AS TO THAT  
19 AMENDMENT. IT'S VAGUE, LAYS OUT NO GUIDELINES  
20 WHEN THAT AGGRAVATING CIRCUMSTANCE IS GOING TO BE  
21 APPLIED. IT VIOLATES DUE PROCESS, AGAIN, BECAUSE  
22 OF ITS VAGUENESS AND ITS OVERBREADTH. THERE'S NO  
23 INDICATION IN THERE AS TO WHEN THAT CIRCUMSTANCE  
24 SHOULD APPLY.

25 ALSO, AS TO THE AMENDMENT, THE DEFENSE WAS

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2 PREJUDICED BECAUSE ALTHOUGH THE COMMONWEALTH HAD  
3 SUFFICIENT NOTICE AS TO WHEN -- AS TO WHAT THEIR  
4 TESTIMONY WAS GOING TO BE, THEY NEVER DISCLOSED IT  
5 TO THE DEFENSE. THERE'S NO EVIDENCE PRESENTED  
6 THAT, IN FACT -- THAT THERE WAS A DRUG ASSOCIATION  
7 OTHER THAN THEY BOTH DID DRUGS.

8 THE COURT: NO. THERE WAS EVIDENCE  
9 PRESENTED THAT THERE HAD BEEN AN ONGOING  
10 RELATIONSHIP WITH THIS DEFENDANT AND THE DECEDENT  
11 IN DRUG TRAFFICKING. THERE WAS EVIDENCE THAT  
12 THERE HAD BEEN SALES, FROM THE PORCH. THERE WAS  
13 EVIDENCE THAT THERE HAD BEEN SALES INVOLVING THESE  
14 INDIVIDUALS FROM THE BASEMENT. AND ARGUABLY, IF  
15 THE DECEDENT WAS ONLY THE LANDLORD, HE WAS A  
16 FACILITATOR. BUT THERE WAS ADDITIONAL EVIDENCE  
17 THAT SUGGESTED THAT PERHAPS SOMEHOW THERE WAS AN  
18 INTERRELATION BETWEEN THE INDIVIDUALS IN THE DRUG  
19 TRAFFICKING BECAUSE ONE WAS FURNISHING OR  
20 SUPPLYING DRUGS TO INVENTORY.

21 MR. PADOVA: RESPECTFULLY, THE ONLY EVIDENCE  
22 THAT SOME OF THAT MAY HAVE OCCURRED IS THE HEARSAY  
23 EVIDENCE.

24 THE COURT: I UNDERSTAND.

25 MR. PADOVA: IF THERE'S NO EVIDENCE BUT FOR

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2 HEARSAY, HOW'S THAT'S ADMISSIBLE? HOW ARE THEY  
3 GOING TO GET THAT AGGRAVATED? HOW IS IT GOING TO  
4 BE SUBMITTED?

5 THE COURT: YOU ARGUE THERE IS INSUFFICIENT  
6 EVIDENCE TO PROVE IT.

7 AT THE TIME OF THE KILLING, THE VICTIM WAS  
8 OR HAD BEEN INVOLVED, ASSOCIATED, OR IN  
9 COMPETITION WITH THE DEFENDANT IN THE SALE,  
10 MANUFACTURE, DISTRIBUTION, DELIVERY OF A  
11 CONTROLLED SUBSTANCE OR COUNTERFEIT CONTROLLED  
12 SUBSTANCE IN VIOLATION OF THE CONTROLLED  
13 SUBSTANCE, DRUG, DEVICE, AND COSMETIC ACT ANJD /OR  
14 SIMILAR LAWS OF ANY OTHER STATE OR THE UNITED  
15 STATES, AND THE DEFENDANT COMMITTED THE KILLING OR  
16 WAS AN ACCOMPLICE TO THE KILLING AS DEFINED IN 18  
17 PACS SECTION 306 (C), AND THE KILLING RESULTED  
18 FROM OR WAS RELATED TO THE ASSOCIATION,  
19 INVOLVEMENT, OR COMPETITION TO PROMOTE THE  
20 DEFENDANT'S ACTIVITIESS IN SELLING, MANUFACTURE,  
21 DISTRIBUTION, DELIVERENCE OF A CONTROLLED  
22 SUBSTANCE OR COUNTERFEIT CONTROLLED SUBSTANCE.

