

A-2058-9774

A-2058-0374

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. :

Trial FILED  
APPELLATE DIVISION  
JUN 30 2004

*Walter F. Flynn*  
CLERK

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

Date: February 4, 1997

B E F O R E:

HONORABLE LINDA G. ROSENZWEIG, J.S.C.  
And A Jury

TRANSCRIPT ORDERED BY:

HAROLD KATZ, ESQ.

APPEARANCES:

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

ROBERT H. LLINER, ESQ.  
For the Defendant

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

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THE COURT: Counsel, before we resume this morning and before we bring the jury into the courtroom, there are a few issues that should be resolved.

We had the opportunity to discuss at some length in Chambers, and I discussed them with each of you individually on Friday. Before we actually bring any members of the panel in, let me indicate for the record what it is that I think we should do and what occurred.

On Thursday we concluded this trial at approximately 10:00 o'clock in the morning. Some time between 10:00 and 11:00 I was informed by Judge Natal, who is in the midst of a homicide trial, that he believes four jurors from this trial were watching that trial.

I asked the Sheriff's Officer to go upstairs to try and bring them down here, so that I could speak to them on the record individually, and ask them not to continue to watch the trial.

In the process three of the four apparently left the building and did not ever return to that courtroom, after the break in that trial. One of them did, however, and that is the juror seated in Seat Number 1, who is Juror Number 138.

At that point I asked that Juror Number 1 be brought in this courtroom. I did not speak to him in any method, other than on-the-record, and on the record I told Juror Number 1 that although I had no authority and no right to direct

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1 him not to continue watching that trial, it was certainly my  
2 strong preference that he not watch it.

3 He did not respond verbally to my request. He just  
4 stared at me, in effect kept looking at me, but he did not  
5 indicate verbally whether he would or would not continue  
6 watching that trial.

7 The other jurors who it was reported to me were  
8 watching some portion of that trial, were Juror Number 281 in  
9 Seat 15, as well as Juror Number 343 in Seat 10, and there was  
10 a fourth juror who it was not possible for the Sheriff's  
11 Officer to remember that person's seat number. Perhaps we can  
12 ascertain that today. We will have to do that.

13 What I would be inclined to do under the circum-  
14 stances is have each of those jurors come in individually.  
15 I would explain to each one that he or she did nothing wrong  
16 by watching that trial, that I had not given any instruction  
17 to them on that subject and, therefore, they should not con-  
18 sider my question to them about a trial as any type of  
19 criticism, because clearly they did nothing wrong.

20 The questions I would ask each of them would be how  
21 did they find out there was a homicide trial going on in  
22 another courtroom, what did they see in that courtroom, did  
23 they talk among themselves or with anybody else about what  
24 they saw and heard, what impact, if any, would that trial have  
25 on the jurors' ability to be fair and impartial in this case.

1 Counsel, are there any additional questions that  
2 either of you would like the Court to ask of these jurors,  
3 and is there any objection or comment with respect to the  
4 information that I have given you and how it is I believe we  
5 should proceed?

6 Mr. Aronow?

7 MR. ARONOW: Your Honor, when you indicated bring  
8 them in, I take it you mean individually in Chambers?

9 THE COURT: Individually.

10 MR. ARONOW: In Chambers with counsel present and  
11 the Court Reporter, not in the courtroom?

12 THE COURT: That hasn't been decided. It is an open  
13 public courtroom. I would have to hear a reason why I would  
14 not do it in Chambers.

15 MR. ARONOW: Number One, Judge, I think that is the  
16 appropriate thing, to do that. We are not here to chastise  
17 these individuals. We are here to find out in private  
18 basically whether anything they saw would have influenced them.

19 The added part of being in a courtroom here with  
20 everyone else puts added pressure on them. I think we are more  
21 likely to get a response from them for the reasons why your  
22 Honor wanted to ask certain questions from them, if we have a  
23 conference with them on the record in Chambers with counsel  
24 present.

25 THE COURT: Well, there are certain competing con-

1 siderations. One is that proceedings involving trials are  
2 open to the public and are open proceedings. I have confi-  
3 dence that I will be able to speak to these people and not  
4 put them on the spot.

5 This is not the first time this has happened. I  
6 don't want to say it is not the first time I had jurors go to  
7 another courtroom. This is the first time I am aware that it  
8 happened during my tenure on the Bench.

9 Many times I have situations where there has been  
10 some inadvertent reading of a newspaper, and I had to question  
11 jurors individually, see if they were impacted. I have done  
12 it always in open court, where I believe it should be done.

13 I believe there are strong reasons why proceedings  
14 involving the Court and involving the trial should be conducted  
15 in public.

16 Mr. Leiner.

17 MR. LEINER: I have no objection to the manner in  
18 which your Honor wishes to proceed this morning, in regards to  
19 the questioning of the jurors.

20 THE COURT: Very good. We need to be off-the-  
21 record one second.

22 (Discussion off-the-record.)

23 FOLLOWING COLLOQUY AT SIDEBAR:

24 THE COURT: Another issue we discussed in Chambers  
25 is the fact that throughout the trial, at least part of it,

1 there has been an elderly gentleman who does not seem to be  
2 related to any of the witnesses to this case, who has been in  
3 the courtroom.

4 Mr. Leiner, you informed me that you saw him  
5 socializing with one of the jurors, which would lead to possi-  
6 bly that he is related to her in some way, maybe her husband.  
7 He is in the courtroom now.

8 I don't have the right to ask him to leave the  
9 courtroom. Therefore, I am going to reconsider what I said  
10 earlier and I will speak to the jurors in camera on the record.

11 Also, I will speak with them, ask him who he is,  
12 who he is related to, and whether he has discussed what he  
13 has seen during this trial with his relative. I may as well  
14 do it now.

15 In the third row there is a gentleman wearing a gray  
16 coat with black collar and striped sweater.

17 Sir, I don't mean to single you out or embarrass you  
18 in any way. We have noticed that you have been present in the  
19 courtroom during portions of the trial.

20 Are you related in some way to any member of the  
21 jury panel?

22 A VOICE: Yes.

23 THE COURT: Can you tell us what the seat number is  
24 of the person you are related to or show me the seat?

25 A VOICE: Counting from left to right, the fourth

1 seat.

2 THE COURT: On the front or back row?

3 A VOICE: Front row.

4 THE COURT: You are including the metal chair, the  
5 makeshift chair?

6 A VOICE: No. Excluding the first chair. She would  
7 be in the fourth chair.

8 THE COURT: That would be, for our purposes, Seat  
9 Number 5?

10 A VOICE: Yes.

11 THE COURT: The way you are counting is Seat Number  
12 4. That is Juror Number 414. That juror is related to you?  
13 She is your wife?

14 A VOICE: My wife.

15 THE COURT: You have been present in the courtroom  
16 at some time when the jury has not been in the courtroom. For  
17 example, the discussion we just had concerning some of the  
18 jurors watching the trial upstairs has occurred while you have  
19 been in the courtroom.

20 If you come forward a little more, you can hear me a  
21 bit better.

22 A VOICE: All right.

23 THE COURT: You can be seated right there between the  
24 two attorneys, if you would. I am going to ask you whether  
25 you have seen anything that has occurred when the jury hasn't

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been in the courtroom, or have you left the courtroom during those times? Do you recall one way or the other?

A VOICE: It was sporadic. If I wanted to get a cup of coffee, I got a cup of coffee. If I wanted to go out and read, I read. It didn't matter whether the panel was here or not.

THE COURT: You are absolutely right. I want to emphasize this is an open public courtroom. You heard me say that a few moments ago.

A VOICE: The primary reason is I don't like my wife traveling by herself, and I take her in the morning, I stay here all day with her, and take her home. That's why I am in this court.

THE COURT: As I indicated a second ago, you have absolutely every right to do that. You have every right to watch this trial. You have every right to watch any trials. These are open public courtrooms.

My only concern, the only reason I am even talking to you about it, is I wanted to be sure that you and she have not discussed the trial in any way.

A VOICE: No.

THE COURT: You have not?

A VOICE: No.

THE COURT: You are absolutely sure about that?

A VOICE: Positive.

1 THE COURT: If you saw things that occurred when  
2 the jury was not in the room, did you discuss any of these  
3 things with your wife?

4 A VOICE: No.

5 THE COURT: Counsel, any further questions you would  
6 like to ask this gentleman?

7 MR. ARONOW: Nothing.

8 MR. LEINER: No, your Honor.

9 THE COURT: Thank you very much. You can continue  
10 being seated where you are. You have every right to remain  
11 in the courtroom. Thank you for speaking to me.

12 A VOICE: Thank you.

13 THE COURT: I am going to begin speaking to the  
14 first of the jurors, who we know some of them are, and in the  
15 meantime we can hopefully ascertain the identity of the fourth  
16 person. We are trying to find the sheriff's officer who  
17 brought this to my attention last week.

18 If we can ask Don to bring around the jurors, we  
19 will go in seat order. I already spoke to Juror Number 1,  
20 but I did not ask him whether he was influenced in any way.  
21 Why don't we start with the juror in Seat Number 1, Juror  
22 Number 138.

23 Counsel, can I ask you both to please approach for  
24 a second.

25 MR. ARONOW: Yes.

1 (Juror enters courtroom.)

2 THE COURT: Good morning. We will be with you in  
3 one second.

4 FOLLOWING COLLOQUY AT SIDEBAR:

5 THE COURT: One consequence of speaking to the  
6 jurors in my office is that I make it a practice not to have  
7 defendants in the back area, and not to have defendants in my  
8 office.

9 The defendant, I understand, is not willing to waive  
10 his right to be present during these interviews or voir dire  
11 sessions with the members of the jury.

12 Under the circumstances, I am going to return to my  
13 original decision and I am going to do it in open court. I  
14 don't see a reason to remove people from the courtroom. It  
15 is an open public courtroom and I don't see any prejudice in  
16 here. I don't believe there is any prejudice to either side  
17 resulting from keeping people in the courtroom.

18 I believe these members of the jury can conduct  
19 themselves appropriately and give me honest answers, whether  
20 there are spectators in the courtroom or not. I will proceed  
21 in open court.

22 FOLLOWING PROCEEDINGS IN OPEN COURT:

23 THE COURT: Juror Number 1, good morning. You and  
24 I had the opportunity to chat on Thursday briefly, and again  
25 I want to emphasize to you I do not mean to put you on the

1 spot. I will be speaking to the other jurors as well who  
2 were upstairs in Judge Natal's courtroom, and I want to re-  
3 emphasize what I said to you before, that you did absolutely  
4 nothing wrong by being up there.

5 However, because I spoke to you, just the two of us  
6 on Thursday without the attorneys being present, I wanted to  
7 just ask you some followup questions that I didn't ask at that  
8 time.

9 JUROR NUMBER 1: Okay.

10 THE COURT: The first thing I was interested in  
11 knowing is how you were aware there was even a homicide trial  
12 going on in another courtroom.

13 How did that come to your attention, if you remember?

14 JUROR NUMBER 1: Well, I wasn't really aware of the  
15 particulars of that trial, but my wife is a juror up there.

16 THE COURT: Your wife is a juror up there? That is  
17 an amazing coincidence, both of you are serving on juries at  
18 the same time.

19 Can you tell me what you actually saw, when you were  
20 in that courtroom, if you can describe it in a general way?

21 JUROR NUMBER 1: To tell you the truth, I'm not --  
22 I don't really even remember anything. I know it was the  
23 testimony of the prosecution witnesses.

24 THE COURT: Was there anything about what you saw  
25 that would have any impact on your ability to be fair and

1 impartial in this case?

2 JUROR NUMBER 1: I don't think so.

3 THE COURT: Is that something that you can be certain  
4 about?

5 JUROR NUMBER 1: Yes, I'm pretty certain about that.

6 THE COURT: I detected a slight note of hesitation  
7 in your voice. What we are concerned about here is that there  
8 is an absolutely one hundred percent fair and impartial trial  
9 to both the State and to the defendant.

10 If there is any concern about something that you  
11 saw, now would be the time to tell me.

12 Again, you did nothing wrong. If there is any  
13 problem that results from your being up there, maybe you can  
14 be a little more specific.

15 JUROR NUMBER 1: No, there wasn't anything that I  
16 saw or heard up there that would influence me in this case.

17 THE COURT: Did you talk to any of the other three  
18 jurors that were with you upstairs, any of the other three  
19 from this trial?

20 JUROR NUMBER 1: Since then? What do you mean?

21 THE COURT: Since then did you talk to them about  
22 what you saw up there?

23 JUROR NUMBER 1: No.

24 THE COURT: Counsel, anything further?

25 MR. ARONOW: Nothing further.

1 MR. LEINER: Yes. Just one question, your Honor.  
2 Sir, did you ever talk to your wife about the trials  
3 going on, your trial and her trial? Did you ever compare  
4 notes, anything like that?

5 JUROR NUMBER 1: Maybe some general questions like,  
6 you know, she mentioned it was a murder trial.

7 THE COURT: Beyond that, though, did you have any  
8 discussion about the types of testimony in that trial versus  
9 the types of testimony here?

10 JUROR NUMBER 1: No.

11 THE COURT: Anything further?

12 MR. LEINER: No, your Honor.

13 THE COURT: Sir, I am going to be speaking with the  
14 other three. Then we will be resuming this trial in full.  
15 Thank you very much for speaking with us.

16 JUROR NUMBER 1: Okay.

17 (Juror Number 1 excused from courtroom.)

18 THE COURT: I suggest we make a determination on a  
19 one-by-one basis, rather than afterwards, so our memories are  
20 clear as to what the person said.

21 Is there any objection, Mr. Aronow, on the part of  
22 the State to Juror Number 1 continuing?

23 MR. ARONOW: None at all.

24 THE COURT: Mr. Leiner?

25 MR. LEINER: Yes, there is, your Honor.

1 THE COURT: I will hear you.

2 MR. LEINER: Your Honor, it is clear that this  
3 gentleman's wife, and it is an amazing coincidence, I am not  
4 implying anything unfair is going on there, given his answers  
5 he was pretty sure that it wouldn't affect him concerns me.

6 He also concerns me in regard to his lack of response  
7 to what he saw, and also the fact that it appears as though  
8 there was some discussing between him and his wife about the  
9 trials. He characterized those as being general, but I am  
10 concerned in this case we have to err on the side of caution  
11 and precaution, that these conversations, we don't just have  
12 him going upstairs, but we have his wife sitting on the other  
13 jury and they have a conversation in a general way.

14 With regard to what he saw and his responses to your  
15 Honor's questions, would it affect his ability to be fair and  
16 impartial, his response was not as strong as I would have  
17 hoped it would have been.

18 Therefore, I am concerned about this juror's ability  
19 to maintain his fairness and impartiality during the deliber-  
20 ation.

21 THE COURT: Your objection is certainly noted and  
22 your request is noted. I am going to hear from the other  
23 three and then I can rule on any objections and request for  
24 disqualification for cause. I will handle those in the  
25 aggregate. You have made your objection clear.

1 We will bring in the next juror, the seat number at  
2 this point is Number 10.

3 In the meantime, Mr. Leiner, I will give you a copy  
4 of the proposed verdict sheet.

5 MR. LEINER: Thank you, your Honor.

6 (Juror enters courtroom.)

7 THE COURT: Good morning.

8 JUROR NUMBER 10: Good morning.

9 THE COURT: I wanted to speak to you individually  
10 about something from last Friday. Before I do that, I want to  
11 emphasize to you strongly as I can you have done absolutely  
12 nothing wrong. I don't want you to feel because you are com-  
13 ing in individually we think you did anything wrong. Clearly  
14 you did not.

15 What I am referring to is that one of the sheriff's  
16 officers who is in this courtroom happened to also be assigned  
17 to Judge Natal's courtroom on Thursday, because after we ended  
18 about 10:00 o'clock the sheriff's officers are very efficient,  
19 and when one courtroom is not in session they go up to another  
20 courtroom.

21 In that process he became aware some of the jurors  
22 from this trial were watching some portion of the trial that  
23 was being conducted up in Judge Natal's courtroom, which is a  
24 homicide trial.

25 He brought to my attention that you and I think three

1 others were seated upstairs for some portion of that. I wanted  
2 to speak to you individually, just to see whether there is any  
3 impact in having watched that trial on this trial.

4 JUROR NUMBER 10: Oh, no, no.

5 THE COURT: Can you tell me how it was you learned  
6 there was a trial up there?

7 JUROR NUMBER 10: One of the other jurors that's  
8 sitting here, Michael, Number 1 --

9 THE COURT: The one in Seat 1?

10 JUROR NUMBER 10: Yeah. His wife is a juror in  
11 that trial.

12 THE COURT: So he mentioned this to some of you?

13 JUROR NUMBER 10: That he was going down.

14 THE COURT: That he was going up?

15 JUROR NUMBER 10: Up, yeah, and we decided that  
16 would be nice, to watch something when you are not a juror.  
17 We weren't a juror on that.

18 THE COURT: What did you actually see, if you can  
19 tell us? What was going on when you were up there?

20 JUROR NUMBER 10: I don't know who was talking.  
21 There was a gentleman talking.

22 THE COURT: He was a State witness?

23 JUROR NUMBER 10: Yes. We saw two defendants there.

24 THE COURT: Two defendants?

25 JUROR NUMBER 10: Yeah, and it was a murder trial.

1 There was a lot of names going on, and I don't understand the  
2 names, who was who, so it was hard to follow.

3 THE COURT: You couldn't tell because you saw such  
4 a brief portion of it?

5 JUROR NUMBER 10: Right.

6 THE COURT: Were you present during the Judge's con-  
7 versations with the attorneys and the defendant, that might  
8 have occurred outside the presence of the jury?

9 I don't know if there was any such conversation.

10 JUROR NUMBER 10: No. We had to leave.

11 THE COURT: Because they were aware you were from  
12 another trial at that point?

13 JUROR NUMBER 10: I don't know Maybe.

14 THE COURT: Did you talk to any of the other three?  
15 Am I right, there were four of you from the trial?

16 JUROR NUMBER 10: Right.

17 THE COURT: Did the four of you talk either then or  
18 afterwards about what you had seen up there?

19 JUROR NUMBER 10: We just said it was hard to follow  
20 because we didn't know the names.

21 THE COURT: Would anything that you saw in that  
22 trial have any impact on your ability to be fair and impartial  
23 in this case?

24 JUROR NUMBER 10: No.

25 THE COURT: Is that something you are a hundred per-

1 cent confident of?

2 JUROR NUMBER 10: Yes.

3 THE COURT: Counsel, any additional questions that  
4 either of you would like to ask?

5 This is the juror in Seat Number 10, Juror Number  
6 343. Any additional questions either of you would like to  
7 ask her?

8 MR. ARONOW: No, your Honor.

9 MR. LEINER: No, your Honor.

10 THE COURT: If I could ask you not to discuss this  
11 issue with the other jurors, when you get back there.

12 JUROR NUMBER 10: Okay.

13 THE COURT: Very good. We will be able to resume  
14 the trial in a little while. Thank you for coming in.

15 JUROR NUMBER 10: Thank you.

16 (Juror Number 10 excused from courtroom.)

17 THE COURT: Bring in the juror in Seat Number 4,  
18 which is Juror Number 412.

19 While waiting for her to come in, Mr. Aronow, are  
20 there any objections the State has to Juror Number 343 in  
21 Seat 10 continuing?

22 MR. ARONOW: Absolutely not.

23 THE COURT: Mr. Leiner?

24 MR. LEINER: No, your Honor.

25 (Juror enters courtroom.)

1 THE COURT: Have a seat in whichever chair you would  
2 like. Good morning.

3 JUROR NUMBER 4: Hi.

4 THE COURT: I want to speak to you individually, and  
5 I am speaking to a few other jurors individually as well,  
6 about something that happened on Thursday.

7 Before I go any further, let me emphasize that you  
8 did absolutely nothing wrong and nobody in this courtroom is  
9 even suggesting or thinking you did anything wrong.

10 We learned from one of the sheriff's officers that  
11 one of the jurors seated in this trial after we ended early  
12 on Thursday, I should say some of the jurors went upstairs to  
13 another courtroom to watch a homicide trial going on there.

14 I had not given you any instruction about that. You  
15 were absolutely free to do that. It is an open public judicial  
16 system and you are free to do that.

17 The only reason I am speaking to you individually  
18 is because I want to be sure that you can still be fair and  
19 impartial in this case. In other words, we want to be sure  
20 that nothing you saw there would interfere with your ability  
21 to decide this case, based only on the evidence.

22 JUROR NUMBER 4: No.

23 THE COURT: If I could start by asking you, how did  
24 you know that there was a homicide trial going on upstairs?  
25 How did that come to your attention?

1 JUROR NUMBER 4: By one of the jurors, because his  
2 wife is serving.

3 THE COURT: The juror that sits in Seat Number 1?

4 JUROR NUMBER 4: Yeah, Number 1.

5 THE COURT: Can you tell me what you saw, when you  
6 went up in that courtroom?

7 JUROR NUMBER 4: I just saw at the time it was, I  
8 believe, a detective or something on the stand, and the pro-  
9 secutor was asking him questions, and I was able to see there  
10 was a weapon there, and the jury, and there was a bunch of  
11 little kids in the back behind me. Looked like probably family  
12 that was there. That was it.

13 THE COURT: Did you draw any inferences or any  
14 assumptions about that trial?

15 JUROR NUMBER 4: No. I didn't hear that much of it.  
16 We were only there about fifteen minutes.

17 THE COURT: You were only there fifteen minutes?

18 JUROR NUMBER 4: Yes.

19 THE COURT: Did you have any discussion with the  
20 other three people that you were with, the other three jurors  
21 from this trial about that?

22 JUROR NUMBER 4: No. I just walked out because they  
23 wanted to break, because they told us to please leave the  
24 courtroom. I just said, I went like that to some of the other  
25 jurors, and that was it. Then we talked about what we were

1 doing afterwards, as far as leaving and doing what next. That  
2 was it.

3 THE COURT: What impact, if any, would that trial  
4 have on your ability to be fair and impartial in this trial?

5 JUROR NUMBER 4: What impact?

6 THE COURT: Yes.

7 JUROR NUMBER 4: None.

8 THE COURT: Counsel, any additional questions either  
9 of you would like the Court to ask?

10 MR. ARONOW: No.

11 MR. LEINER: No, your Honor.

12 THE COURT: We will have you go back into the jury  
13 room, and we will be resuming the trial.

14 Do you need water?

15 JUROR NUMBER 4: I am just getting over a cold. I  
16 just had some water, thank you.

17 THE COURT: If you need anything else, I will be  
18 glad to give it to you.

19 I will be speaking with the other jurors in a moment.  
20 After that we will be resuming the trial. If I can ask you  
21 not to discuss with any of the other three, and for that  
22 matter with anybody what we have been talking about here.

23 JUROR NUMBER 4: Sure.

24 THE COURT: Thank you very much. We will be with  
25 you in a little while.

1 (Juror Number 4 excused from courtroom.)

2 THE COURT: Counsel, as to that juror, Juror Number  
3 412 in Seat Number 4, Mr. Aronow, does the State have any  
4 objection to that juror continuing?

5 MR. ARONOW: Absolutely not.

6 THE COURT: Mr. Leiner?

7 MR. LEINER: Not at this time, your Honor.

8 THE COURT: Then we will bring in the fourth juror,  
9 who is seated in Seat Number 15 and is Juror Number 281.

10 (Juror enters courtroom.)

11 THE COURT: Good morning. Have a seat right there.  
12 Thank you for coming in.

13 I want to speak to you individually. I have spoken  
14 to three other people individually about Thursday. Before I  
15 go any further, let me emphasize to you you have done nothing,  
16 absolutely nothing wrong. Nobody thinks you did anything  
17 wrong.

18 We are aware that some of the jurors from this trial  
19 watched a small portion of a trial upstairs. As I said a  
20 second ago, you have every right to do that. When you are  
21 discharged from this courtroom, you have the right to go and  
22 watch any other trial. There is no problem with that.

23 The only reason we are speaking to you individually  
24 is just to make sure that nothing that you saw up there would  
25 have any impact on this trial.

1 JUROR NUMBER 15: No.

2 THE COURT: If I can ask you, how did you become  
3 aware there was another homicide trial going on?

4 JUROR NUMBER 15: One of the other jurors, his wife  
5 was serving on that jury.

6 THE COURT: That is the juror seated in Seat 1?

7 JUROR NUMBER 15: Right.

8 THE COURT: What did you see, when you were up in  
9 that courtroom?

10 JUROR NUMBER 15: There was somebody -- We couldn't  
11 tell -- We got in kind of in the middle. We weren't there  
12 very long. They broke about 11:00 and we left. I was look-  
13 ing around to see if they were the same kind of people. They  
14 didn't have a Court Reporter. They had a TV and the prosecutor  
15 was speaking. I assume it was someone from law enforcement.  
16 I didn't notice when we came in who that was, but they were  
17 presenting evidence and things like that.

18 THE COURT: Did you talk among the four of you,  
19 either then or another time about what you saw up there?

20 JUROR NUMBER 15: Not in any detail. Just it was  
21 different because they didn't have a Court Reporter, it was  
22 being recorded.

23 THE COURT: That is a different technology. They  
24 have what is called a video courtroom up there.

25 JUROR NUMBER 15: We noticed that, but that was

1 pretty much it. It was kind of dull. We were there about  
2 twenty minutes.

