

1 person acts knowingly with respect to his
2 conduct if he is aware that his conduct is
3 of that nature.

4 Since knowingly is a state of mind
5 and cannot be seen and can only be
6 determined by inferences from conduct,
7 words or acts, it is rarely susceptible of
8 direct proof. Therefore, it is not
9 necessary that witnesses be produced by the
10 State to testify that the defendant said he
11 knowingly did something. His knowledge may
12 be gathered from his acts and his conduct
13 and from all he said and did at the
14 particular time and place and from all of
15 the surrounding circumstances reflected in
16 the testimony.

17 I'd ask you now, ladies and
18 gentlemen, if you would please recall and
19 consider that which I have just instructed
20 you as to the meaning of possession under
21 the law.

22 The third element is that the
23 defendant had possession of the weapon
24 under circumstances not manifestly
25 appropriate for such lawful uses as it

1 have. The State has the burden of proving
2 beyond a reasonable doubt that the
3 defendant's possession of the ax was under
4 circumstances not manifestly appropriate
5 for such lawful uses as it may have.

6 It is not necessary for the State to
7 prove that the defendant formed an intent
8 to use that object as a weapon. It is,
9 however, necessary for the State to prove
10 that it was possessed under such
11 circumstances that a reasonable person
12 would recognize that it was likely to be
13 used as a weapon; in other words, under
14 circumstances where it imposed a likely
15 threat or harm to others.

16 You may consider such things as the
17 surrounding circumstances, size, shape, the
18 condition of the object, the nature of the
19 concealment, the time, place and actions of
20 the defendant when it was found in his
21 possession to determine whether or not the
22 object was manifestly appropriate for its
23 lawful use.

24 The defendant may not be found guilty
25 of this offense of unlawful possession

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2 beyond a reasonable doubt that the
3 defendant's possession of the ax was under
4 circumstances not manifestly appropriate
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7 prove that the defendant formed an intent
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18 condition of the object, the nature of the
19 concealment, the time, place and actions of
20 the defendant when it was found in his
21 possession to determine whether or not the
22 object was manifestly appropriate for its
23 lawful use.

24 The defendant may not be found guilty
25 of this offense of unlawful possession

1 weapon unless the State has proven each
2 element of this offense beyond a reasonable
3 doubt. If the State has failed to prove
4 any element beyond a reasonable doubt, then
5 you must find the defendant not guilty.

6 Ladies and gentlemen, the verdict
7 must represent the considered judgment of
8 each Juror. In order to return a verdict,
9 it is necessary that each Juror agree
10 thereto. Your verdict must be unanimous.

11 It is your duty as Jurors to consult
12 with one another and to deliberate with a
13 view to reaching an agreement, if you can
14 do so without violence to individual
15 judgment. Each of you must decide the case
16 for yourself, but do so only after an
17 impartial consideration of the evidence
18 with your fellow Jurors.

19 In the course of your deliberations,
20 do not hesitate to re-examine your own
21 views and change your opinion if convinced
22 it is erroneous, but do not surrender your
23 honest conviction as to the weight or
24 effect of evidence solely because of the
25 opinion of your fellow Jurors or for the

1 weapon unless the State has proven each
2 element of this offense beyond a reasonable
3 doubt. If the State has failed to prove
4 any element beyond a reasonable doubt, then
5 you must find the defendant not guilty.

6 Ladies and gentlemen, the verdict
7 must represent the considered judgment of
8 each Juror. In order to return a verdict,
9 it is necessary that each Juror agree
10 thereto. Your verdict must be unanimous.

11 It is your duty as Jurors to consult
12 with one another and to deliberate with a
13 view to reaching an agreement, if you can
14 do so without violence to individual
15 judgment. Each of you must decide the case
16 for yourself, but do so only after an
17 impartial consideration of the evidence
18 with your fellow Jurors.

19 In the course of your deliberations,
20 do not hesitate to re-examine your own
21 views and change your opinion if convinced
22 it is erroneous, but do not surrender your
23 honest conviction as to the weight or
24 effect of evidence solely because of the
25 opinion of your fellow Jurors or for the

1 mere purpose of returning a verdict.

2 You are not partisans. You are
3 judges, judges of the facts. Your sole
4 interest is to ascertain the truth from the
5 evidence in this case.

6 As I just indicated, since this is a
7 criminal case, your verdict must be
8 unanimous. All twelve Jurors deliberating
9 must agree. You should decide the case on
10 the evidence without any bias, prejudice or
11 sympathy, and without reference to any
12 suspicion or conjecture.

13 Ladies and gentlemen, as to the
14 possible verdicts in this case, I have
15 prepared a possible verdict sheet which you
16 will have with you during the course of
17 your deliberations, but if I may now, I
18 would just like to go over that with you.

19 1. State your verdict with respect
20 to the guilt or innocence of the defendant
21 on the first count charging him with
22 purposely or knowingly causing the death of
23 or serious bodily injury resulting in the
24 death of Clarence McMillen.

25 Guilty or not guilty.

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mere purpose of returning a verdict.

You are not partisans. You are judges, judges of the facts. Your sole interest is to ascertain the truth from the evidence in this case.

As I just indicated, since this is a criminal case, your verdict must be unanimous. All twelve Jurors deliberating must agree. You should decide the case on the evidence without any bias, prejudice or sympathy, and without reference to any suspicion or conjecture.

Ladies and gentlemen, as to the possible verdicts in this case, I have prepared a possible verdict sheet which you will have with you during the course of your deliberations, but if I may now, I would just like to go over that with you.

1. State your verdict with respect to the guilt or innocence of the defendant on the first count charging him with purposely or knowingly causing the death of or serious bodily injury resulting in the death of Clarence McMillen.

Guilty or not guilty.

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I note for you only if you find the defendant guilty of purposely or knowingly causing the death of Clarence McMillen answer the following question:

1A. The defendant committed the killing by his own conduct.

Yes or no.

I wish to instruct you now that the words by his own conduct means that the State is required to prove beyond a reasonable doubt that the killing took place by the defendant's own actions.

2. State your verdict with respect to the guilt or innocence of the defendant on the second count charging him with causing the death of Clarence McMillen during the commission of the crime of robbery.

Guilty or not guilty.

3. State your verdict with respect to the guilt or innocence of the defendant on the third count charging him with robbery.

Guilty or not guilty.

3A. If your verdict with respect

I note for you only if you find the defendant guilty of purposely or knowingly causing the death of Clarence McMillen answer the following question:

1A. The defendant committed the killing by his own conduct.

Yes or no.

I wish to instruct you now that the words by his own conduct means that the State is required to prove beyond a reasonable doubt that the killing took place by the defendant's own actions.

2. State your verdict with respect to the guilt or innocence of the defendant on the second count charging him with causing the death of Clarence McMillen during the commission of the crime of robbery.

Guilty or not guilty.

3. State your verdict with respect to the guilt or innocence of the defendant on the third count charging him with robbery.

Guilty or not guilty.

3A. If your verdict with respect

Question No. 3 above is guilty, put a check mark next to one of the following, which will assist the Court in designating your finding.

First degree, second degree.

4. State your verdict with respect to the guilt or innocence of the defendant on the fourth count charging him with possession of a deadly weapon; to wit, an ax, with the purpose to use it unlawfully against another.

Guilty or not guilty.

5. State your verdict with respect to the guilt or innocence of the defendant on the fifth count charging him with unlawfully possessing a weapon; to wit, an ax.

Guilty or not guilty.

The attorneys wish to be heard?

MR. DEFIZIO: No, your Honor.

MR. BEVINO: No, Judge.

THE COURT: Will the Clerk please be good enough to select the four Alternate Jurors.

If I may, just one minute, and I

1 Question No. 3 above is guilty, put a check
2 mark next to one of the following, which
3 will assist the Court in designating your
4 finding.

5 First degree, second degree.

6 4. State your verdict with respect
7 to the guilt or innocence of the defendant
8 on the fourth count charging him with
9 possession of a deadly weapon; to wit, an
10 ax, with the purpose to use it unlawfully
11 against another.

12 Guilty or not guilty.

13 5. State your verdict with respect
14 to the guilt or innocence of the defendant
15 on the fifth count charging him with
16 unlawfully possessing a weapon; to wit, an
17 ax.

18 Guilty or not guilty.

19 The attorneys wish to be heard?

20 MR. DEFENDANT: No, your Honor.

21 MR. PROSECUTOR: No, Judge.

22 THE COURT: Will the Clerk please go
23 good enough to select the four Alternate
24 Jurors.

25 If I may, just one minute, and I

1 think I explained it to you before, but
2 perhaps I want to explain it to you so you
3 understand what we are going. I think I
4 probably did, but I still want to explain
5 it to you.

6 It's at this time of the case where
7 the Clerk will select four of you not to
8 participate in deliberations. The
9 remaining twelve Jurors will deliberate and
10 decide the case.

11 However, the four Jurors who are
12 selected, as with all Alternate Jurors, you
13 still will have an important part in this
14 case, and you still will remain with us
15 until the conclusion of the case.

16 THE COURT CLERK: When I call your
17 name, please step down from the jurybox.

18 Juror No. 12, Cheryl Ghee.

19 Juror No. 16, Bertha Rodriguez
20 Rameriz.

21 THE COURT: Excuse me. If you would
22 just be good enough to be seated right
23 the first row there.

24 THE COURT CLERK: Juror No. 10,
25 Michael Lyle.

1 think I explained it to you before, but
2 perhaps I want to explain it to you so you
3 understand what we are doing. I think I
4 probably did, but I still want to explain
5 it to you.

6 It's at this time of the case where
7 the Clerk will select four of you not to
8 participate in deliberations. The
9 remaining twelve Jurors will deliberate and
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17 name, please step down from the jurybox.

18 Juror No. 12, Cheryl Ghee.

19 Juror No. 16, Bertha Rodriguez
20 Rameriz.

21 THE COURT: Excuse me. If you were
22 just be good enough to be seated right
23 the first row there.

24 THE COURT CLERK: Juror No. 10,
25 Michael Kyle.

1 Juror No. 4, Carrie Abbott.

2 THE COURT: Swear the Officer,
3 please?

4 (Officer sworn.)

5 THE COURT: Thank you.

6 Ms. Diggs, you are the Forelady of
7 the Jury. I will ask the Officer to give
8 you the possible verdict sheet.

9 In addition, ladies and gentlemen,
10 you will have with you that yellow pad and
11 a pencil if you need that during the course
12 of your deliberations, and you will have
13 with you in the juryroom all of the
14 exhibits that have been admitted into
15 evidence.

16 I would ask that the attorneys would
17 be good enough now to review the exhibits
18 to make sure that we have all of them in
19 proper order before I ask the Jury to
20 retire and deliberate.

21 Also, I wish to advise you we think
22 we have found a place that would be a lot
23 cooler and comfortable than our juryroom.
24 We have an empty courtroom up on the ninth
25 floor, so you know where you are going.

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Juror No. 4, Carrie Abbott.

THE COURT: Swear the Officer,
please?

(Officer sworn.)

THE COURT: Thank you.

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the Jury. I will ask the Officer to give
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In addition, ladies and gentlemen,
you will have with you that yellow pad and
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The Twelve Jurors who will be deliberating
will retire to that room, and as soon as
you retire there, I will have the Officer
take your lunch order also, but that room
should be a lot more comfortable than our
juryroom, hopefully more comfortable than
our courtroom.

So, if the attorneys would be good
enough to review the exhibits.

MR. BOVINO: I'm satisfied, Judge.

MR. DeFAZIO: No problem.

THE COURT: All right. Ladies and
gentlemen of the Jury, I would ask you if
you would be good enough to retire with the
Officer to commence your deliberations.

(Jury leaving courtroom at 12:26
p.m.)

THE COURT: Officer, would you be
good enough to take the evidence directly
up to the Jurors and come back.

The four remaining Jurors are not
going to go home. You can stay here for a
few minutes, Officer, if you wish.

Ms. Abbott, Mr. Lyle, Ms. Rodriguez,
Pameriz ---

1 The Twelve Jurors who will be deliberating
2 will retire to that room, and as soon as
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4 take your lunch order also, but that room
5 should be a lot more comfortable than our
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10 MR. BOVINO: I'm satisfied, Judge.

11 MR. DeFAZIO: No problem.

12 THE COURT: All right. Ladies and
13 gentlemen of the Jury, I would ask you if
14 you would be good enough to retire with the
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16 (Jury leaving courtroom at 12:26
17 p.m.)

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19 good enough to take the evidence directly
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22 going to go home. You can stay here for a
23 few minutes, Officer, if you wish.

24 Ms. Abbott, Mr. Lyle, Ms. Rodriguez,
25 Pameriz ---

1 MS. PAMERIZ: Pameriz.

2 THE COURT: --- Ms. Ghee, you are
3 what we call the Alternate Jurors.

4 As I indicated just before, you are
5 still playing a very important part in this
6 case because it could well be for some
7 unknown reason, illness or otherwise, you
8 maybe called upon to go into the juryroom
9 and to deliberate and decide this case.

10 It doesn't happen often, but it does
11 happen. It has happened on many occasions
12 during the past years. So, I am going to
13 give you some instructions, and I know I
14 have been repeating myself, but it's still
15 important that all four of you adhere to
16 instructions.

17 You will not discuss this case with
18 anyone, do not discuss this case among
19 yourselves, and do not allow anyone to
20 discuss the case with you or in your
21 presence, and do not read any newspaper
22 articles concerning this case.

23 The Officer will find a convenient
24 place for you to retire to also. Okay?
25 We'll take your lunch order also.

1 MS. PAMERIZ: Pameriz.
 2 THE COURT: --- Ms. Ghee, you are
 3 what we call the Alternate Jurors.
 4 As I indicated just before, you are
 5 still playing a very important part in this
 6 case because it could well be for some
 7 unknown reason, illness or otherwise, you
 8 maybe called upon to go into the juryroom
 9 and to deliberate and decide this case.
 10 It doesn't happen often, but it does
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 16 instructions.
 17 You will not discuss this case with
 18 anyone, do not discuss this case among
 19 yourselves, and do not allow anyone to
 20 discuss the case with you or in your
 21 presence, and do not read any newspaper
 22 articles concerning this case.
 23 The Officer will find a convenient
 24 place for you to retire to also. Okay?
 25 We'll take your lunch order also.

1 (Alternate Jurors leaving courtroom
 2 at 12:30 p.m.)
 3 (The hearing recessed for lunch and
 4 then resumed, out of the presence of the
 5 Jury.)
 6 THE COURT: Gentlemen, as I advised
 7 you informally, we have a note from the
 8 Jury which reads as follows: What
 9 conditions are necessary to convict the
 10 defendant on the third charge of robbery.
 11 It would appear to the Court that the
 12 Jury is asking for the elements of the
 13 offense. It's my intention to instruct the
 14 Jury again as to the elements of the
 15 offense of robbery, and then also indicate
 16 to them they consider not only that which I
 17 just instructed them, but everything else
 18 that I instructed them previously.
 19 Any objection to that?
 20 MR. DEFAZIO: No your Honor.
 21 THE COURT: One other thing, if I
 22 may.
 23 Judge Walsh's juryroom is now
 24 available. It's an outside juryroom. The
 25 air conditioning is working very well over

(Alternate Jurors leaving courtroom
at 12:30 p.m.)

(The hearing recessed for lunch and
then resumed, out of the presence of the
Jury.)

THE COURT: Gentlemen, as I advised
you informally, we have a note from the
Jury which reads as follows: What
conditions are necessary to convict the
defendant on the third charge of robbery.

It would appear to the Court that the
Jury is asking for the elements of the
offense. It's my intention to instruct the
Jury again as to the elements of the
offense of robbery, and then also indicate
to them they consider not only that which I
just instructed them, but everything else
that I instructed them previously.

Any objection to that?

MR. DeFAZIO: No your Honor.

THE COURT: One other thing, if I
may.

Judge Walsh's juryroom is now
available. It's an outside juryroom. The
air conditioning is working very well over

there. So, that may be a lot more
convenient, and it will be more convenient
for the Jurors and for the Court officers.

Any objection to that?

MR. DeFAZIO: No, your Honor.

THE COURT: May we have the Jurors
and the Alternate Jurors.

We'll mark this note C-5.

(Note marked C-5 in evidence.)

(Jury entering courtroom at 2:33
p.m.)

THE COURT: Just a couple more
minutes, ladies and gentlemen, until the
other Jurors arrive.

(Alternate Jurors entering
courtroom.)

THE COURT: Would you please be
enough to come all the way over here?

MS. PAFERIZ: Oh, sure.

THE COURT: Thank you.

Ladies and Gentlemen of the Jury:
have your note which reads as follows:
What conditions are necessary to convict
the defendant on the third charge of
robbery.

1 there. So, that may be a lot more
2 convenient, and it will be more convenient
3 for the Jurors and for the Court officers.

4 Any objection to that?

5 MR. DeFAZIO: No, your Honor.

6 THE COURT: May we have the Jurors
7 and the Alternate Jurors.

8 We'll mark this note C-5.

9 (Note marked C-5 in evidence.)

10 (Jury entering courtroom at 2:33
11 p.m.)

12 THE COURT: Just a couple more
13 minutes, ladies and gentlemen, until the
14 other Jurors arrive.

15 (Alternate Jurors entering
16 courtroom.)

17 THE COURT: Would you please be
18 enough to come all the way over here?

19 MS. RAFFERTY: Oh, sure.

20 THE COURT: Thank you.

21 Ladies and Gentlemen of the Jury:
22 have your note which reads as follows:
23 What conditions are necessary to convict
24 the defendant on the third charge of
25 robbery.

1 It appears to the Court you are
2 requesting for me to instruct you again as
3 to the elements of the crime of robbery. I
4 will do so at this time.

5 Under the third count of the
6 indictment, the defendant is charged with
7 the crime of robbery.

8 The third count reads as follows:

9 "And further present on the date,
10 place and jurisdiction set forth in the
11 first count herein, the said Leonard Stone,
12 also known as Joshua Leonard, in the course
13 of committing a theft, did inflict bodily
14 injury upon Clarence McMillen by use of a
15 deadly weapon; to wit, an ax, contrary to
16 the provisions of N.J.S. 2C:15-1."

17 The pertinent part of the statute on
18 which this count is based reads as follows:

19 "A person is guilty of robbery if, in
20 the course of committing a theft, he
21 inflicts bodily injury or uses force upon
22 another."

23 In order for you to find the
24 defendant guilty of robbery, the State is
25 required to prove each of the following:

1 It appears to the Court you are
2 requesting for me to instruct you again as
3 to the elements of the crime of robbery. I
4 will do so at this time.

5 Under the third count of the
6 indictment, the defendant is charged with
7 the crime of robbery.

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15 deadly weapon; to wit, an ax, contrary to
16 the provisions of N.J.S. 2C:15-1."

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18 which this count is based reads as follows:

19 "A person is guilty of robbery if, in
20 the course of committing a theft, he
21 inflicts bodily injury or uses force upon
22 another."

23 In order for you to find the
24 defendant guilty of robbery, the State is
25 required to prove each of the following

1 elements beyond a reasonable doubt;
2 firstly, that the defendant was in the
3 course of committing a theft and, secondly,
4 that while in the course of committing that
5 theft, the defendant inflicted bodily
6 injury or used force upon another.

7 As I have said, the State must first
8 prove beyond a reasonable doubt that the
9 defendant was in the course of committing a
10 theft. In this connection, you are advised
11 that an act is considered to be in the
12 course of committing a theft if it occurs
13 in an attempt to commit the theft, during
14 the commission of the theft itself or in
15 immediate flight after the attempt or
16 commission.

17 Theft is defined as the unlawful
18 taking or exercise of unlawful control over
19 property of another with purpose to deprive
20 him thereof.

21 I have used the phrase with purpose.
22 You may hear me use that phrase or the word
23 purposely again. I shall now explain what
24 that means.

25 A person acts purposely with respect

elements beyond a reasonable doubt;
 firstly, that the defendant was in the
 course of committing a theft and, secondly,
 that while in the course of committing that
 theft, the defendant inflicted bodily
 injury or used force upon another.

As I have said, the State must first
 prove beyond a reasonable doubt that the
 defendant was in the course of committing a
 theft. In this connection, you are advised
 that an act is considered to be in the
 course of committing a theft if it occurs
 in an attempt to commit the theft, during
 the commission of the theft itself or in
 immediate flight after the attempt or
 commission.

Theft is defined as the unlawful
 taking or exercise of unlawful control over
 property of another with purpose to deprive
 him thereof.

I have used the phrase with purpose.
 You may hear me use that phrase or the word
 purposely again. I shall now explain what
 that means.

A person acts purposely with respect

to the nature of his conduct or result
 thereof if it is his conscious object to
 engage in conduct of that nature or to
 cause such a result.

In addition to proving beyond a
 reasonable doubt that the defendant was in
 the course of committing a theft, the State
 must also prove beyond a reasonable doubt
 that while in the course of committing that
 theft the defendant inflicted bodily injury
 or used force upon another.

The phrase bodily injury means
 physical pain, illness or any impairment of
 physical condition. Force means any exertion
 of physical power or strength used against
 a victim even though it entailed no pain or
 bodily injury and leaves no mark.

A section of our statute provides
 that robbery is a crime of the second
 degree, except it is a crime of the first
 degree if the robber is armed with or uses
 or threatens the use of a deadly weapon.

In this case, it is alleged that the
 defendant was armed with and used a deadly
 weapon while in the course of committing

1 to the nature of his conduct or result
2 thereof if it is his conscious object to
3 engage in conduct of that nature or to
4 cause such a result.

5 In addition to proving beyond a
6 reasonable doubt that the defendant was in
7 the course of committing a theft, the State
8 must also prove beyond a reasonable doubt
9 that while in the course of committing that
10 theft the defendant inflicted bodily injury
11 or used force upon another.

12 The phrase bodily injury means
13 physical pain, illness or any impairment of
14 physical condition. Force means any use
15 of physical power or strength used against
16 a victim even though it entailed no pain or
17 bodily injury and leaves no mark.

18 A section of our statute provides
19 that robbery is a crime of the second
20 degree, except it is a crime of the first
21 degree if the robber is armed with or uses
22 or threatens the use of a deadly weapon.

23 In this case, it is alleged that the
24 defendant was armed with and used a con-
25 weapon while in the course of committing

1 the robbery. In order for you to determine
2 the answer to this question, you must
3 understand the meaning of the term deadly
4 weapon.

5 A deadly weapon is any firearm or
6 other weapon, device, instrument, material
7 or substance which, in the manner it is
8 used or intended to be used, is known to be
9 capable of producing death or serious
10 bodily injury or in which the manner it is
11 fashioned would leave the victim reasonably
12 to believe it to be capable of producing
13 death or other serious bodily injury.

14 Serious bodily injury means bodily
15 injury which creates a substantial risk of
16 death or which causes serious injury,
17 permanent disfigurement or protracted loss
18 or impairment of a function of any bodily
19 member or organ.

20 The defendant may not be found guilty
21 of this offense of robbery unless the State
22 has proven each element of this offense
23 beyond a reasonable doubt. If the State
24 has failed to prove any element beyond a
25 reasonable doubt, then you must find the

1 the robbery. In order for you to determine
2 the answer to this question, you must
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5 A deadly weapon is any firearm or
6 other weapon, device, instrument, material
7 or substance which, in the manner it is
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12 to believe it to be capable of producing
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15 injury which creates a substantial risk of
16 death or which causes serious injury,
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19 member or organ.

20 The defendant may not be found guilty
21 of this offense of robbery unless the State
22 has proven each element of this offense
23 beyond a reasonable doubt. If the State
24 has failed to prove any element beyond a
25 reasonable doubt, then you must find the

1 defendant not guilty.

2 I would ask you now, ladies and
3 gentlemen, not only to consider that which
4 I have instructed you again at your request
5 as to the elements of the offense of
6 robbery, but to consider all of the law
7 that I instructed you previously as to not
8 only the elements of each offense, but as
9 to all the law that I instructed you
10 previously with regard to a presumption of
11 innocence, burden of proof and my
12 definition of reasonable doubt.

13 So, please consider everything that
14 I instructed you now and I did before. I ask
15 you now if you would be good enough -- it
16 may say this first. We have now a juryroom
17 right across the hall, which is an outside
18 juryroom, I should say. It's an outside
19 juryroom. I think it will be a lot more
20 comfortable.

21 I understand the air conditioning
22 working there, and it will be more
23 comfortable for you, and I would ask you
24 retire to that juryroom and continue your
25 deliberations, please.

1 defendant not guilty.

2 I would ask you now, ladies and
3 gentlemen, not only to consider that which
4 I have instructed you again at your request
5 as to the elements of the offense of
6 robbery, but to consider all of the law
7 that I instructed you previously as to not
8 only the elements of each offense, but as
9 to all the law that I instructed you
10 previously with regard to a presumption of
11 innocence, burden of proof and my
12 definition of reasonable doubt.

13 So, please consider everything that
14 I instruct you now and I did before. I ask
15 you now if you would be good enough -- it
16 may say this first. We have now a juryroom
17 right across the hall, which is an outside
18 juryroom, I should say. It's an outside
19 juryroom. I think it will be a lot more
20 comfortable.

21 I understand the air conditioning
22 working there, and it will be more
23 comfortable for you, and I would ask you
24 retire to that juryroom and continue your
25 deliberations, please.

1 (Jury leaving courtroom at 2:40 p.m.)

2 (The hearing recessed and then
3 resumed, out of the presence of the Jury.)

4 THE COURT: Gentlemen, as I indicated
5 informally in chambers, I have a note from
6 the Jury which just says verdict.

7 We will mark that C-6 in evidence,
8 please.

9 (Note marked C-6 in evidence.)

10 THE COURT: Thank you. Officer, may
11 we have the Jurors and the Alternate
12 Jurors, please.

13 (Jury entering courtroom at 3:24
14 p.m.)

15 THE COURT: Officer, do we have the
16 Alternate Jurors?

17 (Alternate Jurors entering
18 courtroom.)

19 THE COURT: Macam Forelady and Ladies
20 and Gentlemen of the Jury: I have your
21 note which reads as follows -- which says
22 verdict.

23 I would ask the Clerk of the Court to
24 please take the verdict. Proceed.

25 THE COURT CLERK: Please answer the

1 (Jury leaving courtroom at 2:40 p.m.)
 2 (The hearing recessed and then
 3 resumed, out of the presence of the Jury.)
 4 THE COURT: Gentlemen, as I indicated
 5 informally in chambers, I have a note from
 6 the Jury which just says verdict.
 7 We will mark that C-6 in evidence,
 8 please.
 9 (Note marked C-6 in evidence.)
 10 THE COURT: Thank you. Officer, may
 11 we have the Jurors and the Alternate
 12 Jurors, please.
 13 (Jury entering courtroom at 3:24
 14 p.m.)
 15 THE COURT: Officer, do we have the
 16 Alternate Jurors?
 17 (Alternate Jurors entering
 18 courtroom.)
 19 THE COURT: Madam Forelady and Ladies
 20 and Gentlemen of the Jury: I have your
 21 note which reads as follows -- which says
 22 verdict.
 23 I would ask the Clerk of the Court to
 24 please take the verdict. Proceed.
 25 THE COURT CLERK: Please answer the

1 when I call your name.
 2 THE COURT CLERK: Dorothy Diggs.
 3 MS. DIGGS: Here.
 4 THE COURT CLERK: Dorothy Teniuch.
 5 MS. TENIUCH: Here.
 6 THE COURT CLERK: Percy Benton.
 7 MR. BENTON: Here.
 8 THE COURT CLERK: Lorraine Burke.
 9 MS. BURKE: Here.
 10 THE COURT CLERK: Carol McKay.
 11 MS. MCKOY: Here.
 12 THE COURT CLERK: Sharon Smith.
 13 MS. SMITH: Here.
 14 THE COURT CLERK: Philomena Carlock.
 15 MS. CARLOCK: Here.
 16 THE COURT CLERK: Mureen Hannon.
 17 MS. HANNON: Here.
 18 THE COURT CLERK: James Gullis.
 19 MR. GULLIS: Here.
 20 THE COURT CLERK: Janice Padilla.
 21 MS. PADILLA: Here.
 22 THE COURT CLERK: Gloria Povlas.
 23 MS. POVLAS: Here.
 24 THE COURT CLERK: Luz Riveria.
 25 MS. RIVERIA: Here.

1 when I call your name.

2 THE COURT CLERK: Dorothy Diggs.

3 MS. DIGGS: Here.

4 THE COURT CLERK: Dorothy Teniuch.

5 MS. TENIUCH: Here.

6 THE COURT CLERK: Percy Benton.

7 MR. BENTON: Here.

8 THE COURT CLERK: Lorraine Burke.

9 MS. BURKE: Here.

10 THE COURT CLERK: Carol McKay.

11 MS. MCKAY: Here.

12 THE COURT CLERK: Sharon Smith.

13 MS. SMITH: Here.

14 THE COURT CLERK: Philomena Carlock.

15 MS. CARLOCK: Here.

16 THE COURT CLERK: Noreen Hannon.

17 MS. HANNON: Here.

18 THE COURT CLERK: James Gullis.

19 MS. GULLIS: Here.

20 THE COURT CLERK: Janice Padilla.

21 MS. PADILLA: Here.

22 THE COURT CLERK: Gloria Povlas.

23 MS. POVLAS: Here.

24 THE COURT CLERK: Luz Fivera.

25 MS. FIVERA: Here.

1 THE COURT CLERK: The Alternates,

2 Carrie Abbott.

3 MS. ABBOTT: Here.

4 THE COURT CLERK: Michael Lyle.

5 MR. LYLE: Here.

6 THE COURT CLERK: Sharon Ghee.

7 MS. GHEE: Here.

8 THE COURT CLERK: Bertha Rodriguez.

9 MS. RODRIGUEZ: Here.

10 THE COURT CLERK: Madam Forelady,

11 please rise. Have you reached a verdict?

12 MS. DIGGS: Yes, we have.

13 THE COURT CLERK: Is it a unanimous

14 verdict?

15 MS. DIGGS: Yes, it is.

16 THE COURT CLERK: Please state your

17 verdict to the Court.

18 1. State your verdict with respect

19 to the guilt or innocence of the defendant

20 on the first count charging him with

21 purposely or knowingly causing the death

22 or serious bodily injury resulting in the

23 death of Clarence McMillen.

24 Guilty or not guilty?

25 MS. DIGGS: Guilty.

1 THE COURT CLERK: The Alternates,
 2 Carrie Abbott.
 3 MS. ABBOTT: Here.
 4 THE COURT CLERK: Michael Lyle.
 5 MR. LYLE: Here.
 6 THE COURT CLERK: Sharon Ghee.
 7 MS. GHEE: Here.
 8 THE COURT CLERK: Bertha Rodriguez.
 9 MS. PAMERIZ: Here.
 10 THE COURT CLERK: Madam Forelady,
 11 please rise. Have you reached a verdict?
 12 MS. DIGGS: Yes, we have.
 13 THE COURT CLERK: Is it a unanimous
 14 verdict?
 15 MS. DIGGS: Yes, it is.
 16 THE COURT CLERK: Please state your
 17 verdict to the Court.
 18 1. State your verdict with respect
 19 to the guilt or innocence of the defendant
 20 on the first count charging him with
 21 purposely or knowingly causing the death
 22 or serious bodily injury resulting in the
 23 death of Clarence McMillen.
 24 Guilty or not guilty?
 25 MS. DIGGS: Guilty.