23 MR. PADOVA: RESPECTFULLY, THE ONLY POSSIBLE  
24 EVIDENCE THAT THERE WAS, AND I'M GOING TO SAY  
25 ASSOCIATION, I'M NOT EVEN SURE THERE'S



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2 ASSOCIATION, OTHER THAN THERE WAS TESTIMONY THAT  
3 THE WOMAN SAW MY CLIENT SELLING FROM THE PORCH OF  
4 THE HOUSE. ANYTHING OTHER THAN THAT IS HEARSAY AS  
5 TO AN INVOLVEMENT BETWEEN THE DECEASED AND MY  
6 CLIENT IN THE NARCOTICS TRADE OR THE NARCOTICS  
7 BUSINESS OR DEALING, WHATEVER THAT MAY MEAN.

8 THE COURT: THEN, MR. PADOVA, I THINK THAT  
9 GOES TO THE WEIGHT AS OPPOSED TO ITS  
10 ADMISSIBILITY.

11 MR. PADOVA: WELL, IT GOES TO ADMISSIBILITY  
12 BECAUSE IT'S ONLY HEARSAY TESTIMONY. THAT'S  
13 HEARSAY TESTIMONY.

14 THE COURT: WHAT AM I GOING TO DO? BRING  
15 THE DECEASED IN THAT HE HAD A PERSONAL  
16 RELATIONSHIP?

17 MR. PADOVA: THAT'S THEIR PROBLEM TO PROVE  
18 THERE WAS A PERSONAL RELATIONSHIP INVOLVING THE  
19 DRUG TRADE.

20 THE COURT: WHAT HE IS SUGGESTING IS  
21 CIRCUMSTANTIAL EVIDENCE -- MR. DOYLE, THE  
22 COMMONWEALTH HAS SUGGESTED THROUGH CIRCUMSTANTIAL  
23 EVIDENCE THAT THEY, THAT'S THE JURY, MAY INFER  
24 FROM THAT EVIDENCE THAT THERE WAS, IN FACT, SOME  
25 ONGOING RELATIONSHIP WITH THIS DEFENDANT AND THE

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DECEDENT.

MR. PADOVA: IS THE COURT ALSO RULING THAT THE NOTICE REQUIREMENT HAS BEEN SATISFIED?

THE COURT: YES.

MR. DOYLE: THE LAW THAT STATES THAT --

MR. PADOVA: THE RULE --

THE COURT: I UNDERSTAND THE RULE. SHOW ME SOMETHING THAT SAYS IF IT'S NOT GIVEN PRIOR TO THE TRIAL, IT CAN'T BE USED.

MR. PADOVA: WELL, IT WASN'T GIVEN UNTIL AT THE CONCLUSION OF THE TRIAL, ACTUALLY. AND IT'S MY POSITION, OR IT'S OUR POSITION THAT THE COMMONWEALTH KNEW OR SHOULD HAVE KNOWN THAT THEY WERE GOING TO ARGUE THAT THERE WAS SOME KIND OF RELATIONSHIP BETWEEN THE TWO INDIVIDUALS, AND THEY SHOULD HAVE GIVEN THAT TO DEFENSE IN ENOUGH TIME TO GO INVESTIGATE WHETHER OR NOT THERE WAS A RELATIONSHIP INVOLVING THE DRUG BUSINESS BETWEEN THE DEFENDANT AND THE DECEASED. AGAIN, THIS ISSUE HAS NOT BEEN DECIDED, AND I SUGGEST THAT THIS IS -- I DON'T KNOW IF THIS IS GOING TO BE THE PRECEDENT CASE.

THE COURT: MAY VERY WELL BE.

MR. DOYLE, GIVE ME ANYTHING THAT YOU MIGHT

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HAVE WITH REGARD TO THIS PARTICULAR SUBJECT --

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MR. DOYLE: YES, SIR.

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THE COURT: -- AND I WILL CALL ON SOME OF MY  
LEARNED COLLEAGUES TO SEE WHAT DECISION THEY MIGHT  
MAKE. I REALLY DON'T KNOW, AND I KNOW OF NO CASE  
ON IT.

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MR. DOYLE: ALL RIGHT. I'VE ALREADY CITED  
ZOOK TO THE COURT. AND I WOULD MERELY CITE, AND I  
DON'T THINK COUNSEL WOULD DISPUTE THIS, THAT THERE  
WERE FOUR STATEMENTS TAKEN FROM THE EYEWITNESS IN  
THE CASE, LENA LAWS, AND NONE OF THOSE STATEMENTS  
DOES SHE EVER MENTION THE VICTIM WAS INVOLVED IN  
THE SALE OF DRUGS WITH THE DEFENDANT OR ASSOCIATED  
IN THAT WAY, AND, ALSO, AT THE PRELIMINARY  
HEARING. SO, THEREFORE, THE OPPORTUNITY DID NOT  
EXIST. THE PRIMA FACIE CASE MUST EXIST AND THE  
PRIMA FACIE CASE DID NOT EXIST. SO, THEREFORE,  
ONCE THE TRIAL TOOK PLACE, SHE DID TESTIFY TO THAT  
EFFECT. NOW IT'S TIMELY.