3 THE COURT: Did you discuss anything about the sub-  
4 stance of that trial at all?

5 JUROR NUMBER 15: No. We didn't know what was going  
6 on. I know there were two defendants instead of one. Every-  
7 one had their own attorney, but that was it.

8 THE COURT: What impact, if any, would that trial  
9 have on your ability to be fair and impartial in this trial?

10 JUROR NUMBER 15: Nothing. It was just to see what  
11 was going on up there. It was nothing.

12 THE COURT: Counsel, are there any additional ques-  
13 tions either of you would like the Court to ask of this juror?

14 MR. ARONOW: No, your Honor.

15 MR. LEINER: No, your Honor.

16 THE COURT: We will be starting up with the trial  
17 in a few moments. I want to talk to the attorneys. If you  
18 refrain from talking to anyone else about this conversation  
19 we just had, I would appreciate it.

20 JUROR NUMBER 15: Okay.

21 THE COURT: I want to emphasize you did nothing  
22 wrong. Thank you for coming in and speaking with us.

23 (Juror Number 15 excused from courtroom.)

24 THE COURT: Mr. Aronow, any objections on the part  
25 of the State to Juror Number 281, Juror 15 continuing this

1 trial?

2 MR. ARNOW: None whatsoever.

3 THE COURT: Mr. Leiner?

4 MR. LEINER: No specific objection, Judge.

5 THE COURT: At this time there has only been an  
6 objection to one of the jurors continuing and that is the  
7 juror in Seat Number 1, Juror Number 138.

8 We do have three alternate jurors, and I would ex-  
9 pect the trial will end either today or tomorrow.

10 I am inclined to agree this juror should be excused,  
11 largely for the reasons stated by the defendant. I agree  
12 there was equivocation in that juror's voice, when I asked  
13 him if he thought he could be fair and impartial in this  
14 trial.

15 As a matter of fact, I noted it when I spoke to him.  
16 I said: You seem to be hesitating a little bit.

17 The fact his wife is a juror in that other trial  
18 certainly leads to the possibility that there was some level  
19 of the discussion, in the very fact he knew she was serving on  
20 a homicide trial, which leads to the possibility there was  
21 further discussion.

22 He said there was not, but given his equivocation  
23 I believe the safest course is to excuse him for cause. I am  
24 not making a finding that he did anything improper. The only  
25 thing I am making is that the possibility exists and, perhaps,

1 it was just his tone of voice and how he spoke, and that might  
2 be very, very innocent, but I did notice a clear difference  
3 between the degree to which the other three assured us about  
4 their impartiality and the tone and the demeanor of that  
5 juror.

6 There was a marked difference, which is why I wanted  
7 to see all four.

8 MR. ARONOW: The only thing I would like to indicate  
9 is he was the only juror that was twice called on the carpet  
10 by the Court, so we are dealing with the spontaneity of the  
11 other three jurors not knowing what is going to happen, until  
12 they were brought in here, whereas he was contemplating this  
13 whole thing over the weekend, because he is the only person  
14 called by your Honor on Thursday without anyone else being  
15 present.

16 I don't think his tone of voice or anything indicates  
17 anything with respect to his ability to be fair and impartial,  
18 and I would like to indicate that for the record. I under-  
19 stand your Honor will make a ruling based upon what your Honor  
20 feels is appropriate, but I would like to place that on the  
21 record.

22 THE COURT: I didn't call him on the carpet today  
23 or on Thursday. What I did on Thursday was simply tell him  
24 he has every right to watch another trial, and I asked him  
25 simply to not go back up there. I didn't talk to him about

1 what he was seeing, if it had any impact. I believed those  
2 questions were best reserved for today.

3 The only thing I talked to him about, it is on the  
4 record, I asked him not to go back there, and I made no  
5 attempt to extract a commitment from him. When he didn't  
6 answer me, I left it at that. I didn't say anything further.

7 MR. ARONOW: I am not referring to your Honor's  
8 intentions in any way. I am saying how someone may perceive  
9 it as a juror.

10 THE COURT: You may be right. Maybe that was his  
11 tone here, because he was spoken to twice. There is no way  
12 to tell. All I can do is judge him by the way he appears here,  
13 and I believe the more cautious and prudent approach would be  
14 to excuse him for cause.

15 MR. LEINER: In addition, your Honor, I would like  
16 to indicate to the Court that my concerns were first alerted  
17 when your Honor indicated he had a non-response to you on  
18 Thursday. That was the first indication I had that he was  
19 concerned about what had happened.

20 Maybe it was just that feeling people get of: What  
21 did I do wrong? However, there was that non-response and then  
22 also the equivocation today.

23 THE COURT: Let me make things clear. I didn't  
24 actually ask him a question. I stated my own preference. I  
25 said to him that I prefer that you not go back up there. I

1 don't have the right to tell you not to, but I prefer that you  
2 not go there. Those were pretty much my words. I didn't  
3 state it in a question form, which is why he didn't give me  
4 an answer, perhaps.

5 I am going to bring Juror Number 1 back into the  
6 courtroom at this time, and he will be excused.

7 The husband of the juror in Seat Number 5, you have  
8 been present during these proceedings. I just want to ask you  
9 again, I know you have not discussed anything with your wife,  
10 I just want to make sure that you will continue.

11 A VOICE: I am having a tough time hearing.

12 THE COURT: You told me you haven't discussed any-  
13 thing with your wife. I want to be sure that you will not  
14 discuss anything with her at any time during the trial and  
15 during the deliberations.

16 Can I have that commitment from you?

17 A VOICE: Certainly.

18 THE COURT: Thank you very much.

19 (Juror Number 1 enters courtroom.)

20 THE COURT: Juror Number 1, in considering your  
21 answers and speaking to the attorneys, I am going to excuse  
22 you from the trial. Just because your wife is on another homi-  
23 cide trial doesn't mean that you discussed it. I have no rea-  
24 son to think you did.

25 Under the circumstances, I think the most prudent

1 course would be to excuse you at this time.

2 JUROR NUMBER 1: All right.

3 THE COURT: You are excused. You had a one-in-five  
4 chance anyway, yes, a one-in-five chance of being an alternate  
5 anyway. I would expect this may come as a disappointment to  
6 you, and I am sorry for that. I do not want you to take this  
7 personally. You did nothing wrong, but to be on the safe  
8 side, given the unusual circumstance that exists, and I am  
9 going to be excusing you with our thanks for participating.  
10 Thank you very much.

11 MR. ARONOW: Judge, one thing. Is he going back to  
12 the jury panel?

13 THE COURT: I am going to go out of the courtroom  
14 and tell the Court Officer not to let that juror talk to any-  
15 body else.

16 MR. ARONOW: I don't mean that. I mean just the  
17 appearance.

18 THE COURT: Is there any further comment from either  
19 side or further argument respecting the colloquy with the  
20 jurors that we just had?

21 MR. LEINER: Only to place on the record my general  
22 concern about what has been taking place, your Honor, and I  
23 think the three jurors remaining that were interviewed gave  
24 unequivocal responses, and luckily it appears as though they  
25 were not able to see very much of that trial and, therefore,

1 it doesn't appear from their responses that there is that  
2 taint.

3 I do always have that concern, that something else  
4 subconsciously may be at work, but there has been no showing  
5 of that through the questioning.

6 THE COURT: Thank you. The State has rested.  
7 Are there going to be any defense witnesses, Mr.  
8 Leiner?

9 MR. LEINER: No, your Honor.

10 THE COURT: At this point, Mr. Copling, you have the  
11 right to testify, if you wish to. However, you have absolutely  
12 no obligation to testify. You have no obligation to offer  
13 any evidence whatsoever.

14 Because of that, therefore, you have no obligation  
15 to take the stand. You have every right not to do so.

16 You have a choice at this point, and I believe Mr.  
17 Leiner has already discussed it with you. That is I can tell  
18 the jury that they are to draw no inference from the fact  
19 that you did not take the stand. In other words, I will be  
20 telling them they may not hold that against you.

21 Some defendants feel that draws more attention to  
22 the issue than they desire, and they ask the Court not to give  
23 that instruction. At this time I will read that instruction  
24 to you exactly as it will be given to the jury, and then I  
25 will be asking you whether you want that instruction given.

1           The defendant in this case chose not to be a witness.  
2  
3           It is the Constitutional right of a defendant to remain  
4           silent. I instruct you that you are not to consider for any  
5           purpose or in any manner in arriving at your verdict, the  
6           fact that the defendant did not testify, nor should that fact  
7           enter into your deliberations or discussions in any manner or  
8           at any time.

9           The defendant is entitled to have the jury consider  
10          all of the evidence, and he is entitled to the presumption of  
11          innocence, even if he does not testify as a witness.

12          Do you want that instruction to be given to the jury?

13          THE DEFENDANT: Yes.

14          THE COURT: Mr. Leiner, anything further on that  
15          subject?

16          MR. LEINER: No, your Honor.

17          THE COURT: That instruction will be given.

18          Before we bring in the jury, we are going to be go-  
19          ing right into closing argument, obviously. I think what we  
20          need to do is continue with the charge conference. We had  
21          provisional or tentative charge conference on Thursday. We  
22          need to continue that as well as address some additional  
23          issues that we didn't discuss on Thursday.

24          For example, we need to review the transferred in-  
25          tent charge. It is substantially the same as the version pro-  
            vided to me by Mr. Aronow. I made changes in the language to

1 make the language a little bit less cumbersome. They are  
2 minor.

3 I will give each of you a copy of that instruction  
4 at this time. At the same time let me also give you a second  
5 instruction, which I believe should be given, and we discussed  
6 this briefly in Chambers.

7 Essentially the Court will be instructing the jury  
8 on accomplice liability on murder and on two lesser included  
9 offenses, aggravated and reckless manslaughter. The case law  
10 suggests, most particularly State vs. Concepcion, when there  
11 are a number of possible verdicts that the Court has an obli-  
12 gation to explain what facts are in the record or what find-  
13 ings by the jury could support one verdict as opposed to  
14 another.

15 Therefore, I have drafted a supplemental instruction,  
16 which I would propose to give. Let me distribute it to you  
17 at this time and allow you to review it closely. It's three  
18 pages in length. I believe this certainly needs to be clari-  
19 fied and discussed and approved before we proceed to closing  
20 argument. Let me give each of you a copy of this at this  
21 time.

22 We need to clarify the verdict sheet, of course.

23 Mr. Aronow, any objection on the part of the State  
24 to the verdict sheet I distributed?

25 MR. ARONOW: No.

1 THE COURT: Mr. Leiner?

2 MR. LEINER: No, your Honor.

3 THE COURT: Why don't we take a brief recess, because  
4 it will take some time to review, particularly the additional  
5 part that I drafted. As soon as you both had an opportunity  
6 to study it and read it, let me know and then we will resume.  
7

8 MR. LEINER: Thank you, your Honor.

9 (Recess.)

10 THE COURT: Counsel, my Chambers just received a  
11 phone call from the sister of Juror Number 108, seated in  
12 Seat 7, indicating that they have a sister in North Carolina  
13 who is dying, and that at noontime the sister that called and  
14 some other family members will be driving down to North  
15 Carolina to visit their sister.

16 Therefore, the one that just called wants to be put  
17 in touch with the sister, who her sister is being asked to  
18 come down to North Carolina. I know this was not mentioned  
19 during the jury selection process. I probably would have ex-  
20 cused her. I would have excused her for cause because of the  
21 possibility that this could happen.

22 I wanted to let you know I was going to be allowing  
23 Juror Number 108 to speak to her sister.

24 Are there any objections or comments before we do  
25 so?

MR. LEINER: No.

1 THE COURT: After she gets off the phone, we will  
2 speak with her. I will have her taken to a private area to  
3 call her sister back.

4 While doing that, have you both had an opportunity  
5 to review the transferred intent instruction?

6 MR. LEINER: Yes, your Honor.

7 THE COURT: Are there any objections to it from  
8 either of you?

9 MR. ARONOW: No.

10 THE COURT: Is there any comment or objection to the  
11 other instruction that I gave you, the one that set forth the  
12 possible verdicts?

13 MR. ARONOW: Yes, Judge.

14 THE COURT: Mr. Aronow, what is your objection?

15 MR. ARONOW: Judge, first of all, with regard to the  
16 Order that your Honor sets forth the information, I think it's  
17 important that when the jury hears the instructions from the  
18 Court, that it makes it sound like Fahim is the only one that  
19 did anything here, and then secondarily your Honor brings in  
20 the defendant on trial.

21 More importantly, that just has to do with the Order.

22 Paragraph 2 is almost a directed verdict for aggra-  
23 vated manslaughter or reckless manslaughter, and just because  
24 a scuffle occurs doesn't negate necessarily someone's intent  
25 to kill someone. If you are the one that sets the wheels in

1 motion, just because the person defendants himself doesn't  
2 mean because a scuffle occurred and aggravated manslaughter  
3 or reckless manslaughter as opposed to murder.

4 If it was someone's intention to kill someone,  
5 whether a scuffle occurs or not, it's still murder.

6 This paragraph also deals with Fahim individually,  
7 and your Honor's proposed instruction constantly deals with  
8 just Fahim, as though there is only one shooter here, and that  
9 is not the State's theory.

10 The State's theory is it was Dennis Copling who  
11 fired the shots in the house and Fahim who fired the shot out-  
12 side the house. I think a reading of the instruction as a  
13 whole leads one to believe one or the other, ~~not~~ the possi-  
14 bility of both.

15 THE COURT: Mr. Leiner.

16 MR. LEINER: First, your Honor, I disagree with the  
17 prosecutor's interpretation, in regard to Paragraph 2 in some  
18 way commands addressing further.

19 Your Honor is clear in your Honor's proposed charge  
20 that, "If you find that the shooting of Kirby Bunch by Fahim  
21 occurred as the result of a scuffle over a gun rather than as  
22 a knowing or purposeful act," I think that is a distinction  
23 right there. I think that is covered right there and already  
24 covered in Paragraph 1 in regard to the purposeful or knowing  
25 act and, of course, your Honor will have defined those terms

1 to the jury long before that.

2 In addition, your Honor paints several scenerios  
3 here, all of which are arguably consistent with the evidence.  
4 It does indicate, starting with Paragraph 3, "If you find  
5 that the defendant Dennis Copling committed the murder of  
6 Kirby Bunch himself, in other words, he fired the gun, not  
7 Fahim," clearly all of those are contemplated and they are  
8 questions of fact for the jury.

9 They are questions of fact for the jury to determine,  
10 and I think you have given them in that the overall proposed  
11 charge here, both scenerios, and, therefore, we have one  
12 scenerio that supports the State's theory and another that  
13 supports the defense's theory.

14 Therefore, I don't think it's improper.

15 In regard to the Order, why should the Order be any  
16 different? Why should the Order favor the State? It falls  
17 either way, and your Honor wrote it that way. I don't see how  
18 that is prejudicial either way.

19 THE COURT: What I can do is also add one scenerio  
20 under which if they find the defendant fired a gun, and if  
21 they find that he solicited Fahim to also fire a gun at Kirby  
22 Bunch, then the defendant would be found guilty of murder.

23 MR. LEINER: I thought that was included.

24 THE COURT: No. There is no scenerio in my supple-  
25 mental instruction that discusses both of them as shooters.

1 Mr. Aronow is correct in that.

2 MR. LEINER: "If you find beyond a reasonable doubt  
3 that the defendant, Dennis Copling, solicited Fahim to commit  
4 the murder of Kirby Bunch, or that defendant aided or agreed  
5 to aid Fahim in committing that murder, then Dennis Copling  
6 is guilty of murder."

7 THE COURT: Correct, but it does not address a  
8 scenario where the jury could find that the defendant did both,  
9 that he solicited Fahim to shoot Kirby Bunch and he himself  
10 fired a shot.

11 MR. LEINER: I understand what you are saying.

12 THE COURT: That part is missing.

13 MR. LEINER: I think it's covered later on if they  
14 find that he was actually the shooter. That is already  
15 covered.

16 THE COURT: Right. The way it is structured seems  
17 to be, one, that the defendant was the shooter himself and  
18 secondly, that the defendant solicited Fahim to do the shooting.  
19 There is a third alternative which is that the defendant may  
20 have done the shooting himself or also solicited Fahim.

21 I agree with Mr. Aronow that a third scenario is  
22 not expressly stated and should be. The purpose is to give  
23 the jury an indication what the possible verdicts could be,  
24 then I agree that all possible results suggested by the evi-  
25 dence should be outlined here.

1 I will draft something that would encompass that  
2 as well.

3 MR. ARONOW: Judge, with respect to the scuffle  
4 argument, counsel is correct that your statement does say as  
5 a result of a scuffle over a gun rather than as a knowing or  
6 purposeful, but to suggest scuffle over a gun suggests that  
7 somehow it's an accidental act.

8 Whether a scuffle occurred or not is not the issue,  
9 because clearly the evidence presented demonstrates that one  
10 did.

11 The issue is whether or not someone went in there  
12 with a purpose to kill, and if a scuffle occurred that doesn't  
13 negate their intent.

14 THE COURT: Why is aggravated manslaughter being  
15 charged at all?

16 MR. ARONOW: Because the defendant requested it as a  
17 possible scenerio the jury may find, but that is not the posi-  
18 tion of the State is what happened.

19 THE COURT: I understand that, but if there is no  
20 evidence from which this jury could find anything other than  
21 the scuffle occurring in the midst of a preplanned attack,  
22 then aggravated manslaughter shouldn't be charged.

23 MR. ARONOW: I ask your Honor to include something  
24 which deals with merely a scuffle over the gun, as opposed to  
25 something that is suggested in that way. On the end of the

1 last paragraph of Paragraph 2b, on the second page --

2 THE COURT: Hold on. Let me change what we already  
3 discussed.

4 MR. ARONOW: Okay.

5 THE COURT: I will delete the language which says,  
6 "rather than as a knowing or purposeful act". That is legal  
7 terminology, not fact, and I would instead substitute the  
8 following language: "not as part of a pre-planned attack on  
9 Kirby Bunch". I think that addresses the State's concern.

10 Any other comment? We can discuss this, the actual  
11 fine tuning after you both closely look at it. I would take  
12 a break and not go directly into the closing anyway, but I  
13 think this way I can be working on it in the meantime.

14 Is there anything else either of you would like to  
15 bring to my attention respecting the supplemental instruction  
16 I drafted?

17 MR. ARONOW: If you know is going to have it re-  
18 drafted with respect to some of the comments, I ask your Honor  
19 to consider when redrafting two more points I would like to  
20 bring up.

21 THE COURT: Hold on, please. I am going to include  
22 the scenerio you mentioned where both are shooters.

23 What are the other things you have?

24 MR. ARONOW: On the second paragraph, Page 2, under  
25 the heading 2b, "Again, defendant Copling can only be found

1 guilty or murder, aggravated manslaughter or reckless man-  
2 slaughter as an accomplice if he solicited Fahim to commit  
3 the homicide, or if Copling aided or agreed to aid Fahim in  
4 planning it."

5 Your Honor, it's committing it, planning or commit-  
6 ing under the statute, or if he was involved in a conspiracy  
7 to commit it.

8 THE COURT: Mr. Leiner.

9 MR. LEINER: Just read that sentence one more time.

10 MR. ARONOW: "Again, defendant Copling can only be  
11 found guilty of murder, aggravated manslaughter or reckless  
12 manslaughter as an accomplice if he solicited Fahim to commit  
13 the homicide or if Copling aided or agreed to aid Fahim in  
14 planning it."

15 MR. LEINER: I think the language of conspiracy,  
16 it's already contained in there. Planned it, that is a con-  
17 spiracy. That is what conspiracy is. It is an agreement  
18 between people. I think that is already in there.

19 MR. ARONOW: Judge, if you look at 2C:2-6, liability  
20 for conduct of another, complicity, is what we are talking  
21 about, a person is legally accountable for the conduct of  
22 another person if he is an accomplice or he is involved in a  
23 conspiracy with that person.

24 THE COURT: I agree. They are separate concepts.  
25 I will include that additional language.

1                   What else, Mr. Aronow?

2                   MR. ARONOW: I don't know if your Honor meant to  
3 say homicide under Paragraph 4 on the third line closest to  
4 the margin, as opposed to murder of Mark Winston. You talk  
5 later on about not escaping responsibility for the murder.  
6

7                   THE COURT: I did intend to use the homicide. I in-  
8 tended to use a neutral word, because I then go on to explain  
9 in the succeeding line, the lines that follow what would turn  
10 it into a murder as opposed to an aggravated or reckless man-  
11 slaughter.

12                   Yes, I did do it on purpose.

13                   MR. ARONOW: Further along where the last sentence  
14 begins with the word, "however," where you read along further  
15 you get to the point where it says solicited, I wanted to add  
16 the same thing I was talking about, aided or agreed to aid in  
17 the planning or commission of the murder of Kirby Bunch.

18                   THE COURT: Mr. Leiner.

19                   MR. LEINER: The problem I have with that is relat-  
20 ing it to the charge on causation. I understand the charge on  
21 causation or the prosecutor terms it transferred intent, if  
22 the jury finds that scenerio that the prosecutor puts forth,  
23 then there could be liability under causation for murder for  
24 Dennis Copling.

25                   However, the problem I have with that is the con-  
spiracy itself transferring through that causation I don't

1 think applies.

2 In other words, if people make an agreement to  
3 commit a crime and to do that crime, if something else  
4 happens he could be criminally liable for the murder, but I  
5 am not sure that he could be criminally liable for a conspiracy  
6 to kill Mark Winston, unless there is evidence that was part  
7 of the conspiracy itself, that was part of the agreement. I  
8 think they are different concepts.

9 MR. ARONOW: They would have to find that he is  
10 guilty of the murder in order to even look at it from my  
11 scenerio. That takes into account it was a knowing and pur-  
12 poseful conspiracy to commit murder, as opposed to something  
13 lesser.

14 THE COURT: I agree with the State to a limited ex-  
15 tent. I believe that the portion of the sentence which talks  
16 abotu accomplice liability should be if founded to include all  
17 of the statutory language on accomplice liability. I think  
18 that to add the conspiracy as a possible basis for criminal  
19 repsonsibility for the killing of Mark Winston makes no logi-  
20 cal sense.

21 There never was a conspiracy to murder Mark Winston.  
22 If there was a conspiracy, it was with regard to Kirby Bunch.  
23 I agree I should expand the accomplice liability as you have  
24 suggested, and I will do that.

25 MR. ARONOW: The last question I have deals with the

1 last two words, and I didn't know if you meant purposeful --

2 THE COURT: Excuse me one second. I can read it  
3 back to you also. I will be giving you a redraft when I in-  
4 corporate these. I want to do it while it's fresh in my mind.

5 MR. ARONOW: Okay.

6 THE COURT: The next one?

7 MR. ARONOW: The last two words, "at Fahim". I  
8 don't think it is at Fahim. I think it's at Mark Winston, or  
9 just leave that off altogether, it's fired purposefully at  
10 another. It should be if Mark Winston died as a result of a  
11 bullet meant for Kirby Bunch and fired purposefully, not at  
12 Fahim.

13 THE COURT: That is a definite mistake. Thank you.

14 MR. LEINER: I think you meant to say by Fahim, your  
15 Honor. Maybe I am reading that wrong.

16 THE COURT: I did this very late. I wrote it as  
17 Fahim. Let me change it. I will change the word Fahim to  
18 Kirby Bunch. I will give you a revised draft and I will add  
19 that third scenerio.

20 Any other comments before we bring the jury in for  
21 closing?

22 MR. LEINER: Only, your Honor, at the conclusion of  
23 this portion of your Honor's charge, if you could indicate to  
24 the jury that these are -- I don't want to say hypothetical  
25 scenerios, but they could find other scenerios themselves.

1 THE COURT: This is not meant to be an exhaustive  
2 list or an exhaustive discussion.

3 MR. LEINER: It's only for instructional purposes  
4 they are offered.

5 THE COURT: It is not meant to be an exhaustive  
6 discussion. You said one other thing after that?

7 MR. LEINER: Yes. That they are offered for in-  
8 structural purposes only.

9 THE COURT: As opposed to what?

10 MR. LEINER: As opposed to indicating that this is  
11 the only way the evidence could allow them to find it.

12 THE COURT: That is not really a difference from  
13 what you first said.

14 MR. LEINER: I understand.

15 THE COURT: I thought they were two separate con-  
16 ceptions. It is really an elaboration of the first.

17 MR. LEINER: Exactly.

18 THE COURT: Mr. Aronow, any objection to my includ-  
19 ing that?

20 MR. ARONOW: No, your Honor.

21 THE COURT: Why don't we bring in that juror. From  
22 what I gather, she is going to request to be excused for  
23 cause.

24 Any objection?

25 MR. ARONOW: No.

1 MR. LEINER: Under the circumstances, no, your Honor.

2 THE COURT: That will leave us with just one alter-  
3 nate.

4 MR. LEINER: Yes, your Honor.

5 (Juror enters courtroom.)

6 THE COURT: I am sorry your sister is ill in North  
7 Carolina. I wasn't aware of it, you kept it to yourself,  
8 which you are entitled to do.

9 Do you want to go down to North Carolina?

10 JUROR NUMBER 7: At this point I went to North  
11 Carolina about a week ago and I did tell Don my sister was  
12 ill, if something happens what do I do, and he said no problem  
13 because of one of the numbers he gave us.

