

A-2058-0374

A-2058-9774

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEW JERSEY, :

vs. : Trial

DENNIS L. COPLING, :

Defendant. :

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

Date: February 5, 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. LEINER, ESQ.
For the Defendant

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

FILED
APPELLATE DIVISION
JUN 3 2004

Walter F. Flynn
CLERK

STANDARD FORM NO. 100

THE CURRY GROUP 1 800 275 5810

27

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE JURY: Verdict

15

EXHIBITS:

Evid.

C-1 Jury Question

3

C-2 Jury Question

4

STOCK FORM F1000

THE CORBY GROUP 1-800-255-5040

1 (Roll call. All jurors present.)

2 (Jury deliberating commencing at 9:00 A.M.)

3 THE COURT: Why don't we mark this as C-1.

4 (Jury Question marked Exhibit C-1 in Evidence.)

5 THE COURT: Counsel, do you need another minute?

6 MR. LEINER: No, your Honor.

7 THE COURT: The jury has a question, which I have
8 marked Court's Exhibit 1.

9 The question reads as follows: "Could you please
10 give us a definition between aggravated and reckless man-
11 slaughter again?"

12 We talked about this briefly in Chambers. What I
13 propose to do would be to read the instruction to the jury
14 in full as to aggravated manslaughter and reckless man-
15 slaughter, and then at the conclusion of that to briefly
16 highlight for them the principal differences between the
17 two offenses.

18 The principal differences I would highlight is
19 that aggravated manslaughter, unlike reckless manslaughter,
20 requires a showing beyond a reasonable doubt that when the
21 defendant acted, he acted with manifest indifference to the
22 value of human life.

23 I would also explain to them aggravated manslaughter
24 requires a probability that death will result, whereas reck-
25 less manslaughter requires only a possibility death will

1 result.

2 Any objection to that proposed answer to the jury's
3 question?

4 MR. ARONOW: No.

5 MR. LEINER: No, your Honor.

6 THE COURT: Why don't we bring the jury in then.
7 (Jury returned to courtroom at 9:53 A.M.)

8 THE COURT: Ladies and gentlemen, good morning.

9 I understand you have a question, which has been
10 marked as Court's Exhibit 1, and that question reads as
11 follows: "Your Honor, could you please give us the defini-
12 tion between aggravated and reckless manslaughter again?"

13 I have just been handed another note as you came
14 in, which reads: "Your Honor, could you please give us the
15 testimony of Queensbury, Young and Mate?", which I will mark
16 C-2.

17 (Jury Question marked Exhibit C-2 in Evidence.)

18 THE COURT: With respect to your second request
19 for a readback of the testimony of those witnesses, that is
20 going to take us a little bit longer, because the Court
21 Reporter, Mr. Flynn, was not the Court Reporter who was here
22 on all these days. You probably remember there were differ-
23 ent Court Reporters. They may be in other courtrooms in the
24 middle of a trial. Hopefully they are not, because that
25 would cause a little bit of a problem. We will deal with

1 that, but it will take us a little while. We will try and
2 do it as quickly as we can.

3 Putting that aside, as far as your first question,
4 what I am going to do is reinstruct you on aggravated and
5 reckless manslaughter, as you requested. In other words, I
6 will give you that instruction again in full, and then after
7 I finish doing that, I will highlight for you the two princi-
8 pal differences between aggravated and reckless. That will
9 help you focus on the question that you asked.

10 Starting with aggravated manslaughter, a person is
11 guilty of aggravated manslaughter if he recklessly causes the
12 death of another person under circumstances manifesting ex-
13 treme indifference to human life.

14 Let me focus you again. Aggravated and reckless
15 manslaughter both require a state of mind of recklessness.
16 Both of them have that in common, unlike murder, which re-
17 quires, as I told you, the higher state of mind which is
18 knowing or purposeful.

19 Both aggravated and reckless manslaughter require
20 the State to prove beyond a reasonable doubt that the defen-
21 dant acted recklessly.

22 Going back to aggravated manslaughter, a person is
23 guilty of aggravated manslaughter if he recklessly causes the
24 death of another person under circumstances manifesting ex-
25 treme indifference to human life.

