

A-2058-0374

A-2058-9174

SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION
CAMDEN COUNTY
IND. 2469-10-95

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STATE OF NEW JERSEY, :
vs. :
DENNIS L. COPLING, :
Defendant :

FILED
APPELLATE DIVISION
TRIAL

JUN 30 2004

Walter F. Flynn
CLERK

Place: Hall of Justice
100 South Fifth Street
Camden, New Jersey

Date: January 23, 1997

B E F O R E:

HONORABLE LINDA G. ROSENSZWEIG, J.S.C.
And a Jury

TRANASCRIPT ORDERED BY:

HAROLD KATZ, ESQ.

APPEARANCES:

JOEL H. ARONOW, ESQ.
For the State of New Jersey

ROBERT H. LEINER, ESQ.
For the Defendant

WALTER F. FLYNN, C.S.R.
Official Court Reporter
Suite 580
Hall of Justice
Camden, New Jersey

I N D E X

<u>MIRANDA HEARING</u>	<u>Direct</u>	<u>Cross</u>	
<u>FOR THE STATE</u>			
Det. Leonard G. Finneman	3	8	(Voir Dire)

<u>OPENING BY:</u> Mr. Joel Aronow		43	
BY: Mr. Robert Leiner		58	

<u>Witness:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
<u>FOR THE STATE</u>			
Dr. Robert L. Catherman	63	108	114

<u>EXHIBITS:</u>		<u>Ident.</u>	<u>Evid.</u>
S-1	Miranda Rights Form		14
S-2 to S-13	Photographs	80	
S-14 to S-18	Photographs	96	
S-19	Bag with Contents	96	
S-20	Bag with Contents	96	
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S-4 to S-17	Photographs		120
S-19 & S-20	Photographs		120

STUCK FORM FASTER

THE CORBY GROUP 1-800-525-5000

1 THE COURT: The state may call its next witness.

2 MR. ARONOW: The State would call Detective Leonard
3 Finneman to the stand.

4 L E O N A R D G. F I N N E M A N, S R., sworn.

5 VOIR DIRE DIRECT EXAMINATION BY MR. ARONOW:

6 Q. Would you state your name for the record?

7 A. Detective Leonard Finneman, Sr.

8 Q. Do you use Leonard or Gary as your first name?

9 A. Leonard is my first name. Gary is my middle.

10 Q. Do you go by Gary?

11 A. Yes. Both of them.

12 Q. For whom are you employed?

13 A. Camden Police Department.

14 Q. In what capacity?

15 A. Detective.

16 Q. How long have you been a police officer with the
17 Camden Police Department?

18 A. Approximately five and a half years.

19 Q. I am going to call your attention to January 27,
20 1995.

21 Did you participate in the arrest of Dennis Copling
22 or Dennis Turner?

23 A. Yes, I did.

24 Q. Also known as Copling?

25 A. Yes, sir.

1 Q. Did you subsequently participate in any questioning
2 of Dennis Turner, also known as Dennis Copling?

3 A. Yes, I did.

4 Q. Where did that take place?

5 A. Camden Police Detective Bureau.

6 Q. At the time that you became involved in the question-
7 ing of Dennis Turner, were you a detective assigned to this
8 particular investigation?

9 A. No, I wasn't.

10 Q. Did you have any particular knowledge of the facts
11 and circumstances surrounding the homicide that took place
12 involving this individual?

13 A. Just the basic fact that it was a double homicide, it
14 occurred out Westminster.

15 Q. How was it that you knew that information?

16 A. I had subsequently had a homicide earlier that day, and
17 just talking to the officers, all the detectives coming in,
18 detectives that were handling it, the sergeant, things of that
19 nature. You know, just in passing, because I had a working
20 homicide myself that particular day.

21 Q. Did you have any specific communication with
22 Sergeant Joseph Forte of the Camden County Prosecutor's
23 Office, with respect to this investigation?

24 A. No, not until the evening of the 27th.

25 Q. Do you recall the circumstances wherein you became

1 involved in the questioning of Dennis Turner?

2 A. Yes Detective Wilson and Investigator Sergeant Forte
3 were interviewing Mr. Turner, and Detective Wilson had left
4 the room and Sergeant Forte of the Prosecutor's Office asked
5 me to come in and just speak to Mr. Turner.

6 Q. Prior to your actually speaking to Mr. Turner, did
7 you have any participation or did you sit in during any por-
8 tion of the interviewing through Sergeant Forte?

9 A. No.

10 Q. What was the basis for your --

11 MR. ARONOW: Strike that.

12 Q. What did you do specifically with respect to Dennis
13 Turner?

14 A. Specifically I came in and spoke to him, talked to him,
15 listened to what he had to say, as Sergeant Forte was the one
16 that was questioning him.

17 Then the answers he was giving, I was trying to
18 bring out more points, you know, on the answers he was giving.

19 Q. Did you at any time speak with Dennis Turner alone?

20 A. Yes, I did.

21 Q. Was that after you sat in and listened to what he
22 was basically telling you with Sergeant Forte?

23 A. Yes.

24 Q. At the time that you spoke with Dennis Turner alone,
25 what was the substance of your conversation with Dennis Turner?

1 A. Basically I just appealed to him as a young man, one
2 young man to another young man, and explained to him that at
3 that particular time there had been eleven homicides in the
4 city as of January 27th, including four had been double homi-
5 cides.

6 I didn't know too much about the case, but in tell-
7 ing the truth, you know what I mean, it would help him a lot.
8 I just appealed to him on that aspect, one African American to
9 another.

10 Q. Approximately how long did your conversation take
11 with Dennis Turner alone?

12 A. Ten, fifteen minutes tops.

13 Q. During the time you spoke with Dennis Turner alone,
14 did he at any time request to speak with an attorney?

15 A. No, he didn't.

16 Q. Did he at any time invoke his right to remain silent?

17 A. No, he didn't.

18 Q. Did he at any time invoke any of the Constitutional
19 rights he has under Miranda?

20 A. No, he didn't. No, sir.

21 Q. Subsequent to your one-on-one conversation with
22 Dennis Turner, what happened after that? Did Sergeant Forte
23 re-enter the room?

24 A. Yes, he did, after I spoke to Mr. Turner. He said: I'll
25 tell the truth, and I immediately got Sergeant Forte, told him

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to come back in the room, he was ready to tell the truth.

Q. Was a statement taken from him orally?

A. Yes.

Q. Was a taped statement taken of Dennis Turner that evening?

A. No.

Q. Why was that?

A. While still interviewing him, getting details of the case, Detective Torres knocked on the door and stated that Mr. Turner's family was out there and a lawyer was on the way, that a lawyer was there.

Q. Did the interview process cease at that point?

A. Yes.

Q. Did anything further happen with respect to Dennis Turner taking a statement?

A. No.

Q. To your knowledge, did you ever see an attorney at the Detective Bureau for Dennis Turner?

A. No, I didn't.

Q. Were you subsequently made aware whether or not an attorney actually appeared at any time on January 27, 1995, for Dennis Turner?

A. Not that particular night. Later on after getting the reports, seeing the reports, it reflected that no lawyer was actually there for Mr. Turner.

STOCK FORM FARRIN

THE CORBY GROUP 1-800-55-5010

1 MR. ARONOW: I have no further questions of this
2 witness.

3 THE COURT: Mr. Leiner, you may Cross-examine.

4 MR. LEINER: Thank you, your Honor.

5 VOIR DIRE CROSS-EXAMINATION BY MR. LEINER:

6 Q. Detective Finneman, you indicated in the beginning
7 of your testimony you were involved in the arrest and appre-
8 hension of Dennis Copling, is that correct?

9 A. Yes, sir.

10 Q. When did you take part in that arrest?

11 Did you go down to Monroe Township?

12 A. Yes, I did, sir.

13 Q. You were with Sergeant Forte, and who else was with
14 you?

15 A. I think Sergeant Forte, Detective Wilson, Investigator
16 Harry Norcross of the Prosecutor's Office, along with some
17 Monroe Township police officers.

18 Q. What time did you go back to the Detective Bureau of
19 the Camden Police Department?

20 MR. ARONOW: I object. It is beyond the scope.

21 THE COURT: Mr. Leiner.

22 MR. LEINER: I just want to ascertain the times,
23 your Honor, in regard to when he was involved with Mr. Copling.
24 He was involved in the investigation, and he already testified
25 he was involved in the arrest.

1 I want to know if he knows what time they got back
2 to the station.

3 THE COURT: Although it is technically beyond the
4 four corners of the Direct, I will allow the question. Objec-
5 tion overruled.

6 You may answer the question.

7 A. I guess approximately 7:30, 8:00 o'clock, 7:30.

8 Q. Approximately 7:30 or 8:00 o'clock?

9 A. Yes.

10 Q. You indicated that Detective Forte and Detective
11 Wilson were talking to Dennis Copling for a while without
12 you being in the room?

13 A. That's correct.

14 Q. At some point during that interview process, what
15 were you doing while they were interviewing Dennis Copling?

16 A. I was out at my desk. I had a working homicide also
17 myself, like I said.

18 Q. When you refer to a working homicide that day, you
19 are talking about the day Dennis Copling was apprehended, not
20 the day the homicide took place?

21 A. The day he was apprehended on the 27th, I was still work-
22 ing, actively working my job. I was still, you know, not his
23 particular job, but my job that occurred on the 18th.

24 Q. Somewhere along the line Detective Wilson is called
25 out of the room, is that correct?

1 A. I don't know how he came out. He came out of the room.
2 I don't know whether he was called or summoned or what. I
3 don't know.

4 Q. Who asked you to go into the room with Dennis
5 Copling?

6 A. Sergeant Forte asked me to come.

7 Q. When you first went into the room with Sergeant
8 Forte and Dennis Copling, did you stay in that room by yourself,
9 or did Detective Forte stay with you?

10 A. Detective Forte stayed with me for a while.

11 Q. Isn't it true, Detective Finneman, some point Dennis
12 Copling became somewhat uncooperative with Sergeant Forte's
13 questioning?

14 A. Not to my knowledge, not while I was in the room.

15 Q. But at some point Sergeant Forte left you in the
16 room with Dennis by himself, is that correct?

17 A. After we were in there going back and forth with him, and
18 I think Sergeant Forte knew of the details of the case, we
19 came outside and he said, you know, we are not really getting
20 anywhere, see what you can do, that was when I went in there
21 and basically spoke to him myself on a one-on-one basis.

22 Q. If you weren't getting anywhere, wouldn't that
23 indicate Mr. Copling was not being completely cooperative?

24 A. He was cooperative because he was giving us a story.
25 Whether the details of the story were true or not, I couldn't

1 judge that because I didn't know the full details of the case.
2 Sergeant Forte could. That was when we came outside and spoke
3 about it, and he said to go in and see if I can talk to him.

4 Q. Without knowing any of the details of the case, you
5 went in by yourself to talk to Dennis Copling, is that correct?

6 A. Yes.

7 Q. How would you know whether or not the story, subse-
8 quent story Dennis Copling was giving you was the truth, if
9 Sergeant Forte was not there to help you?

10 A. I wasn't asking him about the details of the case. I was
11 appealing to him as one man to another. That is why I went in
12 there, for basically that particular time.

13 Q. You said that you were aware somewhat of this case.

14 Did you have any conversations with anybody, prior
15 to talking to Dennis Copling in regard to this case?

16 A. Nothing, other than just like around the office, that
17 basically it was a double homicide that occurred on Westminster
18 and Maguire, things of that nature.

19 Q. Prior to your testimony today, did you talk to the
20 prosecutor or talk to Sergeant Forte about this case?

21 A. Yes, I did.

22 Q. Did you talk to them any point yesterday about this
23 case?

24 A. No, we didn't.

25 Q. Some point you called Sergeant Forte back into the

1 room, is that correct?

2 A. Yes, sir.

3 Q. And at that point you felt Dennis Copling would
4 have been more cooperative?

5 A. He stated to me that he was willing to tell the truth
6 then, yes.

7 Q. But you didn't know from what he was telling you
8 whether or not he was telling you the truth?

9 A. True. That is why I had to have Sergeant Forte come back
10 in.

11 Q. After Sergeant Forte came back in, who continued to
12 question him?

13 Did you continue or did Sergeant Forte?

14 A. Basically Sergeant Forte.

15 Q. Did you assist in that questioning?

16 A. Yes, I did.

17 Q. Did you ask questions during that interview?

18 A. Yes.

19 Q. What questions did you ask Dennis during that inter-
20 view?

21 A. I can't recall, but basically just bringing out the de-
22 tails of the case, trying to get descriptions, things of that
23 nature, pin down dates, times, location. You know, things of
24 that nature. You are trying to bring out the finer points.

25 I didn't know the whole broad picture. Sergeant

1 Forte did, when he would say something, I would try to bring
2 it out a little more in detail, assist.

3 Q. You were trying to assist with details you really
4 knew nothing about?

5 A. If he said there was a black male, I would say how tall,
6 weight, height, clothing description, things of that nature,
7 tie up details.

8 Q. Were you present when Dennis Copling was read his
9 Miranda rights, back at the Detective Bureau?

10 A. No, I wasn't.

11 Q. Were you present when Dennis Copling was read his
12 Miranda rights back in Monroe Township?

13 A. No, sir, I wasn't.

14 Q. What were you doing in the house or apartment in
15 Monroe Township, while the arrest was taking place?

16 A. I was securing the back in Monroe Township, me and Inves-
17 tigator Norcross, Monroe Township officers, and we came by,
18 went around the house, the house had been secured, Mr. Turner
19 or Copling was in custody.

20 Sergeant Forte and Detective Wilson and them already
21 had been in the house and everything was secure, so I just came
22 in basically and it was all over by then.

23 Q. Did you ride back in the patrol car with Sergeant
24 Forte and Dennis Copling?

25 A. No, I didn't.

1 Q. You were in a separate car?

2 A. Yes.

3 MR. LEINER: I have no further questions.

4 MR. ARONOW: Nothing further.

5 THE COURT: Thank you, Detective Finneman. You may
6 step down. You are excused.

7 THE WITNESS: Thank you.

8 THE COURT: At least from this hearing.

9 MR. ARONOW: For purposes of the hearing, I would
10 move to have S-1 introduced as evidence.

11 THE COURT: Mr. Leiner, any objection?

12 MR. LEINER: No objection.

13 THE COURT: It will be received.

14 (Exhibit S-1 marked for Identification, marked
15 Exhibit S-1 in Evidence.)

16 THE COURT: Mr. Aronow, you said there are no other
17 witnesses on behalf of the State for this Miranda hearing?

18 MR. ARONOW: That's correct.

19 THE COURT: Mr. Leiner, any witnesses on behalf of
20 the defendant for this hearing?

21 MR. LEINER: Can I have a brief moment with my client?

22 (Mr. Leiner conferring with defendant.)

23 MR. LEINER: No, your Honor.

24 THE COURT: There are no witnesses?

25 MR. LEINER: No, your Honor.

1
2 THE COURT: I have been informed that the jury is
3 on its way up, the new panel. I will be glad to hear any
4 arguments from either side with respect to the admissibility
5 of the testimony, regarding an oral statement made by Dennis
6 Copling.

7 MR. ARONOW: Judge, the State would submit it has
8 set down all the parameters necessary to have the statement
9 admitted into evidence. It is a voluntary statement taken
10 with the defendant's full knowledge and understanding of his
11 rights, as evidenced by S-1, and the testimony of Sergeant
12 Forte and Finneman, and the State would argue any statement
13 that the defendant made on January 27, 1995, after being ad-
14 vised, and I don't think it matters or the Court need to get
15 into the Miranda issue at the house, because there was no
16 questioning of him at the house, there was no questioning of him
17 while he was being transported to the Detective Bureau, and
18 they advised him of his Miranda rights, specifically Joe Forte
19 did at the time they were at the detective headquarters, and
20 I don't think that issue needs to be addressed, although the
21 State would argue it's clear he was advised of his rights
22 possibly twice, and that all the evidence we have, we are not
23 talking about an extended period of time in custody, but it
24 happened rather quickly, as soon as he was brought up from
25 Monroe Township, and if anything, I would say the credibility
of the officers is the highest in this case, because State vs.

1 Reed says if an attorney in fact appears at police headquarters,
2 they must so advise the defendant.

3 They went beyond that. There was never an attorney
4 who appeared. It was merely the family attempting to inter-
5 vene on the defendant's behalf, and they honored that request
6 and stopped questioning him, when clearly the testimony was
7 they were not done, and the next step would be for a taped
8 statement, and that was not concluded based upon their scrup-
9 ulously honoring this defendant's Constitutional rights.

10 THE COURT: Thank you.

11 Mr. Leiner.

12 MR. LEINER: Thank you, your Honor.

13 In this case, your Honor, I think the credibility
14 of hte officers are in question. I suggest to your honor that
15 if you look at the testimony of Sergeant Forte yesterday, there
16 are some parts of his testimony I think the Court has to look
17 at and look at and question.