14 I got a report that she was doing fine, and then  
15 like during the week her condition deteriorated rapidly. At  
16 this point my brother-in-law called, I got a call from my  
17 sister that she is at the point where I don't think may make  
18 it through the day, we don't know.

19 So he said that if I wanted to see her, you should  
20 get out here right away. That is what I am torn between.

21 I felt like obligated. I did not want to leave, but  
22 I am kind of, you know, but I wanted to see her. That is the  
23 only thing.

24 THE COURT: I don't want to put myself in your shoes.  
25 I know what I would do under the circumstances. It's your

1 decision. We would respect your feeling, and there would be no  
2 problem. If you are asking to be excused on that basis, I  
3 will excuse you.

4 JUROR NUMBER 7: I need to be excused. Unfortunately,  
5 I need to be.

6 THE COURT: Counsel, anything further?

7 MR. LEINER: No, Judge.

8 MR. ARONOW: Nothing.

9 THE COURT: I hope she is well and recovers.

10 JUROR NUMBER 7. Thank you.

11 THE COURT: Thank you.

12 (Juror Number 7 excused from courtroom.)

13 THE COURT: That was the juror seated in Seat 7,  
14 Juror Number 108.

15 Are we ready to bring the jury back in for closing?

16 MR. LEINER: Yes, your Honor.

17 THE COURT: As I mentioned a moment ago, we will  
18 under any circumstances take some sort of a break between your  
19 closing argument and the Court's charge. That will give us  
20 an opportunity to make any further fine tuning or adjustment  
21 to what we have been talking about. You will have an oppor-  
22 tunity to comment on it, before I actually give that instruction  
23 to the jury.

24 We will bring the jury in.

25 (Jury returned to courtroom.)

1 THE COURT: I am sorry we were delayed. There were  
2 things I didn't anticipate, when I spoke to you on Thursday  
3 and asked you to come in at 9:00 o'clock. We certainly  
4 apologize for that delay.

5 At this point in the trial the State has rested.  
6 There are no defense witnesses. We are therefore, ready for  
7 the closing arguments, and we will start with Mr. Leiner and  
8 his closing argument on behalf of the defendant, Dennis  
9 Copling.

10 Mr. Leiner.

11 MR. LEINER: If it please the Court, Mr. Aronow,  
12 Mr. Copling, ladies and gentlemen of the jury, good morning.

13 Well, you heard the testimony presented and the  
14 evidence presented in this case, and very shortly you will  
15 all be going back into the jury deliberation room, and then  
16 twelve of you will go back and take this case, and twelve of  
17 you from different backgrounds and different upbringings and  
18 living in different areas, different jobs, will come together  
19 to decide this case about yet another individual, Mr. Copling,  
20 who is probably from another background, another upbringing  
21 and another occupation, and you all have to come together and  
22 decide basically his fate in regard to this particular case.

23 I would like to take the opportunity to thank you  
24 all this morning. I am going to talk to you about the evi-  
25 dence and about some concepts. I will not talk about legal

1 concepts too much, because at the conclusion of these remarks  
2 Judge Rosenszweig will be talking to you and will instruct you  
3 on how to apply the law to the facts you find in this particu-  
4 lar case.

5 Let me talk to you more in regard to the concepts  
6 of human nature, things that we all know about, things that  
7 we all have within us, things that we all have observed in  
8 our lives, and I will ask you to draw upon that experience  
9 you had during the course of your life, and take that into  
10 your deliberations and apply it as you see fit, because it is  
11 how you see fit is the way that you are going to decide this  
12 case.

13 I am not going to stand here and tell you things.  
14 You are going to decide them. I am going to suggest to you  
15 certain things. I am going to talk about things that bothered  
16 about this case, and hopefully you will have your own decision  
17 about what conclusions to make in regard to this matter.

18 I also want to apologize in advance for anything  
19 that I may have done during this trial to either offend you  
20 by something I said, some comment I made, some face I made,  
21 and ask you not to hold that against my client if I have done  
22 it in that regard, because I am here as his representative,  
23 but if I do soemthing to offend you, I know you won't hold it  
24 against him.

25 I know you are going to follow your oath and you will

1 have and will continue to give my client the presumption of  
2 innocence, and you will only find him guilty if the State has  
3 proven its case beyond a reasonable doubt.

4 Therefore, I would like to start this morning and  
5 talk to you about the prosecutor who in the beginning of this  
6 case indicated to you this case is about murder. Actually  
7 that's for you to decide, what this case is about, whether  
8 it's murder or whether it's something different, or whether  
9 or not a crime was committed at all by Dennis Copling, and you  
10 also have to decide if you find there was a murder or homicide,  
11 who committed that crime.

12 I would like to start with some of the testimony in  
13 regard to what happened in the house on Westminster Avenue on  
14 January 18th of 1995. This was the house Nate Simmons indi-  
15 cated was his house, and he was there that day with Kirby  
16 Bunch and Benjamin Young.

17 The police are called to the scene, they find a body  
18 inside, and that is the body of Kirby Bunch. Inside they find  
19 the body of Mark Winston. It is indicated through the evidence  
20 that Kirby Bunch was shot at least once outside, and that was  
21 most likely the wound that struck him through the back of the  
22 back.

23 Therefore, we are left with the inference that the  
24 other two wounds happened inside.

25 You heard the testimony of Dr. Catherman in regard

1 to that, and how close those wounds took place, where they  
2 were on the body.

3 I suggest to you, ladies and gentlemen, that what  
4 happened in the house is not inconsistent with some of the  
5 other evidence you heard. In other words, if people are  
6 struggling over a gun, isn't it logical that gun will go off  
7 in close proximity to one of the persons' bodies and leave  
8 powder residue and things like that, that Dr. Catherman found  
9 on the ground?

10 We had the testimony of Mike Aaron to draw this  
11 sketch for us to present to the jury, who indicated that cer-  
12 tain other things were found in the house, and also certain  
13 things were recovered, including some shell casings. They  
14 found two shell casings in the inside of the house, and another  
15 on the outside of the house.

16 The sergeant who came in testified in regard to  
17 ballistics in this matter, indicated that all those shell cas-  
18 ings came from the same weapon. There is something that  
19 bothers me about this. It's not quite right about everything  
20 they said. I am not disputing the shell casings were in the  
21 house, and also the spent projectiles taken from the body of  
22 Kirby Bunch matched with the shell casings that were outside,  
23 and were probably fired from the same gun.

24 I don't think that is in dispute. We have something  
25 else. We don't have that weapon, but we do have this weapon

1 found inside the house. According to Pierre Robinson this  
2 weapon was found three feet from the body of Mark Winston.

3 There are no discernible or useable fingerprints  
4 were able to be taken from the weapon or from what is referred  
5 to as a clip. No one could testify as to whether or not this  
6 particular weapon was ever fired.

7 We do have something else. Who had this weapon,  
8 who possessed it, was it Mark Winston? Was it the man inside  
9 the house? Was it Kirby Bunch? They are things we don't know  
10 and questions that we all have to have in our mind, and things  
11 you have to think about when you are in the jury room.

12 There are so many scenerios possible under that  
13 circumstance.

14 If Kirby Bunch had the weapon, the individual who  
15 may have pulled the other weapon in the house may have had  
16 some provocation for pulling that weapon. Then you have to  
17 determine whether or not whoever was in that house committed  
18 a purposeful or knowing murder, or committed something else.

19 The judge will instruct you on all that law as to  
20 how to apply it.

21 Now, what does the State say about what took place  
22 here? Well, they say through the prosecutor that on January  
23 18th, some time after dark, Dennis Copling ran into Leervin  
24 Hill. You remember Leervin Hill. He was a six foot two drug  
25 dealer who possessed a ski mask, who supposedly Dennis

1 Copling ran into on the street.

2 He described what Dennis Copling was wearing. He  
3 described a black leather jacket, some black pants. Also, he  
4 indicated that Dennis Copling's hands were free. He didn't  
5 see his hand in his pocket. He didn't see any evidence of a  
6 gun. He was with a friend called Naughty (phonetic). He  
7 didn't know his last name. He didn't know where he lives.  
8 He has known him for a while.

9 We can't call Naughty (phonetic) to see if Leervin  
10 Hill got it quite right.

11 When Dennis Copling left the area, according to  
12 Leervin Hill, he walked off. He didn't see him get in a car.  
13 He didn't see him with anybody. This was after dark on  
14 January 18th, 1995.

15 Then we have Dennis Copling, according to the testi-  
16 mony, appearing over at the house of Marie Covin (phonetic).  
17 This is some time later. Dennis Copling supposedly comes there  
18 by himself.

19 Latisha Fair describes what he is wearing, black  
20 leather jacket. I think she said a blue and white striped  
21 jacket. I think she said a blue and white striped shirt.

22 Then after some discussion, he supposedly leaves  
23 again by himself and goes somewhere else.

24 Approximately twenty minutes later or so Latisha  
25 Fair and Barbara Buckhannon and Lakesha Buckhannon go to find

1 Lakesha's brother, and yet everything is done already.

2 Under that scenerio you have Dennis Copling supposedly  
3 on the street with Leervin Hill, nobody else, no visible sign  
4 of a gun, running over and talking to Lakesha Buckhannon and  
5 Latisha Fair and Barbara Buckhannon with a blue and white  
6 shirt on, no one sees a gun of course, Latisha Fair says she  
7 thinks was a gun.

8 Then going over to Maguire Garden Apartments shortly  
9 thereafter, and according to the State committing this crime.

10 It's someone without a gun with slightly different  
11 clothing on, because if you remember the testimony of Nate  
12 Simmons, he indicated that the person who came in the house  
13 had a black and white jacket on.

14 He also indicated he had a black hood over his face  
15 and a mask over his face.

16 In this time period Dennis Copling has to run, get a  
17 gun, go over to see Latisha Fair and Lakesha Buckhannon, run  
18 some distance away to Maguire Garden Apartments, put on a hood,  
19 put on a jacket, have the gun, go in and commit these crimes,  
20 run out of the house, and then hand the gun like a baton in a  
21 relay to someone else who comes over and shoots Kirby Bunch  
22 outside.

23 I think it's clear the State never disputed that the  
24 shooter outside was not Dennis Copling. I think that is clear  
25 from both the opening statement and clear from the evidence.

1 The shooter outside was not Dennis Copling.  
2

3 Now let's talk about the individuals in the house  
4 and what they saw. Benjamin Young, he sees an individual he  
5 knows as Malik come into the house. He doesn't see anybody  
6 else come in the house, because he is seated on the couch in  
7 the living room area in the apartment back in here. So he  
8 doesn't know who that other individual was.

9 Nate Simmons, on the other hand, is seated on the  
10 couch next to Benjamin Young, supposedly right next to the  
11 door, but Nate says there was no hallway, yet Mike Aaron drew  
12 a hallway here, so there must be some distance between the  
13 living room and kitchen.

14 But then again, Nate couldn't find his own front  
15 door, when he went to draw it, or the back door, when he went  
16 to draw it on the diagram. We don't know how much he had to  
17 add there.

18 I asked Nate whether or not there was any drug use  
19 going on in the house that particular day. Nate said no, and  
20 I think you all know why I asked him that question. That would  
21 be to see whether or not his perception could have been clouded  
22 or anything else was going on there.

23 I find it interesting that you have a convicted drug  
24 dealer, Nate Simmons, convicted drug dealer, Benjamin Young,  
25 glassene bags consistent with Controlled Dangerous Substance  
with drugs in the kitchen, one torn open as if to get something

1 out of it, and no drug use was going on.

2 The prosecutor is going to stand up here and probably  
3 argue that is not proof there was any drugs going on in the  
4 house that particular occasion. Those bags could have been  
5 there from anywhere in time, and just because there are two  
6 convicted drug dealers in the house, that doesn't mean any-  
7 thing.

8 You know something? He would be right. But, ladies  
9 and gentlemen, isn't that the same conclusion you are going to  
10 be asked to make in the circumstantial evidence in this case?  
11 You will be asked to put pieces of the puzzle together, but  
12 these pieces aren't quite right.

13 Nate didn't get it quite right. He talked about  
14 six foot two to six foot three individual, black and white  
15 jacket, green pants. He didn't know who that individual was.  
16 He said he knew Dennis Copling. He never said that he recog-  
17 nized Dennis Copling's voice in that room, yet he clearly  
18 stated he heard the conversation. He never said that. He  
19 never said that. Yet he heard it.

20 Then we have Tim Queensbury, who arrived at the  
21 scene from across the street or from around the back. He sees  
22 Kirby Bunch laying there and he says in a dying breath, Kirby  
23 says: Dennis. That's all he says, ladies and gentlemen.

24 According to the testimony of Tim Queensbury, that  
25 was all he said. He doesn't say anything else. Unfortunately

1 we can't question Kirby about what he meant or anything else.

2 Another thing that bothers me that is quite not  
3 right about that scenerio. Dennis Copling is running around  
4 complaining about Kirby Bunch to everybody, and saying: I am  
5 going to get him, I am going to do him.

6 Why disguise yourself and go into the house and then  
7 confront Kirby Bunch, and then talk to him as if you know each  
8 other? Why do that? Something is just not right about that.  
9 Something is just not right about that.

10 What else isn't right about this case? Well, let's  
11 talk about the State's motive for a minute. This motive was  
12 all about the pitbull, the fight between Gary Copling and  
13 Kirby Bunch.

14 Where do we get that evidence from? We get that  
15 evidence from Lakesha Buckhannon and Latisha Fair.

16 Let's talk about Latisha for a moment. Another  
17 convicted drug dealer, by the way. Latisha comes into court  
18 and she tells us a story. Several days before that, several  
19 days before January 18, '95, she sees Dennis Copling with a  
20 gun at a party. She says that Lakesha Buckhannon and Dennis  
21 Copling had a conversation about it.

22 She says to Dennis: What do you need that for?

23 Dennis says: I need it for protection.

24 Of course, Latisha Fair, also says there was no con-  
25 versation with regard to the gun other than the fact she said

1 Dennis Copling said: Don't sit there.

2           Who do we believe? I find it interesting, ladies  
3 and gentlemen, that this story about the party comes out two  
4 years after the incident, two years. It's one week before  
5 this trial Latisha Fair and Lakesha Buckhannon go to the  
6 Prosecutor's Office and talk about this case, and they give  
7 this revelation about this party.

8           What did she say two years ago before that? When  
9 questioned: Did you see the gun? No, I didn't see this one,  
10 but I saw one last night.

11           It wasn't good enough, her story wasn't right to  
12 just say Dennis Copling came to see what happened to his  
13 brother, that wasn't enough. There had to be a gun. There  
14 had to be a gun.

15           Two years ago when she gave her statement, she had  
16 to say, since she didn't see one that night, she had to say  
17 she saw one last night. That statement, if you remember the  
18 testimony, was taken on January 19, 1995, in the very early  
19 morning hours. Let's give her the benefit of the doubt and  
20 say she didn't see it on the 18th, because that is the night  
21 of the incident.

22           Let's say it was the night before, January 17th.  
23 It still would have been last night in her mind. We know it  
24 couldn't have been last night, because that is the night of  
25 the big fight. That's the night of the big fight between

1 Gary Copling and Kirby Bunch. That's the one where Latisha  
2 was there, Lakesha Buckhannon, they went down to find Kirby  
3 Bunch, he beat up Gary Copling over the pitbull.

4 We all know people like Latisha. She is the person  
5 in everybody's business. She is right there when the fight  
6 takes place. She is right there after the shooting offering  
7 evidence, and two years later when she realizes it couldn't  
8 have been quite right, now she has a story that makes it right,  
9 the story that there was a party before where she saw the gun  
10 with Dennis Copling.

11 We know Latisha. Two years ago she said Dennis  
12 Copling's hand was in the left pocket. One week before the  
13 trial all of a sudden it is in the right pocket. She changed  
14 her story. She changed her story. She was going to be the  
15 star that came in here and told everybody what took place in  
16 that house, what took place.

17 Do you remember I asked her when she came to the  
18 Prosecutor's Office, who she came over with? Lakesha  
19 Buckhannon. They didn't quite get it right. Her story didn't  
20 quite get it right even then, because she came in here and  
21 told us it was a party that took place two weeks before then  
22 or several weeks, I think she said actually.

23 She also said that Latisha Fair was not there.  
24 They didn't get it quite right when they came in here two  
25 years later.

1                   When was the last time Lakesha Buckhannon told you  
2                   about that prior incident with the gun? The answer was January  
3                   19, 1997, not two years ago. Not in January of 1995. Just  
4                   a little over two weeks ago, three weeks ago. One week before  
5                   the start of this trial.

6                   Latisha said a lot of things that were inconsistent.  
7                   Latisha said in the house she is sitting next to her mother on  
8                   the couch when Dennis Copling comes in the house. Remember  
9                   she said the couch was about from where this juror is seated  
10                  up to the front door there? That is how far away from the  
11                  couch it was from the door.

12                  She said Dennis Copling threatened to get them all.  
13                  I am going to come back and get everybody. Remember her  
14                  mother said it never happened? She never heard any threats.  
15                  She must have some other dynamic at work. Remember how upset  
16                  she was when she came in this courtroom? She lost a sibling.

17                  I can tell you from personal experience that is not  
18                  an easy thing to deal with. She needs color. She needs some  
19                  color.

20                  Kirby went down and had the fight with Dennis --  
21                  excuse me -- with Gary.

22                  Remember what she also said about that? The prose-  
23                  cutor asked her a question: Did Kirby Bunch choke Gary  
24                  Copling? She said: No. It was a fair fight.

25                  Remember what Nate Simmons said? Kirby Bunch choked

1 Gary Copling to the point of an unconsciousness, to the point  
2 of unconsciousness. She wasn't going to do anything to mar  
3 the memory of her brother.

4 You see, ladies and gentlemen, you have those  
5 stories, you have to make it right, someone has to pay for  
6 this crime. Someone has to pay for the death of her brother.  
7 Someone had to pay for the loss of the pitbull. The story  
8 charges as time goes on and gets embellished.

9 Remember when I talked to Tim Queensbury, I asked  
10 him wasn't there a lot of things going on and a lot of rumors  
11 going on about this case, a lot of misinformation?

12 Well, ladies and gentlemen, I ask you to draw on  
13 your own experience when people know a little bit about some-  
14 thing, and they hear something from other sources, doesn't it  
15 all get added, people tend to adopt things as their own per-  
16 sonal knowledge?

17 I ask you to keep that in mind when you evaluate  
18 the credibility of these witnesses, when you evaluate the  
19 credibility of Lakesha Buckhannon and Latisha Fair in their  
20 testimony, in regard to the motive, because it wasn't good  
21 enough that Dennis Copling talked to them about what happened  
22 with his brother.

23 There had to be a gun. When they realized it wasn't  
24 good enough to have the gun the night before, because it  
25 couldn't have happened the night before, two years later it

1 had to be a party that happened some time before that, but  
2 they didn't quite get it right.

3 Ladies and gentlemen, they didn't quite get the  
4 story right. It's what this case has been about, getting it  
5 right?

6 The police talked to Dennis Copling and couldn't  
7 get it right. Sergeant Forte couldn't get it right. He  
8 didn't get Dennis Copling to tell him what he wanted to hear,  
9 so he had to take a break and talk to Detective Finneman,  
10 Detective Finneman is the person who knows nothing about the  
11 case, wouldn't know whether Dennis Copling is telling the  
12 truth or lying, adding things, subtracting things, yet he is  
13 left in the room alone with Dennis Copling.

14 He is going to talk to him man-to-man, African  
15 American-to-African American. How patronizing. Maybe you  
16 don't find that offensive.

17 I want to ask you a question, though. Dennis Copling  
18 is in their custody three hours, then why not tape the entire  
19 interview? What's wrong with that? What is wrong with that  
20 procedure? What is wrong with that?

21 Then we would know if they had it right. Then we  
22 would know if they got the story right. But that didn't  
23 happen.

24 I suggest there is nothing wrong with taping the  
25 entire interview, nothing.

1  
2 Sergeant Forte sat on the stand and said he wasn't  
3 ready to take a taped statement from Dennis Copling, when the  
4 interview terminated. He wasn't ready then.

5 Why not? Why not tape the whole thing? Why not  
6 let us hear the words spoken in that interview, instead of  
7 some recitation given from the stand from the police officer?  
8 Why not?

9 These are all questions, ladies and gentlemen, that  
10 you are going to have to decide and resolve. They all have to  
11 do with questions of human nature. They have to do with  
12 questions of what you find as fact. There are a lot of things  
13 at work here that I say just aren't right. The pieces just  
14 aren't right in the puzzle.

15 No matter how they try to make them right by tell-  
16 ing different stories two years later, adding to the story  
17 two years later, not allowing us the opportunity to listen to  
18 the interview, there are certain things in this case that are  
19 not right.

20 I am going to ask you to consider that when you go  
21 back in the jury deliberation room. I am going to ask you to  
22 consider is the State's scenerio in regard to what happened  
23 in the house right. Is it right, the way they portray it?

24 Is there some evidence of a struggle with a gun?  
25 Is that an act of purposeful and knowing murder? Did the  
people go there to talk? Did they go there to talk to Kirby

1 Bunch, to find out what happened and things got out of hand?

2 These are all questions of fact for you to decide.

3 I am going to ask you to maintain my client's presumption of  
4 innocence until such time, if they do, you find the State has  
5 proven their case beyond a reasonable doubt.

6 Reasonable doubt, that is a concept that the Judge  
7 will discuss with you in an expanded version a little bit  
8 more than she has so far in this case, before you go into  
9 your deliberations.

10 I am going to ask you now to just imagine yourself  
11 in a car driving down the road, and I assume that most of you  
12 drive, but if you don't, you have all been in the front seat  
13 of a car and you have been on a two lane highway, and up ahead  
14 is a turn you want to make.

15 Imagine yourself in that car and you want to make a  
16 left-hand turn, yet there is traffic coming the other way.  
17 Before you make that turn, you are going to want to be sure  
18 that you can make that turn safely. You are going to want to  
19 be sure it's right to make that turn.

20 Are you going to wait until you're ten percent sure?  
21 Until you're thirty percent sure? Until you're seventy per-  
22 cent sure? Until you're ninety percent sure? Or are you go-  
23 ing to wait until you are sure beyond a reasonable doubt?

24 I ask you, ladies and gentlemen, don't make that  
25 turn in this case. Don't make that turn. It's not safe.

1 It's not right. There is not enough here for you to make  
2 that turn.

3 I thank you for your time. I thank you for your  
4 patience, and I thank you for honoring the oath I know you  
5 have honored and will continue to honor. Thank you.

6 THE COURT: Mr. Aronow, your closing on behalf of  
7 the State.

8 MR. ARONOW: Thank you, your Honor.

9 Ladies and gentlemen of the jury, Mr. Leiner, it  
10 wasn't that long ago that I started in my opening statement  
11 advising you, the jury, of what the State anticipated it would  
12 prove, with respect to the events that occurred on January 18th  
13 and January 17th, 1995.

14 If you will recall, Mr. Leiner said forget about  
15 what was written on this and turn it over. Well, let's turn  
16 it back. Let's talk about what the State said in its opening  
17 statement, with respect to what witnesses were anticipated  
18 to be called in this case, and what the State anticipated  
19 they were going to say.

20 If you recall, I introduced them as the players,  
21 the people who had firsthand knowledge of information that  
22 occurred on various dates and various times during this case.  
23 These people didn't set the wheels in motion on January 18th,  
24 1995. Dennis Copling sent the wheels in motion on January  
25 18th, 1995.

1                   Was there a fight between Kirby Bunch, Jr. and his  
2 brother, Gary? You saw there was. Did the State try to hide  
3 anything? Didn't the witnesses Lakesha Buckhannon and Nate  
4 Simmons testify about the fact there was a fight that occurred  
5 on January 17, 1995, and Gary Copling got his you know what  
6 kicked.

7                   There is no dispute about that. A perfect motive  
8 for revenge. One of the oldest motives there is.

9                   The defendant didn't hear the story straight. He  
10 only heard htat his brother got jumped and he was out to set  
11 the record straight, and he was going to take care of the  
12 people who jumped his brother, specifically Kirby Bunch, Jr.

13                   There has been a lot of talk about witnesses and  
14 what they said and discrepancies, and we can talk about that  
15 until we're blue in the face.

16                   Does the fact that a discrepancy exists mean that  
17 a person is lying? No. Does it mean they are not worthy of  
18 belief? No.

19                   You have to look at what witnesses have said through-  
20 out this trial. Look at where they were in this trial, where  
21 they were on the various times when incidents occurred, what  
22 they specifically had the opportunity to observe, whether  
23 other people who testified were there, and put it altogether.  
24 That's your job as jurors.

25                   What do we know? We know for sure that Kirby Bunch

1 beat up Gary Copling, Jr., and we know that occurred in the  
2 area of 28th and Mitchell.

3 If you look at S-22 in Evidence, you will see 28th  
4 Street and Mitchell Street, but where exactly it happened  
5 isn't relevant. The fact of the matter is that is where it  
6 happened, 28th and Mitchell.

7 What is the significance of that? The significance  
8 is that 28th and Mitchell, that is where Gary Copling was found  
9 the night before. At whose house? Michelle Butler's house in  
10 the area of 28th and Mitchell. That is where Dennis Copling  
11 went the next day looking for Kirby Bunch and anybody else  
12 who had anything to do with his brother getting beat up.  
13 He knew where they were because he knew the family.