1
2 In order for you to find the defendant guilty of
3 aggravated manslaughter, the State is required to prove
4 each of the following elements beyond a reasonable doubt:

5 First, that the defendant caused the death in the
6 case of Count Two of Mark Winston, and Count Three of Kirby
7 Bunch;

8 Secondly, that the defendant did so recklessly;

9 Third, that the defendant did so under circumstances
10 manifesting extreme indifference to human life.

11 One element the State must prove beyond a reason-
12 able doubt in connection with aggravated manslaughter is that
13 the defendant acted recklessly.

14 A person who causes another's death does so recklessly
15 when he is aware of and consciously disregards a substantial
16 and unjustifiable risk that death will result from his con-
17 duct. The risk must be of such a nature and degree that,
18 considering the nature and purpose of the defendant's con-
19 duct and the circumstances known to the defendant, his dis-
20 regard of that risk is a gross deviation from the standard of
21 conduct that a reasonable person would follow in the same
22 situation.

23 In other words, you must find that the defendant
24 was aware of and consciously disregarded the risk of causing
25 death. If you find that the defendant was aware of and dis-
regarded the risk of causing death, you must determine

1 whether the risk that he disregarded was substantial and
2 unjustifiable.

3 In doing so, you must consider the nature and pur-
4 pose of the defendant's conduct, and the circumstances known
5 to the defendant, and you must determine whether, in light
6 of those factors, his disregard of that risk was a gross de-
7 viation from the conduct a reasonable person would have ob-
8 served in the defendant's situation.

9 Another element the State must prove beyond a rea-
10 sonable doubt is that the defendant acted under circumstances
11 manifesting extreme indifference to human life.

12 The phrase under circumstances manifesting extreme
13 indifference to human life, does not focus on the defendant's
14 state of mind. Instead, it focuses on the circumstances
15 under which you find he acted.

16 If, in light of all the evidence, you find that the
17 defendant's conduct resulted in a probability as opposed to
18 a mere possibility of death, then you may find that he acted
19 under circumstances manifesting extreme indifference to human
20 life.

21 On the other hand, if you find that his conduct
22 resulted in only a possibility of death, then you must acquit
23 him of aggravated manslaughter, and consider the offense of
24 reckless manslaughter, that I will explain to you shortly.

25 The final element the State must prove beyond a

1 reasonable doubt in connection with aggravated manslaughter
2 is that the defendant caused the death of the person in
3 question, whether it be Mark Winston or Kirby Bunch.

4 When we say caused the death, we mean by that
5 that the person in question would not have died, but for
6 the defendant's conduct.

7 Another way to analyze the causal relationship
8 between the defendant's conduct and the actual death is to
9 say that the death must have been within the risk of which
10 the defendant was aware. If not, it must involve the same
11 kind of injury or harm as the probable result of the defen-
12 dant's conduct, and also the death must not be too remote,
13 too accidental in its occurrence, or too dependent on
14 another's volitional or voluntary act to have a just bearing
15 on the defendant's liability or on the gravity of the defen-
16 dant's offense.

17 In other words, the State must prove beyond a rea-
18 sonable doubt that the death of the person in question was
19 not so unexpected or unusual that it would be unjust to find
20 the defendant guilty of aggravated manslaughter.

21 If after a consideration of all the evidence you
22 are convinced beyond a reasonable doubt that the defendant
23 recklessly caused the death of either under circumstances
24 manifesting extreme indifference to human life, then your
25 verdict should be guilty of aggravated manslaughter.

1 If after a consideration of all the evidence you
2 are not convinced beyond a reasonable doubt that the defen-
3 dant recklessly caused the death in question under circum-
4 stances manifesting extreme indifference to human life, then
5 you must find the defendant not guilty of aggravated man-
6 slaughter, and go on to consider whether the defendant
7 should be found guilty of reckless manslaughter.

8 Remember again you should consider the evidence
9 separately for Count Two involving the death of Mark Winston,
10 consider that separate from Count Three, which is the evi-
11 dence concerning the death of Kirby Bunch.