1 THE COURT CLERK: Madam Forelady, on
 2 your finding of guilty on Count 1, do you
 3 find the defendant committed the killing by
 4 his own conduct? Yes or no?
 5 MS. DIGGS: Yes.
 6 THE COURT CLERK: State your verdict
 7 with respect to the guilt or innocence of
 8 the defendant on the second count charging
 9 him with causing the death of Clarence
 10 McMillen during the commission of the crime
 11 of robbery.
 12 Guilty or not guilty?
 13 MS. DIGGS: Not guilty.
 14 THE COURT CLERK: State your verdict
 15 with respect to the guilt or innocence of
 16 the defendant on the third count charging
 17 him with robbery.
 18 Guilty or not guilty?
 19 MS. DIGGS: Guilty.
 20 THE COURT CLERK: Madam Forelady, on
 21 your finding of guilty to Count 3, do you
 22 find first degree or second degree?
 23 MS. DIGGS: Second degree.
 24 THE COURT CLERK: State your verdict
 25 with respect to the guilt or innocence of

1 THE COURT CLERK: Madam Forelady, on
2 your finding of guilty on Count 1, do you
3 find the defendant committed the killing by
4 his own conduct? Yes or no?

5 MS. DIGGS: Yes.

6 THE COURT CLERK: State your verdict
7 with respect to the guilt or innocence of
8 the defendant on the second count charging
9 him with causing the death of Clarence
10 McMillen during the commission of the crime
11 of robbery.

12 Guilty or not guilty?

13 MS. DIGGS: Not guilty.

14 THE COURT CLERK: State your verdict
15 with respect to the guilt or innocence of
16 the defendant on the third count charging
17 him with robbery.

18 Guilty or not guilty?

19 MS. DIGGS: Guilty.

20 THE COURT CLERK: Madam Forelady, on
21 your finding of guilty to Count 3, do you
22 find first degree or second degree?

23 MS. DIGGS: Second degree.

24 THE COURT CLERK: State your verdict
25 with respect to the guilt or innocence of

1 the defendant on the fourth count charging
2 him with possession of a deadly weapon; to
3 wit, an ax, with the purpose to use it
4 unlawfully against another.

5 Guilty or not guilty?

6 MS. DIGGS: Guilty.

7 THE COURT CLERK: State your verdict
8 with respect to the guilt or innocence of
9 the defendant on the fifth count charging
10 him with unlawfully possessing a weapon; to
11 wit, an ax.

12 Guilty or not guilty?

13 MS. DIGGS: Guilty.

14 THE COURT: Please be seated. Mr.
15 Fovino, do you wish the Jury polled?

16 MR. BOVIPO: Yes, Judge.

17 THE COURT: Will you please poll the
18 Jury as to each guilty verdict. That would
19 be the first count, third count, fourth
20 count and fifth count, please.

21 THE COURT CLERK: When I call your
22 name, please state I agree or disagree
23 with each count.

24 On the first count, state your
25 verdict with respect to the guilt or

1 the defendant on the fourth count charging
2 him with possession of a deadly weapon; to
3 wit, an ax, with the purpose to use it
4 unlawfully against another.

5 Guilty or not guilty?

6 MS. DIGGS: Guilty.

7 THE COURT CLERK: State your verdict
8 with respect to the guilt or innocence of
9 the defendant on the fifth count charging
10 him with unlawfully possessing a weapon; to
11 wit, an ax.

12 Guilty or not guilty?

13 MS. DIGGS: Guilty.

14 THE COURT: Please be seated. Mr.
15 Bovino, do you wish the Jury polled?

16 MR. BOVINO: Yes, Judge.

17 THE COURT: Will you please poll the
18 Jury as to each guilty verdict. That would
19 be the first count, third count, fourth
20 count and fifth count, please.

21 THE COURT CLERK: When I call your
22 name, please state I agree or disagree on
23 each count.

24 On the first count, state your
25 verdict with respect to the guilt or

1 innocence of the defendant on the first
2 count charging him with purposely or
3 knowingly causing the death of or serious
4 bodily injury resulting in the death of
5 Clarence McMillen.

6 Dorothy Diggs?

7 MS. DIGGS: I agree.

8 THE COURT CLERK: Dorothy Teniuch?

9 MS. TENIUCH: I agree.

10 THE COURT CLERK: Percy Benton?

11 MR. BENTON: I agree.

12 THE COURT CLERK: Lorraine Burke?

13 MS. BURKE: I agree.

14 THE COURT CLERK: Carol McKay?

15 MS. MCKAY: I agree.

16 THE COURT CLERK: Sharon Smith?

17 MS. SMITH: I agree.

18 THE COURT CLERK: Philomena Carlock?

19 MS. CARLOCK: I agree.

20 THE COURT CLERK: Noreen Parron?

21 MS. PARRON: I agree.

22 THE COURT CLERK: James Cullis?

23 MR. CULLIS: I agree.

24 THE COURT CLERK: Janice Padilla?

25 MS. PADILLA: I agree.

1 innocence of the defencant on the first
2 count charging him with purposely or
3 knowingly causing the death of or serious
4 bodily injury resulting in the death of
5 Clarence McMillen.

6 Dorothy Diggs?

7 MS. DIGGS: I agree.

8 THE COURT CLERK: Dorothy Teniuch?

9 MS. TENIUCH: I agree.

10 THE COURT CLERK: Percy Benton?

11 MR. BENTON: I agree.

12 THE COURT CLERK: Lorraine Burke?

13 MS. BURKE: I agree.

14 THE COURT CLERK: Carol McKay?

15 MS. MCKEY: I agree.

16 THE COURT CLERK: Sharon Smith?

17 MS. SMITH: I agree.

18 THE COURT CLERK: Philomena Carlock?

19 MS. CARLOCK: I agree.

20 THE COURT CLERK: Noreen Hannon?

21 MS. HANNON: I agree.

22 THE COURT CLERK: James Cullis?

23 MR. CULLIS: I agree.

24 THE COURT CLERK: Janice Pacilla?

25 MS. PADILLA: I agree.

1 THE COURT CLERK: Gloria Povlas?

2 MS. POVLAS: I agree.

3 THE COURT CLERK: Luz Rivera?

4 MS. RIVERA: I agree.

5 THE COURT CLERK: On 3, state your
6 verdict with respect to the guilt or
7 innocence of the defencant on the third
8 count charging him with robbery.

9 Dorothy Diggs?

10 MS. DIGGS: I agree.

11 THE COURT: Excuse me. The verdict
12 rendered indicate by agree or disagree.

13 THE COURT CLERK: I lost you, Judge.

14 THE COURT: On the finding of guilty
15 to the third count, please indicate whether
16 you agree or disagree.

17 THE COURT CLERK: Dorothy Diggs?

18 MS. DIGGS: I agree.

19 THE COURT CLERK: Dorothy Teniuch?

20 MS. TENIUCH: I agree.

21 THE COURT CLERK: Percy Benton?

22 MR. BENTON: I agree.

23 THE COURT CLERK: Lorraine Burke?

24 MS. BURKE: I agree.

25 THE COURT CLERK: Carol McKay?

1 THE COURT CLERK: Gloria Povlas?
 2 MS. POVLAS: I agree.
 3 THE COURT CLERK: Luz Rivera?
 4 MS. RIVERA: I agree.
 5 THE COURT CLERK: On 3, state your
 6 verdict with respect to the guilt or
 7 innocence of the defendant on the third
 8 count charging him with robbery.
 9 Dorothy Diggs?
 10 MS. DIGGS: I agree.
 11 THE COURT: Excuse me. The verdict
 12 rendered indicate by agree or disagree.
 13 THE COURT CLERK: I lost you, Judge.
 14 THE COURT: On the finding of guilty
 15 to the third count, please indicate whether
 16 you agree or disagree.
 17 THE COURT CLERK: Dorothy Diggs?
 18 MS. DIGGS: I agree.
 19 THE COURT CLERK: Dorothy Teniuch?
 20 MS. TENIUCH: I agree.
 21 THE COURT CLERK: Percy Benton?
 22 MR. BENTON: I agree.
 23 THE COURT CLERK: Lorraine Burke?
 24 MS. BURKE: I agree.
 25 THE COURT CLERK: Carol McKey?

1 MS. McKey: I agree.
 2 THE COURT CLERK: Sharon Smith?
 3 MS. SMITH: I agree.
 4 THE COURT CLERK: Philomena Carlock?
 5 MS. CARLOCK: I agree.
 6 THE COURT CLERK: Foreen Hannon?
 7 MS. HANNON: I agree.
 8 THE COURT CLERK: James Gullis?
 9 MR. GULLIS: I agree.
 10 THE COURT CLERK: Janice Padilla?
 11 MS. PADILLA: I agree.
 12 THE COURT CLERK: Gloria Povlas?
 13 MS. POVLAS: I agree.
 14 THE COURT CLERK: Luz Rivera?
 15 MS. RIVERA: I agree.
 16 THE COURT CLERK: On your guilty or
 17 Count 3 and your finding of second degree,
 18 do you agree or disagree.
 19 THE COURT: As to the Forelady's
 20 indication.
 21 THE COURT CLERK: Dorothy Diggs?
 22 MS. DIGGS: I agree.
 23 THE COURT CLERK: Dorothy Teniuch?
 24 MS. TENIUCH: I agree.
 25 THE COURT CLERK: Percy Benton?

1 MS. McFAY: I agree.
 2 THE COURT CLERK: Sharon Smith?
 3 MS. SMITH: I agree.
 4 THE COURT CLERK: Philomena Carlock?
 5 MS. CARLOCK: I agree.
 6 THE COURT CLERK: Foreen Hannon?
 7 MS. HANNON: I agree.
 8 THE COURT CLERK: James Gullis?
 9 MP. GULLIS: I agree.
 10 THE COURT CLERK: Janice Pacilla?
 11 MS. PADILLA: I agree.
 12 THE COURT CLERK: Gloria Povlas?
 13 MS. POVLAS: I agree.
 14 THE COURT CLERK: Luz Rivera?
 15 MS. RIVERA: I agree.
 16 THE COURT CLERK: On your guilty or
 17 Count 3 and your finding of second degree,
 18 do you agree or disagree.
 19 THE COURT: As to the Forelady's
 20 indication.
 21 THE COURT CLERK: Dorothy Biggs?
 22 MS. BIGGS: I agree.
 23 THE COURT CLERK: Dorothy Teriuch?
 24 MS. TERIUCH: I agree.
 25 THE COURT CLERK: Percy Benton?

1 MP. BENTON: I agree.
 2 THE COURT CLERK: Lorraine Burke?
 3 MS. BURKE: I agree.
 4 THE COURT CLERK: Carol McKay?
 5 MS. MCKAY: I agree.
 6 THE COURT CLERK: Sharon Smith?
 7 MS. SMITH: I agree.
 8 THE COURT CLERK: Philomena Carlock?
 9 MS. CARLOCK: I agree.
 10 THE COURT CLERK: Noreen Hannon?
 11 MS. HANNON: I agree.
 12 THE COURT CLERK: James Gullis?
 13 MP. GULLIS: I agree.
 14 THE COURT CLERK: Janice Pacilla?
 15 MS. PADILLA: I agree.
 16 THE COURT CLERK: Gloria Povlas?
 17 MS. POVLAS: I agree.
 18 THE COURT CLERK: Luz Rivera?
 19 MS. RIVERA: I agree.
 20 THE COURT CLERK: On 4, state your
 21 verdict -- I'm sorry. On your verdict on
 22 Count 4 of the guilt or innocence of the
 23 defendant charging him with possession of a
 24 deadly weapon; to wit, an ax, with the
 25 purpose to use it unlawfully against

1 MP. BENTON: I agree.
 2 THE COURT CLERK: Lorraine Burke?
 3 MS. BURKE: I agree.
 4 THE COURT CLERK: Carol McKay?
 5 MS. MCKAY: I agree.
 6 THE COURT CLERK: Sharon Smith?
 7 MS. SMITH: I agree.
 8 THE COURT CLERK: Philomena Carlock?
 9 MS. CARLOCK: I agree.
 10 THE COURT CLERK: Noreen Fannon?
 11 MS. HANNON: I agree.
 12 THE COURT CLERK: James Gullis?
 13 MP. GULLIS: I agree.
 14 THE COURT CLERK: Janice Padilla?
 15 MS. PADILLA: I agree.
 16 THE COURT CLERK: Gloria Povlas?
 17 MS. POVLAS: I agree.
 18 THE COURT CLERK: Luz Rivera?
 19 MS. RIVERA: I agree.
 20 THE COURT CLERK: On 4, state your
 21 verdict -- I'm sorry. On your verdict on
 22 Count 4 of the guilt or innocence of the
 23 defendant charging him with possession of a
 24 deadly weapon; to wit, an ax, with the
 25 purpose to use it unlawfully against

1 another, your finding of guilty, do you
 2 agree or disagree.
 3 Dorothy Diggs?
 4 MS. DIGGS: I agree.
 5 THE COURT CLERK: Dorothy Teniuch?
 6 MS. TENIUCH: I agree.
 7 THE COURT CLERK: Percy Benton?
 8 MR. BENTON: I agree.
 9 THE COURT CLERK: Lorraine Burke?
 10 MS. BURKE: I agree.
 11 THE COURT CLERK: Carol McKay?
 12 MS. MCKAY: I agree.
 13 THE COURT CLERK: Sharon Smith?
 14 MS. SMITH: I agree.
 15 THE COURT CLERK: Philomena Carlock?
 16 MS. CARLOCK: I agree.
 17 THE COURT CLERK: Noreen Fannon?
 18 MS. HANNON: I agree.
 19 THE COURT CLERK: James Gullis?
 20 MR. GULLIS: I agree.
 21 THE COURT CLERK: Janice Padilla?
 22 MS. PADILLA: I agree.
 23 THE COURT CLERK: Gloria Povlas?
 24 MS. POVLAS: I agree.
 25 THE COURT CLERK: Luz Rivera?

1 another, your finding of guilty, do you
2 agree or disagree.
3 Dorothy Diggs?
4 MS. DIGGS: I agree.
5 THE COURT CLERK: Dorothy Tenuich?
6 MS. TENIUCH: I agree.
7 THE COURT CLERK: Percy Benton?
8 MR. BENTON: I agree.
9 THE COURT CLERK: Lorraine Burke?
10 MS. BURKE: I agree.
11 THE COURT CLERK: Carol McKoy?
12 MS. MCKOY: I agree.
13 THE COURT CLERK: Sharon Smith?
14 MS. SMITH: I agree.
15 THE COURT CLERK: Philomena Carlock?
16 MS. CARLOCK: I agree.
17 THE COURT CLERK: Noreen Hannon?
18 MS. HANNON: I agree.
19 THE COURT CLERK: James Gullis?
20 MR. GULLIS: I agree.
21 THE COURT CLERK: Janice Padilla?
22 MS. PADILLA: I agree.
23 THE COURT CLERK: Gloria Povles?
24 MS. POVLIS: I agree.
25 THE COURT CLERK: Luz Rivera?

1 MS. RIVERA: I agree.
2 THE COURT CLERK: 5, on your finding
3 of guilty with respect to the guilt or
4 innocence of the defendant in this count
5 charging him with unlawful possession of a
6 weapon; to wit, an ax, on your finding of
7 guilty, do you agree or disagree.
8 Dorothy Diggs?
9 MS. DIGGS: I agree.
10 THE COURT CLERK: Dorothy Tenuich?
11 MS. TENIUCH: I agree.
12 THE COURT CLERK: Percy Benton?
13 MR. BENTON: I agree.
14 THE COURT CLERK: Lorraine Burke?
15 MS. BURKE: I agree.
16 THE COURT CLERK: Carol McKoy?
17 MS. MCKOY: I agree.
18 THE COURT CLERK: Sharon Smith?
19 MS. SMITH: I agree.
20 THE COURT CLERK: Philomena Carlock?
21 MS. CARLOCK: I agree.
22 THE COURT CLERK: Noreen Hannon?
23 MS. HANNON: I agree.
24 THE COURT CLERK: James Gullis?
25 MR. GULLIS: I agree.

1 MS. RIVEPA: I agree.

2 THE COURT CLERK: 5, on your finding
3 of guilty with respect to the guilt or
4 innocence of the defendant in this count
5 charging him with unlawful possession of a
6 weapon; to wit, an ax, on your finding of
7 guilty, do you agree or disagree.

8 Dorothy Diggs?

9 MS. DIGGS: I agree.

10 THE COURT CLERK: Dorothy Teniuch?

11 MS. TENIUCH: I agree.

12 THE COURT CLERK: Percy Benton?

13 PP. BENTON: I agree.

14 THE COURT CLERK: Lorraine Burke?

15 MS. BURKE: I agree.

16 THE COURT CLERK: Carol McKay?

17 MS. MCKAY: I agree.

18 THE COURT CLERK: Sharon Smith?

19 MS. SMITH: I agree.

20 THE COURT CLERK: Philomena Carlock?

21 MS. CARLOCK: I agree.

22 THE COURT CLERK: Noreen Hannon?

23 MS. HANNON: I agree.

24 THE COURT CLERK: James Gullis?

25 MS. GULLIS: I agree.

1 THE COURT CLERK: Janice Pacilla?

2 MS. PADILLA: I agree.

3 THE COURT CLERK: Gloria Povlas?

4 MS. POVLAS: I agree.

5 THE COURT CLERK: Luz Rivera?

6 MS. RIVERA: I agree.

7 THE COURT: Will the attorneys come
8 to sidebar, please?

9 (The following occurred in the
10 presence of, but out of the hearing of the
11 Jury.)

12 THE COURT: Just on a time factor,
13 it's twenty-five after three now, and we
14 have two motions that are outstanding and
15 still pending with Mr. Bovino, which should
16 be heard prior to us proceeding.

17 I'll hear those first thing in the
18 morning, but I wanted to find out from you
19 timewise if it will cause -- how much time
20 you need to get ready on the other part of
21 the case.

22 MR. BOVINO: I am going to try to be
23 prepared by tomorrow morning, Judge. I
24 don't know if I am going to be able to get
25 in touch with two witnesses that I planned.

1 THE COURT CLERK: Janice Pacilla?
 2 MS. PACILLA: I agree.
 3 THE COURT CLERK: Gloria Povlas?
 4 MS. POVLAS: I agree.
 5 THE COURT CLERK: Luz Rivera?
 6 MS. RIVERA: I agree.
 7 THE COURT: Will the attorneys come
 8 to sidebar, please?
 9 (The following occurred in the
 10 presence of, but out of the hearing of the
 11 Jury.)
 12 THE COURT: Just on a time factor,
 13 it's twenty-five after three now, and we
 14 have two motions that are outstanding and
 15 still pending with Mr. Bovino, which should
 16 be heard prior to us proceeding.
 17 I'll hear those first thing in the
 18 morning, but I wanted to find out from you
 19 timewise if it will cause -- how much time
 20 you need to get ready on the other part of
 21 the case.
 22 MR. BOVINO: I am going to try to be
 23 prepared by tomorrow morning, Judge. I
 24 can't know if I am going to be able to get
 25 in touch with two witnesses that I planned.

1 I have to check that tonight.
 2 I would say probably some time
 3 tomorrow morning I should be ready.
 4 Hopefully late tomorrow morning or by lunch
 5 time.
 6 THE COURT: Mr. DeFazio?
 7 MR. DeFAZIO: I have no problem
 8 giving Mr. Bovino all the time he needs. I
 9 don't plan on calling any witnesses unless
 10 I have to call rebuttal for some reason.
 11 THE COURT: I would suggest we do
 12 this, if there is no objection.
 13 I will excuse the Jurors until eleven
 14 o'clock tomorrow morning, so that we're not
 15 having them waiting around for an extended
 16 period of time, so they are available for
 17 us if we wish to proceed, but I want to
 18 make it clear, Mr. Bovino, if you need
 19 further time tomorrow to prepare, I'm not
 20 saying we are going to start at eleven.
 21 The door is open for whatever time you
 22 need.
 23 MR. BOVINO: Okay.
 24 MR. DeFAZIO: Fine. No problem with
 25 that, Judge.

1 I have to check that tonight.

2 I would say probably some time
3 tomorrow morning I should be ready.
4 Hopefully late tomorrow morning or by lunch
5 time.

6 THE COURT: Mr. DeFazio?

7 MR. DeFAZIO: I have no problem
8 giving Mr. Bovino all the time he needs. I
9 don't plan on calling any witnesses unless
10 I have to call rebuttal for some reason.

11 THE COURT: I would suggest we do
12 this, if there is no objection.

13 I will excuse the Jurors until eleven
14 o'clock tomorrow morning, so that we're not
15 having them waiting around for an extended
16 period of time, so they are available for
17 us if we wish to proceed, but I want to
18 make it clear, Mr. Bovino, if you need
19 further time tomorrow to prepare, I'm not
20 saying we are going to start at eleven.
21 The door is open for whatever time you
22 need.

23 MR. BOVINO: Okay.

24 MR. DeFAZIO: Fine. No problem with
25 that, Judge.

1 (The hearing resumed in the presence
2 and hearing of the Jury.)

3 THE COURT: Ladies and gentlemen of
4 the Jury, as I explained to you during the
5 Jury selection process, there may be a
6 second part of this case, and there will be
7 a second part of the case based upon the
8 verdict that was rendered.

9 So, I am going to excuse you now for
10 the day until tomorrow, but I will excuse
11 you until eleven o'clock tomorrow morning,
12 at which time you come right into our
13 courtroom here if you would, please.

14 I'd say all the ladies and gentlemen
15 who deliberated and also the four Alternate
16 Jurors, please return here at eleven
17 o'clock tomorrow morning.

18 I am going to instruct you again.
19 It's important that you adhere to my
20 instructions. Do not discuss this case
21 with anyone at this phase, do not -- I know
22 you discussed the case in your
23 deliberations, but we are going into
24 another part, a second phase.

25 Right now do not discuss this case

(The hearing resumed in the presence and hearing of the Jury.)

THE COURT: Ladies and gentlemen of the Jury, as I explained to you during the Jury selection process, there may be a second part of this case, and there will be a second part of the case based upon the verdict that was rendered.

So, I am going to excuse you now for the day until tomorrow, but I will excuse you until eleven o'clock tomorrow morning, at which time you come right into our courtroom here if you would, please.

I'd say all the ladies and gentlemen who deliberated and also the four Alternate Jurors, please return here at eleven o'clock tomorrow morning.

I am going to instruct you again. It's important that you adhere to my instructions. Do not discuss this case with anyone at this phase, do not -- I know you discussed the case in your deliberations, but we are going into another part, a second phase.

Right now do not discuss this case

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A 173-8974

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TRANS. FILED

STATE OF NEW JERSEY,

Complainant,

v.

LEONARD STONE,

Defendant.

REC'D

APPELLATE DIVISION

DEC 8 1986

Signature
Clerk

BEFORE:

CHARLES J. HARRINGTON, JR., JSC, and a Jury

APPEARANCES:

EDWARD J. DeFAZIO, ESQ.,
For the State of New Jersey

SALVATORE BOVINO, ESQ.,
For the Defendant

FILED
APPELLATE DIVISION

NOV 28 1990

Signature
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
(CRIMINAL)
IND. NO. 1369-85
APP. DIV. NO.

A-5529-85 T4

TRANSCRIPT
OF
PROCEEDINGS
VOLUME IX

REC'D
APPELLATE DIVISION

NOV 28 1990

Place: Hudson County Court House
Jersey City, New Jersey

Date: May 20, 1986

Winifred A. Handel, C.S.P.
Hudson County Court House
Jersey City, New Jersey

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[Signature]
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Winifred A. Handel, C.E.P.
Hudson County Court House
Jersey City, New Jersey

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(The hearing resumed out of the presence of the Jury.)

THE COURT: Good morning.

MR. DeFAZIO: Good morning, your Honor.

MR. BOVINO: Good morning.

THE COURT: It's my recollection from reviewing the papers that have been filed, Mr. Bovino, you have two motions outstanding, one addressed to Aggravating Factor 1, if I may call it, and one to the third or the last aggravating factors.

MR. BOVINO: Judge, before I begin with that, I think these aggravating factors now have to really be examined in light of the verdict and the Prosecutor's summation.

As I understand, I think it's 22122- at 97 N.J., maybe Montuzi and even the one that Mr. DeFazio cited in the beginning of the case, State v. Hammond maybe ---

MR. DeFAZIO: State v. Moore.

MR. BOVINO: Not that. The one at the defense has a right to a hearing. Spitwood.

2

1 (The hearing resumed out of the
2 presence of the Jury.)

3 THE COURT: Good morning.

4 MR. DeFAZIO: Good morning, your
5 Honor.

6 MR. BOVINO: Good morning.

7 THE COURT: It's my recollection from
8 reviewing the papers that have been filed,
9 Mr. Bovino, you have two motions
10 outstanding, one addressed to Aggravating
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23 MR. BOVINO: Not that. The one ~~at~~
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25 Spotwood.

1 MR. DeFAZIO: Spotwood. I'm sorry.

2 MR. BOVINO: That I am entitled to
3 know what factors the State would rely on
4 in establishing each of the aggravating
5 factors.

6 As I indicated yesterday after
7 summations, I felt that the State's
8 position had shifted. Their opening and
9 closing was not the same. They had alleged
10 a robbery and murder during the course of
11 the robbery.

12 They then -- Mr. DeFazio then
13 shifted, as I said yesterday, to a murder
14 which took place because of something that
15 the Jury would know or could get from the
16 nuances in the case, that there had been a
17 change in the relationships of the parties,
18 somebody else was coming in to take over
19 the house perhaps.

20 I asked the Court to charge
21 manslaughter and the Court ruled not on the
22 summation, but on my arguments of the day
23 before, and again, I guess, at this time
24 I am stuck with the verdict. Whether the
25 verdicts are consistent or not, I guess.

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1 that would be reviewed by some other
2 authority at some time.

3 When we come to the aggravating fact
4 now of the murder to escape detection,
5 there is no factors, there's no evidence
6 that the State can point to to say that
7 this is an aggravating factor.

8 The basis or the thrust of their
9 attack yesterday was that this was a murder
10 committed during a rage of some sort, a
11 fury of some sort, and that the murder was,
12 I would submit, spontaneous in nature, that
13 there was this attack by Mr. Stone for
14 whatever reason there was, and it was
15 because of some sort of falling out.

16 There is no factors to point to that.
17 Under the, I guess, it's ~~MONROE~~ and a case
18 cited in ~~MONROE~~, ~~MONROE~~ perhaps, that
19 there's got to be something more than just
20 the average, ordinary murder.

21 I think if the State's thesis is now
22 not really the robbery, but the attack of
23 rage because of some falling out or
24 argument, I think the State can't point to
25 any factors. There is no factors to

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17 Under the, I guess, it's MARRA and a case
18 cited in MARRA, MANUZZI perhaps, that
19 there's got to be something more than just
20 the average, ordinary murder.

21 I think if the State's thesis is now
22 not really the robbery, but the attack of
23 rage because of some falling out or
24 argument, I think the State can't point to
25 any factors. There is no factors to

1 prove -- that they can rely on to prove
2 this aggravating factor.

3 For that reason, I would ask that
4 factor be dismissed.

5 THE COURT: You are addressing, so we
6 have it clear, as I see in reviewing the
7 papers -- there's three alleged aggravating
8 factors. One, the murder was outrageous or
9 wantonly vile, horrible, inhuman, that
10 involved torture, depravity of mind or an
11 aggravated battery to the victim. We'll
12 call that number one.

13 Number two, the offense was committed
14 while the defendant was engaged in the
15 commission of or attempt to commit a
16 robbery and, number three, the murder was
17 committed for the purpose of escaping
18 detection, apprehension, trial, punishment
19 or confinement for another offense
20 committed by the defendant or another.

21 You are commenting now ---

22 MR. BOVINO: I am directing now to
23 the third, to escape detection or
24 prosecution.

25 There is no factor the State can rely

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on to say this is what happened, as in the
other cases, as in MAKIS, MAKURI. I'm not
sure if it's MAKURI either.

MR. DeFAZIO: Well, Judge, I
respectfully differ with Mr. Bovino. This
case, our case, is very similar to SEALS --
MAKIS.

First of all, as Mr. Bovino said, a
verdict has been rendered. Within that
verdict, this Jury found the defendant
guilty of robbery period. As in MAKIS,
this is a case where the victim and the
defendant know one another and, in fact, in
MAKIS they were neighbors.

The State maintains that based on the
verdict, it could well be within the
province of this Jury to determine that
since there was this relationship between
the parties, that the defendant killed Mr.
McMillen so that he would not be arrested
or that there would not be some sort of
report to the police or whatever. That's
for this Jury to decide.

MR. BOVINO: I think in MAKIS, Judge,
there was a clearly established burglary or

1 on to say this is what happened, as in the
2 other cases, as in MOORE. MONTEUR. I'm not
3 sure if it's MONTEUR either.

4 MR. DeFAZIO: Well, Judge, I
5 respectfully differ with Mr. Bovino. This
6 case, our case, is very similar to State
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19 the parties, that the defendant killed Mr.
20 McMillen so that he would not be arrested
21 or that there would not be some sort of
22 report to the police or whatever. That's
23 for this Jury to decide.

24 MR. BOVINO: I think in MOORE, Judge,
25 there was a clearly established burglary or

1 robbery at some prior time which is not
2 evidence in this case, and certainly in the
3 State relying on the Prosecutor's summation
4 and his thesis in his summation, that this
5 was an incident that happened not really
6 for robbery, but because of some
7 relationship, a severance of that
8 relationship, that the acts are concurrent
9 in time.

10 The original thesis was that it was
11 an armed robbery and a murder committed
12 during that robbery. Again, it would be
13 concurrent in time. So, I think it differs
14 from MOORE.

15 As MOORE says, every mere fact of the
16 death is not sufficient to trigger the
17 factor of this aggravating factor. It must
18 be something more than that, and there's
19 nothing here that the State can rely on to
20 establish that.

21 MR. DeFAZIO: I disagree, Judge.
22 State v. MOORE is right on point with
23 case, my reading of it period. That's what
24 I was checking into there.

25 In fact, it's eerily similar to

1 robbery at some prior time which is not
2 evidence in this case, and certainly in the
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25 In fact, it's eerily similar to

1 facts in this case. This is a question now
2 for the Jury to determine based on their
3 verdict.

4 If they didn't find a robbery --
5 let's make something else clear since we
6 are making a record here. If they didn't
7 find a robbery, then we would be in a
8 completely different situation. This
9 constant reference to my summation and
10 trying to make it seem that the State was
11 reneging on a robbery theory is error, it's
12 a misconception, and it's something that is
13 confusing the issue here.

14 The Jury obviously was impressed
15 enough with the facts to find Mr. Stone
16 guilty of robbery beyond a reasonable
17 doubt. As Mr. Bovino said, he's stuck with
18 that.

19 I think Moore is right on point,
20 Judge, and I think it's a matter for the
21 Jury to decide.

22 THE COURT: Anything else, Mr.
23 Bovino?

24 MR. BOVINO: Not on that issue.

25 THE COURT: I think the record stands.

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2 to is State of New Jersey v. James Craig
3 Adams and David Boatlick, which was approved
4 for publication on November 8, 1985.