14 He knew where the family used to hang out, and he  
15 went there in a conscious effort to hunt down Kirby Bunch and  
16 anyone else who is involved in beating up Gary.

17 You heard the mother, when she took the stand,  
18 Patricia Copling, that Dennis and Gary are brothers, Dennis  
19 is older. When I asked her on Direct isn't Dennis protective  
20 of his younger brother, Gary, she answered yes.

21 Then on Cross-examination Mr. Leiner tried to bring  
22 out he is not any more protective than anyone would be of  
23 their brother. The fact of the matter is they were close.

24 What someone did to Gary meant that Dennis was going  
25 to respond. Only Dennis didn't know what happened specifically.

1 so he went off hunting for Kirby and anyone else alone? The  
2 State suggests not.

3 Does he show up at various places alone? Yes.

4 Does that mean no one else was around? Absolutely not.

5 You are entitled as jurors to take every reasonable  
6 inference from the evidence presented, both directly and cir-  
7 cumstantially, and what do we know? We know by virtue of  
8 Nate Simmons' testimony, and by virtue of Ben Young's testi-  
9 mony, that Malik came into 2126 Westminster Avenue on the  
10 evening of January 18, 1995, and that he started an argument  
11 about who jumped Jun-Jun.

12 The only logical assumption is Jun-Jun is Gary  
13 Copling.

14 If you remember the testimony of Nate Simmons and  
15 Be Young, Mark Winston didn't want to hear anything else.  
16 He told them to shut the F up, turn off the f-ing radic.  
17 Kirby is trying to explain it was a fair fight.

18 What is a fair fight and not a fair fight is not the  
19 issue here, ladies and gentlemen. The issue is whether or  
20 not Gary Copling was beat up by Kirby Bunch, and if that pro-  
21 vides a motive for Dennis Copling to get Kirby Bunch. It cer-  
22 tainly does.

23 What else do Nate and Ben tell you? That someone  
24 else came in the house shortly thereafter. What else do they  
25 both tell you? They both tell you the person already in there,

1 Malik, said: You're going to have to talk to his brother.

2 Did they embellish their testimony? No. What did  
3 they do afterward? They did the only thing anyone would ex-  
4 pect someone to do, when they realized somebody pulled out a  
5 gun, they got the heck out of there.

6 Are they chicken? I would be a chicken too, if  
7 somebody pulled out a gun while I was in the house, in the  
8 agitated state Malik was already in.

9 What does Nate tell you? Nate tells you he could  
10 see the person, the size of the person is approximately six  
11 foot three, and what is not critical is how tall Dennis Copling  
12 is, because nobody takes out a yardstick and measures people  
13 at a time things like this are happening. Nobody looks at a  
14 watch to know precisely when things are occurring. They gave  
15 you a general description.

16 When asked questions by the defense on Cross-  
17 examination, you remember that Nate Simmons said that he be-  
18 lieved Dennis Copling was also six foot two, six foot three.  
19 So the descriptions of the individual are the same. It is  
20 not a question whetehr they are actually that height.

21 What else did he tell you? That he was wearing a  
22 mask over his face and he had a hoodie pulled down. Even if  
23 you knew who it was, if you are Nate Simmons, are you going  
24 to say, given what you know happened the night before? Nate  
25 Simmons was there when Gary Copling was kicked. He was there

1 when Kirby Bunch kicked at the body and head of Gary Copling,  
2 while he was on the ground.

3           You heard from Lakesha Buckhannon, and she didn't  
4 hold back with respect to that. The description that Nate  
5 Simmons gives, black and white -- somebody wearing a blue and  
6 white striped shirt with a black leather jacket, under the  
7 circumstances that Nate Simmons had to observe them, is cer-  
8 tainly accurate to the extent necessary to describe who he  
9 saw that night.

10           There has only been testimony and only been evi-  
11 dence abotu three people; and we know it wasn't Malik, because  
12 Malik is dead. Malik was wearing a big parka, a down coat  
13 that you can see is in evidence. The only two people who  
14 weren't apprehended that night is a guy named Fahim and Dennis  
15 Copling.

16           We have a description of a third person, Fahim, by  
17 Tim Queensbury. We have a description of the third person by  
18 Dennis Copling himself to the police.

19           Mr. Leiner is right about one thing. The State  
20 doesn't dispute the person who fired the shot to the back of  
21 the neck of Kirby Bunch outside of 2126 Westminster Avenue  
22 was Fahim. A light sweater, faded bluejeans, Timberland boots.  
23 It doesn't match at all with black leather jacket, dark green  
24 or black pants at nighttime. It matches only one person,  
25 Dennis Copling.

1                   Who else saw Dennis Copling on January 18, 1995?  
2 Who didn't have anything to do with what happened at 2808  
3 Mitchell, and the arguments between Barbara Buckhannon,  
4 Lakesha Buckhannon and Latisha Fair and Leervin Hill, or what  
5 happened at Westminster?

6                   There wasn't any testimony from Leervin Hill or  
7 suggested the defendant had a gun. Who cares? Does the fact  
8 someone is not in possession of a gun a half hour, twenty  
9 minutes, fifteen minutes, one minute before anything else  
10 happens, mean they couldn't have gotten their hand on it a  
11 later time? No.

12                   What does Leervin Hill tell us? He tells you he's  
13 at 26th and High. We go back to the map, look at 26th and  
14 High, and High is right about there. You have a scale on  
15 this map. As the crow flies, it's about seven hundred and  
16 fifty feet, give or take.

17                   We have the defendant a couple of blocks away from  
18 28th and Mitchell. What does he do? What is he saying? You  
19 heard Leervin. He thought it was funny that Dennis Copling  
20 was all in a tiff, and how he was pacing back and forth, and  
21 how it was Leervin Hill who had a ski mask, and it was Dennis  
22 Copling, the man with the razor on his neck, and you had an  
23 opportunity to see the defendant clearly has a birthmark that  
24 looks like a raisin on his neck, grab his face mask and said:  
25 Let me see that, and he took it.

1  
2 Leervin Hill thought it was a joke. He didn't do  
3 anything about it. He didn't know anything about what any-  
4 body else heard or seen that night. It's consistent, ladies  
5 and gentlemen, common sense.

6 You don't pick apart what witnesses say line-for-  
7 line, word-for-word to determine whether they are credible.  
8 You look at what they say and what they observed, and what  
9 they were going through at the time that they observed things,  
10 to determine whether you believe they are credible or not.

11 If you remember, the State told you in the beginning  
12 of this case we don't pick who the witnesses are in a case.  
13 It would be nice if a priest or nun or someone of high stature  
14 could come in here and tell you what they saw and have the  
15 aura of believability and credibility about them.

16 The fact someone has been convicted of a crime,  
17 though, it may be something that you may consider determining  
18 whether they are believable or not, is not the critical factor  
19 here. The critical factor here is what they said in relation  
20 ship to everything else, in relationship to the evidence that  
21 has been non-testimonial, whatever evidence you remember Mr.  
22 Leiner bringing up questions about this.

23 You remember that there was testimony from Sergeant  
24 Toth. It may not have appeared to make any sense when I gave  
25 my opening statement in the beginning, as certain evidence  
was removed from the bodies of Kirby Eunch, Jr. and Mark

1 Winston, that being the projectiles, whether it had any signifi-  
2 cance in this case, and whether the shell casings recovered  
3 from the kitchen and the outside area had any significance to  
4 this case.

5 What Sergeant Toth told you is that shell casings  
6 leave certain evidence lines when they have been fired from  
7 a gun. There is no other gun that is going to be presented  
8 in evidence, because that gun was taken with Fahim and Dennis  
9 Copling, when they left after the shooting. But we know a gun  
10 was there and we know the gun wasn't that gun, because Ser-  
11 geant Toth told us that the projectiles, the lead part, the  
12 bullets, two bullets examined by him were determined to be of  
13 the same class characteristic, that is, .38 caliber class,  
14 of which a nine millimeter is part, and they were both fired  
15 from the same firearm.

16 He didn't say they were fired from the same firearm  
17 that fired the shell casings. He did say the bullets are con-  
18 sistent with Luger caliber, which are the shell casings in  
19 evidence, as opposed to the .380 ammunition found in this gun,  
20 which is capable of being fired out of this gun, and which is  
21 also in evidence.

22 We can't give you the gun and ammunition at the same  
23 time, or obvious reasons.

24 The fact of the matter is the three shell casings  
25 were fired from the same gun, the two bullets were fired from

1 the same gun, and they are both consistent with each other.

2 We know that Kirby Bunch was shot in the house  
3 first. How do we know that? We know that from what Nate  
4 Simmons said and what Ben Young said. We know Malik is found  
5 in the house. We know that from the fact Tim Queensbury said  
6 Kirby Bunch was alive and screaming for help and had obviously  
7 been shot when he came up to him.

8 It wasn't until Fahim came up moments later and  
9 stood over the top of him and fired at the back of his neck,  
10 that the third and final shot was placed into and through  
11 Kirby Bunch's body.

12 The evidence was recovered from both bodies. One  
13 bullet remained in Kirby Bunch and the only bullet remained  
14 in Mark Winston. Both of them were killed by a nine millimeter  
15 gun. The testimony was a semi-automatic handgun.

16 The testimony of Nate Simmons was that the person  
17 who said: What did you jump my brother for, who was wearing  
18 the mask and the dark clothing pulled a black semi-automatic  
19 handgun from inside of his jacket, a semi-automatic handgun,  
20 and Sergeant Toth testified that the ammunition fired the pro-  
21 jectile recovered and the shell casings are automatic weapon  
22 ammunition.

23 The evidence both circumstantial and direct in this  
24 case is overwhelming, ladies and gentlemen, overwhelming that  
25 the defendant, Dennis Copling, knew what he was doing, that he

1 went and got help in order to commit this crime, and that he  
2 went a few short blocks away from 26th and High to the Maguire  
3 Garden Apartments. It all fits within this one map here,  
4 ladies and gentlemen. It all fits within this one map.

5 If you recall the testimony of Sergeant Forte and  
6 the testimony of Detective Finneman, the defendant's own  
7 words were that he went with Malik and Fahim. He only admits  
8 to beating up Kirby Bunch.

9 Would you expect him to say anything more? Are you  
10 going to come out and say: Oh, yeah, I killed him, I shot  
11 him, or I only shot him on hte inside, and it was Fahim who  
12 shot him on the outside.

13 Two people are dead, ladies and gentlemen, so you  
14 tell the police officers the truth. The truth is that you  
15 were there. The truth is that you are the one wearing the  
16 dark clothing with the mask. The truth is that Fahim was  
17 wearing a light colored clothing.

18 How did they get to where they were going? By car.  
19 By Fahim's car. This is evidence which the police had no way  
20 of knowing, until they heard it right from the defendant's  
21 mouth himself.

22 Tim Queensbury didn't tell you he knew who Fahim  
23 was. He didn't. Tim Queensbury didn't volunteer any infor-  
24 mation to the police. They went and found him. They didn't  
25 find him until six months later.

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When answering questions in response to Cross-examination, Tim Queensbury didn't sit here and say it was Dennis Copling who shot the shots outside. He said it was someone else. He knew Dennis Copling. He was right there next to Kirby Bunch when two shots were fired, one striking Kirby Bunch and one not striking Kirby Bunch.

Shell casings were found outside the house. Shell casings were found inside the house. Identical. Whoever was in the house had the same gun. Dennis Copling was in the house. He had the reason to settle the score. He brought Fahim and Malik along with him with another gun that was found, according to the paramedic who knelt down to work on Malik, two feet away.

According to the police officer who was first on the scene and ran through and made observations, and then ran to check to see if anybody else was in the house, it was approximately three feet away, but it had been moved by the time he got back.

You heard Dr. Catherman testified that the shot that struck Mark Winston would have paralyzed him immediately from here down, from the midchest down. He could have dropped like that.

The State would suggest he would have dropped his gun. Dr. Catherman testified about a bullet type injury to Mark Winston's right thumb. You will see photographs that have

1           been admitted into evidence of the crime scene in the kitchen,  
2           and the gun is there, and there are smatterings of red stuff  
3           on the gun.

4                     The only testimony you heard about injury to anyone's  
5           hand was to Mark Winston. There is a photograph of his thumb-  
6           nail and the area around the tip of his thumb that is consis-  
7           tent with what Dr. Catherman told you, that he was struck by  
8           a bullet.

9                     If you remember, it was the State's argument to you  
10          in opening statement that if Dennis Copling went there for  
11          the purpose of killing Kirby Bunch, and it was his intention  
12          to do so, or to cause serious bodily injury that resulted in  
13          death, then he is guilty of murder, if that was his conscious  
14          intent.

15                    The fact that Mark Winston, who was clearly not in-  
16          tended to be killed in this incident, but I think it's clear  
17          that Dennis didn't want his buddy to be killed, then it doesn't  
18          matter. If that was still his intention, it's called the  
19          Doctrine of Transferred Intent. He is responsible for it.  
20          It's a murder, it's just the same.

21                    The fact that a struggle occurred inside 2126 West-  
22          minster Avenue does not negate the criminal intention of  
23          Dennis Copling in being there in the first place.

24                    If someone pulled a gun out in front of you, you are  
25          not going to just stand there and say: Shoot me. You are go-

1 ing to try and protect yourself. There has been nothing in  
2 the evidence presented before you that is consistent with  
3 Kirby Bunch possessing or having a firearm. If anything, it  
4 was completely to the contrary.

5 Kirby Bunch didn't use a gun the night before. He  
6 was in a place where he was allowed to be. It was Dennis  
7 Copling and Mark Winston and Fahim who came to him. Even if  
8 he had a gun, he would have been justified in using it to pro-  
9 tect himself, once someone pulled out a gun on him.

10 This isn't self-defense. This is premeditated.  
11 Dennis Copling went there with that purpose. He was looking  
12 for Kirby Bunch because he was going to get Kirby Bunch.

13 You heard the testimony of Lakesha Buckhannon,  
14 Latisha Fair and Barbara Buckhannon. You will listen to their  
15 testimony and you hear the defense's argument they are not to  
16 be believed, because there are inconsistencies in the testimony,  
17 they are lying, they are embellishing.

18 Again. listen to what they say. I would agree with  
19 Mr. Leiner Lakesha Buckhannon is devastated by the death of  
20 her brother and the circumstances that led up to it. Think  
21 about that when determining whether what she said is an in-  
22 tentional misrepresentation to you as jurors or are mistakes.

23 If someone was asked two years later, we brought in  
24 for preparation prior to trial what happened with this prior  
25 gun incident, that's the first time you may hear about it.

1 But you recall that although on Cross-examination Mr. Leiner  
2 asked Sergeant Forte whether Lakesha Buckhannon said anything  
3 about it, he didn't recall that, but he recalled Latisha Fair  
4 mentioning the previous occurrence, it happened, whether two  
5 weeks before or whether it was three days before, and they  
6 both said the same thing.

7 This was at a time when they were still friends  
8 with Dennis Copling. They are together at a family function,  
9 a friend's house, cards are being played. Lakesha Buckhannon  
10 went down to sit on a pillow and there was a gun on it, and  
11 Dennis Coplign told her not to sit there.

12 He takes the gun, retrieves it and puts it somewhere  
13 on his body. All that is entirely consistent with what both  
14 women were saying. It is not a lie. It happened.

15 Does that necessarily mean Dennis Copling was in  
16 possession of a black handgun on January 18th? No. But it  
17 is certainly evidence from which you can determine that he  
18 did.

19 What did Lakesha Buckhannon, Latisha Fair and  
20 Barbara Buckhannon do as soon as the argument was over? They  
21 called the police before it was over. The police arrived.  
22 When they realized the police weren't taking them seriously  
23 enough, they tried to warn Kirby Bunch on their own, but they  
24 were too late.

25 The defendant had already been there and was gone.

1 The only thing left behind were two bodies, Mark Winston's,  
2 Malik, and Kirby Bunch, Jr., K.C.

3 A piece of evidence that you very rarely have in a  
4 case, ladies and gentlemen, especially a homicide, are words  
5 spoken directly from the victim's mouth. In this case just  
6 before a third and final shot, you heard Tim Queensbury who,  
7 if anything, should be the most credible witness of all, be-  
8 cause Mr. Leiner brought out through him that other people  
9 had been saying other things that were inconsistent, and it  
10 was he who set the police straight that he was out there,  
11 that he asked Kirby Bunch who shot him, and Kirby Bunch said:  
12 Dennis. It was right from Kirby Bunch's mouth: Dennis.

13 Tim Queensbury knew Dennis Copling, but he didn't  
14 know to which Dennis Kirby was referring to that particular  
15 moment. Kirby Bunch identified his own killer, ladies and  
16 gentlemen. Kirby Bunch identified the only Dennis involved  
17 in this case, Dennis Copling. That piece of evidence alone  
18 is significant.

19 That piece of evidence alone ties this case together.  
20 There is so much evidence in this case from so many different  
21 people that the conclusion is inescapable. Dennis Copling  
22 was unstoppable that night because he had already made up his  
23 mind what he was going to do.

24 You heard Latisha Fair testify she grew up with him,  
25 she has gone out with him, that she went out to talk with him,

1 but he wasn't hearing anything. He had already made up his  
2 mind, ladies and gentlemen. He had already gotten the ski  
3 mask from Leervin Hill. They were in a car waiting for him.  
4 He got in the car and he went out there, and we all know the  
5 rest.

6 Dennis Copling is guilty of conspiracy to commit  
7 murder with Malik and Fahim; he is guilty of a knowing and  
8 purposeful murder of Kirby Bunch, Jr.; for causing serious  
9 bodily injury resulting in the death of Kirby Bunch, Jr.  
10 Kirby is guilty by virtue of the law of transferred intent,  
11 guilty of the murder, knowing and purposeful, of Mark Winston.

12 Dennis Copling possessed a firearm with purpose to  
13 use it unlawfully against the person of another, and as the  
14 State indicated to you in opening, there is the inference that  
15 is created that you may either accept or not, the defendant  
16 didn't have a permit to carry a handgun.

17 The evidence is inescapable, there is no way he had  
18 a permit to carry a firearm in this case.

19 He is guilty of each and every element of each and  
20 every offense beyond a reasonable doubt, and it's the State's  
21 hope that you will take your time deliberating, that you will  
22 review all the evidence that has been submitted in this case,  
23 that you will discuss it among yourselves, and that you will find  
24 the defendant guilty of each and every count.  
25

Thank you.

1 THE COURT: Ladies and gentlemen of the jury, you  
2 just heard two closings, and it will be my responsibility to  
3 instruct you as to the law which applies to this case. The  
4 instructions that I will be giving you are lengthy, as jury  
5 instructions go, in part because of the number of counts in the  
6 indictment.

7 I think the better course is to allow you to take  
8 your lunch, to recess and come back fresh, and I will instruct  
9 you immediately after lunch on the law that you need to delib-  
10 erate this case, and you will retire and deliberate.

11 Why don't we resume in an hour and fifteen minutes  
12 at 1:20. Enjoy your lunch. Just a reminder not to discuss  
13 the closings or evidence among yourselves in the meantime.  
14 We will see you then. Thank you.

15 (Jury excused from courtroom.)

16 THE COURT: I am going to find out if my secretary  
17 has finished making the revisions to the jury instructions we  
18 talked about before. If so, I can give them to you now and  
19 we can talk about them again before we resume.

20 MR. LEINER: Your Honor, I do have one objection to  
21 the prosecutor's closing. I didn't want to interrupt and  
22 bring it up at the time.

23 That would be in reference to the indication with  
24 regard to Nate Simmons, somehow he was in fear of Dennis  
25 Copling. I think that was improper in the way it was pre-

1           sented, and I object to that portion of his closing.

2           THE COURT: Mr. Aronow.

3           MR. ARONOW: Judge, I think the jurors in looking  
4           at and listening to the witness testify, and determining their  
5           credibility, can use anything involved in their own repertoire,  
6           to determine whether or not a witness had a reason to fear.

7           With respect to why they made an identification or  
8           not made an identification, I don't think anything the State  
9           said in its closing was improper.

10          THE COURT: The Court agrees. The comment that was  
11          made by the State in its closing would call upon the jury to  
12          determine what the particular perspective of that witness may  
13          have been at a given point in time. It is in a sense an  
14          evaluation of the witness' ability to reason observe, recol-  
15          lect and relate.

16          I see nothing that is improper with it. Therefore,  
17          the Court will not admonish the jury to disregard it.

18          If you wait one moment, I will have the modification.  
19          I will get copies made, if you wait two minutes.

20          There is one other minor issue. I expect that it  
21          will take me an hour and a half to charge the jury. From my  
22          prior experience, it may be longer. That being the case, is  
23          there any objection from either side if I sense the jury is  
24          getting restless, I look at them, is there any objection to  
25          my taking a brief recess in the middle?

1 MR. LEINER: No, your Honor.

2 MR. ARONOW: No.

3 THE COURT: I will try to do it all at once, but  
4 not at the expense of their continued attention.

5 Any other housekeeping issues either one of you want  
6 to bring to my attention?

7 MR. LEINER: Not at this time, your Honor.

8 THE COURT: Why don't we move the easel back, so it  
9 is not out there when instructing the jury.

10 When you get my revised instructions, you will see  
11 that in adding the shots were fired by both the defendant and  
12 Fahim, there is a discussion there as to what the jury would  
13 do if they found that the shots fired by the defendant were  
14 the fatal wounds, or what they would do with the shots fired  
15 by both shooters.

16 I think that has to be discussed. The instruction  
17 tells them if the shots fired by the defendant did not in and  
18 of themselves kill Kirby Bunch, the defendant is legally re-  
19 sponsible for the conduct of Fahim, based upon the instruction  
20 I have given them previously, and if all the shots together  
21 killed Kirby Bunch, under that scenerio the defendant would  
22 be guilty of murder, even though the shots fired by himself  
23 were not alone the fatal shots.

24 I wanted to bring that to your attention.

25 The jury is coming back at 1:20. How about we get

1 back together at 1:10?

2 MR. LEINER: Fine, your Honor.

3 THE COURT: I would ask the defendant be back in  
4 the courtroom at ten after 1:00 also.

5 There is one other housekeeping detail. As you both  
6 know, whenever the juror seated in Seat Number 1 has been ex-  
7 cused, then the Court designates as the foreperson the person  
8 next seated, according to the language of the Court Rules.  
9 That doesn't mean the juror in Seat 2. That means the juror  
10 next picked.

11 In reviewing my grid, I have determined it was --

12 MR. LEINER: I guess we should look for the next  
13 one.

14 THE COURT: It was juror in Seat 6, Number 161.

15 MR. LEINER: I think we should look to Number 2, in  
16 case that person is picked.

17 THE COURT: You are right, we should in case that  
18 one is picked. I will give you a copy of the revised instruc-  
19 tion.

20 Counsel, as I indicated, the juror next seated  
21 would have been the juror in Seat 6, because she was selected  
22 on the first seating of the entire panel and never replaced.  
23 If she is designated as the alternate, then the person seated  
24 next was the juror in Seat Number 5, Juror Number 414. Al-  
25 though Juror Number 414 was not seated on the first seating of

1 the jury, she was seated after the peremptory challenge was  
2 exercised or after I excused a juror for cause in this seat,  
3 which was done early in the trial.

4 It would be in Seat 6, if she is excused, then it  
5 will be the juror in Seat 5.

6 MR. LEINER: Thank you, your Honor.

7 THE COURT: We will resume at ten after 1:00.

8 (Luncheon recess.)  
9

10 AFTERNOON SESSION

11 THE COURT: Counsel, any comments concerning the  
12 instruction I gave you before lunch, the written version?

13 MR. ARONOW: Judge, the only thing I see is what you  
14 talked about previously, and that is on Page 2 dealing with  
15 the multiple perpetrator theme, and it's the State's position  
16 it wouldn't matter which bullet was fatal, and I don't think  
17 Dr. Catherman said which one was, because his testimony was  
18 that he died as a result of three gunshot wounds.

19 THE COURT: He said one of them could be fatal by  
20 itself.

21 MR. ARONOW: Right. That was the one to the chest  
22 area that went through the back.

23 THE COURT: Right.

24 MR. ARONOW: That's one thing I see.

25 THE COURT: How is what you just said in conflict

1 with what I have written here, though? I don't think it is.

2 MR. ARONOW: Okay.

3 THE COURT: While thinking about that, Mr. Leiner.

4 MR. LEINER: The only concern I have is under Para-  
5 graph 2, the first page.

6 THE COURT: Give me a second.

7 MR. LEINER: Sure.

8 THE COURT: Yes?

9 MR. LEINER: The middle of the paragraph, the part  
10 of a preplanned attack, the word attack kind of concerns me  
11 only in the sense that if there was a scenerio where it was  
12 proven beyond a reasonable doubt it was my client's intent to  
13 go and beat up Kirby Bunch, which was testified to by the  
14 officers, that doesn't necessarily give him the purpose and  
15 knowledge to cause either serious bodily harm resulting in  
16 death or to cause the death.

17 If other people acted upon that and then brought  
18 guns without his knowledge, and I think the jury could possi-  
19 bly find that, I think the word attack may be misleading in  
20 that sense.