18 Detective Forte tells us that Dennis Copling gave
19 him a statement for over an hour and twenty minutes, where
20 they talked to him, and all they talked about for an hour and
21 twenty minutes was the fact that Dennis Copling was around
22 Camden this night, went to a bar, had a drink and came home.
23 For an hour and twenty minutes Sergeant Forte would have us
24 believe that this is all that took place in that time period.

25 Yet after a brief ten minutes of conversation with

1 Detective Finneman, also this other story comes out in a short
2 period of time.

3 I suggest to your Honor that in this case, despite
4 what Sergeant Forte said, that Dennis Copling was obviously
5 being uncooperative, and may have indicated to him he did not
6 want to speak to him, not speak to him any more, and that is
7 why Detective Finneman was called into the room, not because
8 of anything with regard to this man-to-man kind of conversation.

9 Clearly I think when you look at this in the context,
10 there was some evidence by which Sergeant Forte testified that
11 Dennis Copling was at the very least being uncooperative.

12 Another thing we have to look at here is the fact
13 these are trained investigators. I suggest to your Honor,
14 although I didn't get an answer to it yesterday, when I ques-
15 tioned Sergeant Forte, not a complete answer, with regard to
16 whether or not it was standard operating procedure to leave a
17 particular individual in the room with the suspect, who has no
18 knowledge of the case, it further boggles the mind why when
19 Sergeant Forte on his Direct testimony, where it is standard
20 operating procedure to have two detectives in the room at all
21 times, this suspect is left in the room by himself with some-
22 one who has no knowledge of the case again.

23 I think when you look at the way Sergeant Forte
24 testified in this case, you have to question what he says,
25 and you have to look at it and say: Does it make sense, does

1 it make sense to proceed in this way, especially when you have
2 someone, a suspect in a double homicide, to leave someone in
3 a room with a detective that presumably has no knowledge of
4 the case whatsoever, other than I know it was a double homicide,
5 and that is what Detective Finneman testified to. That was all
6 he knew about it.

7 I think it's highly unlikely that was the scenario.
8 I suggest to your Honor that once Dennis Copling stopped being
9 cooperative and stopped wanting to talk to Sergeant Forte,
10 that's when Detective Finneman was put into the room, because
11 of the frustration of the officers involved not being able to
12 get the story they wanted.

13 Sergeant Forte lied under Cross-examination, when I
14 asked him isn't it true that Dennis Copling was not giving the
15 story he wanted to hear, he said yes. I think after he said
16 ceased to become cooperative and ceased to want to talk to him
17 after an hour and twenty minutes, when all we have is a very
18 brief recitation of what happened in general terms over an
19 hour and twenty minutes, Sergeant Forte would lead us to be-
20 lieve that is all they talked about and nothing else, yet in
21 that last twenty minutes all of a sudden he gives this rather
22 lengthy story about what happened at the scene and where he
23 was.

24 I suggest to your Honor that part of Sergeant Forte's
25 credibility has to be called into question, and I suggest the

1 State has not met its burden beyond a reasonable doubt that
2 this statement was knowing and voluntary.

3 THE COURT: For the reasons which I will explain
4 momentarily, this Court does find that the State has met its
5 burden of proving beyond a reasonable doubt that the oral state-
6 ment given by the defendant, Dennis Copling, also known as
7 Dennis Turner, on the night of January 27, 1995, was a volun-
8 tary statement, and I further find the statement was given by
9 him in full compliance of all his Constitutional rights.

10 I find he was read his Miranda rights, he was ad-
11 vised of his right to remain silent, and he was advised of
12 his right to counsel at the time of his arrest in Monroe Town-
13 ship.

14 I further find he made no statement and was not inter-
15 viewed on the scene in Monroe Township. Therefore, nothing
16 occurred there of any Constitutional significance, but he was
17 advised of his rights there.

18 I further find that he was again advised of his
19 rights orally and in writing, and the Court has S-1 in Evidence,
20 and from that I find the defendant knew what his rights were,
21 and he was advised of them and he understood them.

22 With respect to the claim that his confession or
23 statement was non-voluntary and it was coerced, the Court finds
24 that is not true for the following reasons. While it is true
25 that the defendant was questioned for an hour and twenty

1 minutes by Sergeant Forte, who then left the room and invited
2 Detective Finneman in, and while it was also true that
3 Detective Finneman knew virtually nothing about the facts of
4 the investigation at the time he entered the room, I do not
5 find that is enough for me to find this confession was in any
6 way coerced.

7 I find from the facts presented, that the defendant
8 was giving an account of his activity that night that did not
9 square with what Sergeant Forte believed had actually happened,
10 and he then said to Detective Finneman: We are not getting
11 anywhere, why don't you talk to him one-on-one and see what
12 you can do.

13 Although clearly it is the usual custom and practice
14 of Camden Police Department and apparently the Camden County
15 Prosecutor's Office to have two investigators or detectives in
16 the room when speaking to a defendant in connection with a
17 homicide, I don't find the fact they deviated from that means
18 that the confession is coerced.

19 I find they made a tacticle decision based upon
20 their years of experience that, perhaps, the investigation
21 would proceed and would be more productive if Finneman spoke
22 to the defendant alone.

23 I do not find the fact he spoke to him alone in any
24 way means the confession was coerced. I had the opportunity
25 to hear the testimony of Detective Finneman. I believe what

1 he said he said to the defendant. He stated he explained to
2 the defendant why it would be better for him to tell the
3 truth. He appealed to him, he said man-to-man, and I find
4 that voluntarily the defendant, knowing his rights, knowing
5 he had the right to remain silent, and knowing his statement
6 could be used against him, I find that he did voluntarily
7 decide to give up his right to remain silent and he then gave
8 an account of what happened on the night of January 18, 1995.

9 I also am influenced by the fact that the detectives
10 did not have to stop their interview at the time they did.
11 They were entitled to question him further. They were entitled
12 to take a taped statement, because there was in fact no
13 attorney present for the defendant that night.

14 Not only was no one there at 10:00 o'clock, but no
15 one ever arrived that day and no one arrived until days later.

16 I find Detective Forte and Detective Finneman gave
17 the defendant far more rights than they were obliged to do,
18 because they were not obligated to stop the interview. They
19 could have continued until an attorney arrived at the scene.
20 The fact they did not do so strongly influences this Court in
21 its finding nothing coercive occurred during the time that the
22 defendant was in custody.

23 I, therefore, find that the Statement was proven be-
24 yond a reasonable doubt that at the time Dennis Copling made
25 an oral statement, he did so voluntarily, freely and with full

1 knowledge of his Constitutional rights.

2 Accordingly, the State may present before the jury
3 testimony of any statement made by Dennis Copling on the night
4 in question.

5 When we get to the charge conference, we will dis-
6 cuss the appropriate charge. I do find the State has presented
7 that evidence.

8 MR. ARONOW: One further question, Judge. Whether
9 you rule upon it now or not, is not the issue. It will be the
10 State's intention pursuant to State vs. Gomez, to only intro-
11 duce those portions of the defendant's statement which are
12 inculpatory, and not those self-serving statements. Those
13 self-serving are hearsay, and if it's the defendant's inten-
14 tion to introduce those hearsay statements, then he has to
15 testify himself.

16 THE COURT: There must be a number of jurors outside
17 the door. There are. I think we should proceed with having
18 the jury come in and we can continue with the jury selection,
19 and I will rule on that issue. I will give Mr. Leiner an
20 opportunity to respond, but I will rule on it before the day
21 is out.

22 MR. ARONOW: There is one issue to do with the jury.
23 Apparently the typed statement that indicates the witness list
24 neglected to include the name of Latisha Fair.

25 THE COURT: Who?

1 MR. ARONOW: Latisha, L-a-t-i-s-h-a.

2 THE COURT: Fair?

3 MR. ARONOW: F-a-i-r, of Camden. It was included in
4 my notice to defense counsel, with respect to witnesses ex-
5 pected to be called, and a taped statement was taken from her.
6 There is no surprise.

7 THE COURT: We will continue with the jury selection.
8 I indicated lunch hour will be from 12:30 to 1:30. I have a
9 judges' meeting. I will come back as soon as the jury is seated.

10 (Recess.)

11 (A jury was duly empaneled and sworn.)

12 THE COURT: Ladies and gentlemen, you have been
13 selected as the jury in this case. As you know, this is a
14 criminal case.

15 To assist you in better understanding your functions
16 and duties, I am going to spend some time with you this morning,
17 probably about fifteen minutes, explaining to you how the case
18 will proceed.

19 In other words, I will be giving you an overview of
20 what we do first, what we do next, what comes after that, and
21 hopefully that way you will have a better understanding why we
22 do things, and it will make your jury service more enjoyable.

23 I mentioned yesterday we would be stopping at 12:30
24 today for lunch and resuming at 1:30. It probably makes more
25 sense to start our lunch hour a little bit early. In other

1 words, right after my preliminary remarks to you. That way
2 you will have a lunch hour, and after that you will hear the
3 opening statements.

4 Otherwise what would happen is you would hear one
5 opening statement, and then there would be a lunch break, and
6 then hear another, which is probably not the best way.

7 As soon as I give you the preliminary instructions,
8 we will break for lunch.

9 As you heard me say a few times, you are the sole
10 judges of the facts. Your determination of the facts is to
11 be based solely upon the evidence admitted during the course
12 of the trial.

13 When I use the term evidence, I mean by that the
14 testimony of witnesses who will testify under oath from the
15 witness stand, and any exhibits which may be marked into evi-
16 dence, and which will be taken into the jury room for your re-
17 view at the end of the case.

18 The very first order of business immediately after
19 my preliminary instructions will be the prosecutor's opening
20 statement. In his opening statement Mr. Aronow will outline
21 for you the State's intentions. In other words, he will tell
22 you what he intends to prove on behalf of the prosecution.

23 Following that Mr. Leiner, if he chooses to do so,
24 will make an opening statement.

25 Now, what is said in an opening statement is not

1 evidence. The evidence will come from the witnesses who will
2 testify and from whatever documents or tangible items are
3 received in evidence.

4 During the trial the attorneys may make objections
5 as the evidence is offered, or they may address particular
6 motions to me. The attorneys have a right, and indeed they
7 have a duty to make objections and motions, when it seems to
8 them to be proper to do so, and the Court has a duty to rule
9 upon any objections and motions based upon the law.

10 If you hear me say an objection is overruled, that
11 means I am ruling against the attorney making the objection.
12 In that event you would, of course, consider the question and
13 its answer.

14 If I say in contrast that an objection is sustained,
15 that means I am ruling in favor of the attorney making the
16 objection, and any portion of the question or the answer that
17 you may have heard should be disregarded by you.

18 Anything that is excluded by me is not evidence,
19 and must not be considered by you in your deliberation.

20 Sometimes these evidence questions or legal questions
21 will be heard in your presence in open court. Other times
22 they will be at sidebar here in the front, or on rare occasions
23 you be excused, asked to go into the jury room, so that I can
24 discuss the issue in open court.

25 All of us recognize that you have come here to serve

1 as members of the jury, which means to be in the courtroom
2 and hear testimony. We realize you have not come here to be
3 in the jury deliberation room in the back. You certainly
4 have my commitment and the commitment of everybody in this
5 courtroom that we will do whatever we can to keep interruptions
6 of that sort to a minimum.

7 If I anticipate there is an issue that will take
8 some time for me to resolve, I will try to resolve that at
9 the end of the day after you have been excused, or else do it
10 first thing in the morning, and have you come in somewhat
11 later in the morning, or else we will try and use the midmorning
12 recess break when you are in the back.

13 If not possible for us to do that, I would ask for
14 your patience and your indulgence. We will do everything to
15 keep those interruptions to a minimum.

16 You should not conclude because I rule one way or
17 another I have any feeling about the outcome of this case.
18 I can assure you that I do not. Even if I did, you would have
19 to disregard them, since you and not I will be the sole judge
20 of the facts.

21 During the trial from time-to-time there will be
22 recesses. I think I explained yesterday that we follow a
23 schedule of 9:00 to 12:30 ordinarily, and 1:30 to 4:30.
24 There is a midmorning refreshment break, and midafternoon
25 break without refreshment. That break is somewhat shorter.

1 When we recess overnight or we recess for lunch or
2 midmorning or midafternoon, you should not discuss the case
3 or the testimony among yourselves, or with any other person.

4 The reason, of course, is that you should not begin
5 any deliberation until the entire case has been concluded.
6 In other words, you should not begin to make up your mind
7 until you heard the testimony of all the witnesses, until you
8 hear the final argument of the attorneys, and until you heard
9 my instructions as to the law. Only at that time would you
10 begin to deliberate.

11 It would be improper for any outside influence, a
12 friend or family or to have discussion among yourselves, to
13 allow anyone to intrude upon your thinking. If anyone should
14 attempt to discuss the case with you, you should report that
15 back to me or to the Court staff immediately.

16 During the trial you are not to speak to or associ-
17 ate with any of the attorneys, the witnesses or the defendant,
18 Dennis Copling, nor are they permitted to associate with you.

19 This separation should not be regarded as rudeness,
20 but instead it is a proper precaution to ensure fairness to
21 both sides. If anyone connected with this case or any other
22 person approaches you or attempts to influence you in any way,
23 do not discuss it with the other jurors. Simply tell the
24 Court Officer immediately, and I will be notified of it
25 immediately.

1
2 Your deliberation should be based on the testimony
3 in the case, without any outside influence or opinion of
4 relatives or friends.

5 Additionally, I must instruct you not to read any
6 newspaper articles pertaining to this case. We do not know
7 if there will be newspaper or other media coverage of this
8 trial, but you are instructed to completely avoid reading or
9 listening to any newspaper or media account, and you should
10 also avoid listening to anyone else discuss any such media
11 account.

12 I am sure you can understand why this instruction
13 is so important. Newspapers and media accounts are not evi-
14 dence. They are often based on second or thirdhand informa-
15 tion. They are purely hearsay. They are not always accurate
16 and they are not subject to examination by the attorneys.

17 We have no way to monitor to you in this area, but
18 certainly we rely on your good faith, rely upon the fact that
19 you have taken an oath, and we rely upon the fact you will
20 abide by that instruction.

21 Because it is so important, I will be reminding you
22 of it at the end of each day's proceeding.

23 Since you are the sole judges of the facts, you
24 must pay close attention to the testimony. It is important
25 that you carry with you in the jury room not only a clear
recollecion of what the testimony was, but also a clear

1 recollection of the manner in which that testimony was given.

2 It will be your duty to pay careful attention to
3 all of the testimony.

4 If you are unable to hear a witness, simply raise
5 your hand. Don't be shy. Tell me that you can't hear, and
6 I will be glad to ask the witness to repeat the testimony or
7 speak more loudly or more clearly.

8 As members of the jury, you will be required to
9 pass on all questions of fact, including the credibility or
10 believability of the witnesses.

11 You are not permitted to visit the scene of the
12 alleged incident, nor are you permitted to do your own research
13 or otherwise conduct your own investigation. Your verdict
14 must be based solely on the evidence introduced in this
15 courtroom.

16 Also, jurors are not permitted to take notes. We
17 have found through experience that the taking of notes is
18 itself distracting, and it's better to depend upon the com-
19 bined recollection of all of you, rather than upon notes taken
20 by one or more of you.

21 At the conclusion of the testimony the attorneys
22 will speak to you once again in summation. Summations, in
23 other words, are closing arguments. At that time each attor-
24 ney will present to you his final argument, based upon his
25 respective recollection of the evidence.

1 Again, the closing arguments, like the opening
2 statements, are not evidence, but are instead the attorneys'
3 recollection of the evidence.

4 It is your recollection as to the evidence presented
5 that is controlling.

6 After the summation you will receive your final in-
7 struction on the law from me. You will then retire to con-
8 sider your verdict.

9 You are not to form or express an opinion on this
10 case, but instead you should keep an open mind until you have
11 heard all of the testimony, and until you have heard summa-
12 tions, and until you have had the benefit of my instructions
13 as to the applicable law, and then at that point you would be
14 instructed to begin your deliberation.

15 It is your duty to weigh the evidence calmly and
16 without bias, passion, prejudice or sympathy, and it will be
17 your duty to decide the case upon the merits.

18 You, as jurors, should find your facts from the
19 evidence that is presented during the trial. Evidence can be
20 of two types. It's either direct or circumstantial. Let me
21 explain the difference between them.

22 Direct evidence means evidence that directly proves
23 a fact without an inference, and which in and of itself, if
24 true, conclusively establishes that fact.

25 On the other hand, circumstantial evidence means

1 evidence that proves a fact from which an inference of the
2 existence of another fact can be drawn.

3 What is an inference? An inference is simply a de-
4 duction of fact that may logically and reasonably be drawn
5 from another fact or group of facts established by the evidence.

6 It is not necessary that facts be proved by direct
7 evidence. They may be proved by circumstantial evidence or
8 by a combination of direct and circumstantial evidence. Keep
9 in mind that both direct and circumstantial evidence are
10 acceptable as a means of proof.

11 Indeed, in many cases circumstantial evidence may
12 be more certain, more satisfying and more persuasive than
13 direct evidence.