5 The defendant's motion is addressed
6 to Aggravating Factor No. 3. It's noted
7 that the Jury found the defendant guilty of
8 murder under the first count and also found
9 the defendant guilty of robbery under the
10 third count; however, found the defendant
11 not guilty of felony murder as charged in
12 the second count.

13 As Judge Newman in Moore stated, "In
14 order to dismiss an aggravating factor
15 before trial, the defendant must
16 demonstrate that the evidence is clearly
17 lacking to support it. The aggravating
18 factors shall only be dismissed in the
19 discretion of the Court and only on the
20 clearest and plainest ground," citing
21 State v. McCrory, 97 N.J. 132, 140 to 145
22 (1984).

23 This is an application made after
24 trial. It appears clear to this Court that
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24 trial. It appears clear to this Court that
25 the Jury may reasonably find from the

1 evidence the third aggravating factor and,
2 therefore, I'll deny the motion as to the
3 third aggravating factor.

4 MR. BOVINO: As to the first factor,
5 Judge, the wantonly vile, horrible, inhuman
6 in that it involved torture, depravity of
7 mind or aggravated assault of the victim, I
8 would ask that be stricken.

9 There is no evidence here that the
10 State can rely to show torture prior to the
11 death of the victim, Mr. McMillen. No
12 evidence to show depravity of mind.

13 I would rely upon the wording of
14 State v. Moore, State v. Monturi, State v.
15 Bass at 189 N.J. Super. 445, Godfrey v.
16 Georgia, 446 U. S. 420, 100 Supreme Court,
17 page 1759. Those words are very hard to
18 define and describe.

19 There certainly is no evidence of
20 torture, no evidence of depravity of mind,
21 and all we have is the assault which causes
22 the death.

23 The Doctor testified that death was
24 not instantaneous. The person lived for
25 some period of time because of the

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1 aspiration of blood, but the period of time
2 can't be determined.

3 There's nothing to indicate whether
4 or not the person was or was not conscious
5 from the time the first wound was suffered
6 or inflicted until the person died, and any
7 of those wounds could have inflicted or
8 could have been inflicted with such force
9 as to render the person unconscious.

10 So, I don't think that they really
11 fit the definition of wantonly vile unless
12 the Court were to say all murders were
13 wantonly vile or outrageous or whatever
14 wording is used in the statute.

15 THE COURT: Mr. DeFazio?

16 MR. DeFAZIO: Well, your Honor, once
17 again, I believe that this is a jury
18 question. They will have to determine
19 based on the testimony and the evidence
20 that has been admitted -- those items which
21 have been admitted into evidence, the
22 photographs from the autopsy -- they will
23 have to determine whether this is a case
24 where there was an aggravated battery or
25 aggravated assault, if you will, or torture

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1 on the victim which evidences depravity of
2 mind.

3 Clearly, Judge, this is an issue.
4 It's an issue of fact. It's an issue for
5 the Jury to determine.

6 I think that the cases, *Monturi*, for
7 example, says that the statutory language
8 should be given its ordinary meaning,
9 absent specific intent to the contrary.
10 The attack upon Mr. McMillen could
11 reasonably be viewed by this Jury as one
12 that fits the criteria as presented in the
13 statute.

14 Certainly we know from the testimony
15 of the Medical Examiner that death was not
16 instantaneous. She made it quite clear
17 that he lived for some period of time
18 because of this aspiration of blood, in
19 fact, such an aspiration of blood that it
20 went into the lungs and filled the lungs,
21 besides the number of wounds to the face
22 and head of the victim, and their obvious
23 ferocity. We also have that indicia that
24 the victim was being choked with the blade
25 of the ax during this ordeal.

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Clearly, Judge, this is an issue. It's an issue of fact. It's an issue for the Jury to determine.

I think that the cases, *Monturi*, for example, says that the statutory language should be given its ordinary meaning, absent specific intent to the contrary. The attack upon Mr. McMillen could reasonably be viewed by this Jury as one that fits the criteria as presented in the statute.

Certainly we know from the testimony of the Medical Examiner that death was not instantaneous. She made it quite clear that he lived for some period of time because of this aspiration of blood, in fact, such an aspiration of blood that went into the lungs and filled the lungs, besides the number of wounds to the face and head of the victim, and their obvious ferocity. We also have that indicia that the victim was being choked with the handle of the ax during this ordeal.

Frankly, Judge, I think that based on what's been presented, a reasonable jury could find that aggravating factor to be in existence in this case.

THE COURT: Anything else, Mr. Bovino?

MR. BOVINO: No, Judge.

THE COURT: This is a motion by Counsel for the defendant to dismiss the first aggravating factor.

As indicated by the attorney for the defendant, such an allegation in the aggravating factors does not mean that there is an automatic aggravating factor.

However, there was evidence in this case where the Jury may reasonably find the elements of that factor, and as just indicated previously, an aggravating factor shall only be dismissed in the discretion of the Court and only on the clearest and plainest ground.

Based upon the evidence that was presented during the course of the trial, I will deny the motion to dismiss and, however, I will be instructing the Jury

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2 what's been presented, a reasonable jury
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23 presented during the course of the trial, I
24 will deny the motion to dismiss and,
25 however, I will be instructing the Jury

1 with regard to that factor or that
2 aggravating factor insofar as what has to
3 be shown by the State.

4 Anything else at this time?

5 MR. BOVINO: Judge, I assume those
6 would be the only two factors the State
7 would rely on, since the felony murder was
8 a verdict of not guilty. That factor would
9 now be out.

10 MR. DeFAZIO: No.

11 THE COURT: Mr. DeFAZIO?

12 MR. DeFAZIO: That's not correct at
13 all. The State is going to rely on the
14 three aggravating factors that they noticed
15 to the defendant, including the robbery.

16 MR. BOVINO: That's not what the Jury
17 said, Judge. The Jury said it was not a
18 murder committed during the course --
19 murder during the commission of a robbery
20 as contained in the statute.

21 They said it was a purposeful murder,
22 not guilty as to the murder committed
23 during the robbery and a separate robbery
24 which, I would assume, based upon the
25 State's argument, would precede by some

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2 aggravating factor insofar as what has to
3 be shown by the State.

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21 They said it was a purposeful murder,
22 not guilty as to the murder committed
23 during the robbery and a separate robbery
24 which, I would assume, based upon the
25 State's argument, would precede by some

1 period of time, however minimal or
2 lengthy -- it would seem to me that the
3 verdicts have already indicated that this
4 is not a robbery and a murder committed at
5 the same time during the commission of the
6 robbery.

7 MR. DeFAZIO: Judge, I don't know
8 what this Jury thought.

9 MR. BOVINO: We're stuck with the
10 verdict, Judge. That's a reasonable
11 interpretation of the verdict. Not guilty
12 of felony murder.

13 MR. DeFAZIO: That's an
14 interpretation of the verdict. All right?
15 We don't know what this Jury was thinking,
16 and because we don't know for sure what
17 they were thinking, once again, this is a
18 question for them to decide.

19 Maybe this Jury thought that since
20 they found a purposeful and knowing murder,
21 then it wasn't necessary for them to then
22 find a felony murder. I don't know. I
23 don't know how sophisticated they are, but
24 that's an explanation, too. That once they
25 found the purposeful and knowing murder,

1 period of time, however minimal or
2 lengthy -- it would seem to me that the
3 verdicts have already indicated that this
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22 find a felony murder. I don't know. I
23 don't know how sophisticated they are, but
24 that's an explanation, too. That once they
25 found the purposeful and knowing murder,

1 that they figured they didn't have to find
2 the felony murder, but they did find a
3 robbery.

4 THE COURT: A second degree robbery.

5 MR. DeFAZIO: Second degree robbery.

6 MR. BOVINO: Judge, that's
7 speculation. We can infer a lot of things
8 perhaps or try to interpret their verdict,
9 but their verdict is one of not guilty.
10 They didn't say they didn't vote on it.
11 They said not guilty as to that count.

12 That means the elements have not been
13 proven. The element robbery during the
14 course of a murder was not proven. That
15 verdict stands. You could never be brought
16 to trial on that. That's jeopardy. They
17 have decided those issues.

18 They clearly decided no murder at the
19 time of the robbery as contained in the
20 aggravating factor, that murder must be
21 committed during the commission of the
22 offense -- underlying offense of robbery
23 and so forth and so on or the immediate
24 flight thereafter.

25 That's how you charged them. You

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2 the felony murder, but they did find a
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4 THE COURT: A second degree robbery.

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25 That's how you charged them. You

1 asked for a separate verdict on that count.
2 It wasn't a verdict of if you find Count 1,
3 go to Count 2. It was Count 1, Count 2,
4 Count 3, Count 4 -- Count 4, and they said
5 not guilty. They didn't say we didn't
6 deliberate. They said not guilty. The
7 elements have not been proven.

8 MR. DeFAZIO: I don't think my
9 explanation is any more speculative than
10 Mr. Bovino's explanation.

11 MR. BOVINO: Except the Prosecutor is
12 speculating, and at this point I have the
13 strength of a verdict to sustain my
14 position, that the verdict is one of not
15 guilty. The elements were not proven by
16 the State beyond a reasonable doubt.

17 I am not speculating. That is the
18 fact. That is their verdict. Cannot be
19 impeached or attacked through some
20 speculation as to what they may have
21 thought.

22 They didn't come back to ask for
23 clarification. They entered a verdict
24 as the verdict on the third count and
25 first count. I'm stuck with those

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1 verdicts, as I said, the State has received
 2 their verdict of not guilty, and that's the
 3 law of the case.

4 MR. DeFAZIO: I think it's a jury
 5 question, Judge. It's a question of fact.
 6 That's really ultimately what we are
 7 talking about. It's a question of fact.

8 THE COURT: What about Mr. Bovino's
 9 argument that the Jury, when they found the
 10 defendant not guilty of felony murder and,
 11 in fact, they were saying, well, the murder
 12 did not take place at the time of the
 13 committing of the robbery.

14 MR. DeFAZIO: Judge, first of all,
 15 I'm not sure that that is the criteria by
 16 which this aggravating factor is submitted
 17 to the Jury.

18 The indictment alleges that on
 19 October 1, 1985, the same day that the
 20 murder took place, that the robbery took
 21 place, and the fact that the Jury has found
 22 that this robbery and a purposeful and
 23 knowing murder took place some time on that
 24 date, obviously in the morning hours, would
 25 seem to indicate that this aggravating

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23 knowing murder took place some time on that
24 date, obviously in the morning hours, would
25 seem to indicate that this aggravating

1 factor could be found by them based on the
2 facts presented.

3 I don't see the fact that they came
4 back with a guilty -- with a verdict of not
5 guilty on the felony murder precludes this
6 submission on this aggravating factor.

7 I think it's a question of fact. I
8 don't know -- I really don't know what else
9 to say about it as far as their reasons for
10 the verdict and what they were thinking. I
11 don't know.

12 THE COURT: Anything else, Mr.
13 Bovino?

14 MR. BOVINO: No, Judge.

15 THE COURT: We'll take a recess
16 before I decide this motion..

17 MR. BOVINO: Judge, can I also
18 inquire if the Court is going to have a
19 charge conference as to the supplemental
20 instructions?

21 THE COURT: Yes.

22 MR. BOVINO: Can we have that before
23 we begin the next stage of the proceedings?

24 THE COURT: Certainly. I will give
25 preliminary instructions to the Jury, and

factor could be found by them based on the facts presented.

I don't see the fact that they came back with a guilty -- with a verdict of not guilty on the felony murder precludes this submission on this aggravating factor.

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THE COURT: Yes.

MR. BOVINO: Can we have that before we begin the next stage of the proceedings?

THE COURT: Certainly. I will give preliminary instructions to the Jury, and

and then after evidence is presented and you gentlemen have rendered your summations, I will give a final instruction.

MR. BOVINO: Thank you, Judge.

(The hearing recessed and then resumed, out of the presence of the Jury.)

THE COURT: Anything further from either attorney?

MR. DeFAZIO: No, your Honor.

MR. BOVINO: No.

THE COURT: All right. This is a motion by the attorney for the defendant to dismiss the second aggravating factor alleging the offense was committed while the defendant was engaged in the commission of or an attempt to commit a robbery.

It is noted that the Jury rendered a verdict of guilty on the first count charging murder, either a purposeful and knowing murder, rendered a verdict of not guilty as to the second count charging felony murder, a verdict of guilty on the third count charging robbery in the second degree, and also finding the defendant

1 and then after evidence is presented and
2 you gentlemen have rendered your
3 summations, I will give a final
4 instruction.

5 MR. BOVINO: Thank you, Judge.

6 (The hearing recessed and then
7 resumed, out of the presence of the Jury.)

8 THE COURT: Anything further from
9 either attorney?

10 MR. DeFAZIO: No, your Honor.

11 MR. BOVINO: No.

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19 verdict of guilty on the first count
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21 knowing murder, rendered a verdict of not
22 guilty as to the second count charging
23 felony murder, a verdict of guilty on the
24 third count charging robbery in the second
25 degree, and also finding the defendant

1 guilty on the fourth and fifth counts as to
2 possession of a weapon, the ax.

3 In State v. Moore, State of New
4 Jersey v. James Moore, et al., Superior
5 Court of New Jersey, Law Division, Essex
6 County, Judge Newman held that "the alleged
7 robbery of Hawthorne and the burglary of
8 his apartment are clearly other offenses
9 which occurred on the day of the murder.
10 Therefore, they may be used to support
11 Aggravating Factor 2C:11-3c(4)(f).

12 "In other words, this Court construes
13 the other offense language to include the
14 underlying crimes that may have been
15 committed prior to or during the commission
16 of the homicidal act itself."

17 It is noted that the statute referred
18 to is the third aggravating factor alleged
19 by the State in this case.

20 It would appear, and I so find, that
21 the second aggravating factor is included
22 within the third aggravating factor, and in
23 fairness to the defendant, the second
24 aggravating factor should be dismissed, and
25 accordingly, the motion is granted and the

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21 the second aggravating factor is included
22 within the third aggravating factor, and in
23 fairness to the defendant, the second
24 aggravating factor should be dismissed, and
25 accordingly, the motion is granted and the

1 second factor is dismissed.

2 Are we ready to proceed otherwise,
3 gentlemen?

4 MR. BOVINO: Judge, I'm not ready to
5 proceed at this time. I have two witnesses
6 that were supposed to be here at eleven
7 o'clock. I haven't seen them yet.

8 THE COURT: Well, then, may I suggest
9 we have an informal conference as to the
10 instruction now, so that we'll be able to
11 proceed.

12 (The hearing recessed and then
13 resumed, out of the presence of the Jury.)

14 MR. DeFAZIO: Mr. Bovino received a
15 call from his Investigator, Judge.

16 THE COURT: All right. (Pause)

17 MR. BOVINO: Thank you, Judge.

18 THE COURT: Gentlemen, let the record
19 reflect that we have had an informal
20 conference this morning with regard to the
21 proposed charge by the Court at the
22 commencement of the penalty proceedings.

23 I have also submitted to Counsel
24 a copy of or the original of the proposed
25 possible verdict sheet to be submitted

1 second factor is dismissed.

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25 possible verdict sheet to be submitted

1 the Jury.

2 I believe we have copies made. Do we
3 have a copy? Give it to the attorneys,
4 please? Also we went over the proposed
5 charge by the Court at the closing of the
6 penalty proceedings.

7 Is there any objection thereto,
8 gentlemen? Any requests?

9 MR. BOVINO: Judge, just as to the
10 possible form of the verdict sheet, page
11 3 ---

12 THE COURT: Yes.

13 MR. BOVINO: Page 3 of the verdict
14 sheet, Judge, the bottom portion of the
15 sheet.

16 The first part, does Aggravating
17 Factor 1 outweigh any one or more
18 mitigating factors, and does Aggravating
19 Factor 2 outweigh any one or more
20 mitigating factors.

21 The bottom sheet is aggravating
22 factors and with all the mitigating
23 factors. That seems to me that could be an
24 inconsistent verdict. They could vote
25 on the first two, and then on the third.

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1 question they could vote yes.

2 It seems -- it's unclear to me the
3 way it was explained to me in the charge
4 conference, and the charge essentially will
5 be made clear to the Jury, but the form is
6 disturbing to me, Judge. I'm not sure if
7 the form is clear.

8 MR. DeFAZIO: Judge, I think that the
9 form follows the statute, and perhaps the
10 statute isn't the model of clarity. That
11 certainly is not your Honor's fault.

12 I think these questions have to be
13 asked the way they are on page 3 in order
14 to follow the appropriate law that's
15 currently in effect.

16 THE COURT: Anything else, Mr.
17 Bovino?

18 MR. BOVINO: No, Judge.

19 THE COURT: Well, it's clear there is
20 a conflict between N.J.S.A. 2C:11-3(c)(3)
21 and N.J.S.A. 2C:11-3(c)(3)(a).

22 2C:11-3(c)(3) provides as follows:
23 The Jury, or if there is no jury, the Court
24 shall return a special verdict setting
25 forth in writing the existence or

1 question they could vote yes.

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23 The Jury, or if there is no jury, the Court
24 shall return a special verdict setting
25 forth in writing the existence or

1 nonexistence of each of the aggravating or
2 mitigating factors set forth in paragraphs
3 four and five of the subsection. If any
4 aggravating factor is found to exist, the
5 verdict shall also state whether it
6 outweighs beyond a reasonable doubt any one
7 or more mitigating factors.

8 2C:11-3(c)(3)(a) provides if the Jury
9 or the Court finds that any aggravating
10 factor exists and that all of the
11 aggravating factors outweigh beyond a
12 reasonable doubt all of the mitigating
13 factors, the Court shall sentence the
14 defendant to death.

15 I might say that the form which was
16 used and is being used by the Court is
17 substantially the same form as the form
18 suggested in the Judge's bench manual, and
19 the Court was aware of the fact that there
20 was a conflict in the -- apparent conflict
21 in the statutes.

22 The Court is also aware of the fact
23 that there is a proposed amendment of the
24 statute, Bill S-1680, which, according to a
25 newspaper article in the Star Ledger, on

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1 May 6, 1986, was passed by the Senate by 34
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 3 Assembly.

4 I had my Law Secretary call the Clerk
 5 of the Assembly yesterday afternoon after
 6 the verdict was rendered in this case to
 7 see whether or not that bill was approved
 8 by the Assembly and signed by the Governor.
 9 My Law Secretary was advised telephonically
 10 that the bill is still in committee in the
 11 Assembly at this time.

12 For that reason, I did not amend the
 13 form since that proposed amendment is not
 14 the law at the present time.

15 Anything else, gentlemen?

16 MR. BOVINO: No, Judge.

17 MR. DeFAZIO: No, your Honor.

18 THE COURT: I understand, Mr. Bovino,
 19 you will have witnesses here at one-thirty?

20 MR. BOVINO: I hope so, Judge.

21 THE COURT: All right. We'll recess
 22 until one-thirty.

23 (The hearing recessed for lunch and
 24 then resumed, out of the presence of the
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24 then resumed, out of the presence of the
25 Jury.)

1 THE COURT: Are we ready to proceed,
2 gentlemen?

3 MR. BOVINO: Yes and no, Judge. I
4 have one witness here. I anticipated two
5 other witnesses.

6 I was unable to get in touch with
7 them at lunchtime. It's my understanding
8 just prior to lunch that they were on their
9 way here, and they would be here by
10 one-thirty.

11 My preference is not to open at this
12 time and put on one witness, and then call
13 the Jury in recess until later on this
14 afternoon. I would ask your Honor to give
15 me another maybe fifteen minutes to see or
16 half hour to see if I can make contact with
17 them to see if they are coming in or not.

18 I really don't prefer to split it up
19 piecemeal-type fashion. I want to have all
20 my witnesses to go in sequence all at once.

21 THE COURT: Mr. DeFazio?

22 MR. DeFAZIO: Whatever your Honor
23 thinks best.

24 THE COURT: You have one witness
25 two others on their way?

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1 MR. BOVINO: Hopefully on their way.
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3 message I got. They would try to be here
4 by one-thirty.

5 THE COURT: Well, you know, I am
6 trying to accommodate, but also the Jurors
7 have been sitting since eleven o'clock.

8 May I ask then if you would call now,
9 and I would prefer if we could start to get
10 going within the next ten or fifteen
11 minutes. If you could make some calls and
12 see whether or not somebody may be on the
13 way. If so, we can start.

14 MR. BOVINO: I'll try again, Judge.

15 THE COURT: If you would, please.

16 (The hearing recessed briefly and
17 then resumed, out of the presence of the
18 Jury.)

19 THE COURT: Mr. Bovino, have you had
20 an opportunity to reach out for your
21 witnesses?

22 MR. BOVINO: Judge, a phone call was
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THE COURT: Mr. Bovino, have you had an opportunity to reach out for your witnesses?

MR. BOVINO: Judge, a phone call was made, I guess, about two o'clock. I have received no other information, except that the person that was spoken to is the

husband of the witness, that he said that she didn't -- he didn't know where she was. I would only assume that she's on her way in.

Just for the purposes of the record, it's Mr. Stone's sister and mother who I am trying to bring in from New York City.

THE COURT: Well, Mr. Bovino, would you have any problem proceeding at this time with the understanding that in the event the witnesses are not here and available, that I will carry the matter so you can present the witnesses?

MR. BOVINO: Thank you, Judge. I'll proceed with the witness who is here.

THE COURT: All right, Officers. May we have the Jurors and the Alternate Jurors. They will all be seated in their respective seats in the jurybox.

(Jury entering courtroom at 2:35 p.m.)

THE COURT: Gentlemen, I'd like the Jurors seated in the jurybox. Please take your respective seats in the jurybox, please.

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20 (Jury entering courtroom at 2:35
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23 Jurors seated in the jurybox. Please take
24 your respective seats in the jurybox,
25 please.

1 Good afternoon, ladies and gentlemen.
2 Poll the Jury, please?

3 (Jury polled; all are present.)

4 THE COURT: Ladies and gentlemen of
5 the Jury, having found the defendant guilty
6 of murder, you should put that issue aside.
7 You now have the added responsibility of
8 determining what penalty for that crime is
9 to be imposed on this defendant.

10 Under the law exacted by our
11 Legislature, the penalty may be either
12 death or life imprisonment with no
13 eligibility for parole for thirty years.

14 The Court imposes the sentence, but
15 the decision as to what the sentence will
16 be rests with you, the Jury.

17 To aid the Jury in making that
18 decision, the Legislature in enacting the
19 criminal code has set up a structure and
20 procedure to be followed. Essentially it
21 is this:

22 The law lists a number of specific
23 factors, called aggravating factors, which,
24 if proved by the State, would cause the
25 Jurors to lean toward imposing the death

1 Good afternoon, ladies and gentlemen.
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3 (Jury polled; all are present.)

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20 procedure to be followed. Essentially it
21 is this:

22 The law lists a number of specific
23 factors, called aggravating factors, which,
24 if proved by the State, would cause the
25 Jurors to lean toward imposing the death

1 penalty.

2 The law also lists a number of other
3 factors, called mitigating factors, which,
4 if found by the Jurors, would cause them to
5 lean away from the death penalty and toward
6 life imprisonment.

7 If the State can prove no aggravating
8 factor beyond a reasonable doubt, then the
9 death penalty cannot be imposed. If,
10 however, at least one aggravating factor is
11 proved beyond a reasonable doubt, then the
12 Jurors will have to decide if any
13 mitigating factor or factors exist.

14 If there is a mitigating factor
15 found, then the Jurors are to weigh the
16 aggravating factor or factors against any
17 mitigating factors found to exist to decide
18 whether the penalty should be death or life
19 imprisonment.

20 If the Jury finds that the
21 aggravating factors do not outweigh the
22 mitigating factors beyond a reasonable
23 doubt, the death penalty will not be
24 imposed.

25 The State will now present to you

1 penalty.

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18 whether the penalty should be death or life
19 imprisonment.

20 If the Jury finds that the
21 aggravating factors do not outweigh the
22 mitigating factors beyond a reasonable
23 doubt, the death penalty will not be
24 imposed.

25 The State will now present to you

1 evidence bearing on the aggravating
2 factors, the defense on the mitigating
3 factors.

4 The State alleges aggravating factors
5 are, firstly, the murder was outrageously
6 or wantonly vile, horrible or inhuman in
7 that it involved torture, depravity of mind
8 or an aggravated battery to the victim.

9 Two, that the murder was committed
10 for the purpose of escaping detection,
11 apprehension, trial, punishment or
12 confinement for another offense committed
13 by the defendant or another.

14 The defendant alleges as mitigating
15 factors, firstly, that at the time of the
16 incident, the defendant was twenty-five
17 years of age.

18 Secondly, that the defendant has no
19 significant history of prior criminal
20 activity.

21 Thirdly, any other factor which
22 be relevant to the defendant's character
23 record or to the circumstances of the
24 offense.

25 After all that evidence has been

1 evidence bearing on the aggravating
2 factors, the defense on the mitigating
3 factors.

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19 significant history of prior criminal
20 activity.

21 Thirdly, any other factor which
22 be relevant to the defendant's character
23 record or to the circumstances of the
24 offense.

25 After all that evidence has been

1 presented, we will conclude as before with
2 summations of Counsel and my charge to you
3 as to the law.

4 Procedurally, you'll first hear an
5 opening statement by the State, you'll hear
6 an opening statement by the attorney for
7 the defendant, the proofs will be
8 submitted, as I just indicated, both
9 attorneys will speak to you in summations,
10 and then I will instruct you as to the law.

11 Mr. DeFazio?

12 MR. DeFAZIO: Your Honor, Judge
13 Harrington, Mr. Bovino, Ladies and
14 Gentlemen of the Jury:

15 As Judge Harrington has told you, we
16 have now entered the second phase of this
17 proceeding against the defendant, Leonard
18 Stone, also known as Joshua Leonard. It is
19 in this phase that you will determine what
20 the penalty shall be for what he did on
21 October 1, 1985.

22 The State comes before you with much
23 trepidation. The State is fearful. The
24 State is afraid. The State is afraid
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Procedurally, you'll first hear an opening statement by the State, you'll hear an opening statement by the attorney for the defendant, the proofs will be submitted, as I just indicated, both attorneys will speak to you in summations, and then I will instruct you as to the law.

Mr. DeFazio?

MR. DeFAZIO: Your Honor, Judge Harrington, Mr. Bovino, Ladies and Gentlemen of the Jury:

As Judge Harrington has told you, we have now entered the second phase of this proceeding against the defendant, Leonard Stone, also known as Joshua Leonard. It is in this phase that you will determine what the penalty shall be for what he did on October 1, 1965.

The State comes before you with much trepidation. The State is fearful. The State is afraid. The State is afraid because you may give Leonard Stone life.

but because if you follow the law, you might have to sentence Leonard Stone to death.

When you came here in this courthouse and you were questioned by the Judge, and some of you might have been questioned by the State, by myself, or by Mr. Bovino, some of you said that you did not personally favor the death penalty, others said you were neutral, others said you might favor the death penalty, but all of you said, all of you said, that you would follow the law, and that you would put your personal feelings aside and follow the Judge's instructions based on the facts as as you found them in this case to the law.

You see, some Prosecutors might personally not favor the death penalty, like some Jurors do, but what you think personally, what we think personally, does not control what happens here. Whether I personally think Leonard Stone should be sentenced to life imprisonment or to death means absolutely nothing. We all must follow the law. That's the system we work

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21 not control what happens here. Whether I
22 personally think Leonard Stone should be
23 sentenced to life imprisonment or to death
24 means absolutely nothing. We all must
25 follow the law. That's the system we work

1 under.

2 So, ladies and gentlemen, it will be
3 a most difficult task for all of you to try
4 to set your personal feelings aside, apply
5 the facts to the law. Most difficult.

6 Your Honor, Judge Harrington, read to
7 you the aggravating factors that the State
8 alleges. The first one has to do, in
9 essence, with the nature of the attack, how
10 savage the attack was, how brutal the
11 attack was.

12 The second factor has to do with that
13 you convicted Mr. Stone of another offense,
14 and the State alleges that this murder, you
15 could find -- that one of the reasons that
16 this murder took place, one of the reasons,
17 was that the victim was somebody who he
18 knew and he had to kill him to avoid
19 detection, and there are mitigating
20 factors.

21 The State is going to submit -- what
22 that means -- it doesn't mean the State
23 gives up, because the State can't give up,
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22 that means -- it doesn't mean the State
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24 because the State has an obligation to
25 follow the law as you do.

1 What that means is that the State is
2 going to present or ask you to consider
3 what you've already heard, the testimony
4 that you have already heard in this case,
5 and you heard all of it, and you were all
6 very attentive to that. The State will ask
7 you to look again at the various pieces of
8 evidence that you have.

9 When you recount the pertinent
10 testimony and look at the applicable things
11 in evidence, you will make a determination
12 whether these aggravating factors exist,
13 you will make a determination whether any
14 of the mitigating factors exist, and you
15 are going to weigh them, and if you find
16 beyond a reasonable doubt that the
17 aggravating factors outweigh the mitigating
18 factors, you will have to do what the law
19 requires.

20 Thank you.

21 THE COURT: Mr. Bovino?

22 MR. BOVINO: May it please the Court,
23 Mr. DeFazio, Ladies and Gentlemen:

24 The State is filled with trepidation.
25 I'm filled with horror. It's not easy to

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18 factors, you will have to do what the law
19 requires.

20 Thank you.

21 THE COURT: Mr. Bovino?

22 MR. BOVINO: May it please the Court,
23 Mr. DeFazio, Ladies and Gentlemen:

24 The State is filled with trepidation.
25 I'm filled with horror. It's not easy to

1 come back today. My theory has been
2 rejected, and I have suffered the agony of
3 defeat, as has Leonard Stone, but I don't
4 question your verdict.

5 I told you initially, and I told you
6 yesterday morning, your verdict is
7 sacrosanct. You are judges. You are not
8 partisans.

9 I'm fearful, too, that you may vote
10 the death of Leonard Stone perhaps when you
11 hear the evidence that will be produced
12 now.

13 The State says they rest their case,
14 in effect. They won't present anymore
15 evidence than what you've heard, and
16 they'll ask you to consider the aggravating
17 factors, whatever they mean, and however
18 they are defined and described by Judge
19 Harrington. I won't even attempt to
20 describe what those words mean, but you, as
21 judges, will have to define those words
22 your understanding and your satisfaction.

23 I don't believe there is a Judge who
24 sentence and any Judge -- and you are
25 trained at judges. There's not one

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20 describe what those words mean, but you, as
21 judges, will have to define those words
22 your understanding and your satisfaction.

23 I don't believe there is a Judge who
24 sentence and any Judge -- and you are
25 trained at judges. There's not one

1 that finds sentencing an easy job. Judges
2 have to balance the law with mercy,
3 compassion, justice.

4 The Prosecutor says that you said you
5 would uphold the law regardless of your
6 personal feelings. I hope to show you now,
7 whatever time I have to show you, that
8 there is something that requires that
9 Leonard Stone not be put to death, not be
10 delivered to the execution.

11 I think we all, as a civilized
12 society, cherish life. We try to prolong
13 life. I'm sure the Prosecutor can make a
14 very good argument that Mr. McMillen
15 deserves life, he didn't deserve to die,
16 and I don't say he deserved to die, but he
17 was called by some maker to meet his day.

18 Now Leonard Stone is here, and you'll
19 find out, as you have already found out,
20 that Leonard Stone is twenty-five years of
21 age, has one prior conviction for
22 possession of a gun three or four years
23 ago.