21 THE COURT: What would you prefer it say?

22 MR. LEINER: I guess we can use preplanned attempt  
23 to cause serious bodily injury resulting in death. I would  
24 rather have that.

25 The purpose and knowledge goes to the elements of

1 murder. There is a scenerio where if he did have knowledge  
2 of the gun, that would be different, but the word attack it-  
3 self is somewhat consistent with some of the testimony given,  
4 especially by Sergeant Forte, in regard to Dennis Copling's  
5 oral statement, and I am not sure that --

6 THE COURT: How about if I change it to as part of  
7 a preplanned intention to take the life?

8 MR. LEINER: That is fine. That would be sufficient.

9 THE COURT: Mr. Aronow, anything?

10 MR. ARONOW: Yes.

11 THE COURT: In your comment, Mr. Leiner, you alluded  
12 to another possible verdict that may be encompassed by what  
13 I have given you, and that is if the jury were to find that  
14 the defendant went to Kirby Bunch's home with the intention  
15 of assaulting him, but that other people unbeknown to the  
16 defendant had the intention of murdering him, and did in  
17 fact murder Kirby Bunch, then the defendant would have to be  
18 acquitted of murder.

19 MR. LEINER: Yes.

20 THE COURT: Clearly the Court, if the Court is go-  
21 ing to be getting possible verdicts, the Court should be sure  
22 they are balanced, and that is any verdict suggested by the  
23 evidence is to be presented to the jury.

24 In other words, I have to make it an equal balance.  
25 I think that one should also be included.

1 MR. ARONOW: I don't see any basis for that. I  
2 think all the evidence indicates to the contrary.

3 THE COURT: Well, if the jury were to believe the  
4 first statement made by the defendant to Sergeant Forte,  
5 that would be evidence they must consider in that regard.

6 MR. ARONOW: I think if they believe that is what  
7 happened, he brought them there and told them, Fahim, told  
8 him to bring him back or something like that, if there is  
9 trouble, demonstrates a knowledge on his part something  
10 else was going to happen, and that is why he wanted to get  
11 Fahim.

12 THE COURT: Trouble means a lot of things. It  
13 doesn't mean shooting somebody dead. It could be additional  
14 reinforcement to beat him up or hit him over the head with  
15 an object. It could mean a lot of things. You are drawing  
16 one inference.

17 I see why you would, but I am saying there are  
18 other interpretations the jury could give to the same  
19 evidence.

20 The words we used were not explicit. Nobody said  
21 go get Fahim so that Fahim can shoot Kirby Bunch dead.

22 MR. ARONOW: The only evidence of that comes from  
23 the defendant's statement. All the other evidence points  
24 to the contrary, Judge.

25 There is evidence that indicates that a third per-

1 son who we know is Fahim was dressed differently than Dennis  
2 Copling, and there is evidence that third person fired a  
3 shot and it is not disputed outside the home.

4 There is absolutely no evidence before the jury,  
5 other than the defendant's self-serving portion of his own  
6 statement, that Fahim went into the house.

7 THE COURT: Mr. Leiner.

8 MR. LEINER: I would respond in this way, your  
9 Honor. This was evidence elicited by the State. Clearly  
10 that portion would indicate that Mr. Copling informed the  
11 authorities he was going there to beat him up. I think it's  
12 very consistent if there was going to be trouble, that an  
13 inference is they can draw not necessarily he will bring  
14 people back to kill him. It was introduced as part of this  
15 statement.

16 The prosecutor himself commented on the statement  
17 in his closing. In regard to what it meant in regard to  
18 identification, how he placed himself at the scene, and also  
19 I think they have in front of them other evidence.

20 The prosecutor may think that part of his statement  
21 is incredible, but that is for the jury to decide. I think  
22 they can decide that themselves.

23 THE COURT: These are facts to be determined by the  
24 jury. There is evidence in the record from which the jury  
25 could find that, I agree, they would have to discount

1 practically all of the other evidence presented by the State,  
2 but that is within the province of the jury to do.

3 I will include that possible scenerio as well.

4 Finally, Mr. Aronow, before I heard from Mr.  
5 Leiner just now, you had drawn the Court's attention to the  
6 paragraph that I have numbered 4.

7 Do you have any further thoughts or comments con-  
8 cerning that?

9 MR. ARONOW: No. I will withdraw my earlier com-  
10 ments, Judge.

11 THE COURT: Very good.

12 MR. LEINER: I have one other comment in regard to  
13 the transferred intent instruction.

14 THE COURT: Yes?

15 MR. LEINER: The last paragraph, I would ask that  
16 the entire paragraph be stricken.

17 I think what is contained in that paragraph is not  
18 appropriate, and the prosecutor argued that. He can argue  
19 all these facts. I don't think we have to retell the jury in  
20 the instruction that this is where they can find knowledge  
21 and intent from.

22 I think your Honor will already be giving them an  
23 instruction on purpose and knowledge, and also general in-  
24 structions that would cover that area.

25 When it comes down to the portion of causation,

1 which this clearly is, I don't think it's necessary language

2 MR. ARONOW: Judge, since I got this language  
3 from a portion of the Attorney General's brief in State vs.  
4 Worlock, obviously the causation issue is something in the  
5 model jury charge, and the Judge in Worlock saw fit to add  
6 this additional language, and this was not determined to be  
7 duplicitous or in error.

8 I don't see any reason to strike it.

9 THE COURT: Can you point me to a specific portion  
10 of the Opinion in State vs. Worlock, that particular part?

11 MR. ARONOW: That is what I am saying, Judge, it  
12 is not whether approved. They didn't comment on the Judge's  
13 instruction as being in error.

14 THE COURT: How do I know the Judge's charge con-  
15 tained the language you incorporated here?

16 MR. ARONOW: I can show your Honor a portion of the  
17 Attorney General's brief, where they quote from the transcript  
18 where I incorporated it from.

19 THE COURT: Have you had an opportunity to review  
20 that, Mr. Leiner?

21 MR. LEINER: No, Judge.

22 THE COURT: If you want to look at it and satisfy  
23 yourself. It was part of the Judge's charge and not  
24 commented on, if inadvertently, by the Supreme Court in  
25 Worlock, then I will leave it as it is.

1 MR. LEINER: Mr. Aronow wants the charge in. It  
2 was a complete charge in regard to that issue.

3 MR. ARONOW: Excuse me?

4 MR. LEINER: It was a complete charge with regard  
5 to that issue provided in that brief.

6 MR. ARONOW: No.

7 MR. LEINER: That is part of my problem, Judge.

8 MR. ARONOW: That specific portion that I cited is  
9 in there.

10 MR. LEINER: There might be language that tends to  
11 soften the blow of that particular paragraph, that could have  
12 been contained in that charge, and we don't know that.

13 It says, "It is within your power that proof of  
14 purpose or proof of knowledge has been furnished beyond a  
15 reasonable doubt by inferences which may rise from the nature  
16 of the acts and circumstances surrounding the conduct under  
17 investigation."

18 They also could find that from a lot of other  
19 people. Telling them, "It is within your power," I don't  
20 want there to be any indication to the jury that because they  
21 may find there was a particular weapon used, the location,  
22 nature of the wounds, that they have to find these factors  
23 are there.

24 It's almost like a listing of factors that are  
25 there, and if you add up the factors, then you can find this.

1 I think we already have a complete charge from your  
2 Honor in regard to different scenerios, which is fair to both  
3 sides. I don't think that whole paragraph by itself at the  
4 end is necessary.

5 THE COURT: I have heard both arguments, and I will  
6 decide as I am charging the jury. I will have heard the  
7 entire charge, and then I will make a determination. I put  
8 a question mark by it right now and I will decide at that  
9 time.

10 MR. LEINER: Thank you, your Honor.

11 THE COURT: Okay. We can bring the jury in.

12 (Jury returned to courtroom.)

13 THE COURT: Ladies and gentlemen of the jury, as  
14 you know, the evidence in this case has now been presented,  
15 and the attorneys have completed their closing arguments.  
16 We arrive at that time when you as members of this jury will  
17 perform your final function in this case.

18 At the outset let me express my thanks and my  
19 appreciation to you for your attention to this case.

20 I would like to also commend the attorneys for the  
21 professional manner in which they have presented their respec-  
22 tive cases, and their courtesy to the Court and for their  
23 courtesy to you during the course of this trial.

24 Before you retire to deliberate and reach your ver-  
25 dict, it is my obligation to instruct you concerning the

1 principles of law which apply to this case. You will see  
2 as we proceed this afternoon, my instructions are essentially  
3 in three parts.

4 I will be giving you a roadmap of it as we go  
5 along, so you know when we finish each section.

6 The first part is a review of the principles of law  
7 that I discussed with you, when you were selected about two  
8 weeks ago on the very first day. That review of the principles  
9 of law would be the same principles of law that would apply  
10 to any criminal trial. That is the first section.

11 The middle section concerns the requirements that  
12 the State must prove concerning the specific offenses that  
13 are charged in the indictment, that have been the subject of  
14 this trial. The middle part is specifically to the actual  
15 charges involved in this trial.

16 The third and final portion is an overview and dis-  
17 cussion of how it is that you deliberate, what you do, what  
18 do you consider, what do you not consider, the requirement of  
19 a unanimous verdict, and how you interact with one another  
20 during the jury deliberation process.

21 Those will be the three portions. You shall con-  
22 sider my instructions in their entirety, and you should not  
23 pick out any particular instruction and overemphasize it.  
24 You must accept and apply this law to this case as I give it  
25 to you in these instructions.

1 Any ideas that you have of what the law is or what  
2 the law should be, or any statement by the attorney as to  
3 what the law may be, must be disregarded by you, if they are  
4 in conflict with my instructions to you this afternoon.

5 During the course of the trial I was required to  
6 make certain rulings on the admissibility of the evidence,  
7 either in or outside of your presence. These rulings involved  
8 questions of law.

9 The comments of the attorneys on these matters  
10 were not evidence. In ruling I have decided questions of  
11 law, and whatever the rulings may have been in any particu-  
12 lar instance, you should understand it was not an expression  
13 or an opinion by me on the merits of the case.

14 Neither should my other rulings on any other aspect  
15 of the trial be taken as favoring one side or the other,  
16 because each matter was decided on its own merits.

17 When I use the term evidence, as you know, we mean  
18 by that the testimony that you have heard and seen from the  
19 witness box, and the exhibits that have been admitted into  
20 evidence.

21 Any testimony that I may have had occasion to  
22 strike is not evidence, and shall not enter into your final  
23 deliberation. In other words, it must be disregarded by  
24 you. This means that even though you may remember the testi-  
25 mony, you are not to use it in your discussions or delibera-

1 tions.

2 You may, for example, have heard a reference to  
3 flight or maybe the defendant fled. I sustained any objec-  
4 tion to that, so you should not consider the word flight, nor  
5 is there any evidence in this case from which you could find  
6 the defendant fled.

7 That would be an example of evidence that you may  
8 have heard but you should disregard.

9 Further, if I gave a limiting instruction as to  
10 how to use certain evidence, the evidence must be considered  
11 by you for that limited purpose, and for that limited purpose  
12 only. You cannot use it for any other purpose.

13 You will remember last week you heard testimony  
14 from Latisha Fair and Lakesha Buckhannon concerning their  
15 testimony that on a prior occasion prior to January 18, 1995,  
16 they had seen the defendant in possession of a handgun.

17 You will remember that I gave you an instruction on  
18 the very limited purpose for which you could consider that  
19 evidence.

20 As members of the jury, it is your duty to weigh  
21 the evidence calmly and without passion, prejudice or sympathy.  
22 Any influence caused by these emotions has the potential to  
23 deprive both the State and the defendant of what you promised  
24 them, which is a fair and impartial trial by a fair and im-  
25 partial jury.

1           Also, speculation, conjecture, other forms of  
2 guessing play no role in the performance of your duty.

3           Next I will review with you the concept of presump-  
4 tion of innocence, burden of proof and reasonable doubt,  
5 that I explained to you when the trial began.

6           The defendant on trial is presumed to be innocent,  
7 and unless each and every essential element of an offense  
8 charged is proved beyond a reasonable doubt, then the defen-  
9 dant must be found not guilty of that charge.

10           If you would excuse me one moment.

11           As I was mentioning, the defendant is presumed to  
12 be innocent, and unless each and every essential element of  
13 an offense charged is proved beyond a reasonable doubt, the  
14 defendant must be found not guilty of that charge.

15           The burden of proving each element of the charge  
16 beyond a reasonable doubt, is a burden which rests upon the  
17 State. That burden never ever shifts to a defendant. The  
18 defendant in a criminal case has no obligation or duty to  
19 prove that he is innocent, nor does he have any obligation to  
20 offer any proof whatsoever relating to his innocence.

21           The State has the burden, as I told you, of proving  
22 the defendant guilty beyond a reasonable doubt.

23           Let me explain to you what that means. Some of you  
24 may have served as jurors in civil cases, and you were told  
25 in those cases it was necessary to prove only that a fact is

1 more likely true than not true.

2 But in criminal cases the prosecution's proof must  
3 be more powerful than that. It must be proof beyond a reason-  
4 able doubt.

5 A reasonable doubt is an honest and reasonable un-  
6 certainty in your mind about the guilt of the defendant,  
7 after you have given full and impartial consideration to all  
8 of the evidence.

9 A reasonable doubt may arise from the evidence it-  
10 self or from a lack of evidence. It is a doubt that a rea-  
11 sonable person hearing the same evidence would harbor. Proof  
12 beyond a reasonable doubt is proof, for example, that leaves  
13 you firmly convinced of the defendant's guilt.

14 In this world we know very few things with an abso-  
15 lute certainty. In criminal cases the law does not require  
16 proof that overcomes every possible doubt.

17 If, based on your consideration of the evidence,  
18 you are firmly convinced that the defendant is guilty of the  
19 crime charged, you must find him guilty.

20 If, on the other hand, you are not firmly convinced  
21 of the defendnat's guilt, then you must give the defendant  
22 the benefit of the doubt and find him not guilty.

23 Next I am going to review with you the function of  
24 the jury, as distinguished from the function of the Court.

25 In my preliminary instructions when we started this

1 case, I explained to you that you are the judges of the facts,  
2 and that as judges of the facts you are to determine the  
3 credibility of the various witnesses, as well as the weight  
4 to be attached to their testimony.

5 You and you alone are the sole and exclusive judges  
6 of the evidence, of the credibility of the witnesses, and  
7 the weight to be attached to the testimony of the various  
8 witnesses.

9 Regardless of what the attorneys said or what I  
10 may have said in recalling the evidence, remember that it is  
11 your recollection of the evidence that must and should guide  
12 you as judges of the facts.

13 Arguments, statements, remarks, openings and clos-  
14 ings by the attorneys are not evidence, and must not be con-  
15 sidered by you as evidence. Although the attorneys may point  
16 out what they think is important in this case, both have done  
17 an excellent job in doing that, you must rely solely upon  
18 your understanding and your own recollection of the evidence  
19 that was presented before you during this trial.

20 Whether or not the defendant has been proven guilty  
21 beyond a reasonable doubt, is for you to determine based on  
22 all of the evidence presented during the trial. Any comments  
23 by the attorneys are not controlling.

24 It is your sworn duty to arrive at a just conclu-  
25 sion, after considering all of the evidence which was pre-

1           sented during the course of the trial.

2                       The function of the Court or the judge is separate  
3 and distinct from the function of the jury. It has been my  
4 responsibility to determine all questions of law arising during  
5 the trial, and to instruct you, as I am now doing, concerning  
6 the law which applies in this case.

7                       You must accept the law as given to you during the  
8 instructions this afternoon, and you must apply that law to  
9 the facts, as you as a jury find those facts to be.

10                      Now, I have sustained objections to some questions  
11 asked by the attorneys, which may have contained within those  
12 questions statements of certain facts. The mere fact that  
13 an attorney asks the question and insert fact or comment or  
14 opinions in that question, in no way proves the existence of  
15 those facts.

16                      You will only consider such facts which in your  
17 judgment have been proven by the testimony of witnesses, or  
18 from exhibits admitted into evidence by the Court.

19                      The fact that I may have asked questions of a wit-  
20 ness, and I think I only did that on one occasion, I asked  
21 somebody how to spell something, but the fact I may have asked  
22 questions of a witness must not influence you in any way in  
23 your deliberation.

24                      The fact that I have asked such questions does not  
25 indicate that I hold any opinion one way or another, as to

1 the testimony given by the witness.

2 Any remarks made by me to the attorneys, or by the  
3 attorneys to me, or between the attorneys, are not evidence  
4 and should not affect or play any part in your deliberation.

5 Next I am going to be reviewing with the concept  
6 of direct and circumstantial evidence. You will remember back  
7 when the trial began, I explained to you that snow falling  
8 during the night could be proven by direct and circumstantial  
9 evidence, and I told you how that could be done.

10 I am not going to give you that example again, be-  
11 cause I am sure you all remember it.

12 For present purposes, it's sufficient to just re-  
13 member evidence may be either direct or circumstantial.  
14 Direct evidence, as you recall, means evidence that directly  
15 proves a fact without an inference, and which in and of it-  
16 self if true conclusively establishes that fact.

17 On the other hand, circumstantial evidence means  
18 evidence that proves a fact from which an inference of the  
19 existence of another fact may be drawn.

20 What is an inference? You will remember an infer-  
21 ence is a deduction of fact that may logically and reasonably  
22 be drawn from another fact or group of facts established by  
23 the evidence.

24 Whether or not inferences should be drawn is for  
25 you to decide. Use your own common sense, your own knowledge

1 and your own every day experience. Ask yourself is it probable,  
2 is it logical and is it reasonable.

3 Remember also that it is not necessary that all of  
4 the facts be proven by direct evidence. They may be proven  
5 by direct evidence, by circumstantial evidence, or by a com-  
6 bination of the two, and remember also that all are acceptable  
7 as a means of proof.

8 In many cases, circumstantial evidence may be more  
9 certain, more satisfying and persuasive than direct evidence.

10 Both direct and circumstantial evidence should be  
11 scrutinized and evaluated by you carefully. A verdict of  
12 guilty may be based on direct evidence alone, on circumstan-  
13 tial evidence alone, or a combination of the two, provided,  
14 of course, that it convinces you of a defendant's guilt be-  
15 yond a reasonable doubt.

16 The reverse is also true. A defendant may be found  
17 not guilty by reason of direct evidence, by reason of circum-  
18 stantial evidence, or by a combination of the two, or a de-  
19 fendant may be found not guilty by reason of a lack of evi-  
20 dence, if it raises in your mind a reasonable doubt as to the  
21 defendant's guilt.

22 Next I am going to review with you the criteria  
23 and the factors that may be helpful to you in deciding whether  
24 witnesses' testimony is believable or not.

25 As the judges of the facts, you are to determine

1 the credibility of the witnesses. In determining whether a  
2 witness is worthy of belief and, therefore, credible, you may  
3 take into consideration the following factors:

4 The appearance and demeanor of the witness on the  
5 witness stand, the manner in which he or she may have testi-  
6 fied, the witness' interest in the outcome of the trial, if  
7 any, his or her means of obtaining knowledge of the facts,  
8 the witness' power of discernment, meaning their judgment and  
9 understanding, his or her ability to reason, to observe, to  
10 recollect and to relate, the possible bias, if any, in favor  
11 of the side for whom the witness testified, the extent to  
12 which if at all each witness is either corroborated or con-  
13 tradicted, supported or discredited by other evidence, whether  
14 the witness testified with an intent to deceive you, the  
15 reasonableness or unreasonableness of the testimony the wit-  
16 ness has given, and any and all other matters in the evidence  
17 which serve to support or discredit that witness' testimony  
18 before you.

19 Through this analysis, as the judges of the facts,  
20 you will weigh the testimony of each witness, and then deter-  
21 mine the weight to be given to it. Through that process you  
22 may accept all of it, a portion of it or none of it.

23 If you believe that any witness willfully or know-  
24 ingly testified falsely to any material fact in the case,  
25 with an intent to deceive you, you may give such weight to his

1 or her testimony as you deem it is entitled.

2 You may believe some of it or you may in your dis-  
3 cretion disregard all of it.

4 There are five offenses charged in the indictment.  
5 They are separate offenses by separate counts in the indict-  
6 ment.

7 The defendant is entitled to have his guilt or  
8 innocence separately considered on each count by the evidence  
9 which is relevant and material to that particular charge,  
10 based on the law as I will be giving it to you as we proceed.

11 The next instruction concerns the evaluation of  
12 expert testimony. A general rule of evidence is that wit-  
13 nesses can testify only as to facts known by them. This rule  
14 ordinarily does not permit the opinion of a witness to be  
15 received as evidence.

16 However, an exception to this rule exists in the  
17 case of an expert witness, who may give his opinion as to any  
18 matter in which he is versed or has special knowledge, which  
19 is material to the case. In other words, helpful to your  
20 deliberations.

21 In legal terminology, an expert witness is a wit-  
22 ness who has some special knowledge, special skill, experi-  
23 ence or training that is not possessed by the ordinary juror,  
24 and who may thus be able to provide assistance to you in your  
25 factfinding responsibility.

1                   In this case we heard from Dr. Robert Catherman,  
2 who is a forensic pathologist and a physician, and also  
3 Sergeant Robert Toth, who gave testimony in the area of  
4 firearms identification and ballistics.

5                   You are not bound such experts' opinion, but you  
6 should consider each opinion and give it the weight to which  
7 you deem it is entitled, whether that be great weight or  
8 slight weight, or you may reject it in its entirety.

9                   In examining each opinion you may consider the  
10 reason given for it, if any, and you may also consider the  
11 qualifications and the credibility of the expert. Remember  
12 that it is always within the special function of the jury  
13 to decide whether the facts on which the answer of an expert  
14 is based actually do exist, and the value or weight of the  
15 opinion of the expert is then dependent upon and no stronger  
16 than the facts upon which this expert witness' opinion has  
17 been predicated.

18                   My next instruction to you concerns the evaluation  
19 by you of any oral statement the defendant may have made.  
20 There is for your consideration in this case an oral statement  
21 allegedly made by the defendant.

22                   It is your function to determine whether or not the  
23 statement was actually made by the defendant, and if made,  
24 whether the statement or any portion of it is credible.

25                   In considering whether or not an oral statement was

1 actually made by the defendant, and if made, whether it is  
2 credible, you should receive, weigh and consider this evi-  
3 dence with caution, based upon the generally recognized risk  
4 of misunderstanding by the hearer of the evidence, or the  
5 ability of the hearer to recall accurately the words used  
6 by the defendant.

7  
8 In other words, when a person is taperecorded and  
9 the statement is made on tape, then you have somewhat different  
10 ability to judge it than you would if there was no tape re-  
11 cording, and if one person is telling you what another person  
12 may have said.

13 The specific words used and the ability to remember  
14 them are important to the correct understanding of any oral  
15 communication, because the presence or absence or change of  
16 a single word may substantially change the true meaning of  
17 even the shortest sentence.

18 You should, therefore, receive, weigh and consider  
19 such evidence with caution.

20 In considering whether or not the statement is  
21 credible, you should take into consideration the circumstances  
22 and facts as to how the statement was made, as well as all  
23 other evidence in this case relating to this issue.

24 If, after consideration, you determine the statement  
25 was not actually made, or that the statement is not credible,  
then you must disregard the statement completely. If you find

1 the statement was made and part or all of the statement is  
2 credible, you may give what weight you think is appropriate  
3 to the portion of the statement that you do find to be truth-  
4 ful and credible.

5 My next instruction to you concerns the defendant's  
6 decision not to testify, and what you may do and not do with  
7 that decision.

8 The defendant in this case chose not to be a wit-  
9 ness. It is the Constitutional right of a defendant to re-  
10 main absolutely silent because, as I have explained to you,  
11 a defendant in a criminal case has no obligation to prove  
12 that he is innocent, and he has no obligation to offer any  
13 proof relating to his innocence.

14 It is the Constitutional right of a defendant to  
15 remain silent.

16 I instruct you that you are not to consider for any  
17 purpose or in any manner in arriving at your verdict, the  
18 fact that the defendant did not testify, nor should that fact  
19 enter into your deliberation or discussion in any manner or  
20 at any time.

21 The defendant is entitled to have the jury consider  
22 all of the evidence, and he is entitled to the presumption of  
23 innocence, even if he does not testify as a witness.

24 My next instruction to you concerns the fact that  
25 some of the witnesses who testified have a prior conviction.

1 I am going to explain to you the very limited purpose for  
2 which you can use that testimony.

3 You have heard evidence that Timothy Queensbury,  
4 Ben Young, Nate Simmons, Barbara Buckhannon and Latisha Fair  
5 have previously been convicted of a crime. This testimony  
6 may only be used in determining the credibility or believ-  
7 ability of this witness' testimony.

8 A jury has a right to consider whether a person  
9 who has previously failed to comply with society's rules,  
10 as demonstrated through a criminal conviction, would be more  
11 likely to ignore the oath which requires truthfulness on the  
12 witness stand.

13 In other words, would a person who has violated  
14 society's rules because of a criminal conviction be more  
15 likely than a law abiding citizen would be to depart from  
16 the obligation to tell the truth.

17 You may consider in determining this issue the  
18 nature and degree of the prior conviction, and when it occurred.  
19 You are not, however, obligated to change your opinion as to  
20 the truthfulness of these witnesses, simply because of that  
21 prior conviction, but it is evidence that you may consider  
22 along with all the other factors we previously discussed in  
23 determining credibility of a witness.

