And sorry -- I'm sorry, I'm very sorry, but you see I have faith in God. I don't believe it. And I'm going to do what I can to help him. I'm not saying that anything kids they do is not right. I know that. But I believe the child. And I'll be there for him, to help him and to do what I can.

He lives with me. He's been with me. I just -- he's -- we have talked. We have did everything. He's with me. His life is with me. I'm his -- I'm a sick person, too.

But I feel if he would tell me, God will do what's right. And I -- I know and I believe that because I have faith in God. And I wish you would try to understand please what I'm saying to you for my grandson.

And that's all I have to say. Thank you.

MR. PERANIO: Mr. Taylor would also like to say something.

THE COURT: Mr. Taylor, you do have a right to speak in your own behalf before I impose sentence. Is there anything you would like to tell me?

THE DEFENDANT: Okay. I just want to tell you I ain't kill that girl. That's it.

MR. PERANIO: That's all, Judge.

THE COURT: Okay. Mr. Mc Tigue.

MR. MC TIGUE: Yes, Judge.

Judge, I'd like to respond very briefly to Mr.

Peranio's comments on the level of the proofs in the trial. After that, Judge, there are members of Ms. Mercado's family who wish to address the Court. After they speak, I'll address the aggravating factors as the State alleges them to be.

Judge, I respect Mr. Peranio's opinion. I know him professionally and personally many years. I understand his position.

However, the State's position is that Mr. Taylor was convicted on competent and strong proofs, which was thoroughly tested over a period of two weeks in front of a jury, not by just Mr. Peranio, but by Mr. Clark.

The focus of the defense, Judge, naturally was the questioning of the ability of the three identification witnesses to make the identification that they did, in fact, make and make unequivocably and clearly without hesitation.

And the one point, Judge, I would urge this Court is that there is not that uncertainty that Mr. Peranio would urge upon the Court. What the witnesses presented, Judge, was no more than a snapshot of urban life on a busy corner one early morning, people coming and going, having small quarrels and disputes.

As the identification goes, Judge, and I made this comment to the jury during summation, and clearly I think they accepted it, Judge, by virtue of their verdict -- during the trial it was pointed out, Judge, and Mr. Peranio has raised

it here, with that shotgun life could have been taken quickly, easily and surreptitiously by any person who wished to do so. Whatever his motive, whether he had the right group of people, the wrong group of people, whether it was a willful, deliberate or a stupid act on his part, the proofs were such that Mr. Taylor yelled yo before that shot was fired. The only conceivable purpose that a person would do that in that situation is to attract the attention of his victims and to make sure, Judge, that they saw him, that there was eye contact.

I ask this Court to look at this incident not only through the eyes of the victim and the witnesses, but through the eyes and the perspective of the perpetrator. That that yelling yo meant that person who the jury says is Mr. Taylor wanted his victims to see him. They had adequate opportunity to see him. They picked him out in the photo arrays. It was argued, Judge, that those photo arrays were suggested. I think they were not. The jury found that they were not.

It was argued that the lapse in time tolled against those photo arrays. The State argued, Judge, that it tolled in favor of them given the isolation of the witnesses. The jury accepted that. I would submit, Judge, that I stand before you in all candor and I say I have no uncertainty as to this verdict. I believe the jury certainly had no uncertainty.

Given the length of this trial, the complexity of the questioning of the witnesses, this was a quick verdict,

Judge. It was due deliberation, but the jury was not overly troubled. I submit the proofs are strong. They are competent. And they certainly are beyond impeachment at this level.

Judge, at this point there are two family members who would like to address the Court, Mr. Mercado and Ms. Ferrara.

THE COURT: You may call them.

MR. MC TIGUE: Mr. Mercado.

THE COURT: Mr. Mercado.

MR. MERCADO: Angel Mercado. I'm very glad that this case almost over, because every time we come here bring a lot of memory, lot of suffering, sickness. And it's over, but, you know, my daughter is gone. Whoever kill my daughter steal life, my daughter's gone. And he is live.