24 I hope to have his mother come here
25 to tell you something about his background.

1 his young years before he left home in 1978
2 when he was sixteen, seventeen or eighteen,
3 lived with Mr. McMillen.

4 I hope to have his sister come in to
5 tell you that my brother is not a bad
6 person. There is some good in my brother.
7 They probably will ask you to help save his
8 life, don't kill him.

9 I hope to have a friend, Ms. James,
10 testify that she knows Leonard for some
11 period of time, as short as it may be, that
12 she has been supportive of Leonard, and she
13 hopes to remain supportive of Leonard, and
14 she, too, will ask you not to kill this
15 young man, this young boy, this person,
16 whatever he was, that there is something
17 good in this person, that thirty years in
18 prison is a sufficient amount of
19 punishment.

20 How do you decide punishment?
21 Revenge. I guess revenge is a very strong
22 word. I guess people want revenge. They
23 want to kill the murderer. Eye for an eye,
24 a tooth for a tooth.

25 It's not that easy, and you will be

1 the judges. The buck will stop with you,
2 and you'll have to live with that verdict.

3 I could say I did my best, whether it
4 was good enough or not. You will say the
5 lawyer didn't help us. The lawyer didn't
6 give us anything to help Leonard Stone, and
7 the State was convincing. So, it's not my
8 fault that you are the judges. You will be
9 the person who signs off, so to speak, and
10 says Leonard Stone, you will face the
11 execution.

12 We all, most of us -- we don't know
13 where we are going to be when we are going
14 to die, but you will decide that on a
15 certain date, at a given hour, at a
16 particular time, place, you have come one
17 step closer to death. It's final; it's
18 irrevocable.

19 Any questions you had yesterday when
20 you decided this case, if you had
21 questions, but I would submit in the
22 ordinary course of life you would find,
23 when you first attempt to decide this case,
24 you have some people for and some people
25 against, and some people say I really don't

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2 and you'll have to live with that verdict.

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25 against, and some people say I really don't

1 know what to do. I need some thought about
2 this.

3 I have to convince myself one way or
4 another because it's not a pleasant task.
5 That's not a pleasant task. This is even
6 more unpleasant, for you to deliver Leonard
7 Stone at the age of twenty-five to the
8 execution.

9 I say don't -- I didn't say don't do
10 it. I say do what you must. Be a judge.
11 I ask for your compassion. I ask for your
12 mercy. I ask you to save his life, that
13 thirty years in prison is a suitable
14 alternative to the death penalty, and I ask
15 you to consider the consequences. They are
16 irrevocable, are irretrievable.

17 If there was a mistake -- I'm not
18 saying there was. If there was a mistake,
19 that mistake would be compounded. It's
20 finalized.

21 I only ask you for all of your
22 wisdom, your compassion, and the guidance
23 that you will get from someplace, whatever,
24 whether it's Judge Harrington's
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25 instructions or from some divine

1 inspiration, whatever it maybe inside, to
2 save Leonard Stone's life.

3 Thank you.

4 THE COURT: Mr. DeFazio?

5 MR. DeFAZIO: Your Honor, the State
6 would ask that you take judicial notice of
7 the testimony that was produced at the
8 trial, and the State would also reintroduce
9 those articles that were marked into
10 evidence, and the State would submit on
11 same.

12 THE COURT: For the purpose ---

13 MR. DeFAZIO: For the purposes of
14 this hearing, correct.

15 THE COURT: Any objection, Mr.
16 Bovino?

17 MR. BOVINO: No.

18 THE COURT: Then all of the exhibits
19 that have -- that were admitted into
20 evidence during the course of the trial
21 and hereby are marked the same exhibits
22 for the purpose of this hearing and will be
23 considered by the Jury.

24 Anything else, Mr. DeFazio?

25 MR. DeFAZIO: No, your Honor.

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21 and hereby are marked the same exhibits
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23 considered by the Jury.

24 Anything else, Mr. DeFazio?

25 MR. DeFAZIO: No, your Honor.

1 THE COURT: Mr. Bovino?

2 MR. BOVINO: Georgia James.

3
4 GEORGIA JAMES, 132 Wade Street, Jersey
5 City, New Jersey, having been duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. BOVINO:

8 Q Ms. James, you know Leonard here?

9 A Yes, sir.

10 Q How long have you known Leonard?

11 A Since the summer of 1983.

12 Q Were you living at Wade Street in the
13 summer of 1983?

14 A No. I was living at 31 Martin Luther King
15 Drive.

16 Q How did it come about that you met
17 Mr. Stone, Leonard Stone?

18 A I meet Leonard through my sons. I have
19 three sons. They was playing on the schoolground
20 on Kennedy Boulevard right back from my house, and
21 Leonard was taking pictures and lifting weights at
22 the schoolground of the children on the block, and
23 my kids was out there.

24 So, later that week he asked them to go
25 bowling with him, and so I wouldn't let them

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23 my kids was out there.

24 So, later that week he asked them to go to
25 bowling with him, and so I wouldn't let them

1 the first couple of times. They kept bugging me
2 about it because I didn't know who he was, and
3 they kept saying that he was -- he's a big guy,
4 mama. He gonna take care of us.

5 I said, "No. I haven't met him. I have to
6 met him first and see who he is, see if I like
7 him." So, after my son persisted pestering me to
8 meet him, I finally met Josh, and one Sunday
9 afternoon he came around, and my kids introduced
10 me to him.

11 Q Since that time in the summer of
12 1983, have you had the opportunity to speak to
13 Leonard or Joshua on other occasions?

14 A Yes. He frequently took my kids bowling
15 and out, you know, just took them out riding when
16 he wasn't working. He was working at the
17 Meadowlands at the time, and when he wasn't
18 working, he would take up a lot of time with them
19 and the other kids on the block, couple more kids,
20 and my sons liked the sports and stuff, and he was
21 into that. He liked, you know, lifting weights
22 and stuff.

23 We had several family outings during the
24 summer that we invited Josh to, and he would come.
25 He was very respectful to my family, the kids, and

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24 summer that we invited Josh to, and he would co-e.
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1 they all liked him. My fiancé, he crazy about
2 him, too, and we just almost like adopted him like
3 part of the family, because if we had something,
4 we automatically would call him and tell him he
5 was invited.

6 Q Did you develop a close relationship
7 as a result of these activities with your sons and
8 family outings?

9 A Yes.

10 Q Have you been able to communicate
11 with Mr. Stone from the time of October 1 when
12 this incident happened up until today?

13 A Yes, sir. I talked to him several times
14 since then.

15 Q What was the purpose of your talking
16 to him from October 1 up until now?

17 A Just mainly to let him know that we was,
18 you know, still his friends and, you know, that he
19 could depend on us, we was behind him.

20 Q Do you have an opinion as to whether
21 or not Leonard or Josh here has been an influence
22 on your children in any way?

23 A Yes. I think he had a very good influence
24 on my second son. He's fourteen years old now.
25 At the time he was only about twelve when Josh

1 they all liked him. My fiancé, he crazy about
2 him, too, and we just almost like adopted him like
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19 could depend on us, we was behind him.

20 Q Do you have an opinion as to whether
21 or not Leonard or Josh here has been an influence
22 on your children in any way?

23 A Yes. I think he had a very good influence
24 on my second son. He's fourteen years old now.
25 At the time he was only about twelve when Josh

1 started taking up time with him, and he was
2 running around with a gang, and Josh talked to him
3 and got him away from that.

4 I didn't know that this was going on until
5 Josh came home with him one day and sit down, and
6 he was telling him in front of me what he had told
7 him, because he was crying and upset, and Josh was
8 telling him not to be with the wrong crowd and not
9 to get involved in drugs and alcohol, because at
10 twelve and thirteen years old, young boys, would
11 try most anything.

12 Q Did you think that made a real impact
13 on your son?

14 A Yes, I think it did.

15 Q You say that you have discussed or
16 Leonard has met your family and your fiancée.
17 Have you had an opportunity to discuss Leonard's
18 reputation or character with your boy friend, your
19 fiancé?

20 A Well, we didn't really discuss his
21 character. We discuss it when we first met him,
22 you know, as I wanted his opinion as to whether we
23 should let him go -- the kids go with him, because
24 my youngest son is by the man that I am living
25 with now, and he said that he didn't find no

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23 should let him go -- the kids go with him, because
24 my youngest son is by the man that I am living
25 with now, and he said that he didn't find no

1 reason why they couldn't go with him as long as he
2 brought them home whenever we said at the time to
3 bring home.

4 When we had the family outing, we go out
5 to the beach, Josh would drive out to the beach in
6 one of our cars with the kids, and he could take
7 more of their friend with him, you know, and he
8 got along with them fine.

9 Q You understand that Josh was
10 convicted of murder yesterday?

11 A Yes, I do.

12 Q You also understand that this Jury
13 will now determine whether or not he should live
14 or die?

15 A Yes.

16 Q Do you think that there's a reason
17 why Josh should live?

18 A Yes, I do, because he's a good kid. He's
19 very good, and I think he just need the
20 opportunity to get himself straightened out.

21 Q If he was sentenced to time in
22 prison, thirty years in prison, would you re-
23 supportive of Josh and communicate with him?

24 A For as long as I could, yes, I would.

25 MR. BOVINO: Thank you.

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2 brought them home whenever we said at the time to
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22 prison, thirty years in prison, would you re-
23 supportive of Josh and communicate with him?

24 A For as long as I could, yes, I would.

25 MR. ROVINO: Thank you.

1 THE COURT: Mr. DeFazio?

2 CROSS-EXAMINATION BY MR. DeFAZIO:

3 Q Ms. James, how old are your sons?

4 A My oldest son is sixteen, my second son is
5 fourteen, and my baby is seven.

6 Q You first got acquainted with Josh
7 because he got friendly with your two older boys?

8 A Yes.

9 Q So, that means they would have been
10 fourteen and twelve back in -- around there?

11 A Right.

12 Q In 1983?

13 A Right.

14 Q You said that they met up with Josh
15 at the school yard of School 34?

16 A Yes.

17 Q Kennedy Boulevard in Jersey City?

18 A Yes.

19 Q You told us that Josh was there at
20 the school yard taking pictures and lifting
21 weights?

22 A Yes.

23 Q Do you mean taking pictures of
24 children or of the people that were around there
25 or ---

1 THE COURT: Mr. DeFazio?

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24 children or of the people that were around there
25 or ---

1 A Well, he took pictures of my poodle. He
2 took pictures of my son standing by some guy's car
3 clowning around. He took pictures of the kids
4 doing stunts, standing on their heads and stuff on
5 the steps of the school.

6 Q So, he would be taking pictures of
7 the children?

8 A Just anything. Just anything. He took all
9 kinds of pictures.

10 Q You adopted him, you say? You
11 adopted him into your family, so to speak? You
12 got to know him?

13 A In other words, I trusted him.

14 Q You brought him to family affairs?

15 A Yes.

16 Q Since October 1, 1985, you said you
17 have spoken to Josh?

18 A Yes.

19 Q Did you talk about his case at all?

20 A No. I just wanted to know how he was
21 doing.

22 Q Did you talk to him on the phone or
23 did you see him at all?

24 A I talked to him on the phone.

25 Q You said that you noticed as a

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21 doing.

22 Q Did you talk to him on the phone or
23 did you see him at all?

24 A I talked to him on the phone.

25 Q You said that you noticed as a

1 mother -- you noticed that Josh apparently got
2 along with these children?

3 A Yes.

4 Q Do you know if he got along with
5 other children besides your two older sons?

6 A Yes. I know of one little young man that
7 lives on Jackson Avenue that used to be with Josh
8 a lot.

9 Q How old was that young man?

10 A I think he's about fourteen now, fourteen
11 or fifteen.

12 MR. DeFAZIO: I have nothing further.

13 MR. BOVINO: I have nothing further.

14 THE COURT: You are excused. You may
15 step down.

16 (Witness excused.)

17 MR. BOVINO: Can we go to sidebar?

18 (The following occurred in the
19 presence of, but out of the hearing of the
20 Jury.)

21 THE COURT: Yes, Mr. Bovino?

22 MR. BOVINO: Judge, I don't see
23 anybody who I recognize as Mr. Stone's
24 mother or sister. So, I'd like to have a
25 couple minutes to get an update.

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1 THE COURT: Any objection?

2 MR. DeFAZIO: No, Judge. You want to
3 send them for coffee or something?

4 THE COURT: Well, probably -- no. I
5 think that it would better -- we'll play it
6 by ear and see how Mr. Bovino makes out
7 with regard to the witness.

8 What I am going to do is I am going
9 to recess. We'll have the Jurors, the
10 twelve deliberating Jurors, retire as we
11 have all day -- retire to Judge Walsh's,
12 and the other four Alternate Jurors
13 returned to Judge Ryan's old outer
14 chambers.

15 MR. DeFAZIO: Good.

16 (The hearing resumed in the presence
17 and hearing of the Jury.)

18 THE COURT: Ladies and gentlemen of
19 the Jury, we'll take a recess at this time.

20 I would ask the four Alternate Jurors
21 to retire to the room where you were
22 earlier this afternoon, and the remaining
23 twelve Jurors, if you would be good enough
24 to retire to the juryroom across the hall.

25 The Officers will bring you over

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1 there, which is a lot more comfortable than
2 our juryroom.

3 (Jury leaving courtroom at 2:55 p.m.)

4 (The hearing recessed briefly and
5 then resumed, out of the presence of the
6 Jury.)

7 THE COURT: Mr. Bovino, have you had
8 any contact with your witnesses?

9 MR. BOVINO: Not since the last time
10 I spoke to the Court.

11 At about, I guess, ten after three or
12 so I was advised there was still no
13 definite word as to where Mrs. Stone and
14 the daughter was. I assume they were in
15 transit. I haven't heard. My office
16 hasn't received any communications back
17 from them.

18 I can only say at this time, Judge, I
19 am not ready to proceed.

20 THE COURT: Do you wish the matter be
21 carried until tomorrow morning?

22 MR. BOVINO: Yes, Judge.

23 THE COURT: Any objection?

24 MR. DeFAZIO: No.

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23 THE COURT: Any objection?

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25 MR. BOVINO: The only thing I w

1 like to state is that at the recess, I
2 advised the Court in chambers with the
3 Prosecutor that there is something brought
4 to my attention that there is a case that
5 originated in Florida concerning
6 sequestration of the Jury once the death
7 penalty portion begins.

8 If that's so, Judge -- I don't have
9 the citation for that case. I am not
10 familiar with the facts, but I would move
11 for sequestration, if that has to be done,
12 and ask the Court to sequester the Jury
13 overnight.

14 THE COURT: Mr. DeFazio?

15 MR. DeFAZIO: Well, if there's such a
16 case, your Honor, I'm sure it's indigenous
17 to the State of Florida.

18 Our statute and rules and case law
19 doesn't indicate that there is any need for
20 sequestration, and with this Jury I don't
21 think it's necessary. They have followed
22 all your instructions.

23 THE COURT: All right. On the
24 application for a sequestration of the Jury
25 at this time, R. 1:8-6, entitled

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22 all your instructions.

23 THE COURT: All right. On the
24 application for a sequestration of the Jury
25 at this time, R. 1:8-6, entitled

1 "Sequestration of Jury," reads as follows:

2 A. Prior to instructing the Jury,
3 the Jury shall not be sequestered in any
4 action, civil or criminal, prior to the
5 instructing of the Jury by the Court unless
6 the Court in its discretion so orders on
7 its finding that there are extraordinary
8 circumstances requiring sequestration for
9 the protection of the Jurors or the
10 interest of justice.

11 B. "Following the Instructing of
12 Jury." Following the instructing of the
13 Jury by the Court and during the course of
14 deliberations, the Court may, in its
15 discretion, in both civil and criminal
16 actions, permit the dispersal of the Jury
17 for the night for meals and during other
18 authorized intermissions in the
19 deliberations.

20 Because of the nature of the case
21 that has been before the Court, the Court
22 is sensitive to the question of
23 sequestration. However, it appears to this
24 Court, and I so find, that the Jury has not
25 been subject to knowledge it did not

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B. "Following the Instructing of Jury." Following the instructing of the Jury by the Court and during the course of deliberations, the Court may, in its discretion, in both civil and criminal actions, permit the dispersal of the Jury for the night for meals and during other authorized intermissions in the deliberations.

Because of the nature of the case that has been before the Court, the Court is sensitive to the question of sequestration. However, it appears to this Court, and I so find, that the Jury has not been subject to knowledge it did not

receive in the courtroom and, therefore, the application for sequestration of the Jury be and hereby is denied.

I will excuse the Jury until nine o'clock tomorrow morning.

MR. BOVINO: Judge, could I ask for ten o'clock? Whatever arrangements have to be made hopefully will be accomplished by ten.

THE COURT: Any objection?

MR. DeFAZIO: No, your Honor.

THE COURT: There being no objection, I will excuse the Jury until ten o'clock tomorrow morning.

I would ask the Officer now to bring in all sixteen Jurors before the bench, please.

(Jury entering courtroom at 3:40 p.m.)

THE COURT: Would you just come across so we can put everybody across, if you would?

Ladies and gentlemen of the Jury, I will excuse you now until ten o'clock tomorrow morning, but I instruct you again

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18 (Jury entering courtroom at 3:40
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21 across so we can put everybody across, if
22 you would?

23 Ladies and gentlemen of the Jury, I
24 will excuse you now until ten o'clock
25 tomorrow morning, but I instruct you again

1 do not discuss this case with anyone, do
2 not discuss this case among yourselves, and
3 do not allow anyone to discuss the case
4 with you or in your presence, and I direct
5 you do not read any newspaper articles
6 concerning this case.

7 It's very important that you adhere
8 to my instructions, and again I would ask
9 you when you are now excused, if you would
10 leave the courthouse directly, do not
11 linger in the hallway.

12 When you come in tomorrow morning,
13 the four Alternate Jurors, if you would be
14 good enough to return to the room where you
15 have been most of the day, and the twelve
16 remaining Jurors, if you would be good
17 enough to come right into our juryroom.

18 If it's uncomfortable when you
19 arrive, I'll make other arrangements, but
20 please come right into our juryroom here in
21 this courtroom, please.

22 Have a nice evening.

23 (Jury leaving courtroom.)

24 * * * * *

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Have a nice evening.

(Jury leaving courtroom.)

* * * * *

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STATE OF NEW JERSEY,)

Complainant,)

v.)

LEONARD STONE,)

Defendant.)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
(CRIMINAL)
IND. NO. 1369-85
APP. DIV. NO.

H-5529-8574

TRANSCRIPT REC'D
OF
PROCEEDINGS
VOLUME X NOV 28 1990

Place: Hudson County Court House
Jersey City, New Jersey

Date: May 21, 1986

BEFORE:

CHARLES J. HARRINGTON, JR., JSC, and a Jury

REC'D
APPELLATE DIVISION

DEC 8 1986

APPEARANCES:

EDWARD J. DEFALIO, ESQ.,
For the State of New Jersey

SALVATORE BOVINO, ESQ.,
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(Jury entering courtroom at 10:40

a.m.)

(Jury leaving courtroom at 10:45

a.m.)

(The hearing resumed out of the presence of the Jury.)

THE COURT: Before we proceed any further, I would like the defendant and his attorney to come forward, please.

Leonard Stone, the State has rested its case insofar as this part of the case is concerned and submitted to the Court and the Jury all of the evidence that was presented during the course of the trial, and they have rested in this part of the case.

Do you understand that, sir?

THE DEFENDANT: Yes, I do.

THE COURT: Sir, there is no obligation on your part to take the stand in this matter on this part of the case.

Do you understand that, sir?

THE DEFENDANT: Yes, I do.

THE COURT: If you do take the stand, I advise you that as witnesses for the

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THE COURT: Sir, there is no
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Do you understand that, sir?

THE DEFENDANT: Yes, I do.

THE COURT: If you do take the stand,
I advise you that as witnesses for the

State were cross-examined by your attorney,
if you do take the stand at this time, that
you would be subject to cross-examination
by the Assistant Prosecutor.

Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: I advised you of your
rights in the guilt portion of the trial.
You were advised, and your attorney and you
did confer, with regard to that there is a
certified conviction of a crime as to you.

Do you understand that, sir?

THE DEFENDANT: Yes, I do.

THE COURT: Further, sir, do you
understand that by advising you of your
rights at this point, which are afforded to
you under the Constitution; that is, your
right to remain silent, I do not want it to
be interpreted in any way as to a
suggestion by me or an order by me or even
a hint as to what you should or should not
do.

Do you understand that, sir?

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2 before we proceed further.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Have you had enough time,
6 sir, to confer with your attorney with
7 reference to the question of whether you
8 will testify or will not testify in this
9 part of the case?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: Do you understand, sir,
12 again, that there is no obligation on your
13 part to take the stand in this part of the
14 case?

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Do you understand it?

18 THE DEFENDANT: Yes, I do. Yes.

19 THE COURT: Have you come to a
20 decision as to whether you will or will not
21 testify?

22 THE DEFENDANT: Yes, I will take the
23 stand.

24 THE COURT: Mr. Bovino, is there
25 anything further that I should advise

1 you your right at this juncture of the case
2 before we proceed further.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, I do.

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6 sir, to confer with your attorney with
7 reference to the question of whether you
8 will testify or will not testify in this
9 part of the case?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: Do you understand, sir,
12 again, that there is no obligation on your
13 part to take the stand in this part of the
14 case?

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Do you understand it?

18 THE DEFENDANT: Yes, I do. Yes.

19 THE COURT: Have you come to a
20 decision as to whether you will or will not
21 testify?

22 THE DEFENDANT: Yes, I will take the
23 stand.

24 THE COURT: Mr. Bovino, is there
25 anything further that I should advise

1 client as to his rights at this time?

2 MR. BOVINO: Judge, initially, the
3 fact that he has testified in the guilt
4 proceeding, I don't believe the Judgment of
5 Conviction is evidential at this point.
6 The verdict was established. I don't
7 think -- I would ask the State to be
8 prohibited from asking about that.

9 Additionally, I have had an
10 opportunity to discuss Mr. Stone's
11 testifying in this portion of the
12 proceeding. He has not indicated to me
13 what he wishes to testify to or what he
14 wishes to state.

15 He just asked me if he would have the
16 opportunity to speak freely to the Jury,
17 whatever that may mean. I don't know. He
18 didn't tell me what it was.

19 Based upon his conversations with me,
20 I would advise Mr. Stone not to testify,
21 and it's his decision, as your Honor has
22 just instructed him, and if he wishes to
23 make a statement to the Jury, I don't have
24 any questions of him. I do not know what
25 he wishes to testify to, and he has not

1 client as to his rights at this time?

2 MR. BOVINO: Judge, initially, the
3 fact that he has testified in the guilt
4 proceeding, I don't believe the Judgment of
5 Conviction is evidential at this point.
6 The verdict was established. I don't
7 think -- I would ask the State to be
8 prohibited from asking about that.

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10 opportunity to discuss Mr. Stone's
11 testifying in this portion of the
12 proceeding. He has not indicated to me
13 what he wishes to testify to or what he
14 wishes to state.

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16 opportunity to speak freely to the Jury,
17 whatever that may mean. I don't know. He
18 didn't tell me what it was.

19 Based upon his conversations with me,
20 I would advise Mr. Stone not to testify,
21 and it's his decision, as your Honor has
22 just instructed him, and if he wishes to
23 make a statement to the Jury, I don't have
24 any questions of him. I do not know what
25 he wishes to testify to, and he has not

1 told me what he wishes to testify to in
2 this part of the proceeding.

3 THE COURT: Mr. Stone, do you
4 understand what your attorney said?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Do you understand that
7 your attorney has just indicated -- Mr.
8 Bovino has just indicated that his advice
9 to you is that you not testify in this part
10 of the case with regard to the penalty?

11 Do you understand that?

12 THE DEFENDANT: Yes, I understand
13 that.

14 THE COURT: Knowing that your
15 attorney has advised you not to testify, do
16 you still wish to testify ---

17 THE DEFENDANT: Yes, I do.

18 THE COURT: --- in this part of the
19 case with regard to the penalty?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Is there anything else
22 that you wish me to advise your client at
23 this time, Mr. Bovino?

24 MR. BOVINO: No, Judge.

25 THE COURT: There was an application

1 told me what he wishes to testify to in
2 this part of the proceeding.

3 THE COURT: Mr. Stone, do you
4 understand what your attorney said?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Do you understand that
7 your attorney has just indicated -- Mr.
8 Bovino has just indicated that his advice
9 to you is that you not testify in this part
10 of the case with regard to the penalty?

11 Do you understand that?

12 THE DEFENDANT: Yes, I understand
13 that.

14 THE COURT: Knowing that your
15 attorney has advised you not to testify, do
16 you still wish to testify ---

17 THE DEFENDANT: Yes, I do.

18 THE COURT: --- in this part of the
19 case with regard to the penalty?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Is there anything else
22 that you wish me to advise your client at
23 this time, Mr. Bovino?

24 MR. BOVINO: No, Judge.

25 THE COURT: There was an application

1 by Mr. Bovino with regard to the
2 certified -- no reference to the certified
3 conviction that was referred to, and I
4 don't recall offhand the number of the
5 exhibit.

6 MR. DEFALIO: I might have it,
7 Judge. S-81 for identification.

8 THE COURT: I'll hear you, Mr.
9 DeFazio, on the application.

10 MR. DEFALIO: If he takes the stand,
11 Judge, his credibility is subject to
12 attack. There's no exception to that.

13 THE COURT: Anything else, Mr.
14 Bovino?

15 MR. BOVINO: No. Nothing on that.

16 THE COURT: The application to
17 preclude the State from -- in
18 cross-examination to refer to the certified
19 conviction S-81 is denied.

20 Yes, Mr. Bovino.

21 MR. BOVINO: I just want to check
22 something.

23 THE COURT: Excuse me, Sergeant.
24 Court conferring with Court Officer.)

25 THE COURT: May we have the Jury,

1 by Mr. Bovino with regard to the
2 certified -- no reference to the certified
3 conviction that was referred to, and I
4 don't recall offhand the number of the
5 exhibit.

6 MR. DeFAZIO: I might have it,
7 Judge. S-81 for identification.

8 THE COURT: I'll hear you, Mr.
9 DeFazio, on the application.

10 MR. DeFAZIO: If he takes the stand,
11 Judge, his credibility is subject to
12 attack. There's no exception to that.

13 THE COURT: Anything else, Mr.
14 Bovino?

15 MR. BOVINO: No. Nothing on that.

16 THE COURT: The application to
17 preclude the State from -- in
18 cross-examination to refer to the certified
19 conviction S-81 is denied.

20 Yes, Mr. Bovino.

21 MR. BOVINO: I just want to check
22 something.

23 THE COURT: Excuse me, Sergeant.
24 Court conferring with Court Officer.)

25 THE COURT: May we have the Jury,

1 Officer, please? All sixteen Jurors,
2 please? Where is Mr. Bovino?

3 (Jury entering courtroom at 11 a.m.)

4 THE DEFENDANT: Excuse me, your
5 Honor -- your Honor ---

6 THE COURT: Just a minute, please.

7 THE DEFENDANT: My people is being
8 harassed over here, you know. You know,
9 they have no reason to mess my mother and
10 my sister.

11 THE COURT: Sir, just a minute,
12 please.

13 THE DEFENDANT: I want to know what's
14 happening, why is they harrassing my mother
15 and sister. Look, they have nothing to do
16 with this case at all.

17 THE COURT: Sir, please be seated.

18 THE DEFENDANT: Okay?

19 THE COURT: Sir, please be seated,
20 and I will hear you in a few minutes.
21 Please be seated, sir.

22 Ladies and gentlemen of the Jury, I
23 would ask you if you would be good enough
24 to go with the Officer. We have found
25 another juryroom which is much more

1 Officer, please? All sixteen Jurors,
2 please? Where is Mr. Bovino?

3 (Jury entering courtroom at 11 a.m.)

4 THE DEFENDANT: Excuse me, your
5 Honor -- your Honor --

6 THE COURT: Just a minute, please.

7 THE DEFENDANT: My people is being
8 harassed over here, you know. You know,
9 they have no reason to mess my mother and
10 my sister.

11 THE COURT: Sir, just a minute,
12 please.

13 THE DEFENDANT: I want to know what's
14 happening, why is they harrassing my mother
15 and sister. Look, they have nothing to do
16 with this case at all.

17 THE COURT: Sir, please be seated.

18 THE DEFENDANT: Okay?

19 THE COURT: Sir, please be seated,
20 and I will hear you in a few minutes.
21 Please be seated, sir.

22 Ladies and gentlemen of the Jury, I
23 would ask you if you would be good enough
24 to go with the Officer. We have found
25 another juryroom which is much more

1 convenient right on this floor down at the
2 end of the hall, Judge Grossi's juryroom.

3 If you would be good enough to go
4 with the Officer, and the four Alternates,
5 if you would be good enough to go with the
6 Officer to the office where you have been
7 retiring to.

8 Thank you, ladies and gentlemen.

9 (Jury leaving courtroom at 11:01
10 a.m.)

11 THE COURT: Mr. Bovino, do you have
12 any objection to your client addressing the
13 Court at this time or do you wish to confer
14 with him first?

15 MR. BOVINO: If he wishes to confer
16 with me, Judge, I would be glad to speak to
17 him. He hasn't indicated he wishes to
18 speak to me at all.

19 THE COURT: Mr. Stone, would you like
20 to speak to your attorney at this time?

21 THE DEFENDANT: I have nothing to say
22 to him. Nothing.

23 THE COURT: Do you wish to say
24 something to the Court now?

25 THE DEFENDANT: Yes, sir. I would

1 convenient right on this floor down at the
2 end of the hall, Judge Grossi's juryroom.

3 If you would be good enough to go
4 with the Officer, and the four Alternates,
5 if you would be good enough to go with the
6 Officer to the office where you have been
7 retiring to.

8 Thank you, ladies and gentlemen.

9 (Jury leaving courtroom at 11:01
10 a.m.)

11 THE COURT: Mr. Bovino, do you have
12 any objection to your client addressing the
13 Court at this time or do you wish to confer
14 with him first?

15 MR. BOVINO: If he wishes to confer
16 with me, Judge, I would be glad to speak to
17 him. He hasn't indicated he wishes to
18 speak to me at all.

19 THE COURT: Mr. Stone, would you like
20 to speak to your attorney at this time?

21 THE DEFENDANT: I have nothing to say
22 to him. Nothing.

23 THE COURT: Do you wish to say
24 something to the Court now?

25 THE DEFENDANT: Yes, sir. I would

1 like to know why is my people being
2 harassed. They have no bearing with this
3 case or nothing, but yet, you know, people
4 just came and took them from the house and
5 brought them over here from New York, as a
6 matter of fact, if you want to know, and
7 brought them over here and start harassing
8 them.

9 Why? So they can trick my people to
10 get up there and testify on something they
11 don't know? I would like to know why is
12 they being harassed. Do I hear an answer?
13 Do I hear an answer from you? How about
14 you?

15 THE COURT: Will you please be
16 seated, sir? Anything, Mr. Bovino?

17 MR. BOVINO: Judge, I'm ready to
18 proceed. I don't believe Mrs. Stone or
19 Joanne have been harassed. They appear
20 voluntarily, and I am calling them as my
21 witnesses.