14 Sometimes people think that circumstantial evidence
15 is not as good as direct evidence, that it's somehow inferior
16 to direct evidence. That is not true because both direct and
17 circumstantial evidence are acceptable as a means of proof.

18 In any event, both types of evidence, both circum-
19 stantial and direct evidence, should be scrutinized and eval-
20 uated by you carefully. A conviction may be based on circum-
21 stantial evidence alone, or in combination with direct evidence,
22 provided, of course, that the evidence convinces you of a
23 defendant's guilt beyond a reasonable doubt.

24 Conversely, if circumstantial evidence gives rise
25 to a reasonable doubt in your mind, as to the defendant's

1
2 guilt, then he must be found not guilty.

3 A simple illustration might be helpful as to the
4 difference between circumstantial evidence and direct evidence.
5 Suppose the problem is proving that it has snowed during the
6 night.

7 Direct evidence would be testimony from a witness
8 that the witness actually saw the snow falling during the
9 night. Circumstantial evidence, on the other hand, would be
10 testimony from the witness that the witness went to sleep at
11 night, it was not snowing, and when the witness awoke in the
12 morning, again it was not snowing, yet there was snow on the
13 ground.

14 The former goes directly to prove the fact that snow
15 fell during the night. The direct evidence is that the witness
16 saw it with his or her own eyes, while the latter establishes
17 the fact from which an inference that it snowed during the
18 night can be drawn.

19 As judges of the facts, you are to determine the
20 credibility of the witnesses. In determining whether a wit-
21 ness is worthy of belief and, therefore, credible, you make
22 take into consideration the following factors. In other words,
23 these are factors that you can use in deciding whether a wit-
24 ness' testimony is believable or not.

25 The appearance and demeanor of the witness, the
manner in which a witness may testify, the witness' interest

1 in the outcome of their trial, if any, his or her means of
2 obtaining knowledge of the facts. The witness' power of dis-
3 cernment, meaning their judgment and their understanding, the
4 witness' ability to reason, observe, recollect and relate,
5 the possible bias, if any, in favor of the side for whom the
6 witness testifies, the extent to which if at all each witness
7 is either corroborated or contradicted, supported or dis-
8 credited by other evidence, whether the witness testified
9 with an intent to deceive you, the reasonableness or unreason-
10 ableness of the testimony the witness has given, and any and
11 all other matters in the evidence which serve to support or
12 discredit that witness' testimony before you.

13 During your deliberation you may ask, and in fact
14 you should ask what is more reasonable, what is the more
15 probable or more logical version of these events.

16 Remember also that inconsistencies or discrepancies
17 in the testimony of a witness or between the testimony of
18 different witnesses, may or may not cause you to discredit
19 such testimony. That's because two or more persons seeing
20 an incident or hearing it may see or hear it differently.

21 An innocent misrecollection, like the failure of
22 recollection, is not an uncommon experience. So that in
23 weighing the effect of the discrepancy, you will want to con-
24 sider whether it pertains to a matter of importance, or in-
25 stead if it pertains to a relatively unimportant detail.

1 Also consider whether the discrepancy results from
2 innocent error or from willful falsehood.

3 In this case you will be hearing the testimony of
4 one or perhaps more expert witnesses. You should be aware
5 that an expert is somebody who has special knowledge, skill
6 or experience that is not commonly within the perview or
7 understanding of the average juror.

8 The fact that a person is permitted to testify as
9 a witness does not mean that you must accept all of his testi-
10 mony. You must evaluate that testimony as you would any other
11 witness' testimony, and you should consider whether the opin-
12 ions that the witness gives are based upon facts, and you
13 then through that process decide whether to accept some, all
14 or part of the expert's testimony.

15 Dennis Copling, as you know, stands before you on
16 an indictment charging him with conspiracy to commit murder.
17 It charges him with causing the death of two people, and it
18 also charges him with possession of a weapon for an unlawful
19 purpose, unlawful possession of a weapon, and you must remember
20 the indictment is not evidence of the defendant's guilt on
21 the charges.

22 As you heard me say already, the indictment is
23 simply a step in hte procedure to bring the matter before
24 you, so that you can decide whether or not Dennis Copling is
25 guilty beyond a reasonable doubt of the charges stated within

1 the indictment.

2 Dennis Copling has pleaded not guilty to the charges.
3 The defendant on trial is presumed to be innocent, and unless
4 each and every essential element of the offenses charged are
5 proved beyond a reasonable doubt, then he must be found not
6 guilty of that charge.

7 Remember that the burden of proving each element of
8 the charges beyond a reasonable doubt, rests upon the State.
9 That burden never shifts to a defendant. It is not the obli-
10 gation or the duty of the defendant in a criminal case to
11 prove that he is innocent. nor does he have any obligation
12 to offer any proof whatsoever relating to his innocence.

13 The Government has the burden of proving the defen-
14 dant's guilt beyond a reasonable doubt.

15 During jury selection this morning I explained to
16 you I was giving you a rather short definition or explanation
17 of reasonable doubt, and I told you that I would be giving you
18 a more lengthy explanation. I am now about to give you a more
19 lengthy explanation, and you should be guided by the lengthier
20 not the briefer one I gave you this morning.

21 Some of you may have served as jurors in civil cases,
22 where you were told that it is necessary to prove only that
23 a fact is more likely true than not true. In criminal cases
24 the Government's proof must be more powerful than that. It
25 must be proved beyond a reasonable doubt.

1 A reasonable doubt is an honest and reasonable
2 uncertainty in your mind about the guilt of the defendant,
3 after you have given full and impartial consideration to all
4 of the evidence.

5 A reasonable doubt may arise from the evidence it-
6 self or from a lack of evidence. It is a doubt that a reason-
7 able person hearing the same evidence would harbor.

8 Proof beyond a reasonable doubt is proof, for ex-
9 ample, that leaves you firmly convinced of the defendant's
10 guilt.

11 In criminal cases the law does not require proof
12 that overcomes every possible doubt, but if, based on your
13 consideration of the evidence, you are firmly convinced that
14 the defendant is guilty of the crime charged, you must find
15 him guilty.

16 If, on the other hand, you are not firmly convinced
17 of the defendant's guilt, then you must give the defendant
18 the benefit of the doubt and find him not guilty.

19 You will note a jury of fifteen has been drawn in
20 this case. At the conclusion of all the evidence and after
21 I have given you the instructions on the applicable law, there
22 will be at that time a random selection in which three jurors
23 will be selected to act as alternates.

24 Let me emphasize that we do not know who those three
25 people will be. It has absolutely nothing to do with whether

1 you were selected yesterday or today. It doesn't have any-
2 thing to do with the order in which you were selected or the
3 seat number that you occupy. It's a completely random selec-
4 tion.

5 We put all fifteen names back in the wooden con-
6 tainer we were using earlier, spin it, and from that we
7 randomly draw three names. At this minute we don't know who
8 the alternates will be, or whether or not their service will
9 be utilized.

10 All of you have three-in-fifteen or one-in-five
11 chance to be designated the alternate. All of you should pay
12 equal attention to the evidence as it is presented, and all
13 of you should pay equal attention to the Court's rulings which
14 applies to this case.

15 That completes my preliminary instructions to you.
16 Today we will be taking a slightly longer lunch break than
17 usual. The judges have a mandatory once-a-month luncheon
18 meeting. It happens to be today, and usually it goes from
19 12:00 until about 1:15.

20 If you come back at 1:15, we will be ready for you
21 and we will resume right after lunch with the prosecutor's
22 opening statement. You are free to leave the building, if you
23 wish, or avail yourself of the snack bar on the lower level.

24 Enjoy your lunch and we look forward to seeing you
25 at 1:15. Thank you.

1 (Jury excused from courtroom.)

2 THE COURT: I will see you after lunch, everyone.

3 MR. LEINER. Thank you, your Honor.

4 (Luncheon recess.)

5
6 AFTERNOON SESSION

7 THE COURT: Yes, Mr. Aronow.

8 MR. ARONOW: Two issues, Judge. One is that the
9 State is going to request, your Honor, a joint witnesses be
10 sequestered.

11 Normally because Patricia Copling is on the witness
12 list, she would be sequestered as well, the defendant's
13 mother. However, I am going to indicate to the Court that
14 I don't have an objection to her sitting through the Court
15 proceedings, with the admonition by the Court that she is not
16 to discuss any of the testimony, anything she hears in this
17 courtroom with anybody else on the witness list.

18 THE COURT: Where is Patricia Copling?

19 MR. ARONOW: She was outside earlier.

20 MR. LEINER: She is not in the hallway right now.

21 MR. ARONOW: The other thing I want to --

22 THE COURT: I can't admonish somebody that is not
23 here. I will be glad to do it when she is here.

24 Sequestration is hereby ordered.

25 MR. ARONOW: The other thing was, Judge, the State's

1 allegations or State's position would be that there was a
2 statement made by the deceased Kirby Bunch at the time that
3 he was shot twice, but before a third shot was inflicted, when
4 he came out of the residence holding his gut and fell to the
5 ground and Tim Queensbury found him and asked him who shot
6 him.

7 He explained Dennis.

8 It is the State's position that is an excited
9 utterance and present sense impression, and that word
10 "Dennis" would be admissible in this trial, and the reason
11 why I bring it up now is I would like to mention that in my
12 opening, and I would like to know what the Court's preliminary
13 position would be vis-a-vis that statement.

14 THE COURT: Mr. Leiner.

15 MR. LEINER: Thank you, your Honor.

16 Your Honor, I would object to that statement being
17 used in the opening statement. Obviously if the witness comes
18 in and testifies as to what he heard, then we will make a
19 determination, your Honor will make a determination at that
20 time whether or not it qualifies as an excited utterance or
21 present sense impression.

22 Since it is technically hearsay but an exception to
23 the hearsay, if your Honor so rules, I would rather that be
24 admitted at the proper time when the witness is here to
25 testify, and not be used in the opening statement of the

1 prosecutor, because that would be double hearsay in front of
2 the jury right now.

3 If that is the case, the person who heard that
4 statement would be the only one to introduce it at this time
5 in the trial.

6 THE COURT. Any opening statement which contains
7 within it testimony that the State believes it will be able
8 to produce, if this Court were to rule provisionally that is
9 the type of evidence that would be permitted, then the fact
10 it is hearsay and an exception to the hearsay rule, I don't
11 think differentiates from any other discussion of testimony
12 that the prosecutor would be entitled to use in his opening.

13 I guess I don't understand the significance of that
14 statement.

15 I agree it is a statement, but I don't think it is
16 a statement that makes any legal difference. If the proper
17 evidentiary foundation were laid for that type of testimony,
18 and the Court does agree it falls within the exception that
19 Mr. Aronow alluded to --

20 Let me ask you. Is it your belief you will be able
21 to produce the witness who will testify in the way you out-
22 lined?

23 MR. ARONOW. Yes.

24 THE COURT: What is your expectation as to the
25 foundation you will be able lay?

1 MR. ARONOW: Timothy Queensbury heard gunshots.
2 Contemporaneously or shortly thereafter he ran out to investi-
3 gate, and he came upon the victim, Kirby Bunch, who he knows
4 personally. They refer to themselves cousins, although there
5 is no blood relationship, and that Kirby Bunch was grasping
6 his lower abdomen, which is where the evidence will show one
7 of the exit wounds was that was inflicted, and that he was
8 clearly shot; that Timothy Queensbury knew by looking at him
9 he was shot, and that he ran over to help him, and that he
10 said, "Who shot you? Who shot you?"

11 Kirby Bunch said, "Dennis."

12 THE COURT: That was within moments?

13 MR. ARONOW: Within moments after the shooting.
14 Immediately before the third person in this triangle, Donnie
15 Parker, came up and shot Kirby Bunch in the back of the neck.
16 It's contemporaneous, the State would argue, with the first
17 two bullets being stated by Dennis Copling, and it is within
18 the process of the whole series of events. It is the mid
19 process.

20 THE COURT: If that were the foundation that were
21 to be laid, then I would no doubt find the testimony would be
22 admissible. I am making this ruling now for the limited pur-
23 pose of allowing the State to use that in its opening statement.

24 However, that is without prejudice to the defendant's
25 right to argue against the admissibility of the evidence at

1 the proper time. There is a possibility that ultimately the
2 Court will find that the foundation is not proper. In other
3 words, if the witness does not testify as to that, the State
4 runs the risk the Court would have to instruct, admonish the
5 jury to disregard that portion of the State's opening. The
6 State takes that risk as well.

7 That having been said, there is a substantial like-
8 lihood the testimony would be admitted pursuant to the ex-
9 cited utterance exception, and I believe it is proper, and
10 the State will be allowed to include that in its opening.

11 Anything further?

12 MR. ARONOW: One other matter. Donnie Parker is a
13 juvenile or was at the time this offense occurred. I want to
14 make that comment to the jury in my opening as well.

15 THE COURT: Me. Leiner?

16 MR. LEINER: No objection to that, your Honor.

17 THE COURT: You may do so.

18 Anything else?

19 MR. ARONOW: Nothing further.

20 THE COURT: If you bring it to my attention when
21 Patricia Copling comes in the courtroom, I will give her the
22 instruction you ask. She will be the only exception to the
23 Sequestration Order.

24 Mr. Leiner, you are not obligated to make an opening.

25 Are you going to make one? Is it your intention to

1 make one?

2 MR. LEINER: Yes, your Honor.

3 MR. ARONOW: Dr. Catherman advised he will be here
4 precisely at 2:30.

5 THE COURT: Very good. Thank you.

6 (Jury returned to courtroom.)

7 THE COURT: Mr. Aronow, your opening statement on
8 behalf of the State.

9 MR. ARONOW: Thank you, your Honor.

10 Mr. Leiner, ladies and gentlemen of the jury, good
11 afternoon.

12 This case is about murder, simple premeditated
13 murder. Two individuals were killed. One intended, and the
14 State would suggest one unintended.

15 What was the motive? One of the simplest motives
16 is there is revenge. This defendant, Dennis Copling, killed
17 Kirby Bunch, whose name you will hear is K.C., and Mark
18 Winston, whose name you will hear is Malik.

19 There is a difference between Kirby Bunch and Mark
20 Winston in a moral sense, but not in a legal sense, because
21 Mark Winston, Malik, was a co-conspirator, was an accomplice,
22 was a friend of Dennis Copling. He was killed by a bullet,
23 the State would have you believe, was intended for Kirby
24 Bunch. He was killed at the same time that Kirby Bunch was
25 shot.

1 Kirby Bunch made it out of the house where he was,
2 and was subsequently shot by a third accomplice, who also
3 accompanied Dennis Copling, a juvenile by the name of Donnie
4 Parker. All three came together. All three went there for
5 the same purpose, to get K.C. for what?

6 Because, K.C. beat up Dennis Copling's brother,
7 Gary Copling, his little brother, the night before over a
8 dog that belonged to Kirby Bunch's sister.

9 Two people dead over an argument, a fistfight and
10 a dog.

11 The law, as the Judge will instruct you at the end
12 of the case, says that it doesn't matter that Mark Winston
13 wasn't an intended victim of Dennis Copling, because the
14 bullet was meant for Kirby Bunch, and the same mental state
15 that is necessary to fire that gun is what makes the signifi-
16 cance of the fact that Mark Winston is a murder, just like
17 Kirby Bunch is a murder.

18 Just because an unintended or innocent, but in this
19 case certainly not innocent victim, gets killed, doesn't mean
20 that it wasn't meant to happen.

21 You heard a number of names. You heard a large
22 amount of witnesses listed, and the Judge asked you in the
23 beginning of this case as a voir dire question whether the
24 word of a police officer meant something to you in and of it-
25 self, but the State will submit to you, ladies and gentlemen,

1 this isn't a drug case where the police officers are alleged
2 to observe conduct. This wasn't a motor vehicle accident
3 where they might have witnessed it.

4 This was a murder investigation, and the police re-
5 sponded based upon what was unfolding in front of them. They
6 are fact witnesses. They are investigatory witnesses. But the
7 police officers didn't witness anything with respect to this
8 activity.

9 The people who did witness it were also listed on
10 the list of potential witnesses.

11 So that we understand where we are going with this,
12 because, quite frankly, you almost need a score card to re-
13 member everyone's name. I am going write out people's names,
14 and where they fit in here, so that when you hear the case
15 unfolding you will have an understanding where the State is
16 intending to proceed, and what it is anticipated these witnesses
17 will say.

18 I am running out of space here. Barbara Buckhannon
19 is the stepmother of Kirby Bunch. You have K.C., Lakesha
20 Buckhannon is the sister of Kirby Bunch. Latisha Fair is a
21 cousin of Kirby Bunch. Gary Copling, Jr. is the defendant's
22 younger brother. Nate Simmons is a friend of Kirby's and
23 Gary Copling. Mark Winston, Malik, in addition to being a
24 victim, one of the counts of murder, was Dennis Copling's
25 friend. Donnie Parker was with Dennis and Mark Winston.