My wish is somebody kill, somebody you, serve it you, you get killed, too.

Thank you. I have nothing to say.

THE COURT: Ms. Ferrara.

MS. FERRARA: Good morning, your Honor. On behalf of my cousin Christina, she'll never be over here to listen to. I just want to briefly tell you a little bit about her.

She was a young girl with a whole life ahead of her to live, a lot of dreams. She leaves behind a two year old daughter. And I'm a mother. She leaves a little girl standing at the door all the time asking her grandmother when

is mommy going to come? When is mommy going to come?

And my cousin will never be back. She was just standing at the wrong place at the wrong time, but her life was taken away. She'll never be back. And we're very small family. We don't get involved in no trouble.

Dealing with the police, all this was a big tragedy in the whole family. It's sad that out of 19 year old age, she's gone. And there's no words that can ever explain that only if it happens to somebody in their family. You could be in jail for 30, 50 years, but you'll come out somehow. And when you leave out, early age like that, that's very sad.

That's all I have to say.

THE COURT: Mr. Mc Tigue.

MR. MC TIGUE: Yes, it's the State's position at this juncture that a minimum sentence is not warranted. In considering the aggravating factors, of course, the Court must consider first and most importantly the nature of the offense. The Court cannot double count, but it does not preclude the Court from considering the enormity of the crime, the suffering imposed here.

Judge, this crime represents perhaps the ultimate urban nightmare. Where a person otherwise innocent who had given offense to nobody, whose only crime was to be on the streets is struck down in horrible fashion from nowhere, seemin without explanation, Judge. I think the Court should count

this factor very, very heavily, as indeed the case law indicates you should.

I would argue, Judge, also that this was a crime which was cruel and heinous in its nature. This is the aggravating factor. It has been pointed out that this wasn't simply an efficient killing done quickly and quietly as possible. This was a show killing. The perpetrator of this crime, Judge, yelled yo. He wanted his victims to appreciate the horror which was being inflicted upon them.

So I would argue, Judge, that this is a cruel and heinous crime as would justify finding of this aggravating factor.

The defendant's record, Judge, even though he is a relatively young man, a very young man, is deplorable.

The Court has before it in the Presentence Report a lengthy juvenile record. The State acknowledges that the Court cannot accord those juvenile convictions the same weight that it would an adult conviction, but the Court may consider it. And I ask the Court to consider that juvenile record in conjunction with his adult record, because, Judge, there is a progression in the life of Kesan Taylor.

As a juvenile we start off with property offenses, CDS. But then as we go along, Judge, in 1990 we find our first incident of personal violence, an aggravated assault. As we go into his adult history, Judge, we find that shortly before

this murder occurred, Mr. Taylor has and has admitted to the Court today that he making resort to weapons, a handgun. There is a progression here, Judge. The record does speak and speak more than just a blind listing of offenses. I would submit, Judge, that though I don't think probation is vaguely in the picture here, it isn't in the picture at all, because by virtue of the statute under which he must be sentenced, Mr. Taylor is not a good candidate for rehabilitation.

I say that in a general sense given his record and given the fact that he had opportunities for probation in the past as a juvenile. It's not an ideal system when you become involved in the criminal justice system, but it does offer you something, perhaps not much, but something. And that was offered to Mr. Taylor. It did him no good. And his criminal development progressed notwithstanding albeit the minimum assets offered to him by the system. It didn't happen.

Certainly, Judge, there is a need to deter. Arguably a prosecutor can say that in every case. But here, Judge, I think it does apply with some force, because here we deal with blind violence, which is the plague of our cities. And I think there does need to be strong deterrence against that particular type of act, against Mr. Taylor and against others who would act in similar fashion.

I'm not asking the Court to send an empty message, a message that the Courts will not tolerate this type of

offense where lives are taken for God knows what reason.