24 Ladies and gentlemen, that concludes the first  
25 part of the three sections. I am now going to begin by ex-

1 plaining to you what the State must prove in connection with  
2 Count One of the indictment, which charges the offense of  
3 conspiracy.

4 In Court One the defendant is charged with the  
5 crime of conspiracy to commit murder. The indictment reads  
6 as follows:

7 On or about the 18th day of January, 1995, in the  
8 City of Camden, Dennis Copling did conspire with another to  
9 commit the crime of murder.

10 The statute upon which the indictment is based,  
11 statute is another word for law, the statute on which that  
12 count of the indictment is based reads as follows:

13 A person is guilty of conspiracy with another per-  
14 son or persons to commit a crime if with the purpose of pro-  
15 moting or facilitating its commission, he agrees with such  
16 other person or persons that they or one or more of them will  
17 engage in conduct which constitutes such crime or an attempt  
18 or solicitation to commit such crime.

19 A conspiracy to commit the crime of murder is a  
20 crime in and of itself separate and distinct from the crime  
21 of murder. In other words, a defendant may be found guilty  
22 of the crime of conspiracy, regardless whether that defendant  
23 is guilty or not guilty of the crime of murder itself.

24 In order for you to find a defendant guilty of the  
25 crime of conspiracy, the State must prove the following ele-

1           ments: First, that the defendant agreed with another person  
2           or persons that they or one or more of them would engage in  
3           conduct which constitutes a crime, or they would engage in  
4           conduct which constitutes an attempt or solicitation to  
5           commit such crime.

6                     That is the first thing the State has to prove.

7                     The second thing the State would have to prove in  
8           connection with this offense is that the defendant's purpose  
9           was to promote or facilitate the commission of the crime of  
10          murder.

11                    I just used the word purpose, because I just ex-  
12          plained to you the second thing the State must prove is that  
13          it was the defendant's purpose to promote or facilitate the  
14          commission of a crime.

15                    Let me now tell you what we mean when we use the  
16          phrase a defendant or person acts purposely.

17                    A person acts purposely with respect to the nature  
18          of his conduct or a result thereof, if it is his conscious  
19          object to engage in conduct of that nature or to cause such  
20          a result.

21                    A person acts purposely with respect to the atten-  
22          dant circumstances, if he is aware of the existence of such  
23          circumstances or he believes or hopes they exist.

24                    In order to find a defendant guilty of the crime  
25          of conspiracy, the State does not have to prove that he

1 actually committed the crime of murder. However, to decide  
2 whether the State has proven the crime of conspiracy to  
3 commit murder, you must understand what constitutes the  
4 crime of murder, and I will be instructing you as to that  
5 in a few moments.

6 For present purposes, let's return to the crime  
7 of conspiracy. A conspiracy may be proven by direct evidence  
8 or circumstantial evidence. It is not essential that there  
9 be direct contact among all of the conspirators, nor is it  
10 necessary they enter the agreement at the same time.

11 If the defendant is aware that any person conspired  
12 with others to commit the same crime, the defendant is guilty  
13 of conspiring with the others. He need not be aware of their  
14 identity.

15 Mere association, acquaintence or family relation-  
16 ship with an alleged conspirator is not enough to establish  
17 a defendant's guilt of conspiracy, nor is mere awareness of  
18 the conspiracy, nor would it be sufficient for the State to  
19 prove only that the defendant met with others or they dis-  
20 cussed names and interests in common.

21 However, any of these factors if present may be  
22 taken into consideration along with all other relevant evi-  
23 dence in your deliberation.

24 You have to decide whether the defendant's purpose  
25 was that he or a person with whom he was conspiring would

1 commit the crime of murder. For him to be found guilty of  
2 conspiracy, the State has to prove beyond a reasonable doubt  
3 that when he agreed it was his conscious object or purpose  
4 to promote or to make it easier to commit the crime of  
5 murder.

6 The nature of the purpose with which the defendant  
7 acted is a question of fact for you, the jury, to decide.

8 Purpose is a condition of the mind which cannot be  
9 seen and which can only be determined from inferences, from  
10 conduct, from words or from acts.

11 It is not necessary for the State to produce a wit-  
12 ness or witnesses who could testify that the defendant stated,  
13 for example, that he acted with a specific purpose. That is  
14 not necessary.

15 It is within your power to find proof of purpose  
16 has been furnished beyond a reasonable doubt by inferences,  
17 which may arise from the nature of the acts and the surround-  
18 ing circumstances.

19 It also makes no difference what the person or per-  
20 sons with whom the defendant actually conspired had in mind,  
21 so long as the defendant believed that he was furthering the  
22 commission of the crime of murder.

23 In summary, in order for the defendant to be found  
24 guilty on Count One of the indictment, which charges him with  
25 conspiracy to commit murder, the State must prove the follow-

1 ing elements: First, that the defendant agreed with the  
2 another person or persons that they or one or more of them  
3 would engage in conduct which constitutes the crime of mur-  
4 der; secondly, that the defendant's purpose was to promote  
5 or facilitate the commission of that crime.

6 If after a consideration of all the evidence you  
7 are convinced beyond a reasonable doubt that the State has  
8 proven both of these elements, then you must find the defen-  
9 dant guilty of the crime of conspiracy.

10 On the other hand, if you find that the State has  
11 failed to prove to your satisfaction one or both of these  
12 elements, then you must find the defendant not guilty of the  
13 crime of conspiracy.

14 Remember also that each offense in this indictment  
15 should be considered by you separately. The fact that you  
16 may find the defendant guilty or not guilty of a particular  
17 crime, should not control your verdict as to any other offense  
18 charged against the defendant.

19 MR. LEINER: Excuse me, your Honor. Can we approach?

20 THE COURT: Yes.

21 MR. LEINER: I don't need you.

22 (Discussion off-the-record at sidebar.)

23 THE COURT: Are you all comfortable? Do you need  
24 anything?

25 (No response.)

1 THE COURT: My next instruction to you concerns  
2 what is known as accomplice liability. In other words, the  
3 circumstances under which one person is legally responsible  
4 for the conduct of another person.

5 One of those other persons in this case you might  
6 find to be a person named is Fahim. You have heard some  
7 reference to a person named Donnie Parker or Fahim, who may  
8 have been involved in the incident or alleged incident, which  
9 is the subject of this trial.

10 Obviously you did not see Fahim. You should not  
11 speculate about why he is not on trial here, nor should his  
12 absence from this trial interfere with your deliberation, as  
13 to whether Dennis Copling is guilty or not guilty of the  
14 charges contained within this indictment.

15 In other words, the fact that Fahim or Donnie Parker  
16 is not on trial here, should have no bearing on your deter-  
17 mination as to whether or not the defendant, Dennis Copling,  
18 is guilty beyond a reasonable doubt or not guilty.

19 With that preface, let me explain to you now the  
20 circumstances under which one person is legally responsible  
21 for the conduct of another person.

22 The State alleges that the defendant, Dennis  
23 Copling, is legally responsible for the criminal conduct of  
24 Fahim, also known as Donnie Parker, in violation of a law  
25 which reads in pertinent part as follows:

1           A person is guilty of an offense if it is committed  
2 by his own conduct or the conduct of another person for whom  
3 he is legally accountable or both.

4           A person is legally accountable for the conduct of  
5 another person if he is an accomplice of such other person  
6 in the commission of an offense. A person is an accomplice  
7 of another person in the commission of an offense if with the  
8 purpose of promoting or facilitating the commission of the  
9 offense, he solicits such other person to commit it and/or  
10 he aides or agrees or attempts to aid such other person in  
11 planning or committing the offense.

12           This provision of the law means that not only is  
13 the person who actually commits the criminal act responsible  
14 for it, but one who is legally accountable as an accomplice  
15 is also responsible.

16           This responsibility as an accomplice may be equal  
17 and the same as he who actually committed the crime, or there  
18 may be responsibility in a different degree or to a different  
19 extent, depending upon circumstances as you find them to be.

20           The Court will further explain this distinction in  
21 a moment.

22           In this case the State alleges that the defendant  
23 is equally guilty of the crimes committed by Fahim, also known  
24 as Donnie Parker, because he acted as his accomplice with the  
25

1 purpose that the specific crime of murder be committed.

2 In order to find the defendant guilty of the  
3 specific crime charged, the State must prove beyond a reason-  
4 able doubt each of the following elements: First, that  
5 Fahim committed the crime of murder, and I will shortly ex-  
6 plain to you the elements of this offense of murder.  
7 Secondly, the defendant, Dennis Copling, solicited him to  
8 commit the crime of murder and/or did aid or agree or attempt  
9 to aid him in planning or committing it. Third, that this  
10 defendant's purpose was to promote or facilitate the commis-  
11 sion of the offense; and fourth, that this defendant, Dennis  
12 Copling, possessed the criminal state of mind that is required  
13 to be proved against the person who actually committed the  
14 criminal act.

15 I don't want you to be confused at this point. It  
16 is the State's contention that both the defendant fired a  
17 gun and Fahim did, but right now we are focusing on only part  
18 of that, which is whether or not the defendant is responsible  
19 for what you may find Fahim did.

20 I will focus later on what responsibility the de-  
21 fendant would have of his own act, if you find he committed  
22 any act. Right now we are focusing on Fahim and whether the  
23 defendant is responsible for Fahim.

24 I used the term purposely in connection with the  
25 four elements of accomplice liability. Remember that a person

1 acts purposely with respect to his conduct or a result thereof,  
2 if it is his conscious object to engage in conduct of that  
3 nature or to cause such a result.

4 I used the word solicit in connection with the  
5 accomplice liability. It means to strongly urge, suggest,  
6 to lure or to proposition.

7 Aid means to assist, support or supplement the  
8 efforts of another.

9 Agree to aid means to encourage by promise of  
10 assistance or support.

11 Attempt to aid means a person takes substantial  
12 steps in the course of a conduct designed to planned to lend  
13 support or assistance in the efforts of another to cause the  
14 commission of a particular crime.

15 If you find that the defendant with the purpose of  
16 promoting or facilitating the commission of the crime of  
17 murder solicited Fahim to commit it and/or if you find that  
18 the defendant aided or agreed or attempted to aid Fahim in  
19 planning or committing the crime of murder, then you should  
20 consider the defendant as if he committed the crime himself.

21 Accomplice status can be considered separately as  
22 to each murder charged in the indictment.

23 To prove the defendant's criminal responsibility,  
24 the State does not have to prove his accomplice status by  
25 direct evidence of a formal plan to commit a crime. There

1 does not have to be verbal agreement by all who are charged.

2           The proof may be circumstantial. Participation  
3 and agreement can be established from conduct as well as from  
4 spoken words.

5           Mere presence at or near the scene does not make  
6 one a participant in the crime, nor does the failure of a  
7 spectator to interfere make him a participant in the crime.  
8 It is, however, a circumstance to be considered along with  
9 all of the other evidence, in determining whether he was  
10 present as an accomplice.

11           Presence in and of itself is not conclusive of that  
12 fact. Whether presence has any proof, value or means anything,  
13 depends upon the total circumstances.

14           To constitute guilt there must exist a community  
15 of purpose, an actual participation in the crime committed.  
16 While mere presence at the scene of the perpetration of a  
17 crime does not render a person a participant in it, proof  
18 that one is present at the scene of the commission of a crime  
19 without disapproving it and without opposing it, is evidence  
20 from which in connection with all the other circumstances it  
21 is possible for you, as a jury, to infer that he assented to  
22 it, that he agreed with it, that he approved or he lent it  
23 his contenance and approval, and he was thereby aiding in the  
24 crime.

25           Whether mere presence at the scene proves guilt or

1 not depends upon the totality of the circumstances, as these  
2 circumstances appear from the evidence.

3 An accomplice may be convicted of proof of the  
4 commission of a crime or of his complicity therein, even  
5 though the person who it is claimed committed the crime has  
6 not been prosecuted, or who has been convicted of a different  
7 offense, or has an immunity from prosecution or has been  
8 acquitted.

9 Remember that this defendant, Dennis Copling, can  
10 be held to be an accomplice with equal responsibility, only  
11 if you find as a fact that he possessed the criminal state  
12 of mind that is required to be proved against the person  
13 actually committed the criminal act.

14 In order to convict the defendant as an accomplice  
15 to the specific crimes or crimes charged, you must find the  
16 defendant had the purpose to participate in that particular  
17 crime. He must act with a purpose of promoting or facilitating  
18 the commission of the substantive crime with which he is  
19 charged.

20 It is not sufficient to prove only that the defen-  
21 dant had knowledge that another person was going to commit  
22 the crimes charged. The State must prove that it was the  
23 defendant's conscious object that the specific conduct charged  
24 be committed.

25 In summary as to the accomplice issue, in order to

1 find the defendant guilty of committing the crime of mur-  
2 der in Counts Two and Three, the State must prove each of  
3 the following elements beyond a reasonable doubt: That Fahim  
4 committed the crime of murdering Kirby Bunch and Mark Winston.

5 Remember each murder is to be considered separately.  
6 Also, that Dennis Copling solicited Fahim to commit a murder  
7 or murders and/or that Dennis Copling aided or agreed to  
8 attempted to aid Fahim in planning or committing any such  
9 crime, and third, that Dennis Copling's purpose was to pro-  
10 mote or facilitate the commission of the offenses, and fourth,  
11 that Dennis Copling possessed the criminal state of mind that  
12 is required to be proved against the person who actually  
13 committed the criminal act.

14 Consider the accomplice issue separately as to  
15 each count of the indictment. Remember this instruction I  
16 have just given you about an accomplice to commit the crime  
17 of murder only applies to any agreement that you find may  
18 have existed between the defendant and Fahim.

19 It does not apply to any act that you find the de-  
20 fendant may have committed by himself.

21 If you find the State has proven each one of the  
22 elements as described above beyond a reasonable doubt, then  
23 you must find the defendant guilty of murder.

24 If, on the other hand, you find the State has failed  
25 to prove one or more of these elements beyond a reasonable

1 doubt, then you must find the defendant not guilty of murder.

2 As I previously instructed you, or I will be in-  
3 structing you a little bit later today, any verdict rendered  
4 must be unanimous. All twelve jurors who are chosen to de-  
5 liberate must agree as to whether the verdict is guilty or  
6 not guilty.

7 As I have previously indicated to you, you will  
8 initially consider whether the defendant should be found not  
9 guilty or guilty of acting as an accomplice to Fahim, with  
10 full and equal responsibility for the specific crimes charged.

11 If you find the defendant guilty of the specific  
12 crimes charged, that is, murder, then you need not consider  
13 any lesser charges, such as aggravated manslaughter or reck-  
14 less manslaughter, which I will be explaining to you in a  
15 moment.

16 If, however, you find the defendant not guilty of  
17 acting as an accomplice of Fahim on the specific crime  
18 charged, which is murder, then you should consider whether  
19 the defendant did act as an accomplice of Fahim but with the  
20 purpose of promoting or facilitating the commission of lesser  
21 offense than the actual crime charged in the indictment.

22 Our law recognizes that two or more persons may  
23 participate in the commission of an offense, but may partici-  
24 pate therein with a different state of mind. The liability  
25 or responsibility of each participant for any ensuing offense

1 is dependent upon his own state of mind and not on anyone  
2 else's.

3 Guided by the legal principles, and if you have  
4 found the defendant not guilty of the specific crime charged,  
5 you would then consider whether the defendant is guilty or  
6 not guilty as an accomplice on the lesser charge of aggravated  
7 manslaughter or reckless manslaughter.

8 Remember you would not consider the offense of  
9 aggravated manslaughter and reckless manslaughter, unless you  
10 have found the defendant not guilty of murder in Counts Two  
11 and Three. I will be explaining the relationship between  
12 those various things in a few moments.

13 That concludes my instructions to you on the issue  
14 of responsibility as an accomplice. Now I am going to be  
15 explaining to you the elements of the offense of murder,  
16 followed by aggravated manslaughter and reckless manslaughter.

17 The defendant is charged in the indictment with the  
18 murder of Mark Winston in Count Two, and with the murder of  
19 Kirby Bunch in Count Three.

20 Count Two of the indictment reads as follows: On  
21 or about the 18th day of January, 1995, in the City of Camden,  
22 Dennis Copling did purposely or knowingly cause the death or  
23 serious bodily injury resulting in the death of Mark Winston.

24 Count Three of the indictment reads as follows: On  
25 or about the 18th day of January, 1995, in the City of Camden,

1 Dennis Copling did purposely or knowingly cause the death or  
2 serious bodily injury resulting in the death of Kirby Bunch.

3 A person is guilty of murder if he purposely causes  
4 death or serious bodily injury resulting in death, or knowingly  
5 causes death or serious bodily injury resulting in death.

6 In order for you to find the defendant guilty of  
7 murder, the State is required to prove each of the following  
8 elements beyond a reasonable doubt.

9 First, that the defendant caused Mark Winston's  
10 and Kirby Bunch's death or serious bodily injury resulting  
11 in their death, and the defendant did so purposely or know-  
12 ingly.

13 I have grouped together the issues of Mark Winston's  
14 death and Kirby Bunch's death, because the elements the State  
15 is required to prove for you to find the defendant guilty of  
16 those murders would be the same. In other words, the defini-  
17 tion of murder is the same.

18 I could read the instruction to you twice, one for  
19 Kirby Bunch, one for Mark Winston. I am not going to do that.  
20 There is no reason to do that. I want you to understand that  
21 you should consider the defendant's guilt or innocence on  
22 Counts Two and Three separately and independently from one  
23 another, but I am combining it, of course, into one instruc-  
24 tion on the crime of murder.

25 Remember that his guilt or innocence should be con-

1 sidered separately on each of those two counts. Let me back  
2 up.

3 In order for you to find the defendant guilty of  
4 murder, the State is required to prove each of the following  
5 elements beyond a reasonable doubt: That the defendant  
6 caused Mark Winston's or Kirby Bunch's death or serious bodily  
7 injury resulting in death, and that he did so, as I said,  
8 purposely or knowingly.

9 One of the elements the State must prove beyond a  
10 reasonable doubt in connection with the offense of murder is  
11 that the defendant acted purposely or knowingly.

12 A person who causes another's death does so pur-  
13 posely when it is hte person's conscious object to cause  
14 death or serious bodily injury resulting in death.

15 What do we mean causes a death knowingly? A person  
16 who causes another's death does so knowingly, when the person  
17 is aware it is practically certain that his conduct will  
18 cause death or serious bodily injury resulting in death.

19 The nature of the purpose or knowledge with which  
20 the defendant acted toward Mark Winston and Kirby Bunch, is  
21 a question of fact for you as a jury to decide. Remember  
22 that purpose and knowledge are conditions of the mind which  
23 cannot be seen, and which can be determined only by infer-  
24 ences from conduct, words or acts.

25 It is not necessary for the State to produce a wit-

1           ness or witnesses who could testify that the defendant stated,  
2           for example, that his purpose was to cause death or serious  
3           bodily injury resulting in death, nor is it necessary for  
4           the State to produce a witness who would testify that the  
5           defendant knew that his conduct would cause such death or  
6           serious bodily injury resulting in death.

7                     It is within your power to find that proof of pur-  
8           pose or knowledge has been furnished beyond a reasonable  
9           doubt by inferences, which may arise from the nature of the  
10          defendant's acts and the surrounding circumstances, such  
11          things as the place where the acts occurred, the weapons used,  
12          the location, number and nature of wounds inflicted, and all  
13          that was done or said by the defendant preceding, connected  
14          with and immediately succeeding the events leading to the  
15          death of Mark Winston and Kirby Bunch, are among the circum-  
16          stances to be considered by you.

17                     Although the State must prove that the defendant  
18          acted either purposely or knowingly, the State is not required  
19          to prove a motive.

20                     If the State has proved the essential elements of  
21          the offense beyond a reasonable doubt, then the defendant  
22          must be found guilty of that offense, regardless of the  
23          defendant's motive or lack of a motive.

24                     If the State, however, has proved a motive, you  
25          may consider that insofar as it gives meaning to the circum-

1 stances.

2 On the other hand, you may consider the absence of  
3 motive in weighing whether or not the defendant is guilty  
4 of the crime charged.

5 A homicide or a killing with a deadly weapon, such  
6 as a handgun, in itself would permit you to draw an inference  
7 that the defendant's purpose was to take life or cause seri-  
8 ous bodily injury resulting in death.

9 A deadly weapon is any firearm or other weapon,  
10 device, instrument, material or substance which in the manner  
11 it is used or intended to be used, is known to be capable of  
12 producing death or serious bodily injury.

13 In your deliberation you may consider the weapon  
14 used and the manner and circumstances of the killing, and if  
15 you are satisfied beyond a reasonable doubt that the defendant  
16 shot and killed Mark Winston and/or Kirby Bunch with a gun,  
17 you may draw an inference from the weapon used, that is, the  
18 gun, and from the manner and circumstances of the killing in  
19 order to decide what the defendant's purpose or knowledge  
20 was.

21 The other element the State must prove beyond a  
22 reasonable doubt is that the defendant caused the death of  
23 Mark Winston, in connection with Count Two, and Kirby Bunch,  
24 in connection with Count Three, or that the defendant caused  
25 serious bodily injury resulting in the death of those persons.

1                   What do we mean by serious bodily injury? Serious  
2                   bodily injury means bodily injury which creates a substantial  
3                   risk of death or which causes serious, permanent disfigure-  
4                   ment, or protracted loss or impairment of the function of any  
5                   bodily member or organ.

6                   Whether the killing is committed purposely or know-  
7                   ingly, causing death or serious bodily injury resulting in  
8                   death, must be within the design or contemplation of the  
9                   defendant.

10                  I said causing death. Causation has a special  
11                  meaning under the law. To establish causation, in other  
12                  words, to establish that the defendant's conduct brought  
13                  about a certain result, the State must prove two elements,  
14                  each beyond a reasonable doubt.

15                  First, that but for the defendant's conduct, Mark  
16                  Winston and Kirby Bunch would not have died.

17                  Second, that Mark Winston's and Kirby Bunch's death  
18                  must have been within the design or contemplation of the  
19                  defendant. If not, it must involve the same kind of injury  
20                  or harm as that which the defendant did contemplate, and it  
21                  must also not be too remote, too accidental in its occurrence,  
22                  or too dependent on another's volitional act to have a just  
23                  bearing on the defendant's liability.

24                  In other words, the State must prove beyond a reason-  
25                  able doubt that Mark Winston's and Kirby Bunch's death was

1 not so unexpected or unusual that it would be unjust to find  
2 the defendant guilty of murder.

3 If you find the State has proven beyond a reason-  
4 able doubt that the defendant purposely or knowingly caused  
5 the death or serious bodily injury resulting in death, then  
6 you must find the defendant guilty of murder.

7 If, on the other hand, you determine that the State  
8 has not proven beyond a reasonable doubt that the defendant  
9 purposely or knowingly caused death or serious bodily injury  
10 resulting in death, then you must find him not guilty of  
11 murder, and go on to consider whether the defendant should  
12 be convicted of the crimes of aggravated or reckless man-  
13 slaughter.

14 The indictment, as you know, charges the defendant  
15 with murder. It does not charge him with aggravated man-  
16 slaughter and reckless manslaughter. You may be wondering  
17 why these concepts are introduced into the case. I will ex-  
18 plain to you why I am giving you an instruction on those  
19 other charges.

20 Whenever there is a possibility from the evidence  
21 that the defendant may be not guilty of the crime charged in  
22 the indictment, but he might be guilty of some lesser included  
23 offense, then it is the obligation of the judge to give you  
24 an instruction on those lesser included offenses.

25 The fact that I am giving you the instruction on the

1 lesser included offenses, doesn't mean I think he committed  
2 those and not murder. What I think about the case has no  
3 bearing on what you think about the case. The fact I will  
4 give you the charge doesn't mean I think they are justified  
5 or not justified by the evidence, in terms of what your ver-  
6 dict should be.

7  
8 That having been said, if you find the defendant  
9 not guilty of murder, you should go on to consider the lesser  
10 included offense of aggravated manslaughter and reckless  
11 manslaughter. Let me start with aggravated manslaughter.

12 A person is guilty of aggravated manslaughter if  
13 he recklessly causes the death of another person under cir-  
14 cumstances manifesting extreme indifference to human life.

15 Let me try and focus your attention on what some  
16 of the main differences are between murder and aggravated  
17 manslaughter.

18 Under the criminal law a person's conduct is  
19 judged in part by what their state of mind is. If a person  
20 is simply careless, then that is the responsibility of some-  
21 body in the civil court. For a person to be found guilty of  
22 a criminal offense, their conduct must be either purposeful  
23 or knowing or reckless, and there are other things not perti-  
24 nent to this trial.

25 In order for a person to be found guilty of murder,  
as I already explained to you, they must either purposely or

1 knowingly cause the death of another person.

2 If you find the defendant did not act purposely or  
3 knowingly, then you would go on to consider whether he  
4 acted recklessly. Recklessly is part of both aggravated  
5 manslaughter and reckless manslaughter.

6 For now we are focusing on a different state of  
7 mind, not purposely, not knowingly, but instead recklessly.

8 A person is guilty of aggravated manslaughter if  
9 he recklessly causes the death of another person under cir-  
10 cumstances manifesting extreme indifference to human life.