12 That completes my instruction as to aggravated
13 manslaughter. Next I will instruct you as to reckless man-
14 slaughter.

15 A person is guilty of reckless manslaughter if
16 he recklessly causes the death of another person.

17 In order for you to find the defendant guilty of
18 reckless manslaughter, the State is required to prove each
19 of the following elements beyond a reasonable doubt:

20 First, that the defendant caused the death of Mark
21 Winston or Kirby Bunch;

22 Secondly, the defendant did so recklessly.

23 As I explained in connection with both aggravated
24 manslaughter and reckless manslaughter, there is a require-
25 ment that the State prove beyond a reasonable doubt that the

1 defendant acted recklessly.

2 You will remember that a person who causes another's
3 death does so recklessly when he is aware of and consciously
4 disregards a substantial and unjustifiable risk that death
5 will result from his conduct.

6 The risk must be of such a nature and degree that
7 considering the nature and purpose of defendant's conduct,
8 and the circumstances known to the defendant, his disregard
9 of that risk is a gross deviation from the standard of conduct
10 that a reasonable person would follow in the same situation.

11 In other words, you must find that the defendant
12 was aware of and consciously disregarded the risk of causing
13 death. If you find the defendant was aware of and disregarded
14 the risk of causing death, you must determine whether that
15 risk that he disregarded was substantial and unjustifiable.

16 In doing so, you must consider the nature and pur-
17 pose of the defendant's conduct, and the circumstances known
18 to him, and you must determine whether, in light of those
19 factors, his disregard of that risk was a gross deviation
20 from the conduct that a reasonable person would have observed
21 in the defendant's situation.

22 That part is the same element. That part is
23 identical in reckless manslaughter and in aggravated man-
24 slaughter.

25 The second requirement that the State must prove

1 beyond a reasonable doubt is that the defendant caused the
2 death of Mark Winston or Kirby Bunch. In other words, you
3 must find that the person in question would not have died
4 but for the defendant's conduct.

5 That also is a requirement of both aggravated man-
6 slaughter and reckless manslaughter.

7 If, after consideration of all the evidence, you
8 are convinced beyond a reasonable doubt that the defendant
9 recklessly caused the death of Kirby Bunch or Mark Winston,
10 then your verdict should be guilty of reckless manslaughter.

11 If, however, after consideration of all the evi-
12 dence you are not convinced beyond a reasonable doubt that
13 the defendant recklessly caused the death in question, then
14 you must find the defendant not guilty of reckless manslaughter.

15 If I were to analyze for you the differences be-
16 tween reckless manslaughter and aggravated manslaughter,
17 aggravated manslaughter contains all of the requirements of
18 reckless manslaughter, but it includes two additional ones.

19 The first difference that it includes is that
20 aggravated manslaughter requires a probability that death
21 would result from the conduct of the defendant, whereas
22 reckless manslaughter requires only a possibility. It's a
23 difference between a probability that death will occur with
24 aggravated manslaughter versus only a possibility that it
25 would result with reckless. That is one of the two differences.

1 The other difference is that aggravated manslaughter
2 has a requirement within it that reckless manslaughter does
3 not have, and that is the requirement that the defendant
4 recklessly caused the death under circumstances manifesting
5 extreme indifference to the value of human life.

6 That requirement is part of aggravated manslaughter,
7 but it is not a part of reckless.

8 Both of them, of course, require that the defendant
9 recklessly caused the death, but only aggravated manslaughter
10 has the additional requirement that when the defendant acted,
11 he acted under circumstances manifesting extreme indifference
12 to the value of human life.

13 Counsel, any objection to that instruction as given?

14 MR. LEINER: No, your Honor.

15 MR. ARONOW: No.

16 THE COURT: I hope that answers that question. If
17 you need further instructions from me on that issue of law or
18 any other issue of law, simply send me a note as you have
19 just done.

20 We will move as quickly as we can to get the read-
21 back on those witnesses' testimony. It shouldn't take that
22 long to find it in the Court Reporter's notes. The problem
23 is locating the other Court Reporter and asking them to come
24 down. We will do it as quickly as we can.