Judge, this was a murder, notwithstanding again with respect to counsel's comments, Mr. Taylor should not be rewarded for poor marksmenship. Any time you aim at 10 feet a shotgun -- I think the proofs established, although there was no police testimony that possibly a short barrel shotgun, sawed-off shotgun was used here. It astounds me, Judge, that someone would suggest a proposition that the aiming of a sawed-off shotgun at a group of human beings from a distance of between 10 and 20 feet bespeaks anything, anything but an attempt, a purpose, a design to take human life or certainly at the very least cause serious bodily injury which could result reasonably in the loss of human life.

I don't think this is anything close to an aggravated manslaughter, Judge. It is clearly by the proofs delineated on the record a murder.

In considering the various counts of the indictment, Judge, the State would concede on the proofs before you that Counts Two and Three would result either in merger or concurrency as far as the sentence to be imposed. I believe Count Three, which is the second degree possession of unlawful -- second degree possession of a weapon for an unlawful purpose would merge.

I would submit on the proofs available, Count Two, possession of a weapon, would in all probability appropriately

merge or run concurrent.

However, Judge, with regard to Count Four, I would submit that a consecutive sentence is appropriate. We have proofs which are borne out, Judge, in part by Mr. Taylor's own testimony that there was possession of this vehicle which was stolen both before and after the incident itself.

Certainly, there is beyond the shadow of a doubt, Judge, based on the recovery of Mr. Taylor's fingerprints in the subject vehicle, the theft of the vehicle is a crime with a different victim, which was perpetrated in a different place, different time, and perhaps with a different purpose at the time it initially occurred.

I would submit, Judge, that it is appropriate that the Court consider the consecutive sentences for that, even under the Yarbough standards, Judge, which do not apply any more since the amendment of the statute that would be appropriate.

As far as the murder sentence, Judge, given the aggravating factors which I've outlined and comparing them not quantitatively but qualitatively to any mitigating factors which the Court may find, because the State alleges there are none, there are none -- I would urge that a maximum sentence of life in prison with 30 years no parole is appropriate for the murder count with a presumptive term of four years on Count Four to run consecutive to Count One.

THE COURT: Certainly, this is about as tragic a case as one could see or imagine. It involves a very young woman. Well, I don't know her specific age. It would appear to be in the very early twenties.

MR. MC TIGUE: She was 19 at the time she died, Judge.

THE COURT: Okay. Be that as it may, she was the mother of a young child, about three years old. She certainly seemed to have her life in order.

She was attending a university in Puerto Rico, planned to enter the teaching profession, helping others. And her life very senselessly and ramdomly was just snuffed out in just a moment.

And it really was a killing which from my perspectiv seems absolutely senseless and motiveless. While Mr. Peranio did address some matters as to which might go to state of mind, it was an issue which certainly the jury had before it and considered. And the jury certainly by its conviction of the crime of murder made the finding that Mr. Taylor at the very least purposefully or knowingly caused serious bodily injury which reasonably resulted in death, as I think could be expected when a shotgun is fired in the direction at close range at a group of people in a street while the shooting is in a passing vehicle on that street.

I am certainly bound by the jury's findings. I

think the evidence did contain certainly an adequate basis for their finding that this was a murder, not aggravated manslaughter, and not reckless manslaughter, which are the charges they did consider.

In considering and weighing the aggravating and mitigating factors, I will note that one crime in our statute and the one certainly treated most seriously by the Legislature murder is the one crime which does not have any type of presumptive sentence. And considering and weighing the aggravating and mitigating factors, I overall find as an aggravating factor certainly the overall circumstances in the offense.

Even though the Prosecutor alluded to the warning of yo being shouted, nonetheless, the victims had no real warning or opportunity to avoid being shot. As I said, he did mention the killing itself was just totally senseless, a totally senseless act. I would also note overall that Mr. Taylor is being sentenced now on basically three separate offenses, at least two of which involve victims and different ones and acts also committed at somewhat different times.

I certainly do think with the numerous juvenile adjudications of delinquency, that I must note the extent and seriousness of Mr. Taylor's prior convictions. And tying in with that, there is a risk that Mr. Taylor will commit another offense because of that considerable record. And, indeed,

some of the juvenile record terminated about a year or so before this offense was committed. There also was the Jamesburg commitment involved in one of them.