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THE COURT: WHY DO YOU THINK, MR. DOYLE,  
THAT THE LAW REQUIRES A NOTICE OF AGGRAVATING  
CIRCUMSTANCES BEFORE THE TRIAL STARTS?

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MR. DOYLE: YOUR HONOR, UNDER NORMAL  
CIRCUMSTANCES IT DOES, BUT THERE ARE EXCEPTIONS.

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SIGNIFICANT HISTORY IS ONE.

THE COURT: SIGNIFICANT HISTORY, YOU CAN APPRECIATE THE FACT THAT YOU PUT THE SIGNIFICANT HISTORY ON IF YOU GET A CONVICTION. BUT WHAT ABOUT SOME UNANTICIPATED AGGRAVATING CIRCUMSTANCE THAT AS FAR AS THE DEFENSE WAS CONCERNED, WAS NOT ONE THAT THEY EVEN NEEDED TO CONSIDER AND ADDRESS? YOU DO, IN FACT, AS YOU CAN APPRECIATE, HAMSTRING THE DEFENSE IF YOU DO NOT PUT THEM ON NOTICE AS TO WHAT THEY CAN EXPECT. AND AFTER THE TRIAL, HERE YOU ARE HITTING HIM BELOW THE BELT AND SAYING, I'M GOING TO TAKE IN THE DRUG STORY, AND HE DID NOT HAVE -- ALL HE NEEDED WAS A WITNESS OR TWO WHO WOULD SAY UH-UH, WASN'T NO DRUG RELATIONSHIP BETWEEN THIS DEFENDANT, THIS GUY WAS ANGRY AT HIM BECAUSE BOUGHT A TELEVISION SET ON CREDIT AND DIDN'T PAY FOR IT.

MR. DOYLE: THE ZOOK CASE, YOUR HONOR, ADDRESSES THE NOTICE REQUIREMENT IN THE SPIRIT OF THE NOTICE THAT ITS A CAPITAL CASE.

THE COURT: NOT THE AGGRAVATING CIRCUMSTANCES INDIVIDUALLY.

MR. DOYLE: AND THE ZOOK CASE ADDRESSES --

THE COURT: THEN YOU DON'T HAVE ONE THAT

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SUPPORTS YOUR POSITION, DO YOU?

MR. DOYLE: I DO. AND I BELIEVE THE ZOOK CASE DOES. AND I'LL BE PREPARED TO ARGUE THAT TO YOUR HONOR.

THE COURT: ALL RIGHT. AND, MR. PADOVA, I'LL TAKE YOUR ARGUMENTS UNDER --

MR. DOYLE: MR. PADOVA WAS ADVISED OF THIS POSITION. I TOLD HIM SEVERAL DAYS AGO.

MR. PADOVA: WHICH MADE ME READ THE ZOOK CASE, WHICH HAS NOTHING TO DO WITH THE SECOND TRIAL.

MR. DOYLE: I'LL BE PREPARED TO ARGUE. BUT YOU ARE ALLOWING, OF COURSE, THE AMENDMENT AS TO SIGNIFICANT HISTORY?

THE COURT: YES.

MR. DOYLE: VERY WELL.

THE COURT: YOU HAVE A SIGNIFICANT HISTORY NOW. YOU PIGGYBACKED THE CONVICTION FOR TODAY ON TOP OF THE RECORD THAT PERHAPS MIGHT NOT HAVE BEEN SIGNIFICANT UNTIL THIS TRIAL.

MR. DOYLE: YES, SIR. VERY WELL, YOUR HONOR. THAT COMPLETES MY BUSINESS. MAY I BE EXCUSED?

THE COURT: RIGHT.

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DO YOU NEED ANYTHING ELSE FROM THIS COURT,  
MR. PADOVA?

MR. PADOVA: JUST USE OF THE PHONE.

THE COURT: DOES JUDGE GREENSPAN KNOW WHAT  
MY POSTURE IS?

MR. PADOVA: I'M SURE SHE DOES. I KEEP  
SEEING PEOPLE WALK UP.

MR. DOYLE: I'LL SPEAK TO MR. PADOVA ABOUT  
WHAT STIPULATIONS CAN BE ARRIVED AT. I'LL SPEAK  
TO HIM TODAY.

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(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

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