11 In order for you to find the defendant guilty of  
12 aggravated manslaughter, the State is required to prove each  
13 of the following elements beyond a reasonable doubt.

14 First, that the defendant caused the death of Mark  
15 Winston in connection with Count Two, or in connection with  
16 Count Three the death of Kirby Bunch;

17 Two, that the defendant did so recklessly;

18 Three, that the defendant did so under circumstances  
19 manifesting extreme indifference to human life.

20 One element the State must prove beyond a reason-  
21 able doubt is that the defendant acted recklessly.

22 A person who causes another's death does so reck-  
23 lessly when he is aware of and consciously disregards a sub-  
24 stantial and unjustifiable risk that death will result from  
25 his conduct.

1           The risk must be of such a nature and degree that,  
2 considering the nature and purpose of the defendant's con-  
3 duct and the circumstances known to the defendant, his dis-  
4 regard of that risk is a gross deviation from the standard  
5 of conduct that a reasonable person would follow in the same  
6 situation.

7           In other words, you must find the defendant was  
8 aware of and consciously disregarded the risk of causing  
9 death. If you find that the defendant was aware of and dis-  
10 regarded the risk of causing death, you must determine whether  
11 the risk that he disregarded was substantial and unjustifiable.

12           In doing so, you must consider the nature and pur-  
13 pose of the defendant's conduct, and the circumstances known  
14 to the defendant, and you must determine whether, in light of  
15 those factors, his disregard of that risk was a gross devia-  
16 tion from the conduct a reasonable person would have observed  
17 in the defendant's situation.

18           Another element the State must prove beyond a rea-  
19 sonable doubt in connection with the charge of aggravated  
20 manslaughter is that the defendant acted under circumstances  
21 manifesting extreme indifference to human life.

22           The phrase under circumstances manifesting extreme  
23 indifference to human life, does not focus on the defendant's  
24 state of mind, but rather on the circumstances under which  
25 you find he acted.

1 If, in light of all the evidence, you find the  
2 defendant's conduct resulted in a probability as opposed to  
3 a mere possibility of death, then you may find he acted under  
4 circumstances manifesting extreme indifference to human life.

5 On the other hand, if you find that his conduct  
6 resulted in only a possibility of death, then you must find  
7 him not guilty of aggravated manslaughter and then go on to  
8 consider the offense of reckless manslaughter, which I will  
9 explain in a minute.

10 The final element the State must prove beyond a  
11 reasonable doubt in connection with the charge of aggravated  
12 manslaughter is that the defendant caused the death in Count  
13 Two of Mark Winston, and Count Three of Kirby Bunch. In  
14 other words, you must find that the person in question would  
15 not have died but for the defendant's conduct.

16 If, after a consideration of all the evidence, you  
17 are convinced beyond a reasonable doubt the defendant reck-  
18 lessly caused the death of Mark Winston, or the death of  
19 Kirby Bunch, as the case may be, under circumstances mani-  
20 festing extreme indifference to human life, then your verdict  
21 should be guilty of aggravated manslaughter.

22 Remember that you would not be considering aggra-  
23 vated manslaughter unless you have the defendant not guilty  
24 of the crime of murder.

25 If, however, after a consideration of all the evi-

1           dence you are not convinced beyond a reasonable doubt that  
2           the defendant recklessly caused the death under circumstances  
3           manifesting extreme indifference to human life, then you must  
4           find the defendant not guilty of aggravated manslaughter and  
5           go on to consider the charge of reckless manslaughter.

6           Let me now explain what we mean by reckless man-  
7           slaughter. A person is guilty of reckless manslaughter if  
8           he recklessly causes the death of another person.

9           In order for you to find the defendant guilty of  
10          reckless manslaughter, the State is required to prove each  
11          of the following elements beyond a reasonable doubt:

12          First, that the defendant caused the death of the  
13          person in question, whether it be Mark Winston or Kirby  
14          Bunch, and that he did so recklessly.

15          Therefore, the State must prove beyond a reasonable  
16          doubt in connection with the charge of reckless manslaughter  
17          that the defendant acted recklessly. As I explained to you,  
18          a person who causes another's death does so recklessly when  
19          he is aware of and consciously disregards a substantial and  
20          unjustifiable risk that death will result from his conduct.

21          The risk must be of such a nature and degree that,  
22          considering the nature and purpose of the defendant's con-  
23          duct and the circumstances known to the defendant, his dis-  
24          regard of that risk is a gross deviation from the standard  
25          of conduct that a reasonable person would follow in the same

1 situation.

2 In other words, you must find that the defendant  
3 was aware of and consciously disregarded the risk of causing  
4 death. If you find that the defendant was aware of and dis-  
5 regarded the risk of causing death, you must determine whether  
6 that risk that he disregarded was substantial and justifiable.

7 In doing so, you must consider the nature and pur-  
8 pose of the defendant's conduct, and the circumstances known  
9 to him, and you must determine whether in light of these  
10 factors, his disregard of that risk was a gross deviation  
11 from the conduct a reasonable person would have observed in  
12 the defendant's situation.

13 The other element the State must prove in connec-  
14 tion with reckless manslaughter is that the defendant caused  
15 the death of the person in question, whether that be Kirby  
16 Bunch or Mark Winston.

17 In other words, you must find that person would not  
18 have died but for the defendant's conduct.

19 If, after consideration of all the evidence, you  
20 are convinced beyond a reasonable doubt that the defendant  
21 recklessly caused the death of the person in question, then  
22 your verdict should be guilty of reckless manslaughter.

23 If, however, after consideration of all the evi-  
24 dence you are not convinced beyond a reasonable doubt that  
25 the defendant recklessly caused the death of Kirby Bunch or

1 Mark Winston, as the case may be, then you must find him not  
2 guilty of reckless manslaughter.

3 I have quite a bit more to explain. I think it  
4 might not be a bad idea to take a short break. As I look at  
5 you, some of you are starting to stir a bit. I would like  
6 to take a ten minute recess.

7 You haven't heard hte instructions in their en-  
8 tirety. You should not deliberate or discuss the instructions  
9 or evidence. We will resume in ten minutes. I will see you  
10 then.

11 (Jury excused from courtroom.)

12 MR. ARONOW: Judge, before we leave the courtroom,  
13 I would like to raise an issue.

14 Earlier in the trial Mr. Leiner brought up to me  
15 something I didn't observe earlier. Juror Number 9, the  
16 person in the back row in the corner was sleeping. Well, I  
17 noticed it in my closing, and then I noticed Don having the  
18 juror rustled up during your Honor's instruction.

19 THE COURT: That was done at my instruction. I  
20 don't know if you could tell that I told Tracie to tell Don  
21 to do that.

22 MR. LEINER: I suspected that.

23 MR. ARONOW: That concerns me a great deal. I am  
24 watching him throughout your Honor's instruction, and he is  
25 going in and out. I don't know if he is paying attention or

1 not. He appears to be clearly drowsy.

2 THE COURT. It's fifty/fifty. I don't know if it  
3 is anywhere near that. There are times he closes his eyes  
4 for a few brief seconds. Whether awake behind the closed  
5 eyes, I don't know.

6 What are you asking the Court to do about it? I have  
7 done what I can do. Each time I see it, I can get Don to  
8 prod him in some way.

9 MR. ARONOW: Judge, if the juror is not paying  
10 attention at any part of the trial and it is a repeated  
11 problem. I think there is only one alternative, and that is  
12 to strike him.

13 THE COURT: Well, I don't know that he has heard  
14 any less of my instructions than anybody else has.

15 Other people can stare at me wide-eyed and are  
16 thinking about what they are doing on the weekend, and I have  
17 no way of knowing that. I don't know that I have a greater  
18 reason to think there is a problem with him than anybody  
19 else. Actually it has only been, in my opinion, only been  
20 a very, very small percentage of the time.

21 I will talk to Don about it.

22 We have now taken a break, and what I will ask Mr.  
23 Murray to do is come around over to a different portion of  
24 the courtroom, so that he can see that juror, because from  
25 where he was standing the wall was in the way, he couldn't

1 see him.

2 I asked that he come over there, and then if he  
3 observes him or anybody else appearing to doze off, he can  
4 then give him water and ask another juror to shake the juror  
5 in question.

6 I will reiterate that instruction.

7 Let me see if Mr. Leiner has a comment on the  
8 issue.

9 MR. LEINER: I did bring that to Mr. Aronow's  
10 attention. My reason is not as easy as your Honor is  
11 grappling with.

12 When brought to my attention through someone else,  
13 I looked at him and he appeared to have his eyes closed. At  
14 times it was hard to tell whether his eyes were closed,  
15 whether he was not listening, whether other times his eyes  
16 would be open. I did notice his eyes open and close some  
17 time like that. I don't know whether that is just his  
18 demeanor or not. It's much more difficult for me to tell.

19 THE COURT: I have seen people sleep where it's  
20 clear they are sleeping. With this fellow it is not so  
21 clear to me that he is. It is very brief, and I am not  
22 really sure.

23 MR. ARONOW: Missing portions of your Honor's  
24 charge or portions of the testimony, or what portions of any  
25 other part of the case, is essential in the State's opinion

1 that as a juror at least appear to remain attentive, and it's  
2 not just one time that it was brought to my attention. It  
3 has been a multiple of times.

4 THE COURT: Nobody has discussed it on the record  
5 before now. I don't know how many multiple times there were.  
6 It wasn't brought to the Court's attention.

7 MR. ARONOW: Number One, I didn't notice it. When  
8 Mr. Weiner brought it to my attention. He did bring it to my  
9 attention.

10 Number Two, I noticed it during my closing. That  
11 was the first time I looked directly at him.

12 Number Three, I noticed when Don went over, I  
13 noticed the juror tussling with him to get him up.

14 THE COURT: I think that is a bit of an overstate-  
15 ment. She tapped him and he opened his eyes. It didn't  
16 take tussling or anything like that. It was a tap and he  
17 woke up or sat up differently. I don't know what he was  
18 doing with his eyes.

19 If you would like, we can bring him in. All I am  
20 saying is it is not clear to me that everyone who has their  
21 eyes down are sleeping. People do that to concentrate  
22 better or just for a lot of reasons. I am not sure he is  
23 sleeping. His overall look was not necessarily consistent  
24 with sleeping. Maybe he wasn't. I am not sure.

25 Is there any objection? The State is requesting

1 that juror be removed for cause.

2 Mr. Leiner, what is your response to that?

3 MR. LEINER: We object to that at this time.

4 THE COURT: I am not going to do it. I think it  
5 has been, if at all, has been of such a transitory fleeting  
6 nature it is not going to interfere with his ability to under-  
7 stand the Court's instruction. I am not going to remove him  
8 at this point.

9 If I see it continues as a problem, or there is a  
10 problem, then I will certainly, but at this point I will  
11 leave him where he is.

12 I am going to speak to Mr. Murray about all the  
13 other jurors, and he in particular, and again ask Mr. Murray  
14 to be vigilant.

15 If, during my instruction, you see him close his  
16 eyes, come forward. There is no reason to hesitate to do  
17 that. Ask to approach the Bench and we will deal with it.

18 We will resume in a few minutes.

19 (Recess.)

20 (Jury returned to courtroom.)

21 THE COURT: Ladies and gentlemen, the next instruc-  
22 tion that I am going to give you focuses on the death or  
23 murder of Mark Winston.

24 The indictment charges that the defendant is  
25 legally responsible for the death or for the murder of Mark

1 Winston, which is based on the violation of a law, and that  
2 law reads as follows: A defendant shall not be relieved of  
3 responsibility for causing a result if the only difference  
4 between what actually occurred and what was designed, con-  
5 templated or risked is that a different person was injured  
6 or affected.

7 What that means is that if Dennis Copling purposely  
8 or knowingly killed or caused serious bodily injury resulting  
9 in the death of Kirby Bunch, Jr., that result must have been  
10 within his design or contemplation.

11 It is, however, not necessary for the death of  
12 Mark Winston to have been within Dennis Copling's design or  
13 contemplation, so long as the death of Mark Winston involved  
14 the same kind of injury or harm as that which was designed  
15 or contemplated as to Kirby Bunch.

16 To put it another way, Dennis Copling could be  
17 found guilty of the knowing and purposeful death of Mark  
18 Winston, even if Kirby Bunch was the intended victim, as  
19 long as you find that the killing of Mark Winston involved  
20 the same kind of injury that Dennis Copling designed or  
21 contemplated against Kirby Bunch, Jr., and as long as you  
22 find the killing of Mark Winston was not too remote or acci-  
23 dental in its occurrence, nor too dependent on another's  
24 voluntary act to make it unfair to find Dennis Copling re-  
25 sponsible for it.

1  
2 The State says there was a purposeful or knowing  
3 killing or causing of serious bodily injury resulting in the  
4 death of Kirby Bunch, Jr., and because of the law that I have  
5 just explained to you, the State says there was also a pur-  
6 poseful or knowing killing or causing of serious bodily in-  
7 jury resulting in the death of Mark Winston.

8 The nature of the purpose or knowledge with which  
9 the defendant acted towards each deceased person is a ques-  
10 tion of fact for you to decide.

11 Purpose and knowledge are, as I already explained  
12 to you, conditions of the mind which we cannot see and we  
13 can only determine by inferences from words or acts.

14 It is not necessary for the State to produce a  
15 witness who can testify that a defendant stated it was his  
16 purpose to cause death or serious bodily injury resulting in  
17 death, nor is it necessary for the State to prove that he  
18 knew his conduct was going to kill the victim.

19 It is within your power to find that proof of a  
20 purpose or proof of knowledge has been furnished beyond a  
21 reasonable doubt, from inferences which may arise from the  
22 nature of the acts and circumstances surrounding the death  
23 of Kirby Bunch, Jr. and Mark Winston.

24 Such circumstances include the place where the  
25 acts occurred, the weapons used, the location, number and  
nature of wounds inflicted, and all that was said or done

1 with or by the defendant preceding the death of Kirby Bunch,  
2 Jr. and Mark Winston.

3 That concludes my instructions to you on the Doctrine  
4 of Transferred Intent concerning the death of Mark Winston.

5 I have now completed the instructions on Counts  
6 Two and Three, which charge murder, as well as the lesser  
7 included offenses of aggravated manslaughter and reckless  
8 manslaughter.

9 What I am going to do now is just review with you  
10 the possible verdicts that could be reached, based upon how  
11 you find the facts to be. After that I am going to go on to  
12 explain to you Counts Four and Five of the indictment. Let  
13 you be worried, these explanations are far more brief than I  
14 have already given you.

15 Let me explain to you what some of the possible  
16 verdicts could be. If you find beyond a reasonable doubt that  
17 the defendant, Dennis Copling, solicited Fahim to commit the  
18 murder of Kirby Bunch, or that defendant aided or agreed to aid  
19 Fahim in committing that murder, then Dennis Copling is  
20 guilty of murder if the actual killing by Fahim was knowing  
21 or purposeful.

22 Under that scenario, the defendant would also be  
23 guilty of conspiracy to commit murder.

24 The second possibility would be as follows: If you  
25 find that the defendant solicited Fahim to commit the murder

1 of Kirby Bunch, but if you find that the shooting of Kirby  
2 Bunch by Fahim occurred as the result of a scuffle over a  
3 gun and not as part of a pre-planned intention to take the  
4 life of Kirby Bunch, then you would find the defendant not  
5 guilty of murder and go on to consider the lesser offenses  
6 of aggravated manslaughter and reckless manslaughter.  
7

8 If you find that the actual scuffle between Fahim  
9 and Kirby Bunch over the gun resulted in the killing of  
10 Kirby Bunch, then you should decide if Fahim's conduct in  
11 scuffling over control of the gun was reckless and also  
12 whether Fahim was aware and consciously disregarded the risk  
13 of causing death and, if so, whether Fahim's disregard of  
14 that known risk was a gross deviation from the conduct a  
15 reasonable person would have observed.

16 If you find Fahim's conduct meets the requirements  
17 I have just set forth for aggravated manslaughter, then the  
18 defendant, Dennis Copling, is guilty of aggravated manslaughter  
19 if he solicited Fahim to commit the murder of Kirby Bunch,  
20 and if he did nothing to protect Kirby Bunch during the  
21 scuffle from the risk that the gun might discharge and kill  
22 Kirby Bunch.

23 He would also be guilty of conspiracy for planning  
24 to commit murder.

25 If you find the scuffle for control of the gun was  
reckless, but that the circumstances under which Fahim acted

1 created only a possibility and not a probability of death,  
2 then the defendant Copling would be guilty of conspiracy  
3 and of reckless manslaughter, not aggravated manslaughter.

4 The difference between aggravated manslaughter and  
5 reckless manslaughter is the nature and degree of risk dis-  
6 regarded by the participants Fahim and Copling, and the  
7 nature and purpose Fahim's conduct in scuffling over the  
8 gun.

9 Again, the defendant Copling can only be found  
10 guilty of murder, aggravated manslaughter or reckless man-  
11 slaughter as an accomplice if he solicited Fahim to commit  
12 the homicide or if Copling aided or agreed to aid Fahim in  
13 planning it or committing it, or if the defendant was in-  
14 volved in a conspiracy to commit it.

15 Now, another scenerio that is possible is the  
16 following: If you find that the defendant, Dennis Copling,  
17 committed the murder of Kirby Bunch himself, in other words,  
18 he fired the gun, not Fahim, then the defendant is guilty  
19 of murder if he caused Kirby Bunch's death purposely or  
20 knowingly.

21 If he himself scuffled with Kirby Bunch and the  
22 gun discharged during that scuffle, killing Kirby Bunch,  
23 then you will have to decide whether he is guilty of  
24 aggravated manslaughter or reckless manslaughter by using  
25 the principles I have already explained.

1           The State contends that not only did Dennis Copling  
2 fire shots at Kirby Bunch, but also that he solicited Fahim  
3 to aid or assist him in committing the murder of Kirby  
4 Bunch, and that Fahim also fired at Kirby Bunch.

5           If you find that the State has proven both of  
6 these things beyond a reasonable doubt, then you will have  
7 to decide whether the bullet that killed Kirby Bunch came  
8 from the defendant's gun.

9           If you find that it did, you will decide whether  
10 the killing of Kirby Bunch by defendant was purposeful or  
11 knowing. If so, then you should find the defendant guilty  
12 of the murder of Kirby Bunch.

13           If you find that the shot or shots fired by  
14 defendant were not the bullets that caused Kirby Bunch's  
15 death by themselves, but in combination with the shots fired  
16 by Fahim caused Bunch's death, then you will have to decide  
17 if the defendant is responsible for the conduct of Fahim  
18 either because he solicited Fahim to murder Kirby Bunch or  
19 he aided or agreed to aid Fahim in planning or committing  
20 it.

21           If you find that the defendant is legally respon-  
22 sible for the conduct of Fahim, based on the principles I  
23 have just mentioned, and if you find that the defendant  
24 fired bullets into Kirby Bunch purposely or knowingly, and  
25 if you find that all of these injuries in combination caused

1 Kirby Bunch's death, then the defendant is guilty of murder  
2 even if the shots he fired were themselves not the shots  
3 that by himself or themselves caused the death of Kirby  
4 Bunch.

5 If you find that the defendant intended only to  
6 beat up Kirby Bunch, but that unbeknown to the defendant  
7 other people came to Bunch's home with the intention of  
8 killing him, and did in fact do so, then the defendant is  
9 not guilty of murder.

10 Let me focus on the death of Mark Winston. With  
11 respect to the death of Mark Winston, as I have already ex-  
12 plained to you, the defendant is legally responsible for  
13 the homicide of Mark Winston even if the actual shooting  
14 was done by Fahim, if it occurred during the purposeful  
15 shooting at Kirby Bunch, and if the shooting occurred at  
16 Kirby Bunch was for the purpose of killing him.

17 In other words, the defendant cannot escape re-  
18 sponsibility for the murder of Mark Winston even if Mark  
19 Winston was not the intended victim. However, if the gun  
20 that killed Mark Winston was fired by Fahim, the defendant  
21 is only guilty of the murder of Mark Winston if he solicited  
22 Fahim to murder Kirby Bunch or if he agreed to aid Fahim in  
23 planning or committing it and if Mark Winston died as a  
24 result of a bullet which Fahim meant for Kirby Bunch, and  
25 fired purposely at Kirby Bunch.

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If the death of Mark Winston occurred as a result of the defendant himself purposely shooting at Bunch for the purpose of killing Bunch, then the defendant would be guilty of murdering Mark Winston even though Winston was not the intended victim.

The instruction I have just given you concerning the possible verdicts which could arise from the evidence attempts to be as complete as possible. However, this discussion should not prevent you or discourage you from finding other possible scenerios as suggested by the evidence.

Remember that each count of the indictment is to be considered by you separately. Also remember that in order for you to find the defendant guilty of anything, the State must prove each element of the offense in question beyond a reasonable doubt.

The next instruction to you concerns Count Four of the indictment, which charges the defendant with the offense of possession of a firearm with a purpose to use it unlawfully against the person or property of another.

The fourth count of the indictment charges the defendant with that offense.

The statute on which this count of the indictment is based reads in pertinent part: Any person who has in his possession any firearm with a purpose to use it unlawfully against the person or property of another, is guilty of a

1 crime.

2 In order for you to find the defendant guilty of  
3 this charge, the State has the burden of proving beyond a  
4 reasonable doubt each of the following four elements of the  
5 crime.

6 First, that there was a firearm.

7 Secondly, that the defendant possessed the firearm.

8 Third, that he possessed it with the purpose of use  
9 ing it against another person.

10 Fourth, that his purpose was to use it unlawfully.

11 A firearm means any handgun, rifle, shotgun, machine  
12 gun, automatic or semi-automatic rifle, or any gun, device,  
13 or instrument in the nature of a weapon from which may be  
14 fired or ejected a bullet by means of a cartridge or shell.

15 That is the definition of what a firearm is.

16 The second element the State must prove beyond a  
17 reasonable doubt is that the defendant had possession of the  
18 gun. Let me explain to you what possession means in the  
19 context of the criminal law.

20 Possession means knowing, intentional control of  
21 a designated thing, accompanied by a knowledge of its  
22 character. Thus, the person must know or be aware that he  
23 possesses the item, in this case a gun, and he must know  
24 what he possesses is in fact a gun.

25 The possession cannot be merely a passing control

1 that is fleeting or uncertain in its nature. In other words,  
2 in order to possess a gun within the meaning of the law the  
3 defendant must knowingly procure or receive the item possessed,  
4 or he must be aware of his control of it for sufficient  
5 period of time to have been able to relinquish control of  
6 it, if he chose to do so.

7 I already explained to you what knowing means,  
8 so I will not explain that again.

9 A person may possess a handgun even though it was  
10 not physically on his person at the time of his arrest, if  
11 the person had in fact at some time prior to his arrest had  
12 control and dominion over that object, in this case a fire-  
13 arm.

14 When we speak of possession, we mean a conscious,  
15 knowing possession.

16 The law recognizes two kinds of possession. They  
17 are actual possession and constructive possession.

18 Actual possession means that the person has the  
19 particular item on his person at a given time, and he knows  
20 what it is.

21 Constructive possession means that a person has  
22 knowledge of the character of the particular item, and even  
23 though he doesn't physically have it on his person at a  
24 particular point in time, he is aware of where that object  
25 is, and he is able to exercise intentional control over it,

1 if he chooses to do so.

2 A person who although not in actual possession of  
3 a particular item has knowledge of the character of that item,  
4 and knowingly has both the power and the intention at a  
5 given time to exercise control over the object, either  
6 directly or through another person, is then in constructive  
7 possession of the object.

8 Also, you should be aware that possession can be  
9 sole or joint. Sole means that only one person has control  
10 over the object, either actually or constructively, and  
11 joint means that two or more persons share actual or con-  
12 structive possession of the item.

13 That is what possession means in connection with  
14 the charge of possession of a firearm with purpose to use  
15 it unlawfully against the person of another.

16 The third element the State must prove beyond a  
17 reasonable doubt is that the defendant's purpose in possess-  
18 ing the firearm was to use it against another person. Purpose  
19 is a condition of the mind which, as I explained to you,  
20 cannot be seen, and can only be determined by inferences  
21 from conduct, from words or from acts.

22 In determining the defendant's purpose in possessing  
23 the firearm, you may consider a person acts purposely with  
24 respect to the nature of his conduct or a result thereof,  
25 if it is his conscious object to engage in conduct of that

1 nature. That is, a person acts purposely if he means to  
2 act in a certain way or cause such a result.

3 The defendant's purpose or conscious objective to  
4 use the firearm against another person may be found to  
5 exist at any time that the defendant is in possession of the  
6 object, and it need not have been his original intention in  
7 possessing it.

8 The fourth element the State must prove beyond a  
9 reasonable doubt is that the defendant had a purpose to use  
10 the firearm in a manner which is prohibited by law. I have  
11 already defined purpose for you.

12 The mental element of purpose to use a firearm  
13 unlawfully requires that you find the defendant possessed  
14 a firearm with the conscious objective, design or specific  
15 intent to use it against the person of another in an unlaw-  
16 ful manner as charged in the indictment, and not for some  
17 other purpose.

18 In this case the State contends that the defen-  
19 dant's unlawful purpose in possessing the firearm was to  
20 murder Kirby Bunch.

21 You must not consider your own notions of the  
22 unlawfulness of some other undescribed purpose of the defen-  
23 dant, but rather you must consider whether the State has  
24 proven the specific unlawful purpose which is charged.