22 THE DEFENDANT: Excuse me. They are
23 not here voluntarily. My mother and my
24 sister will tell you that they came over
25 here -- I mean, excuse me, that the people

1 like to know why is my people being
2 harassed. They have no bearing with this
3 case or nothing, but yet, you know, people
4 just came and took them from the house and
5 brought them over here from New York, as a
6 matter of fact, if you want to know, and
7 brought them over here and start harrassing
8 them.

9 Why? So they can trick my people to
10 get up there and testify on something they
11 don't know? I would like to know why is
12 they being harassed. Do I hear an answer?
13 Do I hear an answer from you? Now about
14 you?

15 THE COURT: Will you please be
16 seated, sir? Anything, Mr. Bovino?

17 MR. BOVINO: Judge, I'm ready to
18 proceed. I don't believe Mrs. Stone or
19 Joanne have been harassed. They appear
20 voluntarily, and I am calling them as my
21 witnesses.

22 THE DEFENDANT: Excuse me. They are
23 not here voluntarily. My mother and my
24 sister will tell you that they came over
25 here -- I mean, excuse me, that the people

1 went over to their house and brought them
2 over here. My people live in New York.

3 THE COURT: All right.

4 THE DEFENDANT: That's not
5 voluntarily.

6 THE COURT: Sir, you have placed your
7 position on the record. Mr. Bovino has
8 indicated he's ready to proceed. Are you
9 ready to proceed, Mr. DeFazio?

10 MR. DeFAZIO: Absolutely.

11 THE COURT: Mr. Stone, there will be
12 no further outbursts of that fashion when
13 we proceed. We will proceed in an orderly
14 fashion, and there will be no further
15 outbursts by you.

16 Do you understand what I am saying,
17 sir?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: May we have the Jury,
20 please, Officers?

21 (Jury entering courtroom at 11:05
22 a.m.)

23 (Defendant talking to his sister.)

24 MR. DeFAZIO: Judge ---

25 THE COURT: No.

1 went over to their house and brought them
2 over here. My people live in New York.

3 THE COURT: All right.

4 THE DEFENDANT: That's not
5 voluntarily.

6 THE COURT: Sir, you have placed your
7 position on the record. Mr. Bovino has
8 indicated he's ready to proceed. Are you
9 ready to proceed, Mr. DeFazio?

10 MR. DeFAZIO: Absolutely.

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12 no further outbursts of that fashion when
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14 fashion, and there will be no further
15 outbursts by you.

16 Do you understand what I am saying,
17 sir?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: May we have the Jury,
20 please, Officers?

21 (Jury entering courtroom at 11:05
22 a.m.)

23 (Defendant talking to his sister.)

24 MR. DeFAZIO: Judge ---

25 THE COURT: No.

1 MR. DeFAZIO: Judge, sidebar.

2 THE COURT: Sidebar. All right. All
3 right. Will the attorneys come to sidebar,
4 please?

5 (The following occurred in the
6 presence of, but out of the hearing of the
7 Jury.)

8 THE COURT: Let the record reflect
9 that Mr. DeFazio did wish to say something
10 to the Court and, Mr. Bovino, you were
11 conferring with Mr. Winograd, and I
12 indicated that I would not hear any comment
13 until such time that you were both
14 available, and that's why I don't know what
15 he wanted to say.

16 What is it, Mr. DeFazio?

17 MR. DeFAZIO: I think we have a very
18 serious concern here about security.

19 THE COURT: Excuse me for
20 interrupting you, Mr. DeFazio. That's why
21 I called the Sergeant over before, that we
22 have extra Officers in the courtroom.

23 MR. DeFAZIO: I want somebody over
24 there near me when I cross-examine him.
25 All right?

1 MR. DeFAZIO: Judge, sidebar.

2 THE COURT: Sidebar. All right. All
3 right. Will the attorneys come to sidebar,
4 please?

5 (The following occurred in the
6 presence of, but out of the hearing of the
7 Jury.)

8 THE COURT: Let the record reflect
9 that Mr. DeFazio did wish to say something
10 to the Court and, Mr. Bovino, you were
11 conferring with Mr. Winograd, and I
12 indicated that I would not hear any comment
13 until such time that you were both
14 available, and that's why I don't know what
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18 serious concern here about security.

19 THE COURT: Excuse me for
20 interrupting you, Mr. DeFazio. That's why
21 I called the Sergeant over before, that we
22 have extra Officers in the courtroom.

23 MR. DeFAZIO: I want somebody over
24 there near me when I cross-examine him.
25 All right?

1 THE COURT: May I respectfully
2 suggest that you stay back at the counsel
3 table.

4 MR. DeFAZIO: Even so, even staying
5 there, I want somebody over there on my
6 side of the courtroom. Let me put it on
7 the record. If this guy comes for me, I'm
8 gonna whack him.

9 THE COURT: Okay.

10 MR. BOVINO: Judge, I don't think we
11 have to engage in this type of dialogue.
12 If the Prosecutor is afraid for his safety
13 or if he is going to whack him, I would
14 suggest he have somebody from the
15 Prosecutor's Office sit right behind in the
16 first row as an Investigator and be
17 inconspicuous. I don't want anymore Court
18 Officers in here than we have. If the
19 security becomes a problem ---

20 MR. DeFAZIO: All right, Judge. Do
21 whatever you want.

22 THE COURT: Excuse me. I think the
23 record should reflect that we do have extra
24 Officers in the courtroom. I am not going
25 to give any instructions to them because :

1 THE COURT: May I respectfully
2 suggest that you stay back at the counsel
3 table.

4 MR. DeFAZIO: Even so, even staying
5 there, I want somebody over there on my
6 side of the courtroom. Let me put it on
7 the record. If this guy comes for me, I'm
8 gonna whack him.

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11 have to engage in this type of dialogue.
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13 or if he is going to whack him, I would
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15 Prosecutor's Office sit right behind in the
16 first row as an Investigator and be
17 inconspicuous. I don't want anymore Court
18 Officers in here than we have. If the
19 security becomes a problem ---

20 MR. DeFAZIO: All right, Judge. Do
21 whatever you want.

22 THE COURT: Excuse me. I think the
23 record should reflect that we do have extra
24 Officers in the courtroom. I am not going
25 to give any instructions to them because I

1 know that the Officers will do whatever is
2 necessary, particularly the Officer who is
3 always assigned to this Court, who will --
4 who always is conscientious and does
5 whatever is necessary to protect the
6 attorneys and everyone in the courtroom.

7 So, I think there will be a conscious
8 effort because he was here when I requested
9 the Sergeant to accommodate us with extra
10 Officers.

11 We will proceed.

12 (The hearing resumed in the presence
13 and hearing of the Jury.)

14 THE COURT: Mr. Bovino?

15 MR. BOVINO: Judge, before we
16 proceed, I would like to ask the Court to
17 take judicial notice of all the evidence
18 that we presented in the first part of the
19 case by the defense and move into evidence
20 all the exhibits that were marked into
21 evidence.

22 THE COURT: Any objection?

23 MR. DeFAZIO: No.

24 THE COURT: The Court and Jury will
25 take judicial notice of all the evidence

1 know that the Officers will do whatever is
2 necessary, particularly the Officer who is
3 always assigned to this Court, who will --
4 who always is conscientious and does
5 whatever is necessary to protect the
6 attorneys and everyone in the courtroom.

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8 effort because he was here when I requested
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16 proceed, I would like to ask the Court to
17 take judicial notice of all the evidence
18 that we presented in the first part of the
19 case by the defense and move into evidence
20 all the exhibits that were marked into
21 evidence.

22 THE COURT: Any objection?

23 MR. DeFAZIO: No.

24 THE COURT: The Court and Jury will
25 take judicial notice of all the evidence.

1 that was presented on behalf of the
2 defendant, and all of the exhibits that
3 were offered and admitted into evidence by
4 the Court in the first part of the case are
5 admitted into evidence and made part of
6 this proceeding also.

7 Mr. Bovino?

8 MR. BOVINO: Leonard Stone.

9
10
11 L E O N A R D S T O N E, 145 Warner Avenue,
12 Jersey City, New Jersey, having been duly sworn,
13 testified as follows:

14 THE DEFENDANT: I was asked, you
15 know, can I address the Court because,
16 first of all, in the first part of the case
17 and so forth, it wasn't a fair trial, okay?
18 I'm telling you straight off the bat.

19 The Prosecutor said it, you know,
20 that there was a lot, you know, that he
21 wanted a fair, impartial trial. There was
22 things that they spoke about, they told you
23 about my arrest, they told you about public
24 assistance, that, you know, more like to
25 show you that I needed money, you know.

1 that was presented on behalf of the
2 defendant, and all of the exhibits that
3 were offered and admitted into evidence by
4 the Court in the first part of the case are
5 admitted into evidence and made part of
6 this proceeding also.

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8 MR. BOVINO: Leonard Stone.

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15 know, can I address the Court because,
16 first of all, in the first part of the case
17 and so forth, it wasn't a fair trial, okay?
18 I'm telling you straight off the bat.

19 The Prosecutor said it, you know,
20 that there was a lot, you know, that he
21 wanted a fair, impartial trial. There was
22 things that they spoke about, they told you
23 about my arrest, they told you about public
24 assistance, that, you know, more like to
25 show you that I needed money, you know.

1 They told you about I had two
2 different names. My mother is right there.
3 She'll tell you exactly the whole story
4 about the names. Okay. The Social
5 Security cards. I did have two numbers.

6 The reason for that because like
7 Stone is on my birth certificate, okay?
8 And I use Joshua because George Joshua is
9 my father and I use -- he's the name that's
10 the name that I want, my father's name,
11 okay? You know, so, being that Stone was
12 on the birth certificate, there was no way
13 in the world that, you know, that they
14 would accept it. Okay?

15 You accept my identification as
16 Joshua, like when I came over to Jersey
17 City, people wouldn't accept it unless my,
18 you know, I had the birth certificate and
19 the birth certificate didn't say Joshua.
20 It said Stone.

21 You see, I'm just bringing this, you
22 know, to your attention because there was a
23 lot of things that they tried -- as a
24 matter of fact, they tried, you know, they
25 wanted -- they wanted to make you look like

1 They told you about I had two
2 different names. My mother is right there.
3 She'll tell you exactly the whole story
4 about the names. Okay. The Social
5 Security cards. I did have two numbers.

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9 my father and I use -- he's the name that's
10 the name that I want, my father's name,
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12 on the birth certificate, there was no way
13 in the world that, you know, that they
14 would accept it. Okay?

15 You accept my identification as
16 Joshua, like when I came over to Jersey
17 City, people wouldn't accept it unless my,
18 you know, I had the birth certificate and
19 the birth certificate didn't say Joshua.
20 It said Stone.

21 You see, I'm just bringing this, you
22 know, to your attention because there was a
23 lot of things that they tried -- as a
24 matter of fact, they tried, you know, they
25 wanted -- they wanted to make you look like

1 that -- that I'm in need of money. You
2 know, that I needed the ax to kill Clarence
3 McMillen.

4 Clarence was a very good friend of
5 mines, okay? I'm going to tell you right
6 off he was a very good friend of mine. He
7 was the only white man that I respected,
8 the only one, okay?

9 There was things that like -- things
10 that the Prosecutor never said nothing
11 about. He never told you that I was a
12 carpenter. They never told you that, okay?
13 They never said anything about any of my
14 skills, okay?

15 That, first of all, that, you know, I
16 deal with electricity, electricity and so
17 forth. I deal with plumbing, okay? I deal
18 with all kinds of stuff. I even deal auto
19 mechanic work, okay? These are the types
20 of things that I do, okay? They never said
21 nothing about, you know, how good I am,
22 okay? They just showed you certain things,
23 you know, just to discredit me.

24 They never told you about the cars
25 that I had. As a matter of fact, my lawyer

1 that -- that I'm in need of money. You
2 know, that I needed the ax to kill Clarence
3 McMillen.

4 Clarence was a very good friend of
5 mine, okay? I'm going to tell you right
6 off he was a very good friend of mine. He
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19 mechanic work, okay? These are the types
20 of things that I do, okay? They never said
21 nothing about, you know, how good I am,
22 okay? They just showed you certain things,
23 you know, just to discredit me.

24 They never told you about the cars
25 that I had. As a matter of fact, my lawyer

1 never told you about it, okay? Because he
2 sold me out. That's why.

3 Excuse me. They spoke about my
4 jewelry. Okay? They did. They asked me
5 how many chains I had. I told you, I
6 remember, the first trial, my jewelry, it
7 was about ten pieces of necklace and a
8 bracelet, okay?

9 My sister went to my house. None of
10 my stuff was there. He never told you
11 about the fur coats that I had or the
12 \$6,700 that I had in my house. He never
13 told you about the three piece tailor made
14 suits that I wear. He never told you about
15 that.

16 You know what I'm saying? They just
17 want to discredit me and what, you know,
18 they says that Sal Bovino is my Public
19 Defender. That's supposed to protect me
20 under the law. I'm just showing you it
21 wasn't no fair trial, okay?

22 That's why the Prosecutor, the
23 questions that he asked me? It's very
24 limited, and he only dwelled on certain
25 things, you know, as far as my arrest.

1 never told you about it, okay? Because he
2 sold me out. That's why.

3 Excuse me. They spoke about my
4 jewelry. Okay? They did. They asked me
5 how many chains I had. I told you, I
6 remember, the first trial, my jewelry, it
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10 my stuff was there. He never told you
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18 they says that Sal Bovino is my Public
19 Defender. That's supposed to protect me
20 under the law. I'm just showing you it
21 wasn't no fair trial, okay?

22 That's why the Prosecutor, the
23 questions that he asked me? It's very
24 limited, and he only dwelled on certain
25 things, you know, as far as my arrest.

1 okay? As far as the two names, you know,
2 say, oh, well, I might run down to, what
3 you call it, down south and things, you
4 know, using phony names and so forth. He
5 just wanted to discredit me, and which I
6 see he already succeeded, okay?

7 But nothing -- never said nothing
8 about my -- about how good I am and the
9 things that I had. You know, nothing was
10 said. Nothing about it. You see that just
11 shows you what type of lawyer that I have,
12 okay? That I was sold out by Sal Bovino,
13 okay? I'm making this on record. He never
14 said nothing about them things, okay?

15 First of all, some of the evidence
16 that they produced in this courtroom, the
17 pictures? They was fixed, okay? I'm going
18 to tell you just as it is. They was fixed,
19 okay? They show you a picture of things
20 all over my bed. I just got out the bed,
21 okay? I just got out the bed. How in the
22 world could anything be on my bed when I
23 just got out of it?

24 Only thing that was supposed to have
25 been on my bed was the credit cards and --

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22 world could anything be on my bed when I
23 just got out of it?

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25 been on my bed was the credit cards and --

1 covers, because I told you in the first
2 part of the trial I found the credit cards
3 on the steps downstairs when I took Mr.
4 McCarthy or whatever -- McCarthy
5 downstairs, okay? To check the apartment,
6 and I did put it on my bed, okay? In my
7 apartment, okay? And that was for
8 safekeeping, because, you know, you know,
9 if I put it anywhere else in the house,
10 okay? Other than my apartment, it's
11 possible to be stolen or whatever, and
12 which I thought that he just dropped it and
13 so forth, rushing out to work, and I stated
14 earlier in the, what you call it, trial.

15 The keys. When they produced this
16 key ring, with the black key ring with the
17 keys, okay? The black key ring is mine,
18 okay? Black key ring -- well, they ain't
19 got the graphic there, is where I told you
20 all that I had a chest, a small chest,
21 okay? A wooden chest in my room, okay? In
22 my apartment. This black key ring was in
23 there, okay?

24 The keys is the deceased, Clarence
25 McMillen's. It was put on there, because

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2 part of the trial I found the credit cards
3 on the steps downstairs when I took Mr.
4 McCarthy or whatever -- McCarthy
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22 my apartment. This black key ring was in
23 there, okay?

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25 McMillen's. It was put on there, because

1 there was no keys or nothing on the key --
2 on that key ring. No key rings because I
3 don't even use that key ring no more.

4 They talked about the ax. They said
5 that I needed the ax to kill Clarence
6 McMillen. I needed the ax. Remember, I'm
7 gonna tell you something. I believe in
8 pistols. I don't believe in all that
9 stabbing stuff. They confiscated a
10 twenty-two caliber pistol in my apartment.
11 They ain't never said nothing about that.

12 They want you to believe that I
13 needed that ax. Do you understand? And
14 that's what they did. They wanted you to
15 believe that, you see, but, no, I didn't
16 need that ax. If I wanted to kill
17 somebody, I would use the pistol, not an
18 ax. I don't believe in all that messy
19 stuff. That stuff scares me. I'm going to
20 tell you straight up. It scares me.

21 Let me tell you about some of the
22 witnesses. As a matter of fact, I'm start
23 with any neighbors, okay? Do you know that
24 the Prosecutor or the Investigator for the
25 Public Defender scared my neighbors so bad

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25 Public Defender scared my neighbors so bad

1 that they said that they want no part of
2 the case? They'll come and they'll say
3 they didn't really know me.

4 I spoke to them. I spoke to them on
5 the phone recently, and they said that --
6 the way they was talking was really
7 ridiculous, you know. They said they don't
8 even want to get involved in it.

9 They told you about Shearson
10 Washington, one of the tenants that lived
11 in the same house I did. You want to know
12 something? Do you know somebody in the
13 Prosecutor's Office told him to skip town?
14 Do you want to know that? I'm going to
15 tell you right now.

16 They told him to skip town because
17 they showed you a thirteen page -- excuse
18 me -- a thirteen page statement, but they
19 failed -- but what they did, they failed to
20 bring the tape, the original tape, because
21 it was on tape, okay? His statement was on
22 tape, but they transferred it, okay? Onto
23 a paper, and which they put whatever they
24 want in there, you see?

25 I'm gonna tell you what they did. I

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2 the case? They'll come and they'll say
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1 mean, they said fair, impartial? No, it
2 wasn't. It wasn't fair at all. I'm going
3 to tell you straight off. It was not fair.
4 And as far as where my Public Defender is,
5 he sold me out.

6 There was plenty of times and things
7 that I told him certain things. It came
8 right back to the Prosecutor because when
9 we got in this court -- you see, you all
10 wouldn't know about it because he shoved
11 you all in the room, okay? So you all
12 wouldn't know about it.

13 He brought up certain things. I
14 just -- that I would tell Bovino. He
15 brought up certain things, and it came
16 right out in this court, and I'm sitting
17 there, and I'm saying like wow, what
18 happened? What really happened? Sal
19 Bovino sold me out. I'm going to tell you
20 straight up off the bat. He sold me out,
21 okay?

22 All this, you know, sitting down, you
23 know, being nice and being relaxed, no, I
24 cannot. I cannot sit down there, you know,
25 and just hold everything back, okay?

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1 out. That's not me. I cannot do that.

2 There was something else that I
3 wanted. I'm sure you all -- what's in your
4 mind is why Sal Bovino sold me out. I
5 don't know. To be honest with you, I don't
6 know the reason, okay? But, I guess,
7 there's some kind of little gang that they
8 have going on through here. I don't know
9 what it is.

10 I have lots of -- right in my folder
11 I have lots of things, clippings out the
12 paper, about certain type of racism and so
13 forth in these here courts. I got
14 clippings. I would be glad to show you if
15 you want to know.

16 There's -- as I said, there was
17 evidence and so forth, man, that as far as
18 where my capability and so forth, you know,
19 it was never brought up. Never brought up.
20 Nothing about, you know, what type of
21 person I am. Okay? Nothing. Okay?

22 They didn't even tell you that I have
23 kids, okay? They asked -- and I was being
24 cross-examined -- they asked -- they said
25 that the reason I was going down south

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23 kids, okay? They asked -- and I was being
24 cross-examined -- they asked -- they said
25 that the reason I was going down south

1 to work and go to school. That's true,
2 but, see, it wasn't work as far as work for
3 somebody else, okay? I was going down
4 there to open up a workshop because, you
5 see, I'm very -- as I say, I'm a carpenter.
6 I deal with wood. I deal with wood. These
7 people -- I don't know.

8 Oh, they never told you -- they never
9 told you about the cameras. They just
10 brought one camera in here, a Yashica.
11 They never told you about my Minolta, okay?
12 I'm a free lance photographer. I deal with
13 this.

14 They have pictures. Within a year's
15 time, you know, I have taken plenty of
16 pictures. You heard Ms. James came in here
17 yesterday. She spoke. She said that's all
18 I been doing is taking pictures. I love
19 pictures, you know, what I'm saying,
20 because that's part of my work. You gotta
21 have a special skill, you know, to take
22 pictures, and that's another source of
23 income that they don't want you all to see,
24 okay?

25 As a matter of fact, being that I

1 to work and go to school. That's true,
2 but, see, it wasn't work as far as work for
3 somebody else, okay? I was going down
4 there to open up a workshop because, you
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20 because that's part of my work. You gotta
21 have a special skill, you know, to take
22 pictures, and that's another source of
23 income that they don't want you all to see,
24 okay?

25 As a matter of fact, being that I

1 have four cars, I been doing a lot of
2 mechanic work, auto mechanic work, okay?

3 In that box of evidence that they
4 so-called have, it has where I had bought a
5 starter for a van, okay? A man had paid
6 me, you know, to do work on his van, okay?
7 He paid me -- this is just to let you know,
8 you know, I am getting money, because I do
9 a lot of work, okay? Different types of
10 work, and, you know, there's a receipt in
11 there for a starter, a van starter, okay?
12 I had bought two days before I was
13 arrested.

14 They don't want to let you know that
15 the day that I was arrested -- because I'm
16 going to let you know right now, if I was
17 on the street, okay? I would have fought
18 my case.

19 The only one that was really doing an
20 investigation, because -- that woman there,
21 my mother, okay? She was the only one.
22 Sal Bovino failed to do an investigation.
23 The Public Defender's Department and the
24 Prosecutor failed to do an investigation,
25 okay? There was no investigation on this

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23 The Public Defender's Department and the
24 Prosecutor failed to do an investigation,
25 okay? There was no investigation on this

1 murder here at all. None. Okay? There
2 was no investigation.

3 But as it was said, that they
4 figured, well, you know, hey, since we got
5 somebody, we got somebody to confiscate for
6 the murder and which -- that's what they
7 did, okay? They got me, and they
8 railroaded me.

9 They made you all -- I'm not saying
10 that it's your fault, okay? In your
11 decision. What your decision was was
12 straight up, okay? Because of what they
13 presented to you and what they didn't
14 present to you, okay?

15 As I said, there's lots of evidence
16 in this whole thing that they don't even
17 want you to know nothing about. You see,
18 that's the part of this so-called legal
19 system, you know. They don't want you to
20 know nothing about it. Nothing about it.

21 They just want -- they just take him
22 away. We got somebody to confiscate.
23 That's -- a conviction makes they record
24 look good. That's right. Makes their
25 record, if they want to run for politic,

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1 any kind of seat in the political field,
2 they can do so because they record here.
3 We got the conviction. Oh, sure, why not?
4 They can do so, and they know this. The
5 more conviction that they get, okay? Look
6 good on their record. Hey, I got the
7 votes. Of course they do. I got the
8 money, take the taxpayers' money and so
9 forth and use it just to play around with
10 people lives.

11 You scums. That's what you are. You
12 scums, and you know it.

13 I'm finished.

14 MR. BOVINO: I have nothing further.

15 THE COURT: Anything, Mr. DeFazio?

16 CROSS-EXAMINATION BY MR. DeFAZIO:

17 Q Mr. McMillen was the only white man
18 you ever respected, you said?

19 A The only one because he was truthful.

20 Q How old are you? Twenty-five?

21 A I'm twenty-five years old.

22 Q You never respected any other white
23 man except Mr. McMillen?

24 MR. BOVINO: Judge, I am going to
25 object. It goes beyond the scope of this

Stone -

29

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23 man except Mr. McMillen?

24 MR. BOVINO: Judge, I am going to
25 object. It goes beyond the scope of the

Stone - cross

30

1 hearing.

2 MR. DeFAZIO: No, it doesn't.

3 THE COURT: I'll sustain the
4 objection. The question has been asked and
5 answered.

6 Q You didn't get a fair trial, you say?

7 A No, I didn't.

8 Q How about the Jury? Did you get a
9 fair and impartial jury?

10 A Oh, the Jury, yes.

11 Q The Jury is fine?

12 A Of course. No problem, whether they black
13 or white.

14 Q The Jury is fine?

15 A Yes.

16 Q They made the right decision ---

17 A Yes.

18 Q --- based on what they heard?

19 A Yes, and based on what you gave them to go
20 by.

21 Q Well, you told your story to the
22 Jury, right?

23 A Sure. Why not?

24 Q That story about stubbing your
25 toe, right? You told them all that?

1 hearing.
2 MR. DeFAZIO: No, it doesn't.
3 THE COURT: I'll sustain the
4 objection. The question has been asked and
5 answered.
6 Q You didn't get a fair trial, you say?
7 A No, I didn't.
8 Q How about the Jury? Did you get a
9 fair and impartial jury?
10 A Oh, the Jury, yes.
11 Q The Jury is fine?
12 A Of course. No problem, whether they black
13 or white.
14 Q The Jury is fine?
15 A Yes.
16 Q They made the right decision ---
17 A Yes.
18 Q --- based on what they heard?
19 A Yes, and based on what you gave them to go
20 by.
21 Q Well, you told your story to the
22 Jury, right?
23 A Sure. Why not?
24 Q That story about stubbing your toe?
25 toe, right? You told them all that?

1 A Yes, I did.
2 Q They heard your whole story?
3 A Sure. I hope.
4 Q Right? They heard it, right?
5 A Sure they did.
6 Q You were cross-examined by me?
7 A But you didn't cross-examine me about
8 certain things. You only repeated the same thing
9 that Sal Bovino repeated.
10 Q Well ---
11 A Wasn't that true?
12 Q I wasn't complete enough in my
13 cross-examination then; is that what you are
14 saying?
15 A Whatever you got on the table, bring it
16 forth.
17 Q Well, you know ---
18 A Let's see what you got on the table.
19 Q You know everything that's in this
20 file, Mr. Stone.
21 A Stone? Joshua. So, what? My baby brother
22 is right there. He use Joshua, too.
23 THE COURT: Just a minute, Mr.
24 DeFazio. One at a time, please.
25 Q You have seen everything that's in my

- 1 A Yes, I did.
- 2 Q They heard your whole story?
- 3 A Sure. I hope.
- 4 Q Right? They heard it, right?
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- 20 file, Mr. Stone.
- 21 A Stone? Joshua. So, what? My baby brother
- 22 is right there. He use Joshua, too.
- 23 THE COURT: Just a minute, Mr.
- 24 DeFazio. One at a time, please.
- 25 Q You have seen everything that's in my

- 1 file?
- 2 A Not necessarily, no. I seen just about the
- 3 things that's in Sal Bovino's file.
- 4 Q Mr. Bovino in his file has absolutely
- 5 everything that the State has in its file.
- 6 A I don't think so. I don't think so.
- 7 MR. BOVINO: Judge, that may or may
- 8 not be so, and I would object to this line
- 9 of questioning as to what he has seen
- 10 that's from the Prosecutor's file, whether
- 11 what he has seen in my file is different.
- 12 THE COURT: I will allow the
- 13 question as it stands, but I don't know how
- 14 the witness may know everything that's in
- 15 the Prosecutor's file is in the defendant's
- 16 file, but in any event, proceed, Mr.
- 17 DeFazio.
- 18 Q You mentioned this twenty-two caliber
- 19 pistol that was in your apartment ---
- 20 A Yes, I did.
- 21 Q --- under your mattress?
- 22 A Yes.
- 23 Q Now, you know, because you were here,
- 24 that the State tried to get that introduced into
- 25 evidence.

1 file?

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3 things that's in Sal Bovino's file.

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19 pistol that was in your apartment ---

20 A Yes, I did.

21 Q --- under your mattress?

22 A Yes.

23 Q Now, you know, because you were here,
24 that the State tried to get that introduced into
25 evidence.

1 MR. BOVINO: I am going to object to
2 what the State ---

3 THE COURT: Come to sidebar, please.

4 A Lie.

5 Q I'm a liar?

6 A Yes, you are. That's why you had cut the
7 picture in half. Now, produce that.

8 THE COURT: Excuse me, sir. There is
9 no question before you.

10 (The following occurred in the
11 presence of, but out of the hearing of the
12 Jury.)

13 THE COURT: I'll hear you, Mr.
14 Bovino.

15 MR. BOVINO: Judge, I object to this
16 line of questioning. I know Mr. Stone has
17 given a broad, general statement in
18 narrative form without a direct, and I told
19 the Court that that was one of the reasons
20 why I advised him not to testify since I
21 didn't know what he was going to testify
22 to.

23 While I would submit that the
24 apparent contradiction that that gun was
25 not brought into this case should be

1 MR. BOVINO: I am going to object to
2 what the State ---

3 THE COURT: Come to sidebar, please.

4 A Lie.

5 Q I'm a liar?

6 A Yes, you are. That's why you had cut the
7 picture in half. Now, produce that.

8 THE COURT: Excuse me, sir. There is
9 no question before you.

10 (The following occurred in the
11 presence of, but out of the hearing of the
12 Jury.)

13 THE COURT: I'll hear you, Mr.
14 Bovino.

15 MR. BOVINO: Judge, I object to this
16 line of questioning. I know Mr. Stone has
17 given a broad, general statement in
18 narrative form without a direct, and I told
19 the Court that that was one of the reasons
20 why I advised him not to testify since I
21 didn't know what he was going to testify
22 to.

23 While I would submit that the
24 apparent contradiction that that gun was
25 not brought into this case should be

1 cross-examined by the Prosecutor, I would
2 stipulate that the Prosecutor attempted to
3 offer that gun into evidence, and for legal
4 reasons not connected with this trial, it
5 was kept out.

6 Essentially, Judge, I am objecting to
7 the line of cross-examination of the
8 Prosecutor. This is not cross-examination
9 to impeach his credibility. This is just
10 an examination to show hostility, to have
11 the defendant get baited by the Prosecutor,
12 to prolong the examination and just to show
13 the Jury that this guy deserves to die, but
14 not for the aggravating factors that the
15 State has attempted to establish.

16 I object to the line of
17 cross-examination; more particularly, to
18 this questioning of where the gun was
19 found.

20 THE COURT: Mr. DeFazio?

21 MR. DeFAZIO: Well, do I assume now,
22 from what Mr. Bovino said, that the Jury is
23 going to be instructed that the State tried
24 to introduce the gun?

25 THE COURT: As I understand it, you

1 cross-examined by the Prosecutor, I would
2 stipulate that the Prosecutor attempted to
3 offer that gun into evidence, and for legal
4 reasons not connected with this trial, it
5 was kept out.

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7 the line of cross-examination of the
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15 State has attempted to establish.

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17 cross-examination; more particularly, to
18 this questioning of where the gun was
19 found.

20 THE COURT: Mr. DeFazio?

21 MR. DeFAZIO: Well, do I assume now,
22 from what Mr. Bovino said, that the Jury is
23 going to be instructed that the State tried
24 to introduce the gun?

25 THE COURT: As I understand it, you

1 have indicated you will stipulate.

2 MR. BOVINO: I am objecting to it,
3 Judge, being brought out in the
4 examination. If your Honor disagrees with
5 that, rather than go on through a prolonged
6 hearing as to what the reasons were, I
7 would stipulate that the State offered the
8 gun. Because of legal reasons the Court
9 agreed that the gun should not go in.