Honestly, I cannot find any mitigating factors. So that the aggravating factors do substantially outweigh the mitigating factors.

Therefore, Kesan Taylor on Count One of Indictment 94-5-1811, which charges you with murder, a first degree crime, you are committed to the custody of the Commissioner of the Department of Corrections for a term of life imprisonment to remain until released in accordance with the law and in accordance with the criminal code. You are to serve a mandatory term of 30 years before you will become eligible for parole.

You are entitled to jail time credit of 393 days.

There will be a penalty assessment of $100.00 payable to the Violent Crimes Compensation Board. And a $75.00 Safe Neighborhood assessment.

On Count Two of the same indictment charging you with unlawful possession of a weapon, a third degree crime, you are committed to the custody of the Commissioner of the Department of Corrections for a term of five years to remain until released in accordance with the law. The sentence imposed on this count I will run concurrent with the sentence imposed on Count One.

Again, there is jail time credit of 393 days. $50.00 Violent Crimes Compensation Board penalty.

Count Three -- Count Four rather, I would note that Count Three, possession of a weapon for an unlawful purpose, merges with the first count. Count Two does not merge with Count One.

Count Four, which charges receiving stolen property, a third degree crime, you are committed to the custody of the Commissioner of the Department of Corrections for a term of five years to remain until released in accordance with the law. And the sentence imposed on this count is to run concurrent with the sentence imposed on Count One.

Again, jail time credit of 393 days. There will be a $50.00 Violent Crimes Compensation Board penalty. $500.00 Auto Theft assessment. One year loss of driver's license, although, obviously it will not make any difference.

On Count One of Indictment 93-11-4049, charging you with unlawful possession of a weapon, a third degree crime, you are committed to the custody of the Commissioner of the Department of Corrections for a term of five years. The sentence imposed on this count is to run concurrent with the sentence imposed on Count One of Indictment 94-5-1811.

Again, there will be jail time credit of 393 days. $50.00 Violent Crimes Compensation Board penalty. And $75.00 Safe Neighborhood assessment.

I just would like to make the following statement. The purpose of the statement is to inform the public of the actual period of time this defendant is likely to spend in jail or prison as a result of his sentence. That actual period of jail or prison time is not determined by this Judge but by the statutes of New Jersey as applied to this sentence by the State Parole Board.

In this case there is a requirement that the defendant serve 30 years in State Prison before he can be eligible at all for parole. If at defendant's eligibility date, Parole determines that if there's a substantial likelihood that the defendant will commit a crime if released, parole will be denied at that time.

Presently more than 40 percent of the defendants are not released by the Parole Board at the time estimated in this statement, often serving another year or more. The actual calculation can be complex, but for the majority of defendants, total real time that is served for the sentence is appropriately what I've stated. And in this case it would certainly be at least 30 years.

This defendant has already served 393 days of that time. The defendant should not rely at all on this estimate, in particular cannot rely on it on appeal. It is intended solely to inform the public.

You do, Mr. Taylor, have the right to appeal my

sentence. You do have 45 days in which you may appeal.

MR. MC TIGUE: Judge, I would like perhaps to get one thing on the record. The Graves Act, the Graves Act did not impact on the sentence given the nature of the statute --

THE COURT: No.

MR. MC TIGUE: The State would ask the Court given the proofs of record that the matter, however, does fall within the matter of Graves.

THE COURT: Certainly does.

MR. MC TIGUE: That's all, Judge. Thank you very much.

THE COURT: Okay.

(Sentencing concluded.)

CERTIFICATION

I, KATHLEEN CONNELL, C.S.R., License Number 1072, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.

Kathleen Connell CSR

KATHLEEN CONNELL, C.S.R.
Official Court Reporter
Rm. 111 Essex County Courts Bldg.
Newark, New Jersey

Date: 6-28-95

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