1 That is just to name a few.

2 On January 17, 1995, Lakesha Buckhannon allowed
3 Gary Copling to walk her puppy, a pitbull she received for
4 Christmas. Gary Copling was supposed to return at a certain
5 time on the evening of January 17th, 1995, but he didn't.

6 Barbara Buckhannon was home at the time that the dog
7 was given to Gary and was aware of the circumstances, and the
8 fact that Gary was walking, training the pitbull.

9 Barbara Buckhannon, Lakesha Buckhannon, Latisha Fair,
10 Gary Copling, Dennis Copling, they all knew one another. This
11 isn't a random act here. They grew up together in the city.
12 They were friends. Their families lived close to one another.

13 Lakesha Buckhannon was upset that her dog wasn't
14 returned, so she went looking for Gary. When she found him,
15 he didn't have the dog, and she didn't believe the excuse he
16 gave her. As upset as she was, she went back home where her
17 cousin Latisha Fair was, and she called around to try and find
18 out where her older brother K.C. was, so that he could help
19 get her dog back.

20 They find K.C. later that evening driving around
21 with a friend of his, who also happens to be a friend of Gary
22 Copling, and they are driving around.

23 The four of them, Lakesha Buckhannon, Kirby's sister,
24 Latisha Fair, Kirby's cousin, Nate Simmons and Kirby Bunch go
25 find Gary at 2805 Mitchell Street in the City of Camden.

1 Based upon the excuse that was given, Kirby Bunch
2 proceeds to assault Gary Copling and beats up Gary Copling.
3 Gary Copling runs away.

4 That's all that transpired on January 17, 1995.

5 The following day, January 18, 1995, the date of the
6 double homicide, Dennis Copling shows up at 2805 Mitchell
7 Street, where his brother had been beaten up the night before,
8 in a rage over who jumped his brother. He didn't want to
9 hear anything from anyone. He was going to kill K.C. He was
10 going to F-him up.

11 He burst into this house at 2805 Mitchell where
12 Barbara Buckhannon is, where Latisha Fair is with her child,
13 where another relative is with her small children, and starts
14 ranting and raving with his hand in his pocket the whole time
15 about how he is going to get even, and how he doesn't want to
16 hear nothing from nobody, about who jumped his brother the
17 night before.

18 Latisha Fair was approached by Gary, because Gary
19 knew her. Dennis knew her as well and thought he could talk
20 to her, and she tried to explain to him that he didn't know
21 what he was talking about, and that it was a fair fight last
22 night, that Gary was beat up, nobody jumped him.

23 Dennis didn't want to hear that. He already had his
24 mind made up, ladies and gentlemen. He already had his mind
25 made up. He didn't need any convincing any other way.

1 So disturbed by this screaming and yelling in front
2 of the whole neighborhood, about how he was going to get K.C.,
3 and about how Barbara Buckhannon and Lakesha Buckhannon better
4 not be at 2805 Mitchell Street when he gets back, or he'll
5 get them, too, that Barbara Buckhannon calls the Camden police
6 and reports the incident.

7
8 The Camden police respond, but Dennis Copling isn't
9 anywhere to be found and the Camden police leave.

10 Before doing so, Latisha Fair and Lakesha Buckhannon
11 are frantically trying to tell the police he's got a gun, he's
12 going to look for Kirby, and he is going to kill Kirby.

13 Not satisfied that the police are taking this seri-
14 ously, Latisha Fair and Lakesha Buckhannon leave and try on
15 their own to warn Kirby, but by the time they get there he's
16 already shot.

17 Dennis Copling shot Kirby Bunch. Dennis Copling
18 met up with his friends, Malik, Mark Winston, and Donnie
19 Parker, and they went in Donnie's car looking for K.C.

20 Nate Simmons remembers him from the night before.
21 He wasn't going to participate in the assault on Gary Copling
22 because Gary Copling was his boy, one of his friends. He is
23 at 2126 Westminster Avenue with Kirby Bunch and another guy
24 by the name of Benjamin Young. They are in 2126 Westminster,
25 which is in the Maguire Gardens Apartments in Camden, a short
distance from 2805 Mitchell Street, especially in a car.

1 independent and unknown to Barbara Buckhannon,
2 Lakesha Buckhannon and Latishe Fair is what happens inside
3 2126 Westminster Avenue. They have no way of knowing what
4 happened. Latisha Fair and Lakesha Buckhannon and Barbara
5 Buckhannon will tell you the defendant, Dennis Copling, that
6 night was dressed in black, all black, black leather jacket,
7 black pants, black shoes, black hat.

8 There is a knock on the kitchen door, which is the
9 rear door of 2126 Westminster Avenue, and Kirby Bunch goes to
10 see who it is. It's Malik. He lets Malik in. There is a
11 confrontation between Malik and Kirby Bunch, about who jumped
12 Gary Copling.

13 Mark Winston doesn't want to hear a thing either,
14 because Nate Simmons tries to intercede and he is told to shut
15 the F up. Nate Simmons and Ben Young, they stay out of it.
16 They are in the living room. Malik and Kirby are in the
17 kitchen.

18 Kirby is trying to explain what was going on and
19 what does Mark Winston say? You got to talk to his brother,
20 and who walks in but a man dressed in black but wearing a
21 black ski mask over his face.

22 What does he say? "What did you jump my brother
23 for?"

24 Before there is a real exchange of words, he pulls
25 out a black semi-automatic handgun, and Kirby Bunch goes for

1 it to try and protect himself. Multiple shots are heard and
2 Nate Simmons and Ben Young do the only thing they could do at
3 that point, they run hte hell out of there and they run as
4 far away as they can get.

5 Is it over? No. Kirby Bunch shot through the back
6 and through the left side with the exit wound coming out of
7 his abdomen, comes out of 2126 Westminster and is approached
8 by his cousin, Tim Queensbury, who hears the shot and comes
9 from another area of the Maquire Garden Apartments, and gets
10 to Kirby as he is going down to the ground still holding his
11 gut, and says, "Who shot you? Who shot you?"

12 Kirby Bunch himself says, "Dennis".

13 Is it over? No. Donnie Parker, the juvenile, is
14 still out there. He came with him. He comes jogging up to
15 Tim Queensbury and Kirby Bunch, and pulls out a gun and shoots
16 Kirby Bunch in the back of the neck while he is laying on the
17 front, in front of 2126 Westminster Avenue.

18 Then they leave. They leave behind Malik Winston,
19 because Mark Winston is mortally wounded on the kitchen floor
20 in 2126 Westminster Avenue with a bullet wound to his right
21 upper back.

22 You will hear Dr. Catherman, the Medical Examiner,
23 tell you that bullet severed Malik's spinal cord and he could
24 have been instantly paralysed from the chest down when he was
25 shot. He wasn't going anywhere.

1 Next to Mark Winston on the floor where he is found
2 is a fully loaded nine millimeter handgun. You will hear
3 testimony from Dr. Catherman about the cause of death of
4 Kirby Bunch and Mark Winston. The cause of death for Kirby
5 Bunch is multiple gunshot wounds, three to be exact, two of
6 them penetrating completely through. One of them, the projec-
7 tile is still inside his body and is recovered at the time
8 that Dr. Catherman performs an autopsy. Also recovered is the
9 projectile that is still in Mark Winston at the time of his
10 autopsy.

11 Dr. Catherman will tell you that Kirby Bunch died
12 as a result of multiple gunshot wounds.

13 No one bullet wound of the two more serious can be
14 determined to be, quote, unquote, the fatal bullet. He died
15 as a result of the combination thereof. Two bullets were
16 pumped into him by Dennis Copling, and Dr. Catherman will tell
17 you those two bullet wounds, the one to his left side and the
18 one to his left back were contact wounds.

19 What does that mean? That means the gun was
20 literally touching Kirby Bunch when it was fired. This wasn't
21 haphazard. This wasn't someone shooting someone down while
22 they are trying to get away. This was premeditated. This
23 was purposeful. This was knowing. He did it. Donnie Parker
24 did it and they are all guilty of murder.

25 Malik, he got the ultimate punishment and the imme-

1 diate sentence, but he's just as guilty or would have been
2 just as guilty of the murder of Kirby Bunch as Dennis Copling
3 and Donnie Parker.

4 They conspired together. They were accomplices.
5 They went there for the same purpose. They were there to
6 help each other.

7 What else will the witnesses tell you? You will
8 hear that there are three shell casings recovered from the
9 scene. One was inside the kitchen area, one outside near
10 K.C.'s body, and another one turned over by a neighbor that
11 lived in the area of 2126 Westminster Avenue.

12 You will hear from the ballistics expert that he
13 examined all three shell casings, and that all three shell
14 casings are nine millimeter Luger rounds, although made by
15 different manufacturers, and they are the same type of
16 ammunition, and they were fired from the same gun, the kind
17 that was found next to Malik, although was categorized as an
18 nine millimeter, is a smaller round weapon than the shell
19 casings that were found. It is not capable of firing the nine
20 millimeter Luger rounds, so that it didn't come from that gun.

21 As a matter of fact, that gun, when it was recovered,
22 was loaded with what is known as 380 caliber ammunition, which
23 is close to nine millimeter, almost exactly, and that 380
24 caliber ammunition can be fired out of a nine millimeter hand-
25 gun.

1 You will also hear the testimony of ballistics ex-
2 pert Sergeant Robert Toth of the New Jersey State Police, that
3 examined the two bullets that were recovered, one from Malik,
4 one from Kirby Bunch, and that both bullets are thirty-eight
5 caliber class, and both bullets were fired from the same gun.

6 Now, Judge Rosensweig read to you a copy of the in-
7 dictment in this case. She told you Count One charges Dennis
8 Copling on the 18th day of January, 1995, in the City of
9 Camden, did conspire with another.

10 Another is not mutually exclusive. Another doesn't
11 mean Mark Winston only or Donnie Parker only. Another means
12 both in this case to commit the crime or murder in the first
13 degree.

14 The Judge will explain to you, and I am not going to
15 belabor the issue of what a conspiracy is, but suffice it to
16 say, with exception to what the Judge will tell you, what the
17 Judge tells you the law is, not what I tell you or anyone else
18 tells you, but so that you understand the concept, a conspiracy
19 is an agreement or plan or scheme amongst two or more indi-
20 viduals. You got to have at least one other person to have a
21 conspiracy, but you can have a lot more, which is to commit a
22 crime or to assist or to accommodate in the planning or
23 commission of that crime.

24 The Judge will tell you at the close of the case
25 what accomplice means, and that one person is responsible for

1 the actions of another person, if it was their purpose to
2 commit a crime together.

3 Count Two charges on the same day in the same place,
4 Dennis Copling did purposefully or knowingly cause the death
5 or serious bodily injury resulting in death of Mark Winston.
6 It's very important, that "or" phase in there. It reads did
7 purposefully or knowingly cause the death or serious bodily
8 injury resulting in death of Mark Winston.

9 I already talked to you about the doctrine of
10 transferred intent, and that is what it means. If you kill
11 someone that is unintended, but you have the intention to
12 kill someone else, it doesn't matter, you are just as guilty.

13 Count Three is an identical charge to Count Two,
14 except that Kirby Bunch is the victim. We know that Kirby
15 Bunch was the target that night. He was the intended recipient
16 of those bullets.

17 Count Four charges that Dennis Copling on the same
18 day, the same time, in the same place, did knowingly possess
19 a certain firearm, and it wouldn't matter which one, the one
20 that Malik had or the one that actually fired the rounds, with
21 the purpose to use it unlawfully against the person of another.

22 The final charge charges on the same date and place
23 and time that Dennis Copling possessed a handgun without having
24 first obtained a carrier permit. The Judge will instruct you
25 at the end of the case you may accept or reject an inference

1 in law that if someone, such as Dennis Copling, would have
2 had a permit to carry a handgun, it would have been produced.

3 But, ladies and gentlemen, based upon the facts as
4 you have them here, and the facts that are anticipated to be
5 presented in this trial, the State would respectfully submit
6 that there is no way that Dennis Copling had a permit to carry
7 a handgun, that he possessed actually and constructively, and
8 the Judge will tell you that actually possessing something
9 means have it in your hand. Constructively means that you
10 don't have it in your hand immediately, you have the ability
11 to obtain it and possess it and control it as the person that
12 does.

13 He's just as guilty as possessing the gun as it was
14 in the hand of Donnie Parker, when Donnie Parker fired a round
15 into the neck of Kirby Bunch, while he was laying helplessly
16 in front of 2126 Westminster Avenue.

17 Now, I have a total list of witnesses up here, and
18 I did that for a reason, to create a road map where the State
19 intends to proceed with respect to this homicide. There are
20 a lot of witnesses here.

21 One of the things that the Judge is going to tell
22 you is that someone who's been convicted of a crime may or may
23 not necessarily be worthy of belief. Many of the witnesses
24 that are going to testify before you in this trial, as it
25 proceeds, have been convicted of crime, various crimes. That

1 will come out.

2 The State would submit to you, ladies and gentlemen,
3 that we don't get to pick and choose who is going to be a wit-
4 ness to a murder. We don't determine who will be at the
5 right spot at the right time and the right place. We get the
6 case the way it comes and we get the witnesses the way they
7 come.

8 It's for you as the ultimate factfinders, to determine
9 whether what someone tells you is credible or believable or
10 not. Someone can have five convictions and still be telling
11 the believable, credible story.

12 The State submits that the reason why the testimony
13 of these witnesses will be credible, as you will see for your-
14 self when they take the stand, is that they speak from the
15 heart. They are genuine, and you use your common sense, that
16 one thing you didn't leave outside the door when you came in
17 this courtroom and agreed to be jurors, which was your common
18 sense. You forgot your biases, your preconceived notions,
19 anything that you came in with like that, has to be left at
20 the door and you have a clean slate.

21 You are going to determine the guilt or innocence
22 of Dennis Copling, based solely on the evidence presented by
23 the State.

24 It's the State's total burden of proof that never
25 shifts. It's the State's absolute burden to prove each and

1 every element of each and every crime beyond a reasonable
2 doubt. The State accepts that. That's the way it always is.

3 Every criminal defendant is entitled to the same
4 rights, and the State has the burden of proving to the same
5 level the guilt of every criminal defendant in the United
6 States. The State doesn't have an obligation to present the
7 perfect case. There is no such thing.

8 When dealing with every day people and occurrences,
9 and what they witnessed, there is bound to be discrepancies
10 here and there. The State will submit that is not what makes
11 someone credible or not.

12 Another thing, when you listen to these witnesses,
13 remember where they were and the time they had an opportunity
14 to observe these things, and what they didn't have an oppor-
15 tunity to observe, and put that into conjunction with what you
16 hear other witnesses say, and what you will see is that the
17 State may bore out the pieces of a jigsaw puzzle on a table,
18 and in and of themselves the little pieces may not mean a
19 whole lot, but when you start putting them together and they
20 all fit even, although there may be a couple of pieces missing
21 here and there, you get the total picture, you see what
22 happened here. It's crystal clear.

23 The State will submit, ladies and gentlemen of the
24 jury, there is overwhelming evidence that the defendant,
25 Dennis Copling, killed Kirby Bunch, it was his intention to

1 murder him, and that Malik got killed at the same time that
2 Kirby Bunch was gunned down by the same gun, and that Dennis
3 Copling is guilty beyond a reasonable doubt of each and every
4 element of each and every count of the indictment.

5 I want to thank you for your time and attention.
6 Pay attention, listen to the testimony, determine the credi-
7 bility of the witnesses on your own, and you will be the
8 ultimate determiners of the facts, and apply the law the
9 Judge will give you.

10 Thank you.

11 THE COURT: Mr. Leiner, you ropening on behalf of
12 Mr. Copling.

13 MR. LEINER: May it please the Court, Mr. Aronow,
14 Mr. Copling, ladies and gentlemen of the jury, good afternoon.
15 My name is Robert Leiner. I am the attorney for Dennis
16 Copling and I will be representing him throughout the pro-
17 ceedings in this trial.

18 First at the outset I want to thank you all for be-
19 ing here to take part in this proceeding, taking time away
20 from your families, from your jobs, from your homes, from
21 your friends and a few other things that you could be doing
22 the next two and a half weeks, and I appreciate the time and
23 patience and the attention that I know you will give to this
24 case.

25 That being said, I think the first thing we want to

1 do here is to wipe the slate clean. At this point in time
2 you have heard no testimony in this case. You heard a read-
3 ing of the indictment. The Judge has instructed you this
4 indictment means nothing to this case at this point in time.
5 It is not evidence of Mr. Coplings guilt, and it should not
6 be viewed as anything more than a charge.

7 The State will present testimony in this case, and
8 as the prosecutor already outlined, he will present a series
9 of witnesses who are going to say many different things. He's
10 quite right, and you are the judges of the facts, and the
11 judges of the credibility of these witnesses.

12 I want you to observe these witnesses as they testify.
13 I want you to listen to what context they testify in, what
14 motivation they have for testifying, and view their testimony
15 in the light that it is given.

16 I am going to ask you to scrutinize that testimony
17 and listen to it very carefully, listen to the inconsistencies.
18 I want you to listen to it and see if it makes sense to you.