10 Whether he knows the right reasons or
11 doesn't understand the right reasons, it's
12 a legal reason why it shouldn't go in.

13 THE COURT: Let me ask you this.
14 Would you agree to a stipulation?

15 MR. DeFAZIO: Yes.

16 THE COURT: All right. Then, I
17 think, in the fashion it should be, it's
18 stipulated by the attorneys that the gun in
19 question was offered into evidence by the
20 State, and the Court did not admit the
21 exhibit into evidence period.

22 MR. BOVINO: And was not part of the
23 first case, and it's not part of the second
24 case, and they should not speculate as to
25 any value that that gun has in either

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18 stipulated by the attorneys that the gun in
19 question was offered into evidence by the
20 State, and the Court did not admit the
21 exhibit into evidence period.

22 MR. BOVINO: And was not part of the
23 first case, and it's not part of the second
24 case, and they should not speculate as to
25 any value that that gun has in either

1 portion of the case.

2 MR. DeFAZIO: Well, quite frankly,
3 based on his statements that if he was
4 going to kill somebody he'd use a pistol, I
5 don't think that -- I don't think the Court
6 should have -- any instructions at this
7 point would serve any purpose.

8 THE COURT: Mr. DeFAZIO, wasn't that
9 before the guilt phase, though?

10 MR. DeFAZIO: Judge, this is all
11 going to credibility, please. If this man
12 was on the stand during the trial in chief,
13 and he had said things like he just said,
14 there would be no doubt that I would have
15 been allowed to cross-examine him on it.

16 There is no difference now that we
17 are in this phase. It's the same rules
18 concerning credibility, but, you know, I'm
19 not going to belabor this. I've had
20 enough. All right?

21 THE COURT: All right. Do you want
22 the stipulation?

23 MR. DeFAZIO: Oh, yeah.

24 MR. BOVINO: Judge, I respectfully
25 disagree with the Prosecutor. This is a

1 portion of the case.

2 MR. DeFAZIO: Well, quite frankly,
3 based on his statements that if he was
4 going to kill somebody he'd use a pistol, I
5 don't think that -- I don't think the Court
6 should have -- any instructions at this
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17 are in this phase. It's the same rules
18 concerning credibility, but, you know, I'm
19 not going to belabor this. I've had
20 enough. All right?

21 THE COURT: All right. Do you want
22 the stipulation?

23 MR. DeFAZIO: Oh, yeah.

24 MR. BOVINO: Judge, I respectfully
25 disagree with the Prosecutor. This is a

1 separate hearing in itself, not a rebuttal
2 of every single thing that would have been
3 rebuttal if he testified this way at the
4 trial.

5 It's a different proceeding. He's
6 exercising his right, I guess what they
7 would call elocution in the ordinary sense,
8 and the State would come back in, I don't
9 believe, at this time to rebut every single
10 item.

11 I am willing to enter into a
12 stipulation that the gun was kept out for
13 legal reasons and shouldn't be considered
14 by this Jury.

15 I think the cross-examination
16 alleging a credibility issue -- credibility
17 has got nothing to do with this portion of
18 the case. He is here to present and prove
19 aggravating or mitigating factors.

20 The mitigating factors are age, no
21 substantial record. We are bringing in
22 guns which are not connected to the
23 mitigating factors. We are bringing in
24 guns, which are not connected to the
25 aggravating factors.

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22 guns which are not connected to the
23 mitigating factors. We are bringing in
24 guns, which are not connected to the
25 aggravating factors.

1 I think it goes beyond the scope of
2 the hearing. I realize that it's partially
3 caused by the defendant's testifying this
4 way. That doesn't give the State the right
5 to open the door and do anything they want.

6 THE COURT: Mr. DeFazio indicated he
7 would not pursue the line of questioning.

8 MR. BOVINO: Additional lines of
9 questioning that he may get into, I object
10 to them too as not being relevant.

11 THE COURT: It's reserved unto you
12 the right to object to any question that
13 Mr. DeFazio may ask.

14 Do you want me to indicate the
15 stipulation with regard to the gun?

16 MR. DeFAZIO: I do.

17 MR. BOVINO: Judge, I have no problem
18 as long as the Jury is instructed that the
19 gun was kept out for legal reasons and
20 should not be dealt with them for any
21 reason at all at this hearing.

22 THE COURT: At this part of the
23 hearing.

24 MR. DeFAZIO: All right.

25 (The hearing resumed in the presence

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18 as long as the Jury is instructed that the
19 gun was kept out for legal reasons and
20 should not be dealt with them for any
21 reason at all at this hearing.

22 THE COURT: At this part of the
23 hearing.

24 MR. DeFAZIO: All right.

25 (The hearing resumed in the presence

1 and hearing of the Jury.)

2 THE COURT: Ladies and gentlemen of
3 the Jury, the attorneys have stipulated
4 that the gun that has been referred to by
5 the witness during the course of his
6 examination, his direct and
7 cross-examination, that gun was offered by
8 the State during the first part of the
9 case, and the Court for legal reasons found
10 that that gun would not be admitted during
11 the course of that first part of the case.

12 Insofar as this part of the case is
13 concerned, you are not to consider that
14 insofar as making a determination insofar
15 as penalty is concerned.

16 Mr. DeFazio?

17 Q You don't dispute, Mr. Stone, that
18 you have this prior criminal conviction from the
19 State of New York for possession of a dangerous
20 weapon?

21 A Yes. I was arrested for it. I was
22 arrested for possession of a pistol. I don't
23 dispute it.

24 Q You don't dispute that you have a
25 conviction?

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2 THE COURT: Ladies and gentlemen of
3 the Jury, the attorneys have stipulated
4 that the gun that has been referred to by
5 the witness during the course of his
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20 weapon?

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22 arrested for possession of a pistol. I don't
23 dispute it.

24 Q You don't dispute that you have a
25 conviction?

1 A I pleaded guilty to it because I did have
2 it.

3 Q A conviction ---

4 A Right.

5 Q Please. A conviction in Brooklyn for
6 possession of a dangerous weapon for which you
7 were sentenced to a year. You don't dispute that?

8 A I don't dispute it, no.

9 Q You don't dispute that you are
10 twenty-five years of age?

11 A That's right. What do that have to do with
12 murder?

13 THE COURT: Next question, Mr.
14 DeFazio.

15 MR. DeFAZIO: I don't have anymore
16 questions, Judge.

17 THE COURT: Anything further?

18 MR. BOVINO: No.

19 THE COURT: You are excused. You may
20 step down. Watch your step.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 MR. BOVINO: Mrs. Stone, please?

24 THE DEFENDANT: Now you're trying to
25 get my mother? That's how you are going to

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2 it.

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4 A Right.

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14 DeFazio.

15 MR. DeFAZIO: I don't have anymore
16 questions, Judge.

17 THE COURT: Anything further?

18 MR. BOVINO: No.

19 THE COURT: You are excused. You may
20 step down. Watch your step.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 MR. BOVINO: Mrs. Stone, please?

24 THE DEFENDANT: Now you're trying to
25 get my mother? That's how you are going to

1 get me? My mother?

2

3 L O R N A S T O N E, 145-4 Artin Terrace, Queens,
4 New York, having been duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION BY MR. BOVINO:

7 Q Mrs. Stone, are you the mother of
8 Leonard Stone?

9 A I am his mother.

10 Q How many children do you have?

11 A I had eleven kids, and I buried four. I
12 have seven alive.

13 Q Do any of them live at home with you
14 now?

15 A Come a little louder, please. I didn't
16 hear you.

17 Q At what age did Mr. Stone, Leonard
18 Stone's father, leave the house?

19 A Leonard was exactly two years old when his
20 father left the house. He was in the hospital for
21 fluid on the lungs.

22 Q Do you understand that you are here
23 today because this Jury has found Leonard guilty
24 of murder?

25 A Yes, I understand that.

L. Stone - direct

41

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20 father left the house. He was in the hospital for
21 fluid on the lungs.

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23 today because this Jury has found Leonard guilty
24 of murder?

25 A Yes, I understand that.

L. Stone - direct

42

1 Q You understand that this Jury will
2 decide whether or not your son should live or die?

3 A Yes, I understand.

4 Q Do you love your son?

5 A Yes, I love my son very much.

6 Q Would you ask this Jury to save your
7 son's life?

8 A Yes, I will ask them please not to kill my
9 child, because we all have problems, and I think
10 we cannot solve this problem by killing him.

11 MR. BOVINO: That's all I have.

12 THE COURT: Mr. DeFazio?

13 MR. DeFAZIO: Nothing.

14 THE COURT: You are excused. You may
15 step down. Watch your step, please.

16 (Witness excused.)

17 MR. BOVINO: Joanne Wilson.

18
19 J O A N N E I D A W I L S O N, 193-069 Ninth
20 Avenue, Hollis, Queens, New York, having been duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BOVINO:

23 Q How old are you?

24 A Twenty-seven years old.

25 Q How are you related to Leonard Stone?

1 Q You understand that this Jury will
2 decide whether or not your son should live or die?
3 A Yes, I understand.
4 Q Do you love your son?
5 A Yes, I love my son very much.
6 Q Would you ask this Jury to save your
7 son's life?
8 A Yes, I will ask them please not to kill my
9 child, because we all have problems, and I think
10 we cannot solve this problem by killing him.
11 MR. BOVINO: That's all I have.
12 THE COURT: Mr. DeFazio?
13 MR. DeFAZIO: Nothing.
14 THE COURT: You are excused. You may
15 step down. Watch your step, please.
16 (Witness excused.)
17 MR. BOVINO: Joanne Wilson.
18
19 J O A N N E I D A W I L S O N, 193-069 Ninth
20 Avenue, Hollis, Queens, New York, having been duly
21 sworn, testified as follows:
22 DIRECT EXAMINATION BY MR. BOVINO:
23 Q How old are you?
24 A Twenty-seven years old.
25 Q How are you related to Leonard Stone?

1 A He's my brother.
2 Q Did you grow up in the same house
3 with Leonard?
4 A Yes, I did.
5 Q What were your family conditions as
6 you were growing up with Leonard?
7 A We lived in a broken home. We weren't
8 rich, but we were healthy and, I guess, it was
9 just comfortable. My mother kept us comfortable.
10 Q Since October 1, 1985, have you had
11 occasion to visit with and speak to Leonard?
12 A I visited him once. Two times I went to
13 the jail they wouldn't let me in, but I was there.
14 I tried to be there for him.
15 Q For what reason?
16 A Because I love my brother, and I wanted to
17 be there for moral support to let him know that he
18 wasn't in this by himself, and we're there for
19 him.
20 Q Do you love your brother?
21 A Yes, I love my brother.
22 Q Do you want to see your brother die?
23 A No, I don't want to see my brother die.
24 Q Would you ask this Jury to have mercy
25 and sentence your brother to life imprisonment as

1 A He's my brother.
2 Q Did you grow up in the same house
3 with Leonard?
4 A Yes, I did.
5 Q What were your family conditions as
6 you were growing up with Leonard?
7 A We lived in a broken home. We weren't
8 rich, but we were healthy and, I guess, it was
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23 A No, I don't want to see my brother die.
24 Q Would you ask this Jury to have mercy
25 and sentence your brother to life imprisonment as

1 opposed to death?
2 A I don't even want to see him go to jail.
3 Please don't kill my brother.
4 MR. BOVINO: That's all I have,
5 Judge.
6 THE COURT: Mr. DeFazio?
7 MR. DeFAZIO: Nothing.
8 THE COURT: You are excused. You may
9 step down. Watch your step, please.
10 (Witness excused.)
11 MR. BOVINO: Can we have a sidebar,
12 please?
13 THE COURT: Yes.
14 (The following occurred in the
15 presence of, but out of the hearing of the
16 Jury.)
17 THE COURT: Yes, Mr. Bovino.
18 MR. BOVINO: Judge, I am going to ask
19 the Court to take judicial notice of
20 2C:49-1, which is the procedure for
21 inflicting the death penalty, so that I
22 could comment upon it in summation.
23 THE COURT: May I see the statute,
24 please? 2C:49-1.
25 MR. BOVINO: And the following

1 opposed to death?

2 A I don't even want to see him go to jail.
3 Please don't kill my brother.

4 MR. BOVINO: That's all I have,
5 Judge.

6 THE COURT: Mr. DeFazio?

7 MR. DeFAZIO: Nothing.

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9 step down. Watch your step, please.

10 (Witness excused.)

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20 2C:49-1, which is the procedure for
21 inflicting the death penalty, so that I
22 could comment upon it in summation.

23 THE COURT: May I see the statute,
24 please? 2C:49-1.

25 MR. BOVINO: And the following

1 sections.

2 THE COURT: Just one minute, please.
3 (Pause) What is it -- the Court was aware
4 generally of the contents, but for the
5 record, I have read 2C:49-1, 2, 3 and 4.
6 That's what you are referring to?

7 MR. BOVINO: There's more, Judge.

8 THE COURT: There's more.

9 MR. BOVINO: I would ask for that
10 whole part of the statute, I guess, up to
11 2C:49-10.

12 With that offer, Judge, I am going to
13 rest.

14 Off the record. Mickey said that
15 there was a case. I don't know. I think
16 it's State v. Muller that might apply to
17 the instruction concerning shall or may.
18 So, I just want to get the citation on it.
19 If he has it, I'll let you know, if I could
20 have a couple of minutes.

21 THE COURT: Let the record reflect I
22 have read through 2C:49-1. What is it you
23 want to refer to? All of this?

24 MR. BOVINO: Well, any portions of it
25 that I may. I think there's some portions

1 sections.

2 THE COURT: Just one minute, please.

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4 generally of the contents, but for the
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20 have a couple of minutes.

21 THE COURT: Let the record reflect I
22 have read through 2C:49-1. What is it you
23 want to refer to? All of this?

24 MR. BOVINO: Well, any portions of it
25 that I may. I think there's some portions

1 of it I can refer to, in general, about
2 capital punishment and how it's executed by
3 needle and which, I think, would be
4 allowable as fair inference based upon
5 common knowledge.

6 There may be some things in there
7 which may be more than common knowledge. I
8 would like the opportunity to at least
9 comment upon it, if I choose to comment
10 upon it. I think the only way I can
11 comment upon it, more intimate parts of the
12 statute, would be if I introduced it into
13 evidence.

14 THE COURT: Mr. DeFazio?

15 MR. DeFAZIO: I don't think that is
16 relevant to the Jury's function at this
17 point. They are to determine whether
18 specific aggravating and mitigating factors
19 exist and to weigh them accordingly.

20 This would only serve to confuse the
21 Jury. It's unduly prejudicial to the
22 State, and I think it should be kept out
23 pursuant to some sort of R. 4 rationale.

24 THE COURT: All right. I think it's
25 best that I -- this particular section,

1 of it I can refer to, in general, about
2 capital punishment and how it's executed by
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21 Jury. It's unduly prejudicial to the
22 State, and I think it should be kept out
23 pursuant to some sort of R. 4 rationale.

24 THE COURT: All right. I think it's
25 best that I -- this particular section,

1 Chapter 49, is entitled, "Procedure for
2 Imposing Capital Punishment." Each
3 subtitle deals with some specific area, and
4 I won't read the entire statute, but I will
5 read each heading.

6 2C:49-1 is entitled "Definition."

7 Two is entitled "Intravenous
8 Injection."

9 Three is entitled "Imposition by
10 Commissioner."

11 Four is entitled "Facility."

12 Five is "Judge's Duties."

13 Six is entitled "Confinement and
14 Isolation of Prisoner."

15 Seven is entitled "Persons Who May Be
16 Present."

17 Eight is entitled "Examination of
18 Dead Body."

19 Nine is "Disposition of Body."

20 Ten is "Suspension of Sentence of
21 Pregnant Female."

22 I will allow Mr. Bovino to comment
23 upon the fact -- the manner in which, in
24 the event the death penalty is voted by the
25 Jury -- the manner it will be executed --

Chapter 49, is entitled, "Procedure for Imposing Capital Punishment." Each subtitle deals with some specific area, and I won't read the entire statute, but I will read each heading.

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Seven is entitled "Persons Who May Be Present."

Eight is entitled "Examination of Dead Body."

Nine is "Disposition of Body."

Ten is "Suspension of Sentence of Pregnant Female."

I will allow Mr. Bovino to comment upon the fact -- the manner in which, in the event the death penalty is voted by the Jury -- the manner it will be executed --

the manner in which the defendant will be executed with an intravenous injection.

However, insofar as -- I think I will take each section at a time. The definitions, I don't see what that has to do with this part of the case.

I will allow you to comment upon the intravenous injection. A lethal dose of whatever it may be, but not to go into, as in subparagraph two -- as to specifically the procedure designated.

Insofar as imposition by Commissioner given the authority, I will not allow you to go into. Of course, you can comment it will be done by the State of New Jersey, the Department of Corrections.

As to the facility, I will not allow you to go into.

To the Judge's duties, certainly you can go into the fact that you make the decision, but the Judge ultimately imposes the sentence because we have already told them about that.

Subsection 6, confinement, isolation of prisoner, I would not allow you to go

1 the manner in which the defendant will be
2 executed with an intravenous injection.

3 However, insofar as -- I think I will
4 take each section at a time. The
5 definitions, I don't see what that has to
6 do with this part of the case.

7 I will allow you to comment upon the
8 intravenous injection. A lethal dose of
9 whatever it may be, but not to go into, as
10 in subparagraph two -- as to specifically
11 the procedure designated.

12 Insofar as imposition by Commissioner
13 given the authority, I will not allow you
14 to go into. Of course, you can comment it
15 will be done by the State of New Jersey,
16 the Department of Corrections.

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18 you to go into.

19 To the Judge's duties, certainly you
20 can go into the fact that you make the
21 decision, but the Judge ultimately imposes
22 the sentence because we have already told
23 them about that.

24 Subsection 6, confinement, isolation
25 of prisoner, I would not allow you to go

1 into that area because that's a matter of
2 security and not a matter of this phase of
3 the case.

4 In the other procedures with regard
5 to persons who may be present and
6 examination of the body and disposition of
7 body, that's procedural matters directed to
8 primarily the Commissioner and state
9 officials, not insofar as this part of the
10 case either, and, therefore, I will not
11 allow you to go into that.

12 Of course, paragraph ten won't apply
13 at all. It only applies to a female.

14 MR. BOVINO: You're saying paragraph
15 one, 2C:49-1 ---

16 THE COURT: Two -- excuse me. I'm
17 sorry.

18 MR. BOVINO: My offer of proof,
19 Judge, would be that the immediate
20 transportation down the death row, keeping
21 him in isolation, the anonymous nature of
22 the actual executioner, the execution being
23 held in a nonpublic place, attended by
24 certain witnesses who are anonymous, that's
25 my offer of proof.

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24 certain witnesses who are anonymous, that's
25 my offer of proof.

1 I think the Jury should know that
2 just as the Judge in the normal case, when
3 he sentences a person to prison, he has a
4 knowledge as to what the prison facilities
5 are like, what's available in prison
6 facilities, whether it be, say, maximum
7 security or minimum security, the programs
8 that are available, and he takes all those
9 factors into consideration in incorporating
10 the sentence.

11 THE COURT: That's your proffer.

12 MR. BOVINO: I think that catch-all
13 phrase any other reason would allow the
14 Jury to be aware of the fact as to how and
15 all the circumstances concerning --
16 surrounding the death penalty.

17 THE COURT: Any objection to that
18 proffer?

19 MR. DeFAZIO: I object to everything,
20 Judge. My objection on the record stands.
21 In fact, I am going to need time on this
22 because I want to see what authority there
23 is to allow all this.

24 THE COURT: What we will do is rather
25 than go any further, if you wish an

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23 is to allow all this.

24 THE COURT: What we will do is rather
25 than go any further, if you wish an

1 opportunity to see if you have any
2 authority ---

3 MR. DeFAZIO: I would like to know if
4 Mr. Bovino has any authority that allows
5 this to come in.

6 MR. BOVINO: The only authority I
7 have, Judge -- I seem to recall a case
8 where there was a person who testified he
9 was on death row and was a witness to an
10 execution. He was allowed to testify as to
11 how the execution takes place and ---

12 THE COURT: A New Jersey case?

13 MR. BOVINO: I'm not sure if it's a
14 Jersey case. I think it's a Supreme Court
15 case.

16 THE COURT: We will take a recess,
17 and we'll let the Jury retire to the
18 juryroom.

19 MR. BOVINO: It can't be a New Jersey
20 case. There's no New Jersey executions.
21 So, it would have to be Supreme Court.

22 THE COURT: Unless it was prior to.
23 (The hearing resumed in the presence
24 and hearing of the Jury.)

25 THE COURT: Ladies and gentlemen c:

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24 and hearing of the Jury.)

25 THE COURT: Ladies and gentlemen c:

1 the Jury, we'll take a recess at this time.

2 I'd ask the four Alternates to retire
3 to the room where you have been retiring
4 to, and the twelve other Jurors please go
5 with the Officers to the juryroom right
6 down the hall, just at the end of this
7 hall.

8 (Jury leaving courtroom at 11:50
9 a.m.)

10 (The hearing recessed for lunch and
11 then resumed, out of the presence of the
12 Jury.)

13 THE COURT: Good afternoon.

14 With the consent of Counsel, we broke
15 for lunch from twelve noon to 1 p.m., and
16 ordered lunch for the Jurors.
17 Unfortunately, the Jurors only received
18 their lunch about twenty minutes ago.

19 So, therefore, we'll proceed now with
20 any legal arguments, and then very shortly
21 we'll have the Jurors come back into the
22 courtroom to receive the summations.

23 Insofar as the question that is
24 before the Court at sidebar by Mr. Bovino,
25 that he wished to refer to the provisions

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3 to the room where you have been retiring
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22 courtroom to receive the summations.

23 Insofar as the question that is
24 before the Court at sidebar by Mr. Bovino,
25 that he wished to refer to the provisions

1 of N.J.S.A. 2C:49-1 through 10, first, I
2 have before me now my statute book, and I
3 think some of the titles are a little bit
4 different than might have been shown on the
5 copy that Mr. Bovino showed us.

6 I don't have it before me now, but I
7 think that -- such as, I believe, the
8 Subdivision 5. I think on mine it says
9 "Judge's Duties." The statute I am
10 referring to is "Warrant of Execution Date"
11 and 2C:49-10 indicates for a female, and
12 the title is a little bit different.
13 "Pregnant Person, Inquisition, Suspension
14 of Execution or Warrant."

15 In any event, insofar as that statute
16 is concerned, I want to make it clear my
17 ruling was that the attorney for the
18 defendant could comment in summation as to
19 the means with which the death penalty
20 would be carried out by the proper
21 authorities, meaning the use of an
22 intravenous administration of a legal
23 quantity of whatever is prescribed by law,
24 and the fact that the Jury would decide
25 whether the death penalty would or would

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21 authorities, meaning the use of an
22 intravenous administration of a legal
23 quantity of whatever is prescribed by law,
24 and the fact that the Jury would decide
25 whether the death penalty would or would

1 not be imposed, but the Court would, in
2 fact, be issuing the warrant.

3 Other than that, I want to make it
4 clear my ruling is that Mr. Bovino cannot
5 comment upon the provisions of the statute
6 to which Mr. Bovino referred and I
7 referred, regardless of the proffer that
8 Mr. Bovino gave after I made my ruling.

9 Is there anything further?

10 MR. BOVINO: No, Judge.

11 MR. DEFALIO: No, your Honor.

12 THE COURT: All right, gentlemen. I
13 think we should give the Jurors just a few
14 more minutes to finish their lunch.

15 I'd ask you if you would be good
16 enough to remain in the immediate vicinity
17 of the courtroom so we can proceed
18 promptly, and then we'll proceed with the
19 summations.

20 (The hearing recessed briefly and
21 then resumed.)

22 (Jury entering courtroom at 1:37
23 p.m.)

24 THE COURT: Good afternoon, ladies
25 and gentlemen. Poll the Jury, please.

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2 fact, be issuing the warrant.

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18 promptly, and then we'll proceed with the
19 summations.

20 (The hearing recessed briefly and
21 then resumed.)

22 (Jury entering courtroom at 1:37
23 p.m.)

24 THE COURT: Good afternoon, ladies
25 and gentlemen. Poll the Jury, please.

1 (Jury polled; all are present.)

2 MR. BOVINO: The defense rests,
3 Judge.

4 THE COURT: Mr. Bovino?

5 MR. BOVINO: May it please the Court,
6 Mr. Prosecutor, Madam Forelady, Ladies and
7 Gentlemen:

8 We're at the end of the road here, so
9 to speak. Twelve Jurors will now
10 deliberate and decide the life and death of
11 Leonard Stone. As I said yesterday and as
12 the Prosecutor said yesterday, we both fear
13 the result. I perhaps more than the State
14 because Leonard Stone's life is in my
15 hands.

16 I stand between him and the
17 executioner. I stand between him and life
18 imprisonment with not one chance of parole
19 until he serves thirty years.

20 2016, 2016 would be the first time he
21 would be considered for parole, and the
22 parole board can say no, you will stay in
23 prison. He is twenty-five years old.
24 Thirty years from now he is fifty five.
25 Some of you have seen that. Some of you

(Jury polled; all are present.)

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Thirty years from now he is fifty five.
Some of you have seen that. Some of you

will see that. You know what those
twenty-five or thirty years from
twenty-five to fifty five means. It is, in
fact, your life.

So, we now know that Leonard Stone
probably will die in jail, whether it be
through the act of God, the unknown day,
the unknown time when God will say, Leonard
Stone, you are coming home to pay for your
sin, to pay for the crime that the jury
said you committed or some day earlier. If
you Jurors say earlier, he will pay for the
murder sooner, and he will be wheeled into
a room and needles will be placed in his
arm to be put to death, and I ask you this
is enough death.

I regret -- I'm sorry that Mr.
McMillen died, and I equally regret Leonard
Stone facing the death penalty. I regret
having to ask you to save his life.

I treasure life. I think we all do.
We all want the good things in life. We
all want something finer in life.

When you decide this case now, this
part of the case, you as judges have the

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22 We all want the good things in life. We
23 all want something finer in life.

24 When you decide this case now, this
25 part of the case, you as judges have the

1 right to consider compassion, mercy,
2 sympathy, justice, fairness, and you must
3 decide not the fact that Mr. McMillen died.
4 That is beyond our decision at this point.
5 You must decide whether or not the State
6 has proved aggravating factors as to Mr.
7 Stone.

8 The State's thesis in the beginning
9 was this was a robbery and a murder
10 committed during that robbery, and you
11 Jurors have rendered a verdict of not
12 guilty on that theory. You rejected that
13 theory, but you found Mr. Stone guilty of
14 murder and robbery, and the State now says
15 that he committed this murder to avoid
16 detection on the robbery. You will decide
17 that.

18 Is that so? Do you believe? Are you
19 satisfied? Do you know what happened in
20 that room? You said a murder took place in
21 that room, but do you know the
22 circumstances? Are you sure? Are you
23 convinced beyond a reasonable doubt that
24 the only reason for this murder was the
25 robbery, then the attempt to escape or

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22 circumstances? Are you sure? Are you
23 convinced beyond a reasonable doubt that
24 the only reason for this murder was the
25 robbery, then the attempt to escape or

1 avoid detection?

2 Judge Harrington will tell you -- or
3 the other thesis submitted to you on Monday
4 was that you knew something more about this
5 case. There was more to this case and
6 relationships change, and that you had to
7 read between lines, and there was an attack
8 or a fury, a rage, whatever it was that the
9 Prosecutor said, words to that effect.

10 If that's what you found yesterday in
11 your verdict, then I submit to you that the
12 aggravating factor that the State must
13 prove beyond a reasonable doubt, before you
14 even consider -- before you even consider
15 whether he should live or die, if you find
16 or if you found that this death was caused
17 by a fury or rage, and I submit to you that
18 your verdict really is one where the person
19 did not have time to deliberate and he was
20 blinded, he was in such a rage where it
21 happened and it happens simultaneously,
22 two, three or four, five, six blows in a
23 matter of seconds, the State says that this
24 is a wantonly vile torture.

25 Any evidence of what torture is? I

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25 Any evidence of what torture is? I

1 don't know what torture is. You have to
2 decide as judges. There may be twelve
3 definitions of torture. Maybe Judge
4 Harrington will tell you what torture is.
5 I don't know.

6 I submit to you, as Dr. Natarajan
7 said, there were five wounds, undisputed,
8 six wounds, counting the one to the neck,
9 but any one of those five wounds could have
10 rendered Mr. McMillen unconscious.
11 Torture. He would have aspirated in time,
12 over a -- whatever period of time that
13 might be.

14 You can't accept -- I say to you that
15 you can't accept that this was an act of
16 torture where Mr. Stone hit Mr. McMillen,
17 tortured him by hitting him again a second
18 time after some prolonged period of time.

19 I would say it -- submit to you that
20 the rage that the Prosecutor spoke about
21 yesterday, if that's what you found, would
22 mean that the blows were administered
23 quickly and death over a period of time. -
24 short period of time, whatever period of
25 time Dr. Natarajan said it would be, -

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25 time Dr. Natarajan said it would be.

1 swift, unconscious, was swift and
2 immediate.

3 After you determine -- if you
4 determine that those aggravating factors
5 exist, Judge Harrington will tell you that
6 you must then balance -- somehow you must
7 balance, how you weigh, what you weigh,
8 what value you give to them.

9 Are they pounds or ounces or points
10 or whatever. I don't know how you are
11 going to do that, but you must weigh each
12 aggravating factor against the mitigating
13 factors.

14 Mitigating factor being Mr. Stone's
15 young age, twenty-five years of age, with
16 no prior substantial criminal record.
17 We've heard about it ad nauseam, that he
18 was convicted of a gun in 1982, and he
19 pleaded guilty because he was guilty, and
20 that doesn't mean that he deserves death
21 now because he was in possession of a gun
22 in 1982.

23 You can consider anything else that
24 you feel is important to go to his
25 background or his character or any reason

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why he should live, any reason.

You may consider the testimony of Georgia James. Georgia James is a friend that Mr. Stone has developed over the past year or so, two years, and I wish I could bring in a priest to ask for mercy, a schoolteacher to ask for mercy, but we don't live in that type of world. We bring in the person who knows him and has some understanding of him.

She says he is a good person. He's not a bad person. He may have problems which may be addressed. We don't know what those problems are, but she was satisfied that when Leonard Stone introduced himself to her children down at the school yard lifting weights, whatever it was, he was a good person.

What happened? I don't know. I'm not here to attack what happened. I am only here to ask you for his life, and Mrs. James was satisfied that he was a good influence on her children, on her middle son who was fourteen years of age, and would talk to him, take him out bowling,

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22 James was satisfied that he was a good
23 influence on her children, on her middle
24 son who was fourteen years of age, and
25 would talk to him, take him out bowling.

1 don't get involved in drugs or whatever,
2 and she adopted him into her family.

3 We don't know everything about
4 Leonard Stone. Mr. Stone has told us
5 something about himself. You could accept
6 it or reject it. We don't know everything
7 about his background in this short period
8 of time that you can decide he's a good or
9 bad person, he deserves to die because he's
10 a bad person, because of something that may
11 have happened in his life. We know he is a
12 person.