25 The State need not prove which specific completed

1 crime the defendant intended to commit using the firearm.  
2 The unlawful purpose alleged by the State may be inferred  
3 from all that was said or done, and from all of the surround-  
4 ing circumstances of this case.

5 If you are satisfied beyond a reasonable doubt  
6 that the State has proven each of the elements of this  
7 offense, as I have defined them, you must then find the  
8 defendant guilty.

9 However, if you find the State has failed to prove  
10 beyond a reasonable doubt any one or more of the elements,  
11 as I have defined them, you must find the defendant not  
12 guilty.

13 That concludes my instruction to you concerning  
14 Court Four.

15 The fifth and final count of the indictment charges  
16 the defendant with the offense of unlawful possession of a  
17 handgun.

18 Count Five reads as follows: On the 18th day of  
19 January, 1995, in the City of Camden, Dennis Copling did  
20 knowingly and unlawfully possess a handgun, without first  
21 having obtained a permit to carry that handgun, as is re-  
22 quired by New Jersey law.

23 The pertinent part of the law which the defendant  
24 is charged with violating reads as follows: Any person who  
25 knowingly has in his possession any handgun without first

1 having obtained a permit to carry the same, is guilty of a  
2 crime.

3 The crime with which the defendant in this case  
4 is charged with having committed contains three essential  
5 elements, all of which the State must prove beyond a reason-  
6 able doubt.

7 First, that the defendant had a handgun. In other  
8 words, there was a handgun.

9 Secondly, that the defendant knowingly possessed  
10 the handgun.

11 And third, that the defendant did not have a permit  
12 to possess such a weapon.

13 A handgun is any pistol, revolver or other firearm  
14 originally designed or manufactured to be fired by the use  
15 of a single hand.

16 The second element that the State must prove beyond  
17 a reasonable doubt is that the defendant knowingly possessed  
18 a handgun. In other words, he must be aware of possession of  
19 it.

20 I already explained to you what knowingly means,  
21 and I will not explain that again. I am sure you can incor-  
22 porate that definition here.

23 The third element the State must prove is that the  
24 defendant did not have a permit to possess such a weapon.

25 If you find that the defendant knowingly possessed

1 the weapon, and there is no evidence that the defendant had  
2 a valid permit to carry such a weapon, then you may infer,  
3 if you think it is appropriate to do so, based upon the  
4 facts presented, you may infer that the defendant in fact  
5 had no such permit.

6 Note, however, that as with all other elements,  
7 the State bears the burden of showing beyond a reasonable  
8 doubt the lack of a valid permit, and you may apply the infer-  
9 ence only if you feel it is appropriate to do so, under all  
10 the facts and circumstances.

11 If any of the elements of this particular crime  
12 have not been proven to your satisfaction beyond a reasonable  
13 doubt, then your verdict must be not guilty.

14 If, on the other hand, you are satisfied beyond a  
15 reasonable doubt that the defendant knowingly possessed a  
16 handgun, without a valid permit, then your verdict must be  
17 guilty.

18 That concludes the second of the three portions of  
19 my instructions to you this afternoon. The remaining portion  
20 is brief. That concerns the method in which you deliberate,  
21 and what you may and may not consider.

22 First let me remind you of something which I spoke  
23 of many times during the earlier portions of this trial, and  
24 that is the nature of an indictment.

25 As you remember, the defendant stands before you on

1 a five count indictment. The indictment is not evidence of  
2 the defendant's guilt on the charges, as you heard me say  
3 many times. An indictment is simply a step in the procedure  
4 to bring the matter before the Court and, more importantly,  
5 before all of you for your determination as to whether the  
6 defendant is guilty or not guilty of the charges stated in  
7 the indictment.

8 The defendant has pled not guilty to all of the  
9 charges, and the indictment is not evidence of guilt.

10 Next let me review with you the verdict form that  
11 you will have with you when you retire to deliberate. The  
12 verdict form itself is not evidence, but it is simply a docu-  
13 ment used in order to record your verdict and report it to  
14 the Court.

15 You will see that the verdict proceeds in sequential  
16 order, starting with Count One and naturally ending with  
17 Count Five.

18 You will see Count One deals with and addresses the  
19 alleged offense of conspiracy, and Count One reads as follows:  
20 The defendant, Dennis Copling, on or about the 18th day of  
21 January, 1995, in the City of Camden, with the purpose of  
22 committing the crime of murder agreed with another person that  
23 they, together, or one or more of them, would engage in con-  
24 duct which constituted murder.

25 Then you would find the facts, apply them to the

1 law as I have given the law to you. By doing those things,  
2 you will arrive at a verdict of either not guilty or guilty,  
3 and you will then mark the appropriate spot.

4 You will notice that the way the language is  
5 phrased concerning the offense of conspiracy, it attempts to  
6 summarize in a very shorthand kind of way the lengthier in-  
7 structions I gave to you this afternoon concerning conspiracy.  
8 We have done that here on the verdict sheet to assist you.

9 We have attempted to be as accurate as possible.

10 If there is anything that is present in the longer  
11 instruction and not present on the verdict sheet, or if there  
12 are any nuances of meaning in the longer instruction that are  
13 not contained on the verdict sheet, obviously you should be  
14 guided by the longer oral instruction and not by the verdict  
15 sheet.

16 We have done it just to help you out a little.

17 The verdict sheet then tells you to proceed to  
18 Count Two. Count Two and Count Three of the verdict sheet  
19 are set up identical fashion. As you recall, Count Two con-  
20 concerns the murder of Mark Winston, and Count Three concerns  
21 the murder of Kirby Bunch.

22 Because they are identical, I am going to read only  
23 Count Two to you.

24 Count Two reads as follows: The defendant, Dennis  
25 Copling, on or about the 18th day of January, 1995, in the

1 City of Camden, purposely or knowingly caused the death or  
2 serious bodily injury resulting in the death of Mark Winston.

3 Then you will record your verdict of not guilty or  
4 guilty by finding the facts and applying the facts to the  
5 law, as I have given it to you.

6 You will see that there is an instruction which  
7 reads as follows: If your verdict on murder under Count Two  
8 is guilty, then proceed to Count Three. If your verdict on  
9 murder under Count Two is not guilty, then proceed to the  
10 next section, aggravated manslaughter.

11 That is because, as I mentioned to you earlier,  
12 you would only go onto consider the charge of aggravated  
13 manslaughter or reckless manslaughter if you found the defen-  
14 dant not guilty of murder. But if you found him guilty of  
15 murder, then you would proceed to the next count of the  
16 indictment, and you would not under that circumstance con-  
17 sider aggravated or reckless manslaughter.

18 If you found the defendant not guilty of the murder  
19 of Mark Winston, you would, as I said, go on to consider  
20 aggravated manslaughter, and that reads as follows: The  
21 defendant, Dennis Copling, on or about the 18th day of  
22 January, in the City of Camden, under circumstances manifest-  
23 ing extreme indifference to the value of human life recklessly  
24 caused the death of Mark Winston.

25 Then you would tell us whether your verdict is not

1 guilty or guilty.

2 The instruction says if your verdict on aggravated  
3 manslaughter is guilty, then proceed to Count Three, which is  
4 the Count that deals with the death of Kirby Bunch. It tells  
5 you if your verdict on aggravated manslaughter is not guilty,  
6 then proceed to the next section, reckless manslaughter.

7 After you have completed Count Two, you will go  
8 onto Count Three, which is identical to Count Two. The only  
9 difference is that the name is changed. One is Mark Winston  
10 and one is Kirby Bunch.

11 Count Four is possession of a weapon for an unlawful  
12 purpose. Count Five is unlawful possession of a handgun.  
13 They are self-explanatory. I need not read both to you. You  
14 will have the verdict sheet with you when you deliberate.

15 Now, my next instruction to you concerns how it  
16 is you deliberate, what you do, how would you interact with  
17 one another. Suffice it to say, there is no difference in  
18 the way a jury is to consider the proof in a criminal case  
19 from the way all reasonable people treat any questions depend-  
20 ing upon evidence presented to them.

21 You are expected to use your own good common sense.  
22 Consider the evidence for only those purposes for which it  
23 has been admitted, and give it a reasonable and fair con-  
24 struction in the light of your knowledge of how people behave.

25 It is the quality of the evidence and not simply

1 the number of witnesses that is controlling.

2 Anything that has not been marked into evidence  
3 cannot be given to you in the jury room, even though it may  
4 have been marked for identification. Only those items  
5 actually marked into evidence can be given to you.

6 In a matter of moments you will go into the jury  
7 room to start your deliberation. You are to apply the law  
8 as I have instructed you to the facts, as you find them to  
9 be, for the purpose of arriving at a fair and a correct  
10 verdict.

11 The verdict must represent the considered judgment  
12 of each juror, and the verdict must be unanimous as to each  
13 charge. This means all of you must agree if the defendant  
14 is guilty or not guilty on each charge.

15 It is your duty as members of the jury to consult  
16 with one another, and to deliberate with a view to reaching  
17 a verdict, if you can do so without violence to your individual  
18 judgment. Each of you must decide the case for yourself,  
19 but do so only after an impartial consideration of the evi-  
20 dence with your fellow jurors.

21 In the course of your deliberations do not hesitate  
22 to re-examine your own views, and do not hesitate to change  
23 your opinion, if you are convinced that your opinion was  
24 erroneous. However, do not surrender your honest conviction  
25 as to the weight or effect of the evidence only because of

1 the opinion of your fellow jurors, and do not surrender  
2 your honest conviction as to the weight or effect of the  
3 evidence for the mere purpose of returning a verdict.

4 You are not partisans, you are judges, judges of  
5 the facts.

6 As I indicated, the verdict must be unanimous.  
7 That is, the vote must be twelve to zero on each question  
8 which you decide. It may not be eleven to one, ten to two  
9 and et cetera.

10 You will recall earlier when I described the func-  
11 tions of the jury as judges of the facts, and the Court as  
12 the judge of the law, you will recall that discussion. I now  
13 advise you that sentencing in the event of a conviction, in  
14 other words, if you find the defendant guilty, the defendant's  
15 sentencing is a legal issue and the imposing of the sentence  
16 is something that the Court does or the judge does.

17 Therefore, in your deliberation you should not con-  
18 sider the potential consequences of your verdict.

19 In the event of a conviction, I will order a Pre-  
20 sentence Investigation into the background of the defendant,  
21 and I will consider all relevant facts and circumstances per-  
22 taining to any sentence. It is the judge's function and  
23 responsibility to impose an appropriate sentence according to  
24 law, in the event of a conviction.

25 Therefore, do not concern yourself with what follows

1 after you perform your function of deciding whether the  
2 defendant is guilty or not guilty.

3 If during your deliberation you have a question or  
4 feel you need further assistance or instructions from me,  
5 write your question on a sheet of paper and give it to the  
6 Court Officer, who will be standing at the jury room door,  
7 who in turn will give your question to me.

8 In other words, don't try to explain it orally,  
9 because sometimes the question changes as it is conveyed  
10 orally. I will go over the question with both lawyers and  
11 try to answer it as quickly as possible. If we don't answer  
12 it immediately, it doesn't mean that we are off doing some-  
13 thing else, because I can assure you answering your question  
14 is my sole and one hundred percent priority.

15 If we don't get back to you immediately, it may be  
16 because the answer is a bit more complicated than you may  
17 think it is. Be patient with us. We are giving your ques-  
18 tion the attention it deserves.

19 If you do send out a question, do not disclose where  
20 you stand. In other words, don't tell us that you are ten to  
21 two, eight to four on a given charge. Frankly, it is not  
22 our business to know that.

23 If you have reached a unanimous verdict on each  
24 charge, knock on the door, let Mr. Murray know that, and we  
25 will bring you into court as soon as possible to receive your

1 verdict.

2 Counsel, I have concluded the charge. All we have  
3 to do is swear in Mr. Murray and designate the foreman.

4 Are there any objections to the charge, as given,  
5 other than that which you may have already brought to my  
6 attention?

7 MR. ARONOW: No, your Honor.

8 MR. LEINER: No, your Honor.

9 THE COURT: What we are looking for is the wooden  
10 drum we were spinning and using during the jury selection  
11 process. We put all your names into the drum again, and we  
12 spin it vigorously, and from that we will randomly draw one  
13 name, and that one person will be the alternate.

14 Usually the box sits right here and it is not right  
15 here now. I am sure it will be found in a second.

16 Let me emphasize to you the designation of the  
17 alternate has nothing to do with the seat in which you are  
18 seated. It has nothing to do with whether you were selected  
19 on Wednesday or Thursday of that first week. It's a purely  
20 random choice made by spinning the drum. The one person who  
21 is going to be the alternate is not excused. I will be giving  
22 that person a separate instruction, and we will take that one  
23 alternate to a slightly different place in the back.

24 The person whose name is pulled as an alternate  
25 should please step down from your row, and please take the

1 seat right there that Mr. Murray is pointing to.

2 We are giving it a very vigorous spin. We will  
3 now withdraw one name from the drum.

4 (Alternate juror selected.)

5 THE COURT: On behalf of the court system as a  
6 whole, and on behalf of both lawyers, and on behalf of the  
7 defendant, I want to thank you. I want to stress to you that  
8 your purpose in this trial has been every bit as significant  
9 as that of other jurors.

10 I know if I were seated where you are seated, per-  
11 haps I would be disappointed. Perhaps I would be relieved.  
12 I am not sure which. I don't know which of those two things  
13 you are feeling, but if you are disappointed I want you to  
14 understand that we have to have a system where there are some  
15 alternates.

16 Let me explain to you why that is. Whenever a  
17 trial does not begin and end on the same day, there is always  
18 the risk as time progresses one person or another may not be  
19 able to complete his or her responsibility as a member of the  
20 jury. In fact, that happened with the juror who was seated  
21 at the end. There was an illness in her family, very severe  
22 illness in her family. This morning I excused her.

23 If we had only picked twelve people and one or more  
24 of those people was unable to continue due to family emergency  
25 or something else, then at that point, because the Constitu-

1 tion requires a defendant in a criminal case to have a jury  
2 of twelve, we then got down below twelve, I would have no  
3 choice but declare a mistrial. Meaning all the time that  
4 everybody had spent on the trial, including the witnesses,  
5 including the lawyers, including most importantly the members  
6 of the jury, all of that would be for naught.

7 The jury would not have reached a verdict and we  
8 would have to ask the witnesses to come back at a later time  
9 and present the case all over again.

10 It is for that reason we selected alternates in  
11 this case. We had three because of the length of the trial.  
12 That is why we picked alternates, and if you are disappointed  
13 I can understand why it is. I want to thank you very much,  
14 and as soon as the other twelve people are excused, I will  
15 be giving you a brief instruction as to what you may do.

16 The next thing we need to do is administer the oath.

17 Mr. Murray, if you would please come forward.

18 (Court Aide sworn.)

19 THE COURT: The next thing we have to do is designate  
20 the foreperson of the jury. Ordinarily the juror seated  
21 in Seat Number 1 is the foreperson. The juror in Seat Number  
22 1, this is not Seat 1, you are Seat 2, that would have been  
23 the gentleman who is seated in that seat who I excused this  
24 morning.

25 The Court Rule says whenever Juror Number 1 is ex-

1 cused as an alternate or for some other reason, then the  
2 juror who was selected next becomes the foreman or forelady,  
3 as the case may be. That doesn't necessarily mean the person  
4 in Seat 2. It means the person who was drawn next.

5 In this case Juror Number 161 in Seat 6, you are  
6 that person. Although you are not the original person in  
7 that seat, you were placed into that seat --

8 JUROR NUMBER 6: Yes, I am.

9 THE COURT: You are the original person in that  
10 seat?

11 JUROR NUMBER 6: Yes.

12 THE COURT: That's right, you are. Yes, you are.

13 If you were eliminated, the next person would not  
14 have been the original person in that seat. You are right.  
15 Of all the other people between the very first seat and your  
16 seat, you are the only person that was seated on the first  
17 spinning of the drum. You were seated after Juror Number 1,  
18 and that is why we are going to ask you to be the foreperson.

19 Let me explain to you the additional responsibili-  
20 ties we ask of you as the forelady of the jury, and after  
21 that I will give you an opportunity to ask me any questions  
22 you have, if you have any hesitancy in performing the func-  
23 tion. I will be glad to talk to you about that.

24 The first responsibility you will have would be to  
25 lead the deliberation. In other words, to make sure that

1 the instructions on the verdict sheet are followed, to sign  
2 the jury sheet on the last page. There is a signature line  
3 for you to sign in your capacity as forelady.

4 Also, to make sure to the extent that you can every-  
5 body on the jury has the opportunity to speak his or her  
6 mind. Certainly when twelve people get together, and although  
7 you know each other to an extent from serving on the jury  
8 over the past few weeks, you don't really know each other  
9 very well. Some people tend to clam up a little bit and not  
10 speak their mind very much.

11 The jury function is best when all of its members  
12 contribute to the deliberation.

13 If you see there is somebody a bit shy or not speak-  
14 ing up, if I can ask you to just encourage that person to  
15 speak up and give the benefit of his or her view to every-  
16 body else, that is the first thing to lead the deliberation.

17 The next thing we ask you to do is report the verdict  
18 in open court, as soon as the jury has reached its verdict.  
19 When you have reached your verdict, all of you will come back  
20 into the courtroom. The very first thing that will happen is  
21 I will ask the Court Clerk to please take the roll, make sure  
22 all members of the jury are here. After that she will ask  
23 you to please rise. She will then read to you verbatim each  
24 of the parts of the verdict sheet one by one, and you will,  
25 of course, have the verdict sheet in your hand. Then you

1 will publicly announce that verdict, whether it be not guilty  
2 or guilty. Those are the two responsibilities you have.

3 Your vote as foreperson doesn't carry any greater  
4 or lesser weight than the vote of any other person, nor does  
5 your responsibility, nor does your designation as foreperson  
6 mean you should speak less or more back in the jury room.  
7 The fact you are the forelady doesn't change your participa-  
8 tion in the deliberations in any way.

9 Do you have any questions about the additional  
10 responsibilities?

11 THE FOREPERSON: No.

12 THE COURT: Do you have any hesitancy in performing  
13 them?

14 THE FOREPERSON: No, your Honor.

15 THE COURT: Thank you very much.

16 Next, Counsel, I would ask that you please review  
17 the evidence, make sure that everything that is there should  
18 be there, and there is nothing there that should not be  
19 there.

20 As soon as you have completed that, if I can ask you  
21 to state on the record everything is in order with respect  
22 to the evidence.

23 Ladies and gentlemen, the Court Clerk brought to my  
24 attention on the final count, Count Five on the verdict sheet,  
25 there was not a space that said not guilty or guilty, and

1 just because it would be faster, and because my secretary  
2 is gone for the day, I will hand-write not guilty and guilty.

3 MR. ARONOW: Everything is here, Judge. We are not  
4 going to just put 42 with everything else. That is the live  
5 ammunition.

6 THE COURT: Mr. Leiner, everything is satisfactory?

7 MR. LEINER: Yes, your Honor.

8 THE COURT: We will keep Exhibit 42 separate from  
9 the weapon. If the jury would like to see the bullets, we  
10 will exchange the two.

11 Ladies and gentlemen, at this point you may retire  
12 to deliberate. You should not start deliberating until you  
13 have the verdict sheet and all of the exhibits in the jury  
14 room with you.

15 It's 3:36 or 3:37. You are not under any time  
16 pressure from us. Take all the time you need to reach a  
17 fair and impartial verdict. We will look forward to receiving  
18 your verdicts whenever you have it. Thank you.

19 (Jury excused from courtroom to deliberate at 3:36 P.M.)

20 THE COURT: Juror Number 12, in a second we will be  
21 taking you in a slightly separate room in the back. The  
22 reason we are doing that is that you are not excused completely  
23 at this point, and we ask you to remain. On rare occasions  
24 the services of an alternate juror are used. That is why  
25 you will be kept in a separate area in the back, in the event

1 that becomes necessary.

2 In some trials there are two alternates, and I  
3 would then instruct the two alternates they should not talk  
4 to each other about the evidence in this case. You are the  
5 only alternate. There is nobody for you to talk to about  
6 the evidence.

7 Just a reminder, if there is anybody that should  
8 pass by and have an opportunity to come in contact with you,  
9 there shouldn't be such a person, but if so, you should not  
10 discuss the trial or evidence in any way.

11 If the jury has any questions or when the jury  
12 has its verdict, you will come back into the courtroom along  
13 with everybody else for the question or verdict. We will  
14 attempt to make you as comfortable back there as we can.  
15 If there are any things lying around for you to read, not  
16 newspapers that would report the trial, anything like that,  
17 but we will try to make you as comfortable as we can.

18 We will ask Mr. Murray or the Court Clerk to please  
19 take you back there.

20 (Alternate juror excused from courtroom.)

21 THE COURT: If you are going to leave the third  
22 floor, if you could let the Court Clerk know that, let her  
23 know where you will be.

24 MR. LEINER: Thank you, your Honor.

25 (Recess.)

1 THE COURT: Since it is now almost 4:25, we will  
2 bring the jury in and I will ask them if they need a little  
3 while longer to reach a verdict, in which case they will  
4 probably stay, or if they need a lot longer, I will have them  
5 come back tomorrow.

6 There was something you wanted to bring to the  
7 Court's attention, Mr. Aronow?

8 MR. ARONOW: Only that, your Honor, the gentleman  
9 who was identified earlier as being the husband of one of  
10 the jurors --

11 THE COURT: In Seat 6.

12 MR. ARONOW: Right. He was outside and I don't  
13 know that there was anything intentional --

14 THE COURT: Seat 5. I am sorry.

15 MR. ARONOW: Apparently a relative of the defendant  
16 was talking with him and given the fact your Honor addressed  
17 the gentleman, the juror's husband in open court, I didn't  
18 think it was appropriate, given that, there should be anybody  
19 discussing anything with him in any way.

20 THE COURT: What would you like me to do?

21 MR. ARONOW: Only just inform the husband of the  
22 juror that if there was anything discussed outside of his  
23 wife's presence, he not bring it up with his wife what  
24 happened today.

25 THE COURT: Of course, he is not here. I am not

1 sure where he is.

2 MR. ARONOW: I don't know if he is outside in the  
3 hallway.

4 THE COURT: He probably is here somewhere. I don't  
5 think he will leave until she leaves.

6 MR. ARONOW: Correct.

7 THE COURT: If you can find him, we will deal with  
8 it now before we bring the jury back.

9 MR. ARONOW: Yes, your Honor.

10 (Juror's husband enters courtroom.)

11 THE COURT: Thank you for coming back. I was  
12 aware that some member of Mr. Copling's family was chatting  
13 with you very briefly in an earlier part of the day. I don't  
14 know whether it had anything to do with the trial or not. I  
15 am assuming that it didn't and it was just a passing conver-  
16 sation.

17 If what that member of the family said to you did  
18 have something to do with the trial, I would ask you not to  
19 discuss that with your wife tonight.

20 Any questions?

21 (No response.)

22 THE COURT: You are getting tired of me, I am sure.

23 THE JUROR'S HUSBAND: That is all right. I was  
24 just talking to the gentleman, whoever he was, about mutual  
25 work in the chemical plant.

1 THE COURT: I am glad. That sounds like a perfect  
2 thing to talk about. Thank you very much.

3 Why don't we have the jury come back.

4 (Jury returned to courtroom at 4:30 P.M.)

5 THE COURT: Ladies and gentlemen, because it is  
6 now 4:30 I thought I would get an idea from you whether you  
7 will be able to reach a verdict in a brief period of time.  
8 In other words, ten or fifteen minutes from now, in which  
9 case it would be fine to stay and continue.

10 If you think you need a lot longer than that, I  
11 think it would make more sense to end for the day and resume  
12 tomorrow.

13 Do you have any sense of whether your decision is  
14 one that you could come back in a brief period of time or  
15 longer?

16 THE FOREPERSON: No, your Honor. We would probably  
17 need tomorrow.

18 THE COURT: You need tomorrow?

19 THE FOREPERSON: Yes.

20 THE COURT: We will end for the day. Let me again  
21 just remind you not to discuss the case among yourselves be-  
22 tween now and tomorrow, and also not to read any newspaper or  
23 other media account.

24 Also, the Court Rules and Procedures are such that  
25 jurors are not permitted to deliberate any place other than

1 in the jury deliberation room here. I don't know if you  
2 would get together tonight, if you wanted to, the Court  
3 Rules prohibit that.

4 Nor are you permitted to get together in small  
5 groups together and then regroup tomorrow. Tonight, in  
6 other words, there should be nothing having to do with the  
7 trial at all.

8 On that note you are excused for the day. We look  
9 forward to seeing you tomorrow morning. If you come in at  
10 9:00 o'clock, we will immediately take roll. You won't be  
11 in the courtroom at all. You will in the back delibera-  
12 ting. We look forward to seeing you tomorrow.

13 Thank you and have a nice evening.

14 (Jury excused from courtroom.)

15 THE COURT: I will see you all in the morning.

16 MR. LEINER: Thank you, your Honor.

17 (The proceedings were concluded for the day.)  
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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  
WALTER F. FLYNN, C.S.R.  
Official Court Reporter  
Camden County Courthouse  
Camden, New Jersey

Date: May 6, 1977

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