19 You have to draw from your own experience, your own
20 background, your common sense, things that you know about in
21 life, when you view a particular situation, and say: Does
22 that make sense to me? That's how you will evaluate the
23 credibility of these witnesses.

24 I want you to look at each one of these witnesses
25 very carefully in that aspect. Draw your own conclusions as

1 to what happened.

2 I can't tell you what happened. I can't tell you
3 how to find. I wouldn't insult you by doing that. That's
4 why you're here. That is why you have taken this oath and
5 you also have taken an oath to give my client, Dennis Copling,
6 the presumption of innocence throughout these proceedings,
7 and throughout your deliberations, until such time in your
8 mind you have come to a conclusion in this case, as to his
9 guilt or his innocence.

10 I know you will do that. I know you will take your
11 oath seriously.

12 Judge Rosensweig instructed you earlier today in
13 regard to circumstantial evidence. I submit to you, ladies
14 and gentlemen, that much of the evidence you will hear in this
15 case, as the State relates their contention Dennis Copling
16 was involved in this incident, will be circumstantial.

17 You will hear a series of witnesses who will testify
18 as to this, that and other things. I want you to scrutinize
19 that as well as I want you to look at that in that light, and
20 see if it makes sense.

21 Again, is this evidence from which you will draw an
22 inference from? Ask if you can make those reasonable infer-
23 ences, if you can make that leap from what the prosecutor
24 wants you to do, to have a finding of guilt in regard to my
25 client.

1 Also, I want you to keep in mind what you will not
2 hear in this case, and you will not see in regard to this
3 matter, you will not see a murder weapon in this case. You
4 will not see the weapon that the State alleges killed both
5 Kirby Bunch and Mark Winston.

6 You will see a weapon that is found next to Mark
7 Winston inside the home on Westminster Avenue, but there won't
8 be any recognizable fingerprints on that weapon to link that
9 weapon to anybody. They won't be able to link it to Mr.
10 Copling, Mark Winston or Kirby Bunch or to Donnie Parker.

11 I want you to keep in mind what you don't see in
12 this case.

13 What else you will not see in this case or hear in
14 this case, as the prosecutor outlined in his opening argument,
15 what exactly happened in that particular kitchen on that par-
16 ticular night. All we know is two people ran out of there be-
17 cause they heard gunshots.

18 The prosecutor contends there was a bullet shot
19 from a gun, and he contends that gun was shot by my client
20 that was intended for Kirby Bunch that hit Mark Winston.
21 That is a leap you have to make when you hear the testimony.

22 You will not hear anybody come in and testify as to
23 the fact any particular weapon was fired at any particular man,
24 and in fact the State puts forth their argument as to how it
25 happened, and you won't hear that.

1 It's also interesting that the individual who goes
2 into that house has a ski mask on. Nobody identifies him and
3 says that is Dennis Copling by his face. I want you to keep
4 that in mind as well.

5 There are a lot of pieces of this puzzle that the
6 prosecutor will pour out that will be open. You will have to
7 determine at the conclusion of this trial whether or not those
8 openings create a reasonable doubt in your mind, as to what
9 happened, how these people were killed and who killed them.

10 One of the things you will clearly hear is that
11 Donnie Parker was identified as the person who shot Kirby
12 Bunch outside. Other than that, you will not hear any live
13 testimony from anyone who comes in here and says they saw
14 Dennis Copling shoot anybody.

15 I want you to keep that in mind, as you go through
16 these proceedings.

17 Finally, ladies and gentlemen, I want to thank you
18 for your patience and taking your time, and I want you to
19 listen to this testimony carefully, and give my client the
20 benefit of his right to be presumed innocent throughout these
21 proceedings and throughout your deliberation, until such time
22 as you find otherwise.

23 Thank you very much.

24 THE COURT: Is the doctor here?

25 MR. ARONOW: Ten minutes, I was told.

1 THE COURT OFFICER: He is here.

2 THE COURT: Very good. The State may call its
3 first witness.

4 MR. ARONOW: The State calls Dr. Catherman to the
5 stand.

6 THE COURT: Dr. Catherman, good afternoon. Please
7 come forward to your left and be sworn.

8 ROBERT L. CATHERMAN, M.D.,
9 sworn.

10 DIRECT EXAMINATION BY MR. ARONOW:

11 Q. State your name for the record, please.

12 A. Dr. Robert L. Catherman.

13 Q. Dr. Cathermaan, what is your profession, sir?

14 A. I am a physician and I practice forensic pathology.

15 Q. How long have you been licensed to praactice in the
16 State of New Jersey?

17 A. 1982.

18 Q. Are you licensed to practice in any other state?

19 A. Yes. Pennsylvania.

20 Q. How long have you been licensed to practice in
21 Pennsylvania?

22 A. Since about 1959.

23 Q. Dr. Catherman, are you certified in any specialty
24 area?

25 A. Yes.

1 Q. Would you please elaborate?

2 A. I am certified by the American Board of Pathology in
3 the area of Anatomic and Forensic Pathology.

4 Q. Would you explain to the ladies and gentlemen of
5 the jury what those two areas of pathology are, and what they
6 are by definition?

7 A. First of all, pathology has to do with the study of the
8 origin and cause of diseases or abnormalities.

9 There are three major branches of pathology. It's
10 anatomic, clinical and forensic.

11 Anatomic pathology is surgical or autopsy pathology.
12 It's the examination of materials taken from living individuals
13 in surgical procedures, and examining that material to try to
14 determine what disease process or abnormality is present.

15 The other part, that is autopsy pathology, that has
16 to do with performing autopsies or postmortem examinations
17 on persons after death, to determine those disease processes
18 and the mechanism which brought about their death.

19 Forensic pathology is medical pathology. It's the
20 association of the knowledge about pathology within the Court
21 of Law. More specifically, forensic pathology has to do with
22 the recognition or determination of the nature or cause of
23 injuries, where these injuries came from, and how they were
24 caused, and how they affect the person, whether they are per-
25 fectly normal or whether those injuries complicate some

1 already existing disease process.

2 In general the forensic pathologist not only deter-
3 mines the cause of death, but is involved in the making of a
4 determination of the cause and manner of death.

5 Then the other part, clinical pathology, is the
6 laboratory part. That is the part of pathology where speci-
7 mens go for examination, like you have a blood test or urine
8 tested or have other material sent to the laboratory. Those
9 examinations are done with the purpose of determining what
10 disease process or underlying abnormalities are present.

11 The results go back to the attending physician
12 with the hope he can recognize what disease is present and
13 arrive at a cure for taking care of that disease.

14 Q. You indicated you were Board certified in both
15 Anatomic and Forensic Pathology?

16 A. Yes.

17 Q. Could you explain to the jury what it means to be
18 Board certified?

19 A. That is a designation by a group of individuals who are
20 recognized to be specialists in a given area of medicine,
21 whether it be surgery or internal medicine, or in my case
22 pathology, that set up certain requirements for individuals
23 for education and training and experience and testing, wherein
24 if they meet those requirements and satisfactorily pass the
25 tests, they are then recognized by this group of specialists

1 as being certified to be a specialist in that field.

2 Q. Dr. Catherman, would you summarize for the jury and
3 the Court your education and experience in your field?

4 A. I graduated from Bucknell University, Lewisberg, Penn-
5 sylvania, with a Degree of Bachelor of Science in Biology in
6 1954, from the Temple University School of Medicine in Phila-
7 delphia with a Degree of Doctor of Medicine in 1958.

8 I spent one year in a general rotating internship,
9 and then two years in the specialty training of anatomic
10 pathology at the Williamsport Hospital in Williamsport,
11 Pennsylvania.

12 I then spent two years assigned to the Armed Forces
13 Institute of Pathology as a Captain in the Air Force Medical
14 Corps, primarily involved in aircraft accident investigation.

15 After I was discharged, I spent four years with the
16 Medical Examiner's Office as an Assistant Medical Examiner
17 in Dade County, that surrounds Miami, Florida.

18 In the beginning of July in 1967, I took a position
19 as an Assistant Medical Examiner for the City and County of
20 Philadelphia. I spent twenty-one and a half years as an
21 Assistant Deputy, and later Acting Medical Examiner, until I
22 retired from that position in November of 1988.

23 As I said, about 1982 I started an affiliation with
24 the Camden County Medical Examiner's Office, where I still am
25 as an Assistant Medical Examiner for them, but I became

1 licensed to practice in New Jersey.

2 As I already said, I am certified by the American
3 Board of Pathology in the field of Anatomic and Forensic
4 Pathology, and in addition to my kind of full-time/part-time
5 work for Camden County, I am a consultant for forensic
6 pathology. My services are available to families, to attorneys,
7 to coroners, medical examiners, to physicians, to anybody
8 that would have a need to inquire of me in my area of expertise.

9 Q. Do you belong to any professional societies?

10 A. Yes.

11 Q. Could you name some?

12 A. The principal ones, the professional organizations to
13 which most medical examiners belong, that would be the National
14 Association of Medical Examiners and the American Academy of
15 Forensic Science, biology, pathology section.

16 Q. Have you authored any periodicals or other litera-
17 ture on any of the subject areas that you testify on?

18 A. Yes. I authored some and I prepared and have given many
19 either presentations and/or lectures in the various fields
20 of forensic pathology.

21 Q. Would you indicate to the Court and the jury what
22 your duties are with the Medical Examiner's Office in Camden
23 County?

24 A. My primary duty is, as I explained, to determine the
25 cause and manner of death in those cases considered under the

1 jurisdiction of the Camden County Medical Examiner. These
2 involve not all deaths that occur in a given area, but in-
3 volve those that are due to other than natural causes, that
4 is, all the homicides, accidents, suicides or suspicious
5 deaths, all deaths that are sudden, unexpected, where the
6 person is not under the care of a physician who could readily
7 offer an opinion as to why the person died.

8 It may involve certain deaths that could potentially
9 be a threat to the general public health from some disease
10 process, or certain deaths that may be related to the person's
11 work or occupation, or where there is a question whether the
12 death is connected with that.

13 These are the kinds of cases that come under the
14 jurisdiction of the Medical Examiner for Camden County.

15 As I said, my primary job in those cases is to
16 determine the cause and manner of death.

17 Q. How many medical examiners are there in Camden
18 County?

19 A. Two.

20 Q. You being one of them?

21 A. Yes.

22 Q. How many autopsies would you estimate you performed
23 in your career?

24 A. I guess about sixteen thousand.

25 Q. How many autopsies would you estimate that you do

1 in a given year in Camden County, on average?

2 A. Now that's probably about a hundred to a hundred and
3 twenty.

4 Q. Is there a general procedure, with respect to per-
5 forming an autopsy?

6 A. Yes.

7 Q. Would you elaborate on that for the Court and the
8 jury?

9 A. An autopsy is a systematic examination of a body after
10 death, and involves the external examination and appearance
11 and documentation by description and by photography of all
12 the external aspects of the body, and then it continues with
13 a complete internal examination of the body cavities, and the
14 contents of primarily the head, chest, abdomen, all the
15 organs, and depending upon the nature of the case may involve
16 further dissection of the arms, legs or other parts of the
17 feet, particularly where there is a need to obtain or recover
18 physical evidence which may be important in a case, such as
19 a spent gunshot wound projectile or other evidence.

20 It involves the collection of materials for further
21 testing.

22 The usual reference to specimens for toxicology to
23 determine if there are any poisons, chemicals or drugs or
24 other items or materials present in the body, and then
25 collection of additional specimens, tissues and so on, for

1 further examination, which might become necessary in order
2 to complete the job of doing the determination of the cause
3 or manner of death.

4 Q. Does your external examination include looking at
5 the clothing on the body of the person brought to the Medical
6 Examiner?

7 A. Yes.

8 Q. Is that also of interest to you in the area of
9 forensic pathology?

10 A. Yes.

11 Q. Why is that?

12 A. Well, the clothing may contain particular evidence which
13 may have to do with significant interpretation of what in-
14 juries might be present on the body.

15 As an example, if there are gunshot wounds that
16 involve the body, the examination of the clothing would be
17 important because that represents the first target that is
18 between the muzzle of the weapon that is firing the projectile
19 and the individual.

20 There may be evidence on the clothing which would
21 give you an interpretive information about the range of fire
22 of the gunshot wounds, for example, that might not be present
23 if you only had the bare skin.

24 Having had somebody take away the clothing, you are
25 not being able to examine it in conjunction with the other

1 findings in the case.

2 Q. Does it matter necessarily whether the person is
3 still wearing the clothes at the time that you receive them,
4 as long as you get the clothing?

5 A. No. The important thing is to examine the clothing,
6 it's available to look at and examine it.

7 Q. With respect to your expertise in the area of
8 forensic pathology, do you have any training and experience
9 with respect to analysis of bullet wounds?

10 A. Yes.

11 Q. What type of training and experience do you have
12 with respect to such?

13 A. That comes under the subcategory of the field of foren-
14 sic pathology known as wound ballistics. Covered under that
15 category, like other categories, for example, blunt injuries
16 or sharp injuries or chemical injury, are a number of things.

17 Wound ballistics has to do with the recognition of
18 an injury which is from an objection in flight or in motion,
19 hence a ballistic wound, and what type of object may have
20 caused it, the recovery of an object that caused the injury
21 and the nature of that.

22 As I already said, examination of either clothing
23 or the surface of the skin, if it's the first target, to make
24 some determination of range of fire, and that is the distance
25 between the end of the muzzle firing the projectile and the

1 first target hit. All of these things are under the general
2 category or subsection in forensic pathology known as wound
3 ballistics.

4 Q. Dr. Catherman, has that training and experience
5 allowed you to make determinations with respect to what
6 caliber weapon firearm was used to make a perforation wound?

7 A. Yes.

8 Q. Has it also allowed you to determine the type of
9 firearm used?

10 A. In some instances, yes. There are certain changes and
11 certain findings which allow you to be more specific than
12 in others.

13 You may end up with a determination that is rela-
14 tively non-specific, or you may be more specific. It depends
15 on the type of injuries and what the findings are.

16 Q. Does that depend on the range from which the person
17 was hit?

18 A. That has to do with making an interpretation of the
19 range of fire. That is a different category if you recover a
20 projectile, you can make a determination what source or
21 caliber that projectile is.

22 If you have only an entrance and exit wound, you
23 can be somewhat specific, but less so, because you can't be
24 absolutely sure, because you don't have a projectile to make
25 an identification for the exact size or caliber. You can make

1 certain determinations as to whether it's small, medium or
2 large, or whether it's traveling at a very rapid or high
3 velocity, which in turn causes a great deal of kinetic
4 energy and destruction of tissue, as opposed to a projectile
5 traveling at a lesser degree of speed and not causing as much
6 injury.

7 You can say something about the velocity of the
8 projectile, which was fired and caused injury.

9 Q. Is there a quantity of autopsies that you prepare
10 in a given year that can be quantified that deals with gun-
11 shot wounds, as opposed to other injuries?

12 A. In a given year in Camden County?

13 Q. Yes.

14 A. Last year there were about sixty homicides. This year
15 there were fewer. We are talking maybe twenty, twenty-five
16 or so.

17 When I was working for the Philadelphia Office,
18 their homicide rate was four hundred and fifty to five
19 hundred. That number was greatly increased.

20 Q. Was it increased to the same approximate percentage
21 of the total?

22 In other words, a third or --

23 A. No, not exactly, because there was a different working
24 arrangement in the City of Philadelphia. There are two of
25 us in Camden. There were four or five of us on a rotating

1 basis in Philadelphia, although everybody did the same or
2 equal number of cases.

3 Q. Dr. Catherman, have you been qualified in any --

4 THE COURT: I don't think there was an answer to
5 the question.

6 Can you quantify what percentage of your work in-
7 volves bullets?

8 THE WITNESS: I don't know. I can't do that. It
9 would depend where I was at a given time. I kind of answered
10 by saying if there are sixty homicides and I do a third of
11 them, that is twenty or a few more. Probably eighty percent
12 of those are gunshot wounds.

13 THE COURT: Thank you.

14 THE WITNESS: It is a large number of homicides
15 that are gunshot wounds, as opposed to other kinds of injury.

16 Q. Have you been qualified as an expert in the past,
17 in determining cause of death?

18 A. Yes.

19 Q. Approximately how many times?

20 A. I don't know a total figure for some twenty years. When
21 I was in Philadelphia, I averaged about one appearance a week.
22 Maybe fifty times a year. That is less than that since I have
23 come to work with Camden.

24 Q. Have you specifically been qualified in the area of
25 cause of death in Camden County?

1 A. Yes.

2 Q. Approximately how many times?

3 A. A hundred or perhaps more.

4 Q. At this point, let me ask you this: Have you testi-
5 fied in those times you have been qualified with respect to
6 cause of death, specifically with respect to the area of
7 ballistic analysis and forensic pathology?

8 A. Where it was appropriate, yes.

9 MR. ARONOW: Your Honor, I submit that the doctor
10 is qualified to testify as to cause of death and bullet
11 wounds and ballistics.