13 We have his mother who comes into
14 court. One of the saddest facts of life is
15 to bury a child, to see your son at any
16 age, your daughter at any age, to be buried
17 by a parent. It's one of the worst
18 feelings in the world. Mrs. Stone says she
19 has lost four children, and she now may
20 have to plan to bury a fifth.

21 She doesn't want her son to die. She
22 loves her son. She will support her son
23 for whatever period of time you extend his
24 life by, whether it be thirty years, and if
25 she lives thirty years, she will support

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16 age, your daughter at any age, to be buried
17 by a parent. It's one of the worst
18 feelings in the world. Mrs. Stone says she
19 has lost four children, and she now may
20 have to plan to bury a fifth.

21 She doesn't want her son to die. She
22 loves her son. She will support her son
23 for whatever period of time you extend his
24 life by, whether it be thirty years, and if
25 she lives thirty years, she will support

1 him for thirty years, but she asks you to
2 not let her bury that child. Don't let her
3 make plans for the death of this child.

4 The sister comes in. She loves him.
5 There is no question she loves him. She
6 wants you to save his life. She doesn't
7 want you to kill him. I don't think she is
8 sitting up on that chair crying because she
9 wants to put you on or go over on you.
10 She's there on that chair because she loves
11 him. Whatever he is, whatever he did, she
12 loves him, and she asks you to not
13 surrender that mercy, that compassion, that
14 sympathy, that any person who comes before
15 this bench, before that Judge, or you
16 judges, would want to show.

17 We don't want revenge. We don't want
18 vengeance. We want -- I want your mercy.
19 I want your compassion. I want you to save
20 his life. Being in prison for life without
21 eligibility for thirty years is a long,
22 long time.

23 Prison is not a piece of cake. It's
24 no bed of roses. Perhaps death is
25 merciful. Perhaps I could say that I know

1 him for thirty years, but she asks you to
2 not let her bury that child. Don't let her
3 wake plans for the death of this child.

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24 no bed of roses. Perhaps death is
25 merciful. Perhaps I could say that I know

1 I'm going to die, I don't have to live
2 behind these walls of concrete and bars,
3 but life at any cost is better than no life
4 at all. I'd rather face life knowing I am
5 getting up tomorrow morning or hoping I am
6 getting up tomorrow morning than I am going
7 to sleep tonight and never get up. I don't
8 know what waits for me when I don't get up.

9 We will prolong life at any cost. We
10 prolong Leonard Stone's life even if you
11 were to decide the death penalty. You will
12 prolong his life. The State will prolong
13 his life so they can take their judgment.
14 They will not let Mr. Stone die prior to
15 the day that is fixed by the judgment, if
16 your judgment is death.

17 If he decides to go on a hunger
18 strike, if he decides to hang up and exit
19 by suicide, they will stop him so that he
20 can die when they say, when the State says
21 you will die, Leonard Stone. You will not
22 die a day before you are planned to die.
23 You will wait for death.

24 It's not a pleasant task, I think.
25 that you are going to have to face, and

1 I'm going to die, I don't have to live
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1 think you Jurors realized when you went
2 into vote the first day on Monday that it
3 doesn't come easy. Perhaps you were split
4 as to your decision initially. Perhaps one
5 or two of you changed your mind, and that's
6 because Judge Harrington told you that you
7 must as Jurors deliberate, and reconcile to
8 render a verdict, a unanimous verdict, but
9 now that's different.

10 One of you, just one of you, one of
11 you has a voice to not go along with the
12 eleven, to not say death. Any one of you
13 who has the conscious conviction to stick
14 to your position and say I am not satisfied
15 that the State should take this person's
16 life will halt the process.

17 That is your verdict. If your
18 verdict is eleven to one or eleven and
19 three-quarters to a quarter or eleven and
20 nine-tenths to one-tenth, that one-tenth of
21 your conscious, that one-tenth of your
22 heart that says I want to give Leonard
23 Stone, Mrs. Stone, something to live for, I
24 am not satisfied, I am not confident,
25 perhaps there is a mistake, if there is a

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1 mistake we can fix the verdict, if there
2 was a mistake, but once the mistake is
3 carried through and death is the final act,
4 there is no reclamation, there is no
5 rehabilitation of the death.

6 So, any one of you, any single one of
7 you twelve that deliberate, you merely have
8 to say I am not satisfied, Mr. State. I
9 will not sentence this man to death. I
10 will not deliver him to the executioner to
11 be put to sleep and then the needles to be
12 injected and killed. One of you can just
13 stand back, stand up for your opinion, and
14 your verdict is less than unanimous, and
15 Leonard Stone lives to serve a prison
16 sentence of life.

17 During this case this morning, you
18 heard Mr. Stone -- Mr. Stone gets on the
19 stand, and he makes accusations. He's an
20 angry person. As I said to you yesterday,
21 it's difficult to come back, and I have
22 been defeated. I have been. I have lost
23 to the State, and that is a loss, but I, as
24 an advocate, I as an adversary, am not
25 personally involved in it, but Mr. Stone is

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23 to the State, and that is a loss, but I, as
24 an advocate, I as an adversary, am not
25 personally involved in it, but Mr. Stone is

1 a party. He is a loser. There is a
2 winner, and there is a loser.

3 He has lost, and he is not happy,
4 because he says in his heart -- he knows he
5 is innocent, and he's saying if I was in a
6 better position, I could have had a
7 different lawyer, and he may be right. I
8 may not be the best lawyer. I may not have
9 done what he said I should have done, but I
10 am not on trial. Mr. Stone is on trial.

11 He gets on that stand and perhaps
12 he's angry, perhaps you may interpret his
13 position to be not sympathetic or whatever.
14 You expected him to react differently. He
15 should react differently.

16 How would you react? How do you
17 react when you are rightfully wronged? If
18 you feel you are innocent, if you feel
19 somebody has wrongfully accused you and you
20 are being condemned for that, how do you
21 react? Do you sit back and take it? Do
22 you say, fine, I'll just go along or do you
23 come back and say you are making a mistake?

24 I will accept your verdict. You
25 people did what you had to do on the

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24 I will accept your verdict. You
25 people did what you had to do on the

1 verdict, but he says I was not given a fair
2 trial. He may be right. He may say in his
3 mind, and he may feel in his heart, I have
4 been wronged because of the State, because
5 of my lawyer, because of my
6 lawyer-investigator, whatever it is.

7 I'm not going to be here to -- I'm
8 not here to seek your comfort or solace. I
9 am here to represent him as best I can. I
10 hope I did what was right for him. If I
11 didn't, it will be reviewed by somebody
12 else, not by me.

13 I forgive him. He's desperate. He's
14 depressed. He lashes out at me. I'll take
15 it. I'll take his blame. I'll take his
16 heat. I forgive him. I'm not mad at him.
17 I will go on tomorrow. I will go home. If
18 the good Lord provides, I will see my
19 family, but Mr. Stone will never be put in
20 a position to get out of prison at least
21 for thirty years and perhaps longer. So,
22 he can't react the way you want him to
23 react.

24 How would you react? You can't tell
25 how you would react because you have never

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24 How would you react? You can't tell
25 how you would react because you have never

1 been in his shoes. You haven't walked
2 there. If you haven't walked in the
3 person's shoes, don't say how you would
4 react. It's difficult.

5 I ask you that the mitigating factors
6 are such here that there is something good
7 in Leonard Stone. He's not an evil person.
8 He's not a bad person. He doesn't deserve
9 to die.

10 Is death the only alternative? Life
11 imprisonment is an alternative, and I think
12 that's a reasonable alternative, and I ask
13 you to spare his life regardless of how you
14 feel about him.

15 As judges, you have the discretion,
16 you have the right to say whatever you wish
17 to say. Stand up for that right and
18 enforce that right. Save Leonard Stone.
19 Save him for our sake, for the sake of
20 society. Don't condemn him. Don't put him
21 to death. Save him so that Mrs. Stone and
22 Joanne for the balance of their lives will
23 have a son and a brother to talk to, and
24 his life because there's something good
25 perhaps that can be saved and should be

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23 have a son and a brother to talk to, save
24 his life because there's something good
25 perhaps that can be saved and should be

1 saved.

2 I would ask you to find that the
3 mitigating factors exist, and Leonard Stone
4 should not be put to death.

5 Thank you.

6 THE COURT: Mr. DeFazio?

7 MR. DeFAZIO: Your Honor, Judge
8 Harrington, Mr. Bovino, Ladies and
9 Gentlemen of the Jury:

10 We reach this stage in this
11 proceeding not due to anything that the
12 State has done, but due to what the
13 defendant in this case did on October 1,
14 1985, and we're at this stage because he
15 was convicted by you of murder, purposeful
16 and knowing murder by his own hand, by his
17 own conduct, convicted of robbery by you,
18 and he's convicted of the weapons'
19 offenses. That's what brings us here now.

20 I have been an Assistant Prosecutor
21 for seven years, and I'm a lucky man,
22 because I love my job. Sometimes it's
23 difficult to avoid letting personalities
24 become involved in what you have to do.
25 Yesterday an attorney asked me -- he

1 saved.

2 I would ask you to find that the
3 mitigating factors exist, and Leonard Stone
4 should not be put to death.

5 Thank you.

6 THE COURT: Mr. DeFazio?

7 MR. DeFAZIO: Your Honor, Judge
8 Harrington, Mr. Bovino, Ladies and
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21 for seven years, and I'm a lucky man,
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23 difficult to avoid letting personalities
24 become involved in what you have to do.

25 Yesterday an attorney asked me -- he

1 said what do you think? What do you think?
2 What's the Jury gonna do? I said I don't
3 know personally. Personally, I don't know.
4 Legally, I said, I know what they have to
5 do, because, you see, ladies and gentlemen,
6 what we are talking about here is this.

7 The Legislature in this State, the
8 law in this State, is that if you are
9 convicted of murder under certain
10 circumstances, there are two choices --
11 life with thirty years without parole and
12 death. Those are the choices.

13 Your decision is not is thirty years
14 in jail enough. That's not your decision,
15 because it's easy to say. It's easy for
16 anybody to think, including the State, when
17 you hear that thirty years, that that's
18 enough.

19 You see, what you have to do now is
20 follow the law, and the law says that you
21 have to determine whether there are
22 aggravating factors, and if you determine
23 that these aggravating factors exist, you
24 have to weigh them against the mitigating
25 factors. That's the law.

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 22 aggravating factors, and if you determine
 23 that these aggravating factors exist, you
 24 have to weigh them against the mitigating
 25 factors. That's the law.

1 That's your task, and it's not easy,
 2 and it doesn't involve, and it shouldn't
 3 involve, and it's going to be so difficult
 4 to prevent personal feelings from getting
 5 involved. Very difficult. Very difficult.

6 I thought about what I was going to
 7 say to you yesterday, and I've changed my
 8 mind. I was going to read from the autopsy
 9 report of Dr. Natarajan. I'm not going to
 10 do it. You heard what she had to say. You
 11 heard what happened to Mr. McMillen on
 12 October 1, 1985, and it was savage, and it
 13 was brutal, and it's not pretty, and it's
 14 not neat.

15 You think, ladies and gentlemen, just
 16 think, take your time when the time
 17 comes -- you think about somebody taking
 18 that ax and actually thrusting it into
 19 somebody's face, not once, not twice, five
 20 times, face, skull being crushed by that
 21 hatchet.

22 You determine whether that evidence
 23 is some sort of depravity of mind. You
 24 have to decide that. You will see the
 25 pictures. You heard the testimony, and you

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21 hatchet.

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23 is some sort of depravity of mind. You
24 have to decide that. You will see the
25 pictures. You heard the testimony, and you

1 decide whether that is an aggravated
2 battery or an aggravated assault upon the
3 person of Mr. McMillen as he lay in his
4 bed.

5 No defensive wounds. You determine
6 the nature of that attack, the ferocity of
7 that attack with the choke mark on the
8 neck, the handle holding him down.

9 I don't know whether that happened
10 first or last or whenever, but whenever it
11 happened, it exhibits that the man who did
12 this is capable of extraordinary savagery
13 and brutality, and it evidences a depraved
14 mind.

15 The State, most respectfully submits,
16 that you must find that that aggravating
17 factor should be in existence based on the
18 evidence, based on what you heard and the
19 objects you are going to view. I am not
20 going to wave the ax around. You've seen
21 it. That's enough said about that.

22 The second aggravating factor alleged
23 is that the murder was committed to avoid
24 detection or apprehension on another
25 offense.

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2 battery or an aggravated assault upon the
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20 going to wave the ax around. You've seen
21 it. That's enough said about that.

22 The second aggravating factor alleged
23 is that the murder was committed to avoid
24 detection or apprehension on another
25 offense.

1 Ladies and gentlemen, I do not
2 presume, the State does not presume, to
3 know and could never know what you people
4 thought when you deliberated. We don't
5 know. Mr. Bovino doesn't know. I do know
6 this. You found Mr. Stone guilty beyond a
7 reasonable doubt of robbery, and that
8 robbery occurred on October 1, 1985.

9 If you commit an offense like that
10 upon somebody you know and the relationship
11 between these men is undisputed, it follows
12 that one of the reasons why you would have
13 to kill him would be to cover it up.

14 All you have to do, ladies and
15 gentlemen, is find that one of the reasons
16 for this was to avoid detection. It
17 doesn't have to be the only reason. That
18 is not the law. Mr. Bovino misspoke when
19 he said that.

20 MR. BOVINO: Judge, objection as to
21 what I misspoke about the law. The Court
22 will give the law, not me and not the
23 Prosecutor.

24 THE COURT: Come to sidebar.

25 MR. DeFAZIO: Judge ---

Ladies and gentlemen, I do not presume, the State does not presume, to know and could never know what you people thought when you deliberated. We don't know. Mr. Bovino doesn't know. I do know this. You found Mr. Stone guilty beyond a reasonable doubt of robbery, and that robbery occurred on October 1, 1985.

If you commit an offense like that upon somebody you know and the relationship between these men is undisputed, it follows that one of the reasons why you would have to kill him would be to cover it up.

All you have to do, ladies and gentlemen, is find that one of the reasons for this was to avoid detection. It doesn't have to be the only reason. That is not the law. Mr. Bovino misspoke when he said that.

MR. BOVINO: Judge, objection as to what I misspoke about the law. The Court will give the law, not me and not the Prosecutor.

THE COURT: Come to sidebar.

MR. DeFAZIO: Judge ---

THE COURT: Do you wish to continue?

MR. DeFAZIO: I'll continue.

MR. BOVINO: Judge, can we have a sidebar?

THE COURT: Yes, you may.

(The following occurred in the presence of, but out of the hearing of the Jury.)

THE COURT: Mr. Bovino?

MR. BOVINO: Judge, if I misspoke about the law, I don't want the Prosecutor to give his version of the law. I assume the same charge -- summation I gave the other day, I said I don't give the law. The Court gives the law. I don't want the Prosecutor to correct me as to what the law is. I object that I misspoke the law.

MR. DeFAZIO: I don't know why we had to come over to sidebar for that, Judge. I was prepared to continue.

MR. BOVINO: I didn't know what you were going to say.

MR. DeFAZIO: Mr. Bovino opened it. He was the one who started giving them the law.

1 THE COURT: Do you wish to continue?

2 MR. DeFAZIO: I'll continue.

3 MR. BOVINO: Judge, can we have a
4 sidebar?

5 THE COURT: Yes, you may.

6 (The following occurred in the
7 presence of, but out of the hearing of the
8 Jury.)

9 THE COURT: Mr. Bovino?

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18 MR. DeFAZIO: I don't know why we had
19 to come over to sidebar for that, Judge. I
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21 MR. BOVINO: I didn't know what you
22 were going to say.

23 MR. DeFAZIO: Mr. Bovino opened it.
24 He was the one who started giving them the
25 law.

1 THE COURT: All right. Just a
2 minute. What is it, Mr. Bovino?
3 MR. BOVINO: If I opened up
4 something, that doesn't mean that you
5 retaliate by doing something which is
6 equally wrong as what you allege I did. If
7 I did open it up, and I don't say I opened
8 up anything, the Court will give the law.

9 That was my objection. I didn't know
10 what the Prosecutor was going to say, and I
11 can't rely on him saying anything else,
12 that he was going to go on now. Maybe he
13 was going to give a curative instruction at
14 that point as to something else I did
15 wrong. I wanted to be heard at sidebar.

16 THE COURT: Mr. DeFazio, you may
17 proceed, please.

18 (The hearing resumed in the presence
19 and hearing of the Jury.)

20 THE COURT: Proceed, Mr. DeFazio.

21 MR. DeFAZIO: The State submits that
22 the aggravating factors alleged in this
23 case, unfortunately for the defendant, do
24 exist.

25 The mitigating factors? Do you

1 THE COURT: All right. Just a
2 minute. What is it, Mr. Bovino?

3 MR. BOVINO: If I opened up
4 something, that doesn't mean that you
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14 that point as to something else I did
15 wrong. I wanted to be heard at sidebar.

16 THE COURT: Mr. DeFazio, you may
17 proceed, please.

18 (The hearing resumed in the presence
19 and hearing of the Jury.)

20 THE COURT: Proceed, Mr. DeFazio.

21 MR. DeFAZIO: The State submits that
22 the aggravating factors alleged in this
23 case, unfortunately for the defendant, do
24 exist.

25 The mitigating factors? Do you

1 ladies and gentlemen believe that the fact
2 that this defendant is twenty-five years
3 old is a mitigating factor? This is no kid
4 we are dealing with here. This is a man.
5 This is a man who knows what's going on.
6 This is a man who knows about life. This
7 is no child.

8 Can any of you truly say the fact
9 that he is twenty-five years old is a
10 mitigating factor? By twenty-five years
11 old, don't we know better? Hasn't the time
12 come that you accept responsibility for
13 your actions? The State submits that that
14 is not a mitigating factor in this case.

15 It also turns out the defendant does
16 have a criminal conviction from the State
17 of New York for a felony for which he was
18 sentenced to jail. He's been through the
19 system. He's not a first offender. He
20 knows what it's all about. He knows.

21 What can I say about his family? I
22 can't say anything. They love him, like a
23 mother will always love her son no matter
24 what he does. His sister, she loves him,
25 too. I believe that they were sincere and

1 ladies and gentlemen believe that the fact
2 that this defendant is twenty-five years
3 old is a mitigating factor? This is no kid
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17 of New York for a felony for which he was
18 sentenced to jail. He's been through the
19 system. He's not a first offender. He
20 knows what it's all about. He knows.

21 What can I say about his family? I
22 can't say anything. They love him, like a
23 mother will always love her son no matter
24 what he does. His sister, she loves him,
25 too. I believe that they were sincere and

1 honest people.

2 That's what I mean by personalities.
3 What can we logically expect from his
4 family? Of course they don't want to see
5 him die. Of course not, but we have to
6 supersede that. We have to come over that.
7 We have to follow the law and try to remain
8 fair and impartial.

9 We heard from Mr. Stone again. You
10 saw him. The State submits that this was
11 not the first time that he was angry. He's
12 been angry before. It wasn't only to do
13 with this conviction that was properly and
14 justly brought by each of you. There's a
15 lot more to the anger in that man.

16 I'm no doctor. I'm no psychologist.
17 I don't think any of you are either, but
18 there was a lot more to that than being
19 depressed about his conviction for murder.
20 The same as all of you cannot let
21 personalities, not let your personal
22 feelings interfere, neither can I despite
23 things that were said.

24 You people will have to make the
25 decision, and it is, and will be, the most

1 honest people.

2 That's what I mean by personalities.
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4 family? Of course they don't want to see
5 him die. Of course not, but we have to
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18 there was a lot more to that than being
19 depressed about his conviction for murder.
20 The same as all of you cannot let
21 personalities, not let your personal
22 feelings interfere, neither can I despite
23 things that were said.

24 You people will have to make the
25 decision, and it is, and will be, the most

1 difficult decision you will have to make
2 because the State has proved that
3 aggravating factors exist, and there really
4 aren't -- really there are not any of the
5 mitigating factors.

6 If you follow the law, there is no
7 choice. You will be doing what is
8 required, what is just and what is right
9 for the State and for the victim, a
10 61-year-old victim who suffered.

11 If you do that and you follow the
12 law, there will be no other decision than
13 Mr. Stone having to be executed according
14 to law by the State of New Jersey.

15 Thank you.

16 THE COURT: Ladies and gentlemen of
17 the Jury, you must now decide what penalty
18 is to be imposed on the defendant Leonard
19 Stone, also known as Joshua Leonard, for
20 his conviction of murder.

21 As I have explained to you earlier,
22 you must decide whether the defendant is to
23 be sentenced to death or sentenced by me to
24 a term of years between thirty years or
25 life imprisonment of which thirty years

1 difficult decision you will have to make
2 because the State has proved that
3 aggravating factors exist, and there really
4 aren't -- really there are not any of the
5 mitigating factors.

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7 choice. You will be doing what is
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12 law, there will be no other decision than
13 Mr. Stone having to be executed according
14 to law by the State of New Jersey.

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16 THE COURT: Ladies and gentlemen of
17 the Jury, you must now decide what penalty
18 is to be imposed on the defendant Leonard
19 Stone, also known as Joshua Leonard, for
20 his conviction of murder.

21 As I have explained to you earlier,
22 you must decide whether the defendant is to
23 be sentenced to death or sentenced by me to
24 a term of years between thirty years or
25 life imprisonment of which thirty years

1 must be served before the defendant is
2 eligible for parole.

3 Your decision is based upon your
4 consideration of what are called
5 aggravating and mitigating factors.

6 As a general proposition, aggravating
7 factors are those which would tend toward
8 imposing the death penalty, and mitigating
9 factors are those which would tend towards
10 the sentence of between thirty years and
11 life of which thirty years must be served
12 before the defendant is eligible for
13 parole.

14 The factors have to be both with the
15 circumstances of the crime and the personal
16 traits, qualities and background of the
17 defendant. The ultimate burden rests upon
18 the State to convince you that the death
19 penalty is fitting and appropriate
20 punishment in this case.

21 The State alleges the following
22 aggravating factors as enumerated by the
23 Legislature exist in this case:

24 Firstly, that the murder was
25 outrageously or wantonly vile, horrible or

1 must be served before the defendant is
2 eligible for parole.

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4 consideration of what are called
5 aggravating and mitigating factors.

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7 factors are those which would tend toward
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16 traits, qualities and background of the
17 defendant. The ultimate burden rests upon
18 the State to convince you that the death
19 penalty is fitting and appropriate
20 punishment in this case.

21 The State alleges the following
22 aggravating factors as enumerated by the
23 Legislature exist in this case:

24 Firstly, that the murder was
25 outrageously or wantonly vile, horrible or

1 inhuman in that it involved torture,
2 depravity of mind or an aggravated battery
3 to the victim, and, secondly, that the
4 murder was committed for the purpose of
5 escaping detection, apprehension, trial,
6 punishment, or confinement for another
7 offense committed by the defendant or
8 another.

9 After listening to and then
10 considering the proofs concerning these
11 aggravating factors, you may not find that
12 either exists unless you are satisfied that
13 it does beyond a reasonable doubt.

14 Insofar as the first aggravating
15 factor which I have just mentioned,
16 although murder may be viewed as vile,
17 horrible or inhuman, this does not mean
18 that there is an automatic aggravating
19 factor in the case of murder.

20 What is necessary is that the State
21 prove that the attack by the defendant,
22 Leonard Stone, on the victim Clarence
23 McMillen, involved either torture or
24 conducting -- strike that -- or conduct
25 indicating a depraved mind or that the

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2 depravity of mind or an aggravated battery
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5 escaping detection, apprehension, trial,
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7 offense committed by the defendant or
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19 factor in the case of murder.

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21 prove that the attack by the defendant,
22 Leonard Stone, on the victim Clarence
23 McMillen, involved either torture or
24 conducting -- strike that -- or conduct
25 indicating a depraved mind or that the

1 attack was so savagely brutal or
2 outrageously cruel and violent that the
3 adjectives wantonly vile or horrible or
4 inhuman are justified. You must be
5 satisfied that such conduct was present
6 beyond a reasonable doubt.

7 As I explained to you in the prior
8 phase of the case, a reasonable doubt is a
9 doubt based on reason. It is not a doubt
10 based on guesswork or speculation. It is
11 not a possible or imaginary doubt.
12 Everything relating to human affairs is
13 open to some possible or imaginary doubt.

14 Insofar as proof in a criminal case
15 is concerned, the law does not require
16 absolute certainty. It does require proof
17 beyond a reasonable doubt. A reasonable
18 doubt is an honest and reasonable
19 uncertainty as to the existence of an
20 aggravating factor which you have after you
21 have given full and impartial consideration
22 to all the evidence bearing on that factor.

23 A reasonable doubt may arise from
24 something contained in the evidence or it
25 may arise from a lack of evidence. It is a

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2 outrageously cruel and violent that the
3 adjectives wantonly vile or horrible or
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17 beyond a reasonable doubt. A reasonable
18 doubt is an honest and reasonable
19 uncertainty as to the existence of an
20 aggravating factor which you have after you
21 have given full and impartial consideration
22 to all the evidence bearing on that factor.

23 A reasonable doubt may arise from
24 something contained in the evidence or it
25 may arise from a lack of evidence. It is a

1 doubt which a reasonable, thinking person
2 has after a careful weighing of all of the
3 evidence.

4 Therefore, if, after giving full and
5 impartial consideration to all the evidence
6 bearing on a particular aggravating factor,
7 you have a reasonable doubt as to its
8 existence, you should check no on the
9 verdict form provided by the Court. If you
10 are satisfied that such aggravating factor
11 exists and are satisfied beyond a
12 reasonable doubt, you may check yes in the
13 appropriate box or line.

14 The defense has advanced the
15 following mitigating factors in accordance
16 with the listing of them in the criminal
17 code:

18 Firstly, at the time of the incident
19 the defendant was twenty-five years of age;
20 secondly, the defendant has no significant
21 history of prior criminal activity;
22 thirdly, any other factor which may be
23 relevant to the defendant's character or
24 record or to the circumstances of the
25 offense.

doubt which a reasonable, thinking person has after a careful weighing of all of the evidence.

Therefore, if, after giving full and impartial consideration to all the evidence bearing on a particular aggravating factor, you have a reasonable doubt as to its existence, you should check no on the verdict form provided by the Court. If you are satisfied that such aggravating factor exists and are satisfied beyond a reasonable doubt, you may check yes in the appropriate box or line.

The defense has advanced the following mitigating factors in accordance with the listing of them in the criminal code:

Firstly, at the time of the incident the defendant was twenty-five years of age; secondly, the defendant has no significant history of prior criminal activity; thirdly, any other factor which may be relevant to the defendant's character or record or to the circumstances of the offense.

As to mitigating factors, as distinguished from aggravating factors, they do not have to be proved beyond a reasonable doubt. So long as you are satisfied from all of the believable and acceptable evidence that a mitigating factor exists, you should check yes alongside it on the verdict sheet. If you are not satisfied that it does exist, check no.

If you find that the State has not proved either aggravating factor beyond a reasonable doubt, check the verdict sheet accordingly, knock on the courtroom door and through your Foreperson announce those facts as your verdict in open court. In that event, the sentence will be a term of years between thirty years and life imprisonment of which thirty years must be served before the defendant is eligible for parole.

If you find that the State has proved at least one aggravating factor beyond a reasonable doubt, but are not satisfied to the existence of any mitigating factor,

As to mitigating factors, as distinguished from aggravating factors, they do not have to be proved beyond a reasonable doubt. So long as you are satisfied from all of the believable and acceptable evidence that a mitigating factor exists, you should check yes alongside it on the verdict sheet. If you are not satisfied that it does exist, check no.

If you find that the State has not proved either aggravating factor beyond a reasonable doubt, check the verdict sheet accordingly, knock on the courtroom door and through your Foreperson announce those facts as your verdict in open court. In that event, the sentence will be a term of years between thirty years and life imprisonment of which thirty years must be served before the defendant is eligible for parole.

If you find that the State has proved at least one aggravating factor beyond a reasonable doubt, but are not satisfied to the existence of any mitigating factor,

check the verdict sheet accordingly and through your Foreperson announce those facts as your verdict. In that event, the sentence will be death.

If you find that at least one aggravating factor has been proved and at least one mitigating factor exists, then you must weigh the value represented by the mitigating factor or factors against the value represented by each aggravating factor proved and check on the verdict sheet where, in your judgment, each aggravating factor is or is not outweighed by the mitigating factor or factors found to exist.

If you find the aggravating factors outweigh beyond a reasonable doubt all the mitigating factors, the sentence will be death. If the mitigating factors are not weighed -- strike that -- if the mitigating factors are not outweighed beyond a reasonable doubt or you cannot reach a unanimous verdict, the sentence will be a term of years between thirty years and life imprisonment of which thirty years must be

1 check the verdict sheet accordingly and
2 through your Foreperson announce those
3 facts as your verdict. In that event, the
4 sentence will be death.

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6 aggravating factor has been proved and at
7 least one mitigating factor exists, then
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13 aggravating factor is or is not outweighed
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17 outweigh beyond a reasonable doubt all the
18 mitigating factors, the sentence will be
19 death. If the mitigating factors are not
20 weighed -- strike that -- if the mitigating
21 factors are not outweighed beyond a
22 reasonable doubt or you cannot reach a
23 unanimous verdict, the sentence will be a
24 term of years between thirty years and life
25 imprisonment of which thirty years must be

1 served before the defendant is eligible for
2 parole.

3 This weighing process is not
4 mechanical or numerical. If, for example,
5 you find one aggravating factor and three
6 mitigating factors, that does not justify
7 an automatic answer to the weighing process
8 required. The answer does depend on your
9 careful and considered judgment as to
10 whether the mitigating factor or factors as
11 you evaluate them favor the defendant to
12 the extent that they outweigh the gravity
13 of the aggravating factor or factors.

14 Ladies and gentlemen, I have prepared
15 a verdict sheet, and I'd like to go over it
16 with you now, and I would ask the Officer
17 if you would be good enough to give each
18 Juror -- each of the sixteen Jurors a copy
19 and give this original to the Madam
20 Forelady and a copy to each of the Jurors.
21 please.

22 Ladies and gentlemen, if I may, I
23 would like to read down the verdict sheet
24 with you.

25 First entitled "Aggravating Factors."

1 served before the defendant is eligible for
2 parole.

3 This weighing process is not
4 mechanical or numerical. If, for example,
5 you find one aggravating factor and three
6 mitigating factors, that does not justify
7 an automatic answer to the weighing process
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17 if you would be good enough to give each
18 Juror -- each of the sixteen Jurors a copy
19 and give this original to the Madam
20 Forelady and a copy to each of the Jurors.
21 please.

22 Ladies and gentlemen, if I may, I
23 would like to read down the verdict sheet
24 with you.

25 First entitled "Aggravating Factors,"

1 page 1.

2 Do you unanimously find beyond a
3 reasonable doubt that any of the following
4 aggravating factors exist? Check the
5 appropriate answer.

6 1. The murder was outrageously or
7 wantonly vile, horrible or inhuman in that
8 it involved torture, depravity of mind or
9 an aggravated battery to the victim.

10 Yes or no.

11 2. The murder was committed for the
12 purpose of escaping detection,
13 apprehension, trial, punishment or
14 confinement for another offense committed
15 by the defendant or another.

16 Yes or no.

17 If all of the above are checked no,
18 proceed no further, but return this verdict
19 sheet to the Court as your verdict in the
20 case, signed by your Foreperson. The
21 penalty imposed by the Court will be life
22 imprisonment with no parole eligibility for
23 thirty years.