25 Thank you.

1 (Jury excused from courtroom at 10:05 A.M.)

2 THE COURT: We will assemble as soon as the Court
3 Reporter is here.

4 MR. LEINER: Thank you.

5 (Recess.)

6 (Jury returned to courtroom at 11:30 A.M.)

7 THE COURT: Ladies and gentlemen of the jury, we
8 have for you the readbacks of the testimony that you requested.
9 We are going to be going in sequential order, starting with
10 the testimony of Nathan Simmons, because he was the first of
11 the three. Then we may take a short break between the two
12 to give the Court Reporter a little bit of a break between
13 the readings. We will see how we go with it at this time.
14 We are going to do the readback of the testimony of Nathan
15 Simmons.

16 (Testimony read by Court Reporter.)

17 THE COURT: We will resume in ten minutes.

18 (Jury excused from courtroom.)

19 THE COURT: We will resume at seventeen after.

20 (Recess.)

21 THE COURT: Would you ask the jury to come in,
22 please.

23 (Jury returned to courtroom.)

24 THE COURT: Ladies and gentlemen, we will now pro-
25 ceed with the readback of the testimony of Ben Young.

1 (Testimony read by Court Reporter.)

2 THE COURT: At this point I will ask the Court
3 Clerk to find out if the jury's lunch is here.

4 Mrs anybody ordered a hot lunch or all cold sand-
5 wiches?

6 I see one for hot lunch.

7 Before we start with the next witness, why don't
8 we wait and see if your lunch is here. At this point we will
9 probably stop and take a break for lunch.

10 Ladies and gentlemen of the jury, your lunch isn't
11 here. It is not clear if they will be here in another two
12 minutes or fifteen minutes.

13 What is your preference?

14 A JUROR: Go on.

15 A JUROR: Go ahead.

16 THE COURT: That is all right even for those who
17 ordered the hot lunch. We will proceed with the testimony
18 of Timothy Queensbury.

19 (Testimony read by Court Reporter.)

20 THE COURT: Thank you.

21 Ladies and gentlemen, your lunch is here. Just so
22 you know, I will be outside of the courthouse during the
23 lunch hour for about forty-five minutes. If you have a
24 question in the next five minutes, I won't be able to respond
25 to it until I come back.

1
2 Enjoy your lunch, and I look forward to receiving
3 your verdict.

4 (Jury excused from courtroom to deliberate at 12:55 P.M.)

5 (Recess.)

6 AFTERNOON SESSION

7 (Jury returned to courtroom at 2:10 P.M.)

8 THE COURT: Madam Forelady, I understand the jury
9 has reached a verdict, is that correct?

10 THE FOREPERSON: Yes, your Honor.

11 THE COURT: Madam Clerk, please take the roll, make
12 sure everybody is present.

13 (Roll call. All jurors present.)

14 THE COURT: Mr. Copling, if you would please rise
15 and face the jury.

16 THE COURT CLERK: Madam Forelady, please rise and
17 respond to my questions.

18 Has the jury reached a verdict?

19 THE FOREPERSON: Yes, we have.

20 THE COURT CLERK: Are your answers unanimous?

21 THE FOREPERSON: Yes, they are.

22 THE COURT CLERK: In the case of State of New Jersey
23 versus Dennis L. Copling, under Indictment 2469-10-95, what
24 is your verdict as to Count One, conspiracy, which reads:
25 The defendant, Dennis L. Copling, on or about the 18th day of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

January, 1995, in the City of Camden, with the purpose of committing the crime of murder agreed with another person that they, together, or one or more of them, would engage in conduct which constituted murder?

THE FOREPERSON: Guilty.

THE COURT CLERK: What is your verdict as to Count Two, murder, which reads: The defendant, Dennis L. Copling, on or about the 18th day of January, 1995, in the City of Camden, purposely or knowingly caused the death or serious bodily injury resulting in the death of Mark Winston?

THE FOREPERSON: Not guilty.