12 MR. LEINER: No objection, your Honor.

13 THE COURT: Ladies and gentlemen of the jury, Dr.
14 Catherman will be permitted to offer specialized testimony
15 in the areas of cause of death and wound ballistics.

16 As I explained to you earlier, it will be for you
17 to evaluate the weight of his testimony.

18 On that note, Mr. Aronow, you may proceed.

19 MR. ARONOW: Thank you, your Honor.

20 Q. Dr. Catherman, I would like to call your attention
21 to January 19, 1995.

22 Did you perform an autopsy on a Kirby Bunch, Jr.?

23 A. Yes.

24 Q. Where did that autopsy take place?

25 A. In Pennsauken at the Camden County Medical Examiner's

1 Office Morgue.

2 Q. Do you have your records of that autopsy with you
3 today?

4 A. Yes.

5 Q. Are those records prepared as a result of either
6 oral notes or written notes that you took during the process
7 of your autopsy?

8 A. Yes.

9 MR. ARONOW: Can we approach?

10 THE COURT: Certainly.

11 FOLLOWING COLLOQUY AT SIDEBAR:

12 MR. ARONOW: It will be the State's intention to
13 have the autopsy photographs marked for purposes of identi-
14 fication, so that the doctor can testify concerning what they
15 represent, and Mr. Leiner said he would have objection should
16 the State intend to show these to the jury.

17 It would be the State's position there is no reason
18 not to show them to Dr. Catherman and they will have value to
19 the jury, obviously. The State's position is that these
20 photographs are not that graphic to shock the conscience and
21 they are not open. They are not photos of the body open.
22 They are photographs of first Kirby Bunch's bed and then
23 subsequent to that the testimony on Mark Winston's body, but
24 moreso with respect to Kirby Bunch. Those are photos that
25 depict where certain wounds on the body are.

1 THE COURT: You can mark the pictures for identifi-
2 cation and then move them in evidence, and they will be re-
3 viewed by the jury.

4 MR. ARONOW: Yes.

5 THE COURT: Mr. Leiner.

6 MR. LEINER: I have objection to showing them to
7 the jury. I don't see what evidential value that will give
8 them. The doctor is going to testify as to where the gun-
9 shot wounds were found on the body. He can do that by way
10 of a diagram, and I think the jury will get the same flavor,
11 rather than showing them the dead bodies with bullet wounds
12 in various parts of their body.

13 It will be inflammatory, especially given this
14 instance where we have a double homicide my client is on trial
15 for. I don't think that it is necessary to have them shocked
16 any more than they need by the crime itself, and I think they
17 will be influenced by it.

18 THE COURT: Mr. Aronow, can you explain what proba-
19 tive value the photographs have, that would not be present if
20 there were a diagram and sketch?

21 MR. ARONOW: Number One, they show specifically
22 where certain bullet wounds are received, as opposed to
23 generally by the diagram.

24 THE COURT: Tell me why the precise identical loca-
25 tion is a matter of material to this case?

1 MR. ARONOW: Because if one talks about, for in-
2 stance, being shot in the head, whereas looking at one of
3 the photographs that is in that batch can be seen with the
4 bullet wounds, which is clearly in the neck area below the
5 head. That is one reason.

6 Number Two, the doctor will testify with respect
7 to the two wounds to the thoracic area of the body with close
8 contact wounds, and I would be having him testify as to the
9 fact that he was able to make a diagnosis with respect to the
10 bullet wound, based upon what he observed and the injury, and
11 they ought to be able to see if, once he explains what he
12 has seen and the very facts he testified to.

13 Most of these shots were not full body shots. In
14 addition, the doctor will look at certain photographs with
15 respect to his own diagnosis. The photographs depict clearly
16 the body that he performed the autopsy on on January 19, 1995.
17 I think there are a lot of reasons why the photographs should
18 come in.

19 For instance, the lower right quadrant of the body
20 there is a portion involved in that shot that shows additional
21 damage, also a closeup there, to the right lower leg, and I
22 was going to have the doctor testify what the damage was and
23 what that meant with respect to that damage.

24 THE COURT: Mr. Leiner, anything further?

25 MR. LEINER: Yes, your Honor. I do believe the

1 probative value is limited by this evidence can be introduced
2 another way. I think the specific location of the wounds are
3 not that important. I think the doctor will testify as to
4 any findings he would have as in any other case.

5 I don't think it is necessary for the jury to see
6 something on that picture, which they probably won't under-
7 stand without the benefit of the doctor's testimony anyway.
8 Therefore, his testimony is controlling, not the photographs.

9 I think they are inflammatory, prejudicial, and
10 under the 403 balance, I think the probative value is out-
11 weighed by the prejudice of the jury sitting there looking
12 at dead bodies in the deliberation room.

13 THE COURT: I am going to overrule the objection
14 for two reasons.

15 First, while true these are photographs of a person
16 who is dead, the photographs by their nature are not so gorey
17 or grotesque as to incite prejudice.

18 For example, these are not people or not a person
19 whose neck was slashed open or where the method of death is
20 gruesome from a visual perspective. I don't find the photo-
21 graphs are inflammatory in that respect.

22 I am satisfied, secondly, that there is a probative
23 value to the photographs, which cannot be gained from the
24 use of a sketch. More specifically, I find that the photo-
25 graph which demonstrates contact wounds show that the gunshot

1 was very close range, actually touching the body at the time
2 and, therefore, that is something that can be considered and
3 that could not be duplicated by the use of a sketch.

4 For both reasons, the objection is overruled and
5 the State will be allowed to proceed.

6 MR. LEINER: Your Honor, before we proceed, it
7 appears the State has brought in an exhibit in the back of the
8 courtroom.

9 MR. ARONOW: An anatomic doll from the waist up.
10 Obviously I will show the photos to the jury, and as he
11 describes the injuries for demonstrative purposes, have him
12 indicate what area of the body was hit and the vital organs.

13 MR. LEINER: Your Honor, I never seen it. He has
14 a big bag over it. Prior to presenting it to the jury, I
15 would like --

16 THE COURT: We may take a break at that point.

17 Are you going to use the photos first?

18 MR. ARONOW: Yes. I will have them marked. I will
19 do that during the break. We can go with it right now.

20 THE COURT: Okay.

21 FOLLOWING PROCEEDINGS IN OPEN COURT:

22 (Photographs marked Exhibits S-2 to S-13 for Identifi-
23 cation.)

24 BY MR. ARONOW:

25 Q. Dr. Catherman, how long did the autopsy of Kirby Bunch

1 take?

2 A. Just a little over two hours.

3 Q. Were there other persons present at the time the
4 autopsy was performed?

5 A. Yes.

6 Q. Do your records disclose who was present in addi-
7 tion to yourself?

8 A. The technician and Mike Aaron, who was a member of the
9 Camden County Prosecutor's Office.

10 Q. The Scientific Unit?

11 A. Yes.

12 Q. Were there other persons present from the Camden
13 County Prosecutor's Office, to your knowledge?

14 A. From time-to-time. I don't have them specifically
15 recorded.

16 Q. How is Mr. Bunch identified to you?

17 A. He was identified to the Office of the Medical Examiner
18 by Barbara Bunch.

19 Q. Does that indicate who she is?

20 A. No, not specifically.

21 Q. With respect to the autopsy itself, are photographs
22 taken during the process of an autopsy?

23 A. Yes.

24 Q. At what time are those photographs taken?

25 A. They are taken at various times, but they are taken

1 during the completion of the external examination for sure
2 before any internal examination begins, and they are taken
3 by me or whoever the assigned pathologist is, and for certain
4 the assigned member of the Camden County Prosecutor's Office,
5 at the time in this instance was Mike Aaron, and may be taken
6 by other detectives who have an interest in the case.

7 In this particular instance, it was me and Mike
8 Aaron.

9 Q. Do you remember specifically or do you recall photo-
10 graphs being taken of Kirby Bunch, while hte autopsy was
11 taking place?

12 A. Yes.

13 Q. The type of photographs taken by you are of what
14 type?

15 A. Our photographs are .35 millimeter Kodachrome trans-
16 parencies.

17 Q. In other words, known as slides?

18 A. Yes. They come out as Kodachrome slides that are pro=
19 jected.

20 Q. Are those maintained at the Office of the Medical
21 Examiner?

22 A. Yes.

23 Q. Can you describe the process in which the photo-
24 graphs are taken? What specifically does one do to take
25 photographs of the body?

1 A. Besides what need to be photographed and aim it and shoot.

2 Q. Do they use anything to stand on or lean on?

3 A. Yes. There is a ladder which is used to get more ninety
4 degree acculation, as opposed to standing at the head or foot
5 end of the body.

6 Q. Do you take photographs at approximately the same
7 time as Mike Aaron does?

8 A. Yes. I take the ones, either I take them and then he
9 immediately takes them after me, and I proceed to do other
10 examinations and may take more pictures, after which he takes
11 more pictures, or we wait until the end of external exam and
12 I take mine and he takes his. It's depending on the kind of
13 case.

14 Q. I show you what has been marked S-2 through 13.

15 A. I have looked at these.

16 Q. Does the material that is depicted in those photo-
17 graphs fairly and accurately show the body of Kirby Bunch,
18 as it appeared in your exterior examination on January 19,
19 1995?

20 A. Yes.

21 Q. Do some of these photographs also show clothing?

22 A. Yes.

23 Q. If I can leave those photographs up here for now.
24 When you initially examined Kirby Bunch, you indi-
25 cated the normal course of or procedure for purposes of an

1 autopsy is to perform an external examination.

2 Would you indicate to the members of the jury what
3 your external findings were, with respect to Kirby Bunch?

4 A. He was described by me as being well developed, well
5 nourished, appeared the stated age of nineteen. He was about
6 five eleven and a half and he weighed a hundred and seventy-
7 four pounds with the clothing that was received in a plastic
8 pouch.

9 The significant findings that involve the body were
10 three gunshot wounds, two of which were in and out. That is,
11 they perforated the body. That made a total of four individuals
12 and a third wound which was an entrance wound only, and at
13 the end of that gunshot wound I recovered a projectile.

14 Externally there were five wounds, two entrances,
15 two exits and a third entrance, making a total of he was hit
16 three times. They are described by me as arbitrarily in order
17 to keep track of them and for no other reason, not necessarily
18 to indicate that they occurred in any order, so I initially
19 described five wounds.

20 That is A, B, C, D and E. They turned out to be three
21 wounds.

22 A was a wound on the right side of the back of the
23 neck, which exited on the left side of the jaw.

24 Q. Do any of the photographs, S-2 through S-13 in front
25 of you, depict a shot of that particular wound?

1 A. Yes.

2 Q. Could you indicate using the back of the photograph
3 what the identification number, which photographs depict that?

4 A. S-8, which shows really two of the wounds. It also
5 includes the one on the back of the head.

6 S-9, which shows the exit wound.

7 S-10, which is a closeup of the entrance wound.

8 Q. Would you indicate what the results of your internal
9 examination revealed, with respect to that particular gunshot
10 wound?

11 A. It was a wound that passed downward-forward and to the
12 left, and it went through the soft tissues of the back of
13 the neck and below the base of the skull, and then continued
14 through the muscle and out along the left side of the jaw.

15 The effect of the wound caused some bruising in the
16 underlying areas of the brain inside the boney skull, although
17 the projectile didn't actually pass through the skull.

18 MR. ARONOW: Your Honor, if I may utilize a piece
19 of demonstrative equipment that was brought here.

20 THE COURT: Which is an anatomic model.

21 Any objection?

22 MR. LEINER: May we approach?

23 THE COURT: You may.

24 FOLLOWING COLLOQUY AT SIDEBAR.

25 MR. LEINER: Judge, I just would like to renew my

1 objection. If we are going to take the model where the
2 doctor can pull things out to show the jury, I don't know
3 why we need photographs along with it.

4 It shows the dead body, the face, things like that
5 which they can look at when they are in the deliberation
6 room.

7 I think that if we have something to utilize, such
8 as this where the doctor can show the trajectory of the
9 bullet and testify in regard to that, then that should be
10 sufficient, especially since the prosecutor indicates the
11 photos sufficiently don't show the trajectory and things
12 like that.

13 That would be unnecessary, for him to portray
14 that tot he jury, when we have something like this, with a
15 limited purpose for the photos to show the contact wounds,
16 which he may use those two particular photos that show the
17 contact wounds.

18 I would renew my objection to the remaining photo-
19 graphs.

20 MR. ARONOW: I think there is clearly a difference
21 between the two, and I think certainly the jury, or while
22 hearing Dr. Catherman and visualizing it now, three weeks
23 from now or two and a half weeks from now when they are going
24 to be deliberating, and he is the first witness, they are
25 going to certainly not specifically recall a lot of the

1 testimony that may have been presented in the beginning of
2 the case, and I think that is another reason why the photo-
3 graphs ought to be admitted, because they are not going to
4 have the anatomic model in evidence. It is only for demon-
5 strative purposes today.

6 As I outlined in my earlier point, and I reiterate,
7 it doesn't show the trajectory and they don't show what por-
8 tion of the body the bullet passed through, whereas Dr.
9 Catherman can pull the doll apart and show what parts of the
10 body were involved and why that is the cause of death.

11 MR. LEINER: I only respond to that this way, your
12 Honor. If the argument is that the trajectory is important,
13 the part of the body it passes through, those photographs
14 lend anything other than they show some contact wound.

15 I think the jury will not have the anatomic doll.

16 THE COURT: One of the things the State will have
17 to prove is that the two alleged victims died from gunshot
18 wounds. The photographs demonstrate a gunshot wound and the
19 anatomic model can't do that. That is why I overruled the
20 objection.

21 Secondly, two of the photographs at least do show
22 things that the anatomic model cannot show, and that is the
23 contact wound.

24 I don't find that the photographs are prejudicial
25 particularly, and for that reason their probative value does

1 not have to be that extraordinary, because I don't find they
2 are very prejudicial.

3 With a Rule 403 balancing test, I find the proba-
4 tive value outweighs the prejudice.

5 You may proceed.

6 FOLLOWING PROCEEDINGS IN OPEN COURT:

7 BY MR. ARONOW:

8 Q. Dr. Catherman, if this anatomic model can be of any
9 benefit, with respect to explanation to the jury and the
10 Court where the bullet wounds were on Kirby Bunch, and what
11 parts of his body those bullets would have transversed, and
12 where you found them or where you found evidence of injury,
13 would that anatomical model be helpful in that regard?

14 A. I can point out on the model where the entrance and exit
15 wounds were and discuss the pathology, yes.

16 Q. Please do that beginning with the wound that you
17 discussed previously, which would be the one involving the
18 head, neck and jaw area.

19 THE COURT: Can everybody see?

20 A. Let's just make one note. This is sort of a bisexual
21 model. What we are talking about here is the male. You have
22 to ignore these things which are female.

23 Now, as I said, Gunshot Wound A entered about where
24 my finger is pointing on the back of the right side of the
25 neck. It transversed underneath the base of the skull and

1 then came out what would be just below the left ear opening,
2 about this angle of the jaw, in the area that I am pointing
3 to now with my index finger.

4 It was forcing down forward and to the left. As I
5 said, it passed through those parts of the tissue that are
6 there, mostly muscle tissue, but as it went by the base of
7 the skull it caused bruising of the brain inside the base of
8 the skull at that location.

9 Q. Dr. Catherman, do you have an opinion to a reason-
10 able degree of medical certainty whether that particular gun-
11 shot wound in and of itself would have been necessarily fatal?

12 A. Potentially fatal probably not in and of itself. He
13 would likely to have recovered from that wound.

14 Q. If that were the only wound?

15 A. If that were the only wound.

16 Q. Why is that?

17 A. Barring some complications he might have developed, it
18 could have been a fatal wound.

19 The facts are it was one of three wounds, and so it
20 was a part of a three gunshot wound injury, all of which
21 caused death.

22 Q. Dr. Catherman, would you continue with respect to
23 your exterior examination, and what the next bullet wound was
24 that you detected?

25 A. The next two were the contact gunshot wounds. I might

1 say this wound was not a contact wound.

2 Q. Why do you say that?

3 A. Because of its description and because of its appearance.
4 The wound on the back of the neck was simply a perforate
5 boarded by some bruising, burning or abrasion. There were no
6 surrounding indication of any powder residue.

7 Q. Do any of the photographs before you demonstrate
8 that particular view of that gunshot wound?

9 A. It shows the wound as I described it without evidence of
10 residue.

11 In contrast, the other two wounds, one of which
12 entered about the mid to lower left side of the back, you
13 take about midway between the shoulder and the waist, it
14 entered about where my right index finger is pointing on the
15 lower left side of the back. That wound did not exit. It
16 had evidence of powder residue around it on the skin, and
17 also on and through the clothing that was worn over the body
18 at that location.

19 By powder residue I mean gray discolored material
20 which is soot and smoke, and the actual wound itself had some
21 black residue, which is part of that.

22 There are three kinds of powder residue. There is
23 actual burning or searing. There is smoke and soot, and there
24 is what is called tattooing or stipling. The closer you are,
25 the more the burning and soot formation. As you get a little

1 bit away, then you get some tattooing or stippling. As you
2 get beyond the range at which any of those powder wounds are
3 left, like in the wound in the back of the neck, a distance
4 range, that means for the ordinary weapon about a foot and a
5 half to two feet, and anything beyond that looks like a dis-
6 tance wound, because it leaves no powder residue.

7 The second wound entered here upward and forward to
8 the right involved ribs, and involved major blood vessels com-
9 ing into the heart and the lung, and as a result of that, a
10 large amount of internal bleeding, and actually from the heart
11 sack that surrounds the heart itself, in that cavity I re-
12 covered a projectile.

13 The projectile was about a .38 caliber, about nine
14 millimeter, gray, somewhat scratched and marred projectile.
15 I gave this to Mike Aaron.

16 Q. If I could show you what has been marked S-3 for
17 Identification, Doctor.

18 A. Yes, that's the projectile. You will see on this photo-
19 graph the letters A, B, C, D and E. The letter C is not
20 crossed out and above that is the projectile C, which I re-
21 covered. It's A, B, C -- I mean A, B, D and E were the in
22 and out of the examination.

23 Q. What did you do with that projectile, when you dis-
24 covered it, Doctor?

25 A. I gave it to Mike Aaron.

1 Q. Is that standard operating procedure?
2

3 A. Yes.

4 Q. With respect to the same question that I asked you
5 before, I know what you said it was, a combination of all
6 three wounds that resulted in the death of Kirby Bunch, but
7 would that wound to the mid to lower left side of the back
8 have been fatal in and of itself necessarily?

9 A. Yes, in my opinion as a result of the extensive internal
10 bleeding cause by disruption of the blood vessels involved in
11 the wound.

12 Q. You indicated that was a contact type wound?

13 A. Yes.

14 Q. Is that to a reasonable degree of scientific
15 certainty?

16 A. Yes.

17 Q. The contact, how far away approximately from the
18 body would you estimate that the firearm was, at the time it
19 was discharged?

20 A. By definition, it was in contact with some -- it was
21 touching.

22 Q. It was touching the outer clothing?

23 A. The clothing, and it was not just loosely touching, but
24 it was in full contact enough so that the residue went through
25 the clothing and actually deposited on the surface of the
skin.

1 Q. Would you describe your findings, with respect to
2 your external examination of the third bullet wound injury,
3 the entrance and exit wound?

4 A. The third wound was a wound on the lower left side of
5 the body at about this location right underneath the rib cage
6 margin, lower left side. It went down and through the abdomi-
7 nal cavity and exited on the lower right side, right lower
8 quadrant just above the groin, and actually the groin --
9 actually the thigh was flexed on the groin a little bit, so
10 when it came through the skin it banged into the surface of
11 the thigh and made a bruise.

12 It didn't have enough energy left to re-enter the
13 leg, so it fell away. That projectile actually forced in the
14 body downwards slightly forward and to the right, and it in-
15 volved the small bowel and large bowel, and, as I say, went
16 through the surface of the skin and then made a bruise on the
17 thigh.

18 Q. Doctor, do any of the photographs which are before
19 you depict that specific injury?

20 A. Yes.

21 Q. Showing the right lower quadrant and the right
22 thigh area?

23 A. Yes. S-11 does and S-12 shows the entrance wound on the
24 left ribcage.

25 Q. So that we are clear, when you refer to left or

1 right, you are referring to the victim's left or right,
2 correct?

3 A. Yes.

4 Q. Not as you look at him?

5 A. This individual's right and left. This is his right side
6 and left side.

7 Q. Do any of the photographs which are before you de-
8 pict the wound injury, the other contact wound injury to the
9 left lower back area?

10 A. Yes. S-8. There were some others that aren't here.
11 S-8 and 7.

12 Q. You indicated that was a contact wound as well, is
13 that correct?

14 A. Yes.

15 Q. Were the findings consistent to a reasonable degree
16 of medical certainty or scientific certainty, to the same
17 findings that you found with respect to the other bullet wound
18 injury that was a contact type injury?

19 A. Yes, they both were. They both had indication in the
20 clothing worn over the locations on the body where the en-
21 trance wound occurred, and both had the evidence at the par-
22 ticular entrance wound defect.

23 Q. Now, Dr. Catherman, you indicated that both the
24 photographs S-7 and S-8 for Identification depict the contact
25 gunshot wound to the lower left back, is that correct?

1 A. Right.

2 Q. What's been marked S-2 for Identification, shows
3 the contact wound to the left side?

4 A. That's correct. That is S-12.

5 Q. Doctor, do these wounds in and of themselves appear
6 the same? Is one darker than the other?

7 A. The same as what, the same as I saw them? The same as
8 I described them?

9 Q. To a lay person, would these two wounds, the one to
10 the left side and the one to the back, look the same?

11 THE COURT: Same as each other you mean?

12 MR. ARONOW: Yes.

13 A. Not exactly, no. One is blacker than the other. The one
14 is a little bigger than the other. The bigger one has the
15 blackening more predominantly around just the outside, whereas
16 the other looks like a black spot on the surface of the skin.

17 I might point out that on S-12, to the upper left
18 side is another spot that unless you knew or could figure out
19 is his left nipple. That is not a gunshot wound.

20 Q. So the image of the gunshot wound to the left side
21 that appears in S-12 is darker in color than the other one to
22 the back?

23 A. Yes.

24 THE COURT: Are you going to be a lot longer, if we
25 break now?

1 MR. ARONOW: It will be, yes.

2 THE COURT: We will take a fifteen minute recess.
3 Again just a reminder not to discuss the evidence.

4 (Jury excused from courtroom.)

5 (Recess.)

6 (Photographs marked Exhibits S-14 to S-18 for
7 Identification. Bag with contents of Raiders' Jacket marked
8 Exhibit S-19 for Identification. Bag with black parka marked
9 S-20 for Identification.)

10 MR. ARONOW: Judge, so you know, we had premarked
11 S-14 through 18, photographs of Mark Winston's autopsy, and
12 S-19 which is the jacket of Kirby Bunch, and S-20 is Mark
13 Winston's parka.

14 (Jury returned to courtroom.)

15 ROBERT L. CATHERMAN, M.D., pre-
16 viously sworn, resumes the stand.

17 THE COURT: Mr. Aronow, you may continue.

18 MR. ARONOW: Thank you, your Honor.

19 CONTINUED DIRECT EXAMINATION BY MR. ARONOW:

20 Q. Dr. Catherman, there are three photos up on the
21 ledge which have been marked, which I can indicate for the
22 record are S-6, S-4 and S-5 for Identification.

23 Do you recognize what is depicted in those photo-
24 graphs?

25 A. Yes.

1 Q. What is that?

2 A. That is a jacket that was worn by the decedent, Kirby
3 Bunch, and shows the evidence of the two contact gunshot
4 wounds that correspond with the wounds on the lower left side
5 and the left side of the jacket.

6 Q. I am going to show you the bag which is marked S-19
7 for Identification, and ask if you recognize that garment?

8 A. Yes. That's the black Raiders' jacket. It contains the
9 evidence of gunshot wounds we have been talking about, one on
10 the lower left side of the back and one along the -- Let me
11 get myself oriented -- on the left side of the jacket.

12 Q. What about the bullet wounds A and B actually?

13 A. A and B were the ones that involve the back of the head
14 and out the face. It didn't involve the clothing.

15 Q. If I could show you the top of the hood.

16 A. Actually on the back of the hood there is a defect.
17 Along on the left side of the hood is another one where it
18 was folded. That's a defect through and through the material
19 that went with the wound on the back of the head and the left
20 side of the jaw, but there is no residue around that.

21 Q. That was the wound that you indicated was not a
22 contact wound?

23 A. That's correct.

24 Q. That is when you indicated the person would have
25 been standing more than approximately a foot and a half away?

1 A. Right.

2 Q. Would that type of injury be consistent to a reason-
3 able degree of scientific certainty, with someone standing
4 over the body approximately four feet away?

5 A. You mean with the body on the ground?

6 Q. Yes.

7 A. Yes.

8 Q. The gunshot residue that you testified to with re-
9 spect to the contact wounds on Kirby Bunch's back and left
10 side, are they evident on what is marked S-19 and as well as
11 any of the photographs?

12 A. It's better indicated on the photographs and less so on
13 the actual jacket, due to the wearing of time. The graying
14 around the entrance defect is not as prominent as it is on
15 the original photograph. That is S-5.

16 Q. S-5 having been taken on January 19, 1995?

17 A. Right. There is a little graying but much more visible
18 on the photograph S-5. I don't know about the inside. It's
19 evident on the inside of the jacket, which is on S-4. It's
20 still present on the actual jacket itself.

21 Q. Can you pick that up and show it to the jury?

22 A. It's the gray material that surrounds. The background is
23 gray, but this gray material here, which is gray to black on
24 the photograph, is what we are talking about. On the back of
25 the jacket it's this gray material distributed around the black

1 cloth, which is more evident on the photograph S-5.

2 Q. What is that material, that grayish material?

3 A. That is actual powder residue in the form of smoke and
4 soot, as a result of the explosion of the cartridge within a
5 weapon, and it's discharged, and the end of the muzzle of the
6 weapon along with the projectile is in contact with the cloth-
7 ing and the body.

8 Q. Was that jacket, other than the passage of time,
9 appear to be the same jacket that was on Kirby Bunch at the
10 time you performed the autopsy, January 19, 1995?

11 A. Yes.

12 Q. Do these photographs as well as the other photos
13 that have been marked S-2 through S-13, reasonably and
14 accurately depict the views of those photographs taken on
15 January 19, 1995?

16 A. Yes.

17 Q. The projectile that you testified you removed from
18 Kirby Bunch was a .38 caliber class or nine millimeter?

19 A. Yes.

20 Q. Were the other two pass-through wounds consistent
21 to a reasonable degree of medical certainty and scientific
22 certainty, with .38 caliber class wounds?

23 A. Yes, they would be.

24 Q. Is it your opinion to a reasonable degree of
25 scientific and medical certainty, or do you have an opinion

1 with respect to the cause of death of Kirby Bunch?

2 A. I do.

3 Q. What is that opinion?

4 A. It would be my opinion that the cause of Kirby Bunch's
5 death was the effects from three gunshot wounds in the head,
6 neck and trunk, that is the area of the chest and abdomen that
7 I described, it's a combination of the effects from those
8 three wounds.

9 Q. The description that you gave of the exit wound and
10 from the right quadrant to the thigh area, you indicated to
11 the jury the leg would have to have been in a flexed position
12 in order to receive the bruising it did?

13 A. Yes. If the leg was straight as mine is right now stand-
14 ing erect, it could have just come out. It had to be up in
15 this position, so when it came out it hit the leg and caused
16 the bruising.

17 Q. Is that consistent to a reasonable degree of medical
18 certainty, with someone who is in motion utilizing their leg,
19 in other words?

20 A. It's representative of relative motion between the
21 shooter and a victim at the time it was occurring.

22 MR. ARONOW: I have no further questions of this
23 witness, in terms of the autopsy of Kirby Bunch. I don't know
24 if your Honor wants to proceed totally through the next line
25 of questioning or stop and followup.

1 THE COURT: We already went through the entire
2 Direct of a witness before Cross. I see no reason to do one
3 person. You may continue.

4 CONTINUED DIRECT EXAMINATION BY MR. ARONOW:

5 Q. Dr. Catherman, did you perform an additional autopsy
6 on someone identified to you as Mark Winston, on January 19,
7 1995?

8 A. Yes.

9 Q. Where was that autopsy performed?

10 A. At the Camden County Medical Examiner's Office in
11 Pennsauken.

12 Q. Was that done prior to or subsequent to the autopsy
13 of Kirby Bunch?

14 A. Yes. I don't remember which one was first. Let me look.
15 It was done before, so I did Mark Winston first, followed by
16 Kirby Bunch.

17 Q. Approximately how long did the autopsy of Mark
18 Winston take?

19 A. About an hour and a half.

20 Q. Did you prepare a report, with respect to your find-
21 ings on that autopsy as well?

22 A. Yes.

23 Q. Was there anything of significance discovered, with
24 respect to the exterior portion of the autopsy on Mark Winston?

25 A. Yes.

1 Q. Would you indicate to the jury and the Court what
2 you found on your exterior examination, Mark Winston, on his
3 body?

4 A. This was a well developed, well nourished black male,
5 who was consistent with the reported age of thirty years. He
6 was five-ten and a half, and weighed 205 pounds.

7 The findings were two gunshot wounds. One was a
8 straightforward entrance penetrating gunshot wound of the
9 upper right side of the back. The other almost is a super-
10 ficial and less significant injury, but nonetheless a gunshot
11 wound injury. It was a grazing wound that involved the side
12 and nail of the thumb of the right hand.

13 The major wound was one that was an entrance on the
14 upper right side of the back. It had no indication of any
15 close range fire. It was a distant range gunshot wound, that
16 is fired from a weapon at least a foot and a half to two feet
17 or beyond.

18 Q. I am going to show you a group of photographs marked
19 S-14 through S-18. Wait a minute. They are out of order.

20 A. S-14 to S-18.

21 Q. Do you recognize what is depicted in those photo-
22 graphs?

23 A. Yes.

24 Q. Was a similar procedure utilized with respect for
25 the taking of photographs in the autopsy of Mark Winston, as

1 it was with Kirby Bunch?

2 A. Yes.

3 Q. Do these photographs reasonably and accurately de-
4 pict those portions of Mark Winston's body, and the projectile
5 that was removed from his body on January 19, 1995?

6 A. Yes.

7 Q. You indicated that he had a bullet wound to the
8 right side of his back?

9 A. Yes.

10 Q. Where in proximity to the model that we have would
11 that be?

12 A. The upper right side of the back. If you take this
13 bulge that is here behind the back of the right shoulder, and
14 assume there is a shoulder blade, a scapula underneath that,
15 if was right at the margin, the inner margin of the right
16 shoulder blade on the upper right side of the back.

17 Q. Is there anything else significant, with respect to
18 that particular gunshot wound in the scapula?

19 A. Yes. I can determine that on my internal exam. If you
20 move the shoulder forward, flex the shoulder, the scapula
21 slides out like that. With this gunshot wound entering on the
22 skin and then taking the path in the body it did, it indicated
23 that this shoulder had to be flexed forward and in front of the
24 body, because the projectile did not go through the scapula.
25 It just went on the very inside margin. That means he had to

1 have been slid forward and to the side.

2 The only way you could do that is if you flex your
3 shoulder forward, put your arm and fist in front of your
4 body.

5 Q. What path did the bullet travel through Mr. Winston?

6 A. It continued slightly upward and slightly forward and
7 across the back of the body. It involved the chest cavity,
8 principally the thoracic spine, and the thoracic spinal cord,
9 and came across through the tissues and ended up in the back
10 of the left upper arm just below the shoulder.

11 Having gone through the body and not out and back in,
12 but came across from a little bit below to a little bit above
13 and a little bit forward from the back and from left to right.

14 It went, as I say, through and involved the upper
15 portion of both chest cavities, but principally went through
16 the spine and completely destroyed the spinal cord.

17 The significance of that is that when that injury
18 occurred, it effectively resulted in his body being paralyzed
19 from that level, like mid to upper chest and from that level
20 down. He would have lost all function of any muscles of his
21 legs or the lower portion of his body.

22 He could have functioned with his upper body, neck
23 and head, but mid upper chest down would result in paralyzing
24 effect from the wound.

25 The other effects are it went through the lungs and

1 blood vessels within the lungs, and caused internal bleeding,
2 so that there was a significant internal blood loss.

3 Q. After your external and internal examination, did
4 you form an opinion to a reasonable degree of medical cer-
5 tainty, with respect to the cause of death of Mark Winston?

6 A. Yes, I did.

7 Q. What was that opinion?

8 A. That it would be my opinion with a reasonable degree of
9 medical certainty he died as a result of that gunshot wound
10 to the chest.

11 Q. Dr. Catherman, you testified that you located a
12 projectile in Mark Winston's body in the area of his left arm?

13 A. Yes.

14 Q. Did you remove that projectile?

15 A. Yes.

16 Q. What did you do with it, once you removed it?

17 A. I gave it to Mike Aaron, who was also present for this
18 examination.

19 Q. I show you what's been marked S-17 for Identification.

20 Does that photograph depict the projectile that was
21 removed from the body of Mark Winston?

22 A. Yes.

23 Q. Was that projectile in better or worse condition
24 than the projectile removed from Kirby Bunch?

25 A. I described it as being slightly -- Let me see exactly

1 how I said that.

2 Scratch marked and deformed. It was a .38 caliber
3 projectile, but it was in a little better shape than the other
4 one. Not quite as much scratching and deformity.

5 Q. A .38 caliber is consistent with nine millimeter?

6 A. Yes. In two different ways, the European and American
7 system, they are identical in size. Caliber is in hundreds
8 of an inch, so .38 caliber is and the foreign designation is
9 in the metric system or millimeters. .38 caliber is equivalent
10 to a nine millimeter.