THE COURT CLERK: What is your verdict as to the lesser included charge of aggravated manslaughter, which reads: The defendant, Dennis L. Copling, on or about the 18th day of January, 1995, in the City of Camden under circumstances manifesting extreme indifference to the value of human life recklessly caused the death of Mark Winston?

THE FOREPERSON: Guilty.

THE COURT CLERK: What is your verdict as to Count Three, murder, which reads: The defendant, Dennis L. Copling, on or about the 18th day of January, 1995, in the City of Camden, purposely or knowingly caused the death or serious bodily injury resulting in the death of Kirby Bunch?

THE FOREPERSON: Guilty.

THE COURT CLERK: What is your verdict as to Count

1 Four, possession of a weapon for unlawful purpose, which
2 reads: The defendant, Dennis L. Copling, on or about the
3 18th day of January, 1995, in the City of Camden, knowingly
4 possessed a firearm with the purpose of using it unlawfully
5 against another person?

6 THE FOREPERSON: Guilty.

7 THE COURT CLERK: What is your verdict as to Count
8 Five, unlawful possession of a handgun, which reads: The
9 defendant, Dennis L. Copling, on or about the 18th day of
10 January, 1995, in the City of Camden, knowingly and unlawfully
11 possessed and carried a handgun without first having obtained
12 a permit to carry a handgun, as is required by law?

13 THE FOREPERSON: Guilty.

14 THE COURT: We will take the verdict sheet from
15 you.

16 THE COURT CLERK: Thank you. You may be seated.

17 MR. LEINER: Your Honor, I ask the jury be polled.

18 THE COURT: Unless there is objection, we will poll
19 the jury in the aggregate.

20 MR. LEINER: Yes.

21 THE COURT: Let me proceed this way. Ladies and
22 gentlemen, your forelady has reported verdicts as follows:
23 On Count One, conspiracy, guilty; On Count Two, murder, not
24 guilty, but on the same count aggravated manslaughter, guilty.
25 On Count Three with respect to the murder of Kirby Bunch,

1 your forelady has reported a verdict of guilty. On Count
2 Four, possession of a weapon for unlawful purpose, the ver-
3 dict of guilty has been reported. On Count Five, unlawful
4 possession of a handgun, again a verdict of guilty has been
5 reported.

6 When the clerk calls your seat number, if you agree
7 with those verdicts as reported, please say: I agree. If you
8 disagree, please say: I disagree. Thank you.

9 (Jury polled. All jurors answering in affirmative.)

10 THE COURT: Any objection to the polling procedure
11 that was just used?

12 MR. LEINER: No, your Honor.

13 THE COURT: Counsel is there anything further be-
14 fore I discharge the jury?

15 MR. LEINER: No, your Honor.

16 (Jury excused from courtroom.)

17 THE COURT: Counsel, you both tried an excellent
18 case, and it was a pleasure having both of you appear before
19 this Court.

20 MR. ARONOW, I will be glad to hear you with respect
21 to bail.

22 MR. ARONOW: I ask for the bail to be revoked.

23 THE COURT: Do you wish to be heard, Mr. Leiner?

24 MR. LEINER: No, your Honor.

25 THE COURT: In keeping with the verdict of the jury,

1 bail is revoked. Sentencing will be on Friday, the 28th of
2 March, 9:00 o'clock in the morning in this courtroom.

3 That concludes these proceedings.

4 (The proceedings were concluded.)
5

6 -----

7 C E R T I F I C A T I O N
8

9 I, Walter F. Flynn, C.S.R., License Number 349, an
10 Official Court Reporter in and for the State of New Jersey,
11 do hereby certify the foregoing to be prepared in full com-
12 pliance with the current Transcript Format for Judicial Pro-
13 ceedings and is a true and accurate transcript of my steno-
14 graphic notes taken in the above matter to the best of my
15 knowledge and ability.

16 *Walter F. Flynn*

17 WALTER F. FLYNN, C.S.R.
18 Official Court Reporter
19 Camden County Courthouse
20 Camden, New Jersey

21 Date: May 6, 1997
22
23
24
25

STOCK FORM FMHRN

THE CORBY GROUP 1 800 235 5040