11 Q. To a reasonable degree of medical certainty, would
12 Mark Winston have dropped on the spot where he was standing
13 if he was standing at the time the projectile perforated his
14 skin?

15 A. Yes. That is due to the effects, as I explained, from
16 the destruction of the spinal cord.

17 Q. Do you have an opinion to a reasonable degree of
18 medical certainty, with respect to whether or not the bullet
19 wound that Mark Winston suffered, with respect to the path of
20 travel through the body, whether it would have rendered him
21 unconscious or not at the time it penetrated or shortly
22 thereafter?

23 A. Yes, I would have an opinion.

24 Q. What is that opinion?

25 A. It would not have rendered immediately unresponsive or

1 unconsciousness.

2 Q. With respect to the gunshot wound or injury that
3 you indicated to the right thumb, would you describe to the
4 jury how an injury of that type would be caused?

5 A. It was the result of a projectile grazing that area of
6 the thumb. By definition, it's a wound of the hand or lower
7 portion of the arm, which is identical to a similar wound some-
8 where else on the body, a defense injury, but not likely this
9 represents any kind of a defense injury in association with
10 the wound to the back.

11 It could have been during the relative interaction
12 and movement between the shooter, the assailant, a defense
13 injury, but I can't tell you that from my examination.

14 Q. You indicated previously that the bullet wound that
15 you examined exteriorally on Mark Winston was not a contact
16 type wound, is that correct?

17 A. Correct.

18 Q. Did you have an opportunity to examine any of the
19 clothing that Mark Winston came with at the time of the
20 autopsy?

21 A. Yes. He had just a black jacket but had a perforation
22 in the back corresponding to the wound of entrance, and there
23 was no indication of residue or powder burns that were present
24 on the Raiders' jacket, that I previously seen.

25 Q. I apologize for now coming out of here, but I show

1 you what has been marked S-20 for Identification, and ask if
2 you can examine that garment for evidence of a gunshot wound
3 defect?

4 A. A tiny perforation through the material not surrounded by
5 any discolor, not disruptive.

6 Q. You say not disruptive. Do you mean torn?

7 A. The clothing is not torn and separated. It has the
8 finding or characteristics of a distance range penetrating
9 defect caused by a projectile.

10 Q. Is there a corresponding hole on the interior of
11 the jacket?

12 A. Yes. It is layered. It went through, if it is a down
13 filled jacket, and into the body.

14 MR. ARONOW: That's all the questions I have, your
15 Honor.

16 THE COURT: You may Cross-examine, Mr. Leiner.

17 CROSS-EXAMINATION BY MR. LEINER:

18 Q. Doctor, good afternoon.

19 A. Hello.

20 Q. Doctor, let's start with Kirby Bunch for a moment.

21 In regard to the gunshot that you indicated came
22 through this area and exited out close to the groin, could you
23 show me exactly where that is?

24 A. It is basically the left side of the body. We are talk-
25 ing about a body that has a front, back and left and right

1 side. To the left side of the front.

2 Q. It exited out?

3 A. It exited right down here above the groin. That is the
4 place the leg joins the pelvic.

5 Q. You indicated that bullet took a path through the
6 smaller and large intestinal area?

7 A. It came this way. This is the small intestine. This is
8 the large intestine. Then it came out through the skin, and
9 with the leg, as I said, in a flexed position, it banged into
10 the surface of the leg.

11 Q. In regard to that position, the leg flexed, you can't
12 tell whether or not the person was laying down, standing up,
13 when that flexion happened, can you?

14 A. No. I can tell you the leg had to be in the flexed posi-
15 tion to have the injuries where it was injured, but where I
16 don't know.

17 Q. It could have been anything from a person running to
18 a person struggling with someone, any one of those scenerios,
19 to have produced that effect?

20 A. It could be consistent with those scenerios, yes.

21 Q. In regard to the bullet wound that came in through
22 the back of the neck and exited through the front, I believe
23 you in response to Mr. Aronow's question, indicated that would
24 be consistent with someone laying on the ground being shot
25 from above?

1 A. And the weapon was greater than several feet away.

2 Q. I believe you said greater than a foot and a half?

3 A. I said it would have to be at least a foot and a half to
4 two foot. He mentioned three to four feet, but it was a dis-
5 tant range wound, not a close range.

6 Q. You could tell it was a distant range gunshot wound
7 from the fact you found no powder residue in regard to either
8 the wound or on the jacket itself, what was purported to be
9 worn by Kirby Bunch?

10 A. That's correct.

11 Q. If it was within that foot and a half range, you
12 would have differing levels of powder residue, I believe you
13 called it stippling around the wound?

14 A. Yes. That is the kind of pattern which is left as you
15 move away from being contacted. At contact you get the burn-
16 ing and searing or the smoke and soot. Then as you move away,
17 depending on the weapon and kind of ammunition in that weapon,
18 you lose the searing and burning. You lose the soot and
19 smoke and you start to get a pattern of stippling or tattooing,
20 which increases in size until it disappears.

21 It is at that point the wound becomes a distance
22 range gunshot wound.

23 When you testfire a given weapon using the same type
24 of ammunition, that varies from weapon-to-weapon and varies
25 from ammunition-to-ammunition.

1 Q. In your experience, a nine millimeter and .38
2 caliber weapon produces a particular pattern of stippling,
3 when testfired on certain shots onto a dummy of some sort?

4 A. Usually a white -- a specific kind of white paper that
5 is a little rough and sticky, so that the powder particles
6 there adhere to it, instead of a nice shiny smooth paper
7 where they might hit and fall away and you can't see them.

8 Q. I believe you indicated that in your opinion to a
9 reasonable degree of medical certainty, any one of the three
10 or all those three in combination, actually the wounds to
11 Kirby Bunch, were the cause of death?

12 A. What I said was it was the combination of the effects
13 from all three.

14 Given each one individually, as we discussed, the
15 significant one was the one that entered the back and
16 traveled upward into the chest and involved the major blood
17 vessels that came into the heart. It was that wound that
18 produced the significant internal blood loss, and of the three
19 was the most significant.

20 Also, you have the effects from the wound under the
21 base of the skull, and to some extent the wound in the abdomen.
22 They contributed to it.

23 The opinion of the cause of death is the effects of
24 all three.

25 Q. Not any one particular gunshot caused the death?

1 A. No.

2 Q. I believe you also indicated that the gunshot to the
3 back of the head that exited through the front could have been
4 fatal in and of itself?

5 A. If complications were to have developed. I will say the
6 same thing again. If that were the only wound, he had a po-
7 tential to survive. If the abdominal wound were the only
8 wound, he had a potential to survive. The third of the three
9 wounds, it would be my opinion was the single most lethal
10 wound. He could have expected to have died from that wound,
11 if it were the only wound that occurred.

12 Q. You say he would have been expected to die.

13 Is there a possibility he would have survived with
14 only that wound?

15 MR. ARONOW: Objection to the hypothetical possibility.
16 Anything is possible.

17 THE COURT: Mr. Leiner.

18 MR. LEINER: Judge, he is an expert and I am respond-
19 ing to his answers where he said that basically probably he
20 would have died, and I want to clarify that.

21 A. I think my answer would be that although it's possible he
22 would have survived, it is not likely and wouldn't have, in
23 my opinion, given the effects that I know of from that kind
24 of wound.

25 The wound went from the back up through the chest

1 and involved the major blood vessels around the heart.

2 Q. Now, you also responded to certain questions by the
3 prosecutor in regard to the difference in color between the
4 entrance wound and/or contact wound from the back, and the one
5 in the abdominal area below the ribcage, I believe you said.

6 What causes the difference in coloration in that
7 instance?

8 A. That is powder that carried in through the clothing and
9 deposited on the body surface. That's part of the findings
10 which allow the interpretation of those being contact wounds.

11 Q. What was cause the different one to be darker than
12 the other?

13 A. The one was presented a little harder against the surface
14 of the skin than the other. The one in the back, if you notice
15 in the jacket, there is a great amount of destruction of the
16 material of the jacket. That one was the one that had the
17 blackening around the edges, so that was not quite as hard
18 against the body, meaning the body with the clothing over it,
19 and the one on the side which was much tighter.

20 So more powder went through the material and more
21 powder was on the entrance wound, so it looks blacker.

22 Q. In one case the fabric itself may have absorbed more
23 powder, because of the way it was presented, or the way the
24 fabric was contacting the body?

25 A. I will put it in a different way on loose contact and one

1 was a hard contact. That is by definition, if you think of
2 it, loosely in contact or hardly in contact.

3 Q. So the one that passed originally through the, just
4 below the ribcage on the left side, was the one that was the
5 harder contact?

6 A. Yes.

7 Q. Doctor, briefly in regard to Mark Winston, it's
8 clear that the bullet that entered his back area on his right
9 side severed the spinal cord.

10 With regard to the other injury, you described what
11 you thought may or may not have been a defensive wound, the
12 wound to his right hand or thumb.

13 In your opinion, Doctor, that the defensive wound
14 would have been unlikely to have occurred at the same time as
15 that shot that went through the back?

16 A. That would be my opinion and that is correct.

17 Q. But to a reasonable degree of medical certainty, the
18 one you found on the right hand of Mark Winston was caused by
19 a projectile?

20 A. Yes.

21 MR. LEINER: I have no further questions, your Honor.

22 THE COURT: Any Redirect?

23 REDIRECT EXAMINATION BY MR. ARONOW:

24 Q. Are all of your opinions with respect to Cross by
25 defense, within a reasonable degree of medical certainty?

1 A. Yes, they would be, sir.

2 MR. ARONOW: Nothing further.

3 THE COURT: Anything else, Mr. Leiner?

4 MR. LEINER: No, your Honor.

5 THE COURT: Dr. Catherman, thank you very much.

6 THE WITNESS: Thank you for accommodating me.

7 THE COURT: Ladies and gentlemen, we are going to be
8 ending for the day. Now that we have concluded the testimony
9 of Dr. Catherman today, it will not be necessary for us to be
10 here tomorrow. We will resume on Tuesday, the 28th of January.

11 Counsel, anything else before I excuse the jury,
12 other than the reminder about newspaper reading?

13 MR. LEINER: No, your Honor.

14 THE COURT: The next witness is scheduled for 9:00
15 o'clock Tuesday?

16 MR. ARONOW: Yes. More than one, Judge.

17 THE COURT: You can only take one at a time.

18 Ladies and gentlemen, enjoy your weekend. We will
19 see you then Tuesday morning. If you come in at five of 9:00
20 we will be ready for you at 9:00 o'clock.

21 Just a reminder not to read any newspaper accounts
22 and to not discuss the case among yourselves in any way.
23 Enjoy your long weekend and we will see you Tuesday morning.
24 Thank you.

25 (Jury excused from courtroom.)

1 MR. ARONOW: Judge, for the sake of, I guess not
2 having to carry stuff back, and since they already have been
3 testified to, I would move to have the photographs which have
4 been marked S-2 through 13 of Kirby Bunch's autopsy, admitted
5 into evidence, and S-14 through 18, Mark Winston's autopsy,
6 admitted into evidence, as well as S-19 and 20, which are the
7 two jackets.

8 THE COURT: As far as the photos, State's Exhibits
9 2 through 13 inclusive, Mr. Leiner, other than the objection
10 which you expressed earlier, is there any other objection that
11 you have to the admissibility of S-2 through S-13?

12 MR. LEINER: No, your Honor. I don't object to any
13 of the pictures involving the jacket, S-4, 5 and 6, or the
14 jacket itself, S-19. My objection remains as to as they were
15 previously of the particular photographs.

16 THE COURT: The Court has previously considered that
17 objection and overruled it. Therefore, the photos 2 through
18 13 will be admitted, and there is also no objection to 19, or
19 there is no objection to 19, so S-19, which is Kirby Bunch's
20 jacket, will be received in evidence.

21 With respect to the photos marked for identification
22 S-14 through 18, which are the Mark Winston autopsy photos,
23 is there any objection?

24 MR. LEINER: Yes, your Honor. My objections remain
25 the same for each of the photos in regard to Mark Winston.

1 There is one particular photograph, S-18, that shows
2 a photograph of Mark Winston laying on the base of his face
3 area. I don't see how that has any probative value.

4 MR. ARONOW: Certainly, Judge, it is the intention
5 of the State to have these people identified by family members
6 or other people who know them, and, Judge, it's the State's
7 intention to have other testimony with regard to the facial
8 photograph.

9 THE COURT: As far as the autopsy photographs con-
10 cerning Mark Winston are concerned --

11 MR. ARONOW: They are far less inflammatory.

12 THE COURT: S-15 is the wound, the wound to the back.
13 It is hard to tell what part of the body it even is. Just a
14 closeup of that, you can't tell which part of a leg or back or
15 what it is. That one I agree with you is not inflammatory at
16 all, other than the fact it is a bullet wound which is small
17 in diameter.

18 S-14 does show the back of his head all the way down
19 to his waist, and does show the wound, but I agree with you it
20 is not inflammatory, other than the fact it shows a bullet.

21 S-16 is the hand showing the damage to the fingernail
22 and thumb.

23 S-17 is the bullet.

24 The Court, therefore, agrees that S-15, S-14 and S-16,
25 are not especially inflammatory and, therefore, I find they are

1 more probative than prejudicial. They will be admitted.

2 S-18 is a somewhat different issue. It doesn't show
3 any bullet wound. It just shows the upper chest area and the
4 face of Mark Winston as he lies on the table of the morgue.

5 Tell me again why you think this is probative.

6 MR. ARONOW: Judge, because certainly Dr. Catherman
7 testified that these people were identified to him, but the
8 State's burden of proof, and we already admitted S-2 in
9 Evidence, S-2 is merely a photograph of Kirby Bunch's face in
10 a similar fashion, and I don't see what difference there is
11 between the photograph S-18 and the photograph S-2.

12 MR. LEINER: Well, your Honor, the reasoning is
13 there is no difference between S-2 and S-18, I object to that
14 along with the other photograph. I don't see any purpose or
15 probative value in regard to showing a picture of someone's
16 face lying on an autopsy table. I don't see how it has any
17 probative value.

18 But people, if they come in and testify, they will
19 testify to the fact they went down to the morgue and identified
20 those bodies. The doctor already testified people have
21 identified the bodies.

22 Therefore, connecting the photograph, to have the
23 face laying on the table, I don't see how it has any probative
24 value. It's clearly just intended to have the jury constantly
25 reminded there is a dead body in front of them, when that is

1 not the issue.

2 We are not disputing there are dead bodies in the
3 case. We are disputing who did it.

4 MR. ARONOW: That is not clearly not an issue,
5 Judge. But for that photograph, you wouldn't have any photo-
6 graphs of the face of Mark Winston. You wouldn't know whose
7 bullet wound injuries those were.

8 THE COURT: Except that there is no whole body view,
9 you are right. S-18 shows the face, but there is no way to
10 be certain S-18 is the head that belongs to the other photo.

11 MR. ARONOW: Except for Dr. Catherman's testimony.

12 THE COURT: Dr. Catherman testified that he relied
13 upon the identification by Barbara Bunch.

14 MR. ARONOW: No. That was Kirby Bunch.

15 THE COURT: I don't know who he said identified Mark
16 Winston. I don't think he was asked.

17 MR. ARONOW: He may not have been.

18 THE COURT: He was not asked. I agree with the
19 defendant that S-18 and S-2, I will reconsider my opinion
20 about S-2, and I believe S-2 and S-18 are more prejudicial than
21 they are probative. Neither photograph shows the location of
22 a gunshot wound. Neither photograph connects the wound for
23 the chest, back and neck to the head. In other words, it is
24 not as though the photo of the head in any way shows the other
25 wound to the body.

1
2 Therefore, the photograph has minimal probative
3 value and is far more prejudicial.

4 MR. ARONOW: Maybe not at this time, Judge, but it
5 is the State's intention to show the photograph to witnesses
6 who they can identify who Kirby Bunch and Mark Winston were.

7 THE COURT: You can move them in at that time.
8 Given the evidence as it currently exists, S-2 will remain for
9 identification and will not be received, and likewise S-18.

10 MR. ARONOW: Fine.

11 THE COURT: As far as 19, there was no objection.
12 What about 20, which is the parka belonging to Mark
13 Winston?

14 MR. LEINER: No objection, your Honor.

15 THE COURT: That will be received in evidence as
16 well. Everything is in other than S-2 and S-18.

17 MR. ARONOW: I will give them to Walt to mark.

18 THE COURT: Is there anything else then for today?

19 MR. ARONOW: No, your Honor.

20 MR. LEINER: No, your Honor.

21 THE COURT: Very good.

22 MR. LEINER: 9:00 o'clock on Tuesday, your Honor?

23 THE COURT: Yes.

24 (Exhibits S-3, S-4 to S-17, S-19 and S-20 marked
25 for Identification, marked in Evidence.)

(The proceedings were concluded for the day.)

CERTIFICATION

I, Walter F. Flynn, C.S.R., License Number 349, 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.

WALTER F. FLYNN, C.S.R.
Official Court Reporter
Camden County Courthouse
Camden, New Jersey

Date: _____

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