24 If any of the above answers or either
25 of the above answers are yes, then answer

page 1.

Do you unanimously find beyond a reasonable doubt that any of the following aggravating factors exist? Check the appropriate answer.

1. The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim.

Yes or no.

2. The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by the defendant or another.

Yes or no.

If all of the above are checked no, proceed no further, but return this verdict sheet to the Court as your verdict in the case, signed by your Foreperson. The penalty imposed by the Court will be life imprisonment with no parole eligibility for thirty years.

If any of the above answers or either of the above answers are yes, then answer

the following.

Please go to page 2 entitled, "Mitigating Factors."

Do you find that any of the following exists as mitigating factors? Check the appropriate answer.

1. At the time of the incident the defendant was twenty-five years of age.

Yes or no.

2. The defendant has no significant history of prior criminal activity.

Yes or no.

3. Any other factor which may be relevant to the defendant's character or record or to the circumstances of the offense.

Yes or no.

If you have checked at least one aggravating factor yes and have checked all the above mitigating factors no, proceed no further, but return this verdict sheet to the Court as your verdict in this case, signed by the Foreperson. The penalty imposed by the Court will then be death.

Now go to page 3, please.

the following.

Please go to page 2 entitled,
"Mitigating Factors."

Do you find that any of the following
exists as mitigating factors? Check the
appropriate answer.

1. At the time of the incident the
defendant was twenty-five years of age.

Yes or no.

2. The defendant has no significant
history of prior criminal activity.

Yes or no.

3. Any other factor which may be
relevant to the defendant's character or
record or to the circumstances of the
offense.

Yes or no.

If you have checked at least one
aggravating factor yes and have checked all
the above mitigating factors no, proceed no
further, but return this verdict sheet to
the Court as your verdict in this case,
signed by the Foreperson. The penalty
imposed by the Court will then be death.

Now go to page 3, please.

If you have checked one or more
aggravating factors yes and one or more
mitigating factors yes, then state as to
each aggravating factor checked yes whether
it outweighs any one or more mitigating
factors checked yes beyond a reasonable
doubt. This decision must also be
unanimous. If no aggravating factors
outweigh beyond a reasonable doubt any one
or more of the mitigating factors, the
penalty imposed by the Court will be life
imprisonment with no parole eligibility for
thirty years.

1. Does aggravating Factor No. --
and if you do find an aggravating factor to
be proved beyond a reasonable doubt then
insert, if you would, the appropriate
number -- outweigh any one or more of the
mitigating factors?

Yes or no.

Number two reads in the same manner,
depending upon what your finding may be as
to aggravating factors.

Additionally, if you have checked one
or more aggravating factors yes and one

1 If you have checked one or more
2 aggravating factors yes and one or more
3 mitigating factors yes, then state as to
4 each aggravating factor checked yes whether
5 it outweighs any one or more mitigating
6 factors checked yes beyond a reasonable
7 doubt. This decision must also be
8 unanimous. If no aggravating factors
9 outweigh beyond a reasonable doubt any one
10 or more of the mitigating factors, the
11 penalty imposed by the Court will be life
12 imprisonment with no parole eligibility for
13 thirty years.

14 1. Does aggravating Factor No. --
15 and if you do find an aggravating factor to
16 be proved beyond a reasonable doubt then
17 insert, if you would, the appropriate
18 number -- outweigh any one or more of the
19 mitigating factors?

20 Yes or no.

21 Number two reads in the same manner,
22 depending upon what your finding may be as
23 to aggravating factors.

24 Additionally, if you have checked one
25 or more aggravating factors yes and one or

1 more mitigating factors yes, then also
2 complete the following:

3 Do you unanimously find beyond a
4 reasonable doubt that all the aggravating
5 factors outweigh all the mitigating
6 factors? Check the appropriate answer.

7 Yes or no.

8 If you have checked yes, the penalty
9 imposed by the Court will be death. If you
10 have checked no, the penalty imposed by the
11 Court will be life imprisonment with no
12 parole eligibility for thirty years.

13 Ladies and gentlemen, your verdict
14 must be unanimous; that is, all twelve
15 Jurors deliberating must agree to each
16 answer checked in the verdict sheet.

17 I would ask now if the Officer would
18 be good enough to collect all of the
19 verdict sheets except for the Madam
20 Forelady who has the original.

21 Do the attorneys wish to be heard at
22 sidebar?

23 MR. BOVINO: No, Judge.

24 MR. DeFAZIO: No.

25 THE COURT: Will you swear the

1 more mitigating factors yes, then also
2 complete the following:

3 Do you unanimously find beyond a
4 reasonable doubt that all the aggravating
5 factors outweigh all the mitigating
6 factors? Check the appropriate answer.

7 Yes or no.

8 If you have checked yes, the penalty
9 imposed by the Court will be death. If you
10 have checked no, the penalty imposed by the
11 Court will be life imprisonment with no
12 parole eligibility for thirty years.

13 Ladies and gentlemen, your verdict
14 must be unanimous; that is, all twelve
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18 be good enough to collect all of the
19 verdict sheets except for the Madam
20 Forelady who has the original.

21 Do the attorneys wish to be heard at
22 sidebar?

23 MR. BOVINO: No, Judge.

24 MR. DeFAZIO: No.

25 THE COURT: Will you swear the

1 Officers, please?

2 (Officers sworn.)

3 THE COURT: Ladies and gentlemen of
4 the Jury, you will have with you the
5 verdict sheet and also all the evidence
6 that has been admitted as part of this case
7 that was previously admitted during the
8 first part of the case, both admitted on
9 behalf of the State and the defendant, and
10 they will be available as previously, a pad
11 and pencil if you need it during the course
12 of your deliberations.

13 I'd ask that the four Alternate
14 Jurors retire to the room with the Officer
15 where you have been for the past day or so,
16 and the remaining twelve Jurors who
17 deliberated on the first part of the case
18 retire to the juryroom, Judge Grossi's
19 juryroom, right down the hall, and to
20 commence your deliberations as to the
21 penalty aspect of this case.

22 Please retire to the juryroom.

23 (Jury leaving courtroom at 2:30 p.m.)

24 (The hearing recessed and then
25 resumed out of the presence of the Jury.)

1 Officers, please?

2 (Officers sworn.)

3 THE COURT: Ladies and gentlemen of
4 the Jury, you will have with you the
5 verdict sheet and also all the evidence
6 that has been admitted as part of this case
7 that was previously admitted during the
8 first part of the case, both admitted on
9 behalf of the State and the defendant, and
10 they will be available as previously, a pad
11 and pencil if you need it during the course
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21 penalty aspect of this case.

22 Please retire to the juryroom.

23 (Jury leaving courtroom at 2:30 p.m.)

24 (The hearing recessed and then
25 resumed out of the presence of the Jury.

1 THE COURT: Mr. DeFazio and Mr.
2 Bovino, please be seated.

3 I originally asked you to appear here
4 now to swear in additional Officers who
5 will be available for the Jurors.

6 However, in the meantime, one of the
7 Officers who was sworn presented to me a
8 note from the Jury. I normally advise
9 Counsel informally in chambers before, but
10 I think it's appropriate -- I will read it
11 now, and if you wish time to respond to the
12 question, I'll give you an opportunity to
13 do so.

14 The note reads as follows: Cannot
15 arrive at a unanimous decision. What do
16 you advise?

17 Mark that C-8.

18 (Note marked C-8 in evidence.)

19 THE COURT: Anything from either
20 attorney?

21 MR. BOVINO: Judge, I would accept
22 that as the verdict.

23 THE COURT: Mr. DeFazio?

24 MR. DEFAZIO: I don't know by that
25 question whether we can simply accept that

1 THE COURT: Mr. DeFazio and Mr.
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16 you advise?

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19 THE COURT: Anything from either
20 attorney?

21 MR. BOVINO: Judge, I would accept
22 that as the verdict.

23 THE COURT: Mr. DeFazio?

24 MR. DeFAZIO: I don't know by that
25 question whether we can simply accept that

1 they would be unable to reach a verdict
2 with further deliberations.

3 Honestly, I don't know what, if any,
4 decided law there is in this State
5 concerning whether your discretion to
6 recharge has in any way been circumscribed
7 in this phase. I know of no case that says
8 that that's been decided.

9 So, that would mean following through
10 under normal circumstances, since they've
11 only been out an hour and a half, that your
12 Honor would in some way ask them to
13 continue their deliberations.

14 MR. BOVINO: Judge, the charge was
15 that if it was not unanimous, it would mean
16 life, and that's what that means to me.
17 They can't agree. They are not unanimous.
18 It's in accordance with your instructions,
19 and it's in accordance with what the
20 statute says.

21 That is a verdict. Eleven to one,
22 whatever it maybe. It's not unanimous, it
23 can't be death. Anything else would be
24 worse to keep them in the juryroom to
25 deliberate, and I would ask your Honor to

1 they would be unable to reach a verdict
2 with further deliberations.

3 Honestly, I don't know what, if any,
4 decided law there is in this State
5 concerning whether your discretion to
6 recharge has in any way been circumscribed
7 in this phase. I know of no case that says
8 that that's been decided.

9 So, that would mean following through
10 under normal circumstances, since they've
11 only been out an hour and a half, that your
12 Honor would in some way ask them to
13 continue their deliberations.

14 MR. BOVINO: Judge, the charge was
15 that if it was not unanimous, it would mean
16 life, and that's what that means to me.
17 They can't agree. They are not unanimous.
18 It's in accordance with your instructions,
19 and it's in accordance with what the
20 statute says.

21 That is a verdict. Eleven to one,
22 whatever it maybe. It's not unanimous, it
23 can't be death. Anything else would be
24 worse to keep them in the juryroom to
25 deliberate, and I would ask your Honor to

1 accept that verdict.

2 THE COURT: All right. What I will
3 do, I will take a recess to consider the
4 application by the State to reinstruct the
5 Jury.

6 However, since we are here, perhaps
7 we should at this time -- the Officers who
8 will be in place instead of the Officer
9 originally sworn, I think they should be
10 sworn at this time on the record, please.

11 (Officers sworn.)

12 THE COURT: Five officers have been
13 sworn.

14 (The hearing recessed briefly and
15 then resumed, out of the presence of the
16 Jury.)

17 THE COURT: Gentlemen, we have
18 another note from the Jurors which reads as
19 follows: Your Honor, we're mentally
20 exhausted, and we'd like permission to
21 leave. Please advise.

22 We'll mark that C-9, please, in
23 evidence.

24 (Note marked C-9 in evidence.)

25 THE COURT: Anything further for

1 accept that verdict.

2 THE COURT: All right. What I will
3 do, I will take a recess to consider the
4 application by the State to reinstruct the
5 Jury.

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7 we should at this time -- the Officers who
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15 then resumed, out of the presence of the
16 Jury.)

17 THE COURT: Gentlemen, we have
18 another note from the Jurors which reads as
19 follows: Your Honor, we're mentally
20 exhausted, and we'd like permission to
21 leave. Please advise.

22 We'll mark that C-9, please, in
23 evidence.

24 (Note marked C-9 in evidence.)

25 THE COURT: Anything further for

1 either attorney?

2 MR. DeFAZIO: No.

3 MR. BOVINO: I renew my application,
4 your Honor, to accept the verdict as
5 previously indicated in the first note that
6 they can't be unanimous.

7 MR. DeFAZIO: Just for the record,
8 Judge, I oppose this, especially in light
9 of the second note.

10 THE COURT: All right. I have read
11 into the record what has been marked in
12 evidence C-8 and C-9, the notes that we
13 received from the Jurors indicating they
14 cannot arrive at a unanimous decision.

15 The Court did instruct the Jurors if
16 the mitigating factors are not outweighed
17 beyond a reasonable doubt or you cannot
18 reach a unanimous verdict, the sentence
19 will be a term of years between thirty
20 years and life imprisonment, of which
21 thirty years must be served before the
22 defendant is eligible for parole.

23 N.J.S.A. 2C:11-3(c)(3)(c) provides if
24 the Jury is unable to reach a unanimous
25 verdict, the Court shall sentence the

1 either attorney?

2 MR. DeFAZIO: No.

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5 previously indicated in the first note that
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21 thirty years must be served before the
22 defendant is eligible for parole.

23 N.J.S.A. 2C:11-3(c)(3)(c) provides if
24 the Jury is unable to reach a unanimous
25 verdict, the Court shall sentence the

1 defendant pursuant to Subsection B.

2 The Assistant Prosecutor argues the
3 time in which the Jury has been
4 deliberating.

5 The Court is mindful of the fact that
6 these are the same twelve Jurors who
7 deliberated and decided the guilt phase of
8 the case. I am also aware of the fact that
9 these same twelve Jurors deliberated on
10 Monday, considering substantially most of
11 the facts that have been presented before
12 them on the penalty phase of the case.

13 From the instruction given by the
14 Court and the provision in the statute that
15 I just read, it appears clear to this
16 Court, and I find, that the Court has no
17 alternative but to accept the note C-8 as,
18 in effect, the verdict rendered by the
19 Jury, and, therefore, the application by
20 the State is denied, and the Court will not
21 reinstruct the Jury to continue
22 deliberations.

23 Is there anything further, gentlemen,
24 before I have the Jury returned to the
25 courtroom?

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3 time in which the Jury has been
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19 Jury, and, therefore, the application by
20 the State is denied, and the Court will not
21 reinstruct the Jury to continue
22 deliberations.

23 Is there anything further, gentlemen,
24 before I have the Jury returned to the
25 courtroom?

1 MR. BOVINO: No, Judge.

2 MR. DeFAZIO: No.

3 THE COURT: All right. Officer, may
4 we have the Jury, please, the twelve Jurors
5 and the Alternates?

6 (Jury entering courtroom at 4:40
7 p.m.)

8 THE COURT: Ladies and gentlemen of
9 the Jury, I have your notes, the first note
10 which reads as follows: Cannot arrive at a
11 unanimous decision. What do you advise? I
12 have your second note: Your Honor, we're
13 mentally exhausted, and we'd like
14 permission to leave. Please advise.

15 Ladies and gentlemen of the Jury,
16 since you have indicated to the Court that
17 you cannot arrive at a unanimous decision
18 as to the verdict sheet presented to you,
19 and since you have so indicated to me you
20 cannot reach a unanimous verdict, the
21 sentence will be a term of years between
22 thirty years and life imprisonment of which
23 thirty years must be served before the
24 defendant is eligible for parole.

25 Ladies and gentlemen of the Jury,

1 MR. BOVINO: No, Judge.

2 MR. DeFAZIO: No.

3 THE COURT: All right. Officer, may
4 we have the Jury, please, the twelve Jurors
5 and the Alternates?

6 (Jury entering courtroom at 4:40
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16 since you have indicated to the Court that
17 you cannot arrive at a unanimous decision
18 as to the verdict sheet presented to you,
19 and since you have so indicated to me you
20 cannot reach a unanimous verdict, the
21 sentence will be a term of years between
22 thirty years and life imprisonment of which
23 thirty years must be served before the
24 defendant is eligible for parole.

25 Ladies and gentlemen of the Jury,

1 with the return of your verdicts, in the
2 guilt phase and in the penalty phase, you
3 may have performed one of the most
4 important tasks which you will be called
5 upon to fulfill as a citizen, and with the
6 return of your verdicts, your service in
7 this case is now concluded.

8 The key to your function has been the
9 free and open discussion among yourselves
10 during your deliberations. It is essential
11 to the continuation of the fair
12 administration of justice that those
13 discussions remain solely within your
14 minds.

15 Upon your discharge as a Juror, you
16 are not required, except upon order of this
17 Court, to discuss with anyone your part in
18 those deliberations or the part of your
19 fellow Jurors in arriving at the verdict
20 returned in this matter.

21 In addition, no one connected with
22 this trial is permitted under the rules of
23 court to engage you in conversation about
24 this matter or your role or your fellow
25 Jurors' role in its outcome. All Jurors

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21 In addition, no one connected with
22 this trial is permitted under the rules of
23 court to engage you in conversation about
24 this matter or your role or your fellow
25 Jurors' role in its outcome. All Jurors

1 have a right to expect that their
2 discussions during deliberations will
3 remain confidential.

4 It is in the public interest that
5 there be the utmost freedom of discussion
6 in the juryroom, and that each Juror be
7 permitted to express his or her views
8 without fear of incurring public scorn or
9 the anger of any litigant.

10 Therefore, under no circumstances
11 should you make any comments or statements
12 concerning the deliberations in this matter
13 which you would not be willing to repeat
14 under oath in open court in the presence of
15 your fellow Jurors.

16 One of the reasons for this
17 cautionary instruction is that if the
18 discussions of Jurors during deliberations
19 were to be made public, future Jurors might
20 then feel that they cannot freely and
21 honestly discuss their views and opinions
22 in the juryroom out of the fear that those
23 views and opinions would be publicly
24 criticized.

25 Ladies and gentlemen, the Court

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2 discussions during deliberations will
3 remain confidential.

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20 then feel that they cannot freely and
21 honestly discuss their views and opinions
22 in the juryroom out of the fear that these
23 views and opinions would be publicly
24 criticized.

25 Ladies and gentlemen, the Court

1 thanks you for your service, in accepting
2 your duty and responsibility of spending
3 time beyond the normal time for jury
4 service. I thank you for that.

5 I indicated originally that if you
6 wish and you need an additional letter from
7 me to your employer with regard to the term
8 of service over and above whatever the Jury
9 service may give you, my secretary is here,
10 and you just go around to my outer
11 chambers, and she has a letter and will
12 address it to your employer if you wish a
13 letter.

14 You are excused now from further
15 service in this matter with the thanks of
16 the Court.

17 (Jury leaving courtroom at 4:45 p.m.)

18 THE COURT: All the Jurors gone? We
19 have the verdict sheet, original verdict
20 sheet, from the Forelady. We'll mark that
21 C-10.

22 (Verdict sheet marked C-10 in
23 evidence.)

24 THE COURT: I will set a sentence
25 date at this time.

1 thanks you for your service, in accepting
2 your duty and responsibility of spending
3 time beyond the normal time for jury
4 service. I thank you for that.

5 I indicated originally that if you
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19 have the verdict sheet, original verdict
20 sheet, from the Forelady. We'll mark that
21 C-10.

22 (Verdict sheet marked C-10 in
23 evidence.)

24 THE COURT: I will set a sentence
25 date at this time.

1 Sentencing date will be on June 20 at
2 9 a.m. before this Court.

3 Anything else in this matter at this
4 time, gentlemen?

5 MR. DeFASIO: I'd like to see the
6 verdict sheet for one thing.

7 THE COURT: You certainly may.

8 Anything further at this time,
9 gentlemen?

10 MR. BOVINO: Judge, may I see you in
11 chambers, please, about something else
12 other than this?

13 THE COURT: Anything on this matter
14 at this time?

15 MR. DeFASIO: No, your Honor.

16 THE COURT: All right. The defendant
17 is remanded to the Hudson County Jail.

18 * * * * *

1 Sentencing date will be on June 20 at
2 9 a.m. before this Court.

3 Anything else in this matter at this
4 time, gentlemen?

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6 verdict sheet for one thing.

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11 chambers, please, about something else
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13 THE COURT: Anything on this matter
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15 MR. DeFALIO: No, your Honor.

16 THE COURT: All right. The defendant
17 is remanded to the Hudson County Jail.
18 * * * * *

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6 CERTIFICATE

7
8 I hereby certify the foregoing to be
9 a true and accurate transcript of the
10 proceedings had in the above-entitled
11 matter.
12

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14 *Winifred A. Handel*
15 WINIFRED A. HANDEL, C.S.R.
16 CERTIFICATE NO. XI00421
17

18 DATED: 5/18/86
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C E R T I F I C A T E

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Winifred A. Handel
WINIFRED A. HANDEL, C.S.R.
CERTIFICATE NO. XI00421

DATED: 8/18/86

~~FILED~~
A 1973-8974
601-1-1986

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION (CRIMINAL)
HUDSON COUNTY
INDICTMENT NO. 1369-85

~~TRANS FILED~~
STATE OF NEW JERSEY,

A-5529-8574

Complainant, : STENOGRAPHIC
TRANSCRIPT
vs. : OF
LEONARD STONE, : PROCEEDINGS:
Defendant. : SENTENCE

REC'D
APPELLATE DIVISION

NOV 28 1990

Wednesday, June 25, 1986
Jersey City, New Jersey

BEFORE:

THE HONORABLE CHARLES J. HARRINGTON, JR., J.S.C.

REC'D
APPELLATE DIVISION

APPEARANCES:

DEC 8 1986

EDWARD J. DE FAZIO, ESQ.
Assistant County Prosecutor
For the State

SALVATORE BOVINO, ESQ.
Assistant Deputy Public Defender
For the Defendant

FILED
APPELLATE DIVISION

NOV 28 1990

Reported by:
Kathi L. Trindade, C.S.R.
Official Court Reporter
Hudson County Court House
Jersey City, New Jersey
License No. XI 00689

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FILED
A 1973-6974
2017-1006

TRANS FILED
STATE OF NEW JERSEY,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION (CRIMINAL)
HUDSON COUNTY
INDICTMENT NO. 1369-85

A-5529-8574

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FILED
APPELLATE DIVISION
NOV 28 1990

Reported by:
Kathi L. Trindade, C.S.R.
Official Court Reporter
Hudson County Court House
Jersey City, New Jersey
License No. XI 00689

THE COURT: State of New Jersey versus
Leonard Stone, also known as Joshua Leonard,
under Indictment 1369 of the '85 term. May we
have your appearances, please?

MR. DE FAZIO: Edward J. De Fazio, Hudson
County Prosecutor's Office, for the State.

MR. BOVINO: Salvatore Bovino, on behalf
of Leonard Stone.

THE COURT: Let the record reflect
the Defendant's present here in court.

MR. DE FAZIO: Your Honor, the State would
move for imposition of sentence on Indictment
No. 1369-12 of the '85 term.

THE COURT: Leonard Stone, also known as
Joshua Leonard, on April 21, 1986, represented
by Counsel, you appeared before this Court for
scheduled trial of Indictment 1369 of the 1985
term. That Indictment charged you under the
First Count with murder, under the Second Count,
felony murder, under the Third Count, armed
robbery, the Fourth Count, possession of a weapon
for an unlawful purpose, and in the Fifth Count,
unlawful possession of a weapon, and the Jury
was impaneled and the trial commenced until May 19th,
1986, at which time the Jury returned the following

THE COURT: State of New Jersey versus Leonard Stone, also known as Joshua Leonard, under Indictment 1369 of the '85 term. May we have your appearances, please?

MR. DE FAZIO: Edward J. De Fazio, Hudson County Prosecutor's Office, for the State.

MR. BOVINO: Salvatore Bovino, on behalf of Leonard Stone.

THE COURT: Let the record reflect the Defendant's present here in court.

MR. DE FAZIO: Your Honor, the State would move for imposition of sentence on Indictment No. 1369-12 of the '85 term.

THE COURT: Leonard Stone, also known as Joshua Leonard, on April 21, 1986, represented by Counsel, you appeared before this Court for scheduled trial of Indictment 1369 of the 1985 term. That Indictment charged you under the First Count with murder, under the Second Count, felony murder, under the Third Count, armed robbery, the Fourth Count, possession of a weapon for an unlawful purpose, and in the Fifth Count, unlawful possession of a weapon, and the Jury was impaneled and the trial commenced until May 19th, 1986, at which time the Jury returned the following

verdict: Guilty as to the First Count, charging murder, guilty as to the Third Count, robbery, a second-degree offense, guilty as to the Fourth Count, charging possession of a weapon for an unlawful purpose, guilty as to the Fifth Count, charging unlawful possession of a weapon, and a verdict of not guilty as to the Second Count, charging felony murder, and that same Jury thereafter, on May 21st, 1986, advised the Court by written note, which is part of the record, of its inability to unanimously return a special verdict determining the sentence to be imposed on the First Count.

Leonard Stone, also known as Joshua Leonard, do you have anything to say on your own behalf, sir?

THE DEFENDANT: Well, it really wouldn't make no difference, so, you know, everything is going through, so...

THE COURT: I just want to advise you. You understand this is the time in the proceedings if you wish to say something to the Court, you may do so at this time. Do you understand that, sir?

THE DEFENDANT: I've been saying things to the Court ever since I was arrested, so it really wouldn't make no difference if I say anything right now.

1 verdict: Guilty as to the First Count, charging
2 murder, guilty as to the Third Count, robbery,
3 a second-degree offense, guilty as to the Fourth
4 Count, charging possession of a weapon for an
5 unlawful purpose, guilty as to the Fifth Count,
6 charging unlawful possession of a weapon, and a
7 verdict of not guilty as to the Second Count,
8 charging felony murder, and that same Jury thereafter,
9 on May 21st, 1986, advised the Court by written
10 note, which is part of the record, of its inability
11 to unanimously return a special verdict determining
12 the sentence to be imposed on the First Count.

13 Leonard Stone, also known as Joshua Leonard,
14 do you have anything to say on your own behalf,
15 sir?

16 THE DEFENDANT: Well, it really wouldn't
17 make no difference, so, you know, everything is
18 going through, so...

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20 understand this is the time in the proceedings
21 if you wish to say something to the Court, you may
22 do so at this time. Do you understand that, sir?

23 THE DEFENDANT: I've been saying things
24 to the Court ever since I was arrested, so it really
25 wouldn't make no difference if I say anything right now.

1 THE COURT: Do you understand you may
2 say something if you wish?

3 THE DEFENDANT: Yes, I understand that.

4 THE COURT: Do you wish to say anything?

5 THE DEFENDANT: I don't want to say nothing.

6 THE COURT: Mr. Bovino, do you wish to
7 say anything on behalf of the Defendant?

8 MR. BOVINO: Judge, before you proceed
9 any further, Mr. Stone has been given a copy of
10 the Presentence Report. He's indicated to me
11 that there are errors in that report, or corrections.
12 He hasn't told me what they are. I don't know
13 what he's referring to. He told me that he
14 would straighten this out with the Court when
15 he came into court.

16 I just ask your Honor to ask him if there's
17 anything that he wishes to bring to the Court's
18 attention that's inaccurate in the report, in
19 addition to what you've already asked about what
20 he would want to say to the Court.

21 THE COURT: Well, sir, do you have --
22 you've heard Mr. Bovino. Do you have other --
23 insofar as you're concerned, are there mistakes
24 in the Presentence Report? Yes, sir?

25 THE DEFENDANT: Yes. There's a lot of

1 THE COURT: Do you understand you may
2 say something if you wish?

3 THE DEFENDANT: Yes, I understand that.

4 THE COURT: Do you wish to say anything?

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20 he would want to say to the Court.

21 THE COURT: Well, sir, do you have --
22 you've heard Mr. Bovino. Do you have other --
23 insofar as you're concerned, are there mistakes
24 in the Presentence Report? Yes, sir?

25 THE DEFENDANT: Yes. There's a lot of

1 mistakes in there, yeah, but as I said, I don't
2 want to say anything on it, because it really
3 wouldn't do no difference.

4 THE COURT: Well, what I'd like to know,
5 if I may, I'd like to know if -- if there are
6 any mistakes, and if there are, I'd appreciate
7 it if you'd bring it to my attention if there
8 are any mistakes.

9 THE DEFENDANT: Your Honor, ever since I
10 was arrested -- okay? -- I've been -- I've
11 been calling about, you know, my -- about my lawyer.
12 Okay? That was a big mistake, you know, as
13 far as where -- you know, representing -- you know,
14 having Sal Bovino representing me. Nobody did
15 nothing, so a little report like this, for me --
16 for me to say anything against it and so forth,
17 or -- you know -- or say, "Well, I would like this
18 changed," or whatever, it really would make no
19 difference.

20 THE COURT: Let me ask you this, sir:
21 Have you had -- have you had a chance, an opportunity,
22 to read the Presentence Report?

23 THE DEFENDANT: Yes, I've read it.

24 THE COURT: Okay. Well -- just a minute.
25 please.

1 mistakes in there, yeah, but as I said, I don't
2 want to say anything on it, because it really
3 wouldn't do no difference.

4 THE COURT: Well, what I'd like to know,
5 if I may, I'd like to know if -- if there are
6 any mistakes, and if there are, I'd appreciate
7 it if you'd bring it to my attention if there
8 are any mistakes.

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16 for me to say anything against it and so forth,
17 or -- you know -- or say, "Well, I would like this
18 changed," or whatever, it really would make no
19 difference.

20 THE COURT: Let me ask you this, sir:
21 Have you had -- have you had a chance, an opportunity,
22 to read the Presentence Report?

23 THE DEFENDANT: Yes, I've read it.

24 THE COURT: Okay. Well -- just a minute.
25 please.

1 Well, at this time of the proceeding,
2 if there are mistakes in there, in that report,
3 I'd like to know about it, for -- for the record,
4 so that you could tell me if there's mistakes
5 in there, sir.

6 THE DEFENDANT: Yes, your Honor. I have no
7 comment. Okay? I have no comment.

8 THE COURT: If there are mistakes, you
9 don't want to tell me about them?

10 THE DEFENDANT: It's no use. I see
11 that there's no purpose in saying anything, because
12 nothing is going to be done.

13 THE COURT: Mr. Bovino, to your knowledge,
14 are there any errors or omissions or deletions
15 in the report, sir?

16 MR. BOVINO: Judge, I -- I don't have any
17 information to correct any of the information
18 that's contained in this report. I mean, the
19 background history as to employment is rather
20 minimal. I know Mr. Stone has told me that he
21 has worked in the past as a mechanic and a
22 carpenter and electrician, miscellaneous handyman-
23 type things -- amateur -- perhaps even professional --
24 photographer. That information is not here,
25 but unless he cooperates with the Probation Department

1 Well, at this time of the proceeding,
2 if there are mistakes in there, in that report,
3 I'd like to know about it, for -- for the record,
4 so that you could tell me if there's mistakes
5 in there, sir.

6 THE DEFENDANT: Yes, your Honor. I have no
7 comment. Okay? I have no comment.

8 THE COURT: If there are mistakes, you
9 don't want to tell me about them?

10 THE DEFENDANT: It's no use. I see
11 that there's no purpose in saying anything, because
12 nothing is going to be done.

13 THE COURT: Mr. Bovino, to your knowledge,
14 are there any errors or omissions or deletions
15 in the report, sir?

16 MR. BOVINO: Judge, I -- I don't have any
17 information to correct any of the information
18 that's contained in this report. I mean, the
19 background history as to employment is rather
20 minimal. I know Mr. Stone has told me that he
21 has worked in the past as a mechanic and a
22 carpenter and electrician, miscellaneous handyman-
23 type things -- amateur -- perhaps even professional --
24 photographer. That information is not here,
25 but unless he cooperates with the Probation Department

1 and is willing to bring that to the Court's
2 attention as to dates and places, I can't assist
3 the Court in completing the Presentence Report.

4 Family history, I know he has brothers
5 and sisters. His mother's been in court. His
6 mother has spoken to me. I spoke to his brother
7 and sister. The exact number of the brothers
8 and sisters that he has, again, I don't have
9 information for the Court to complete the
10 Presentence Report in that respect, but that is
11 information that either the Defendant will have
12 to generate through the Probation Department,
13 or the Probation Department would have to
14 generate independently of the Defendant, through
15 his family, through their investigation, so I
16 don't know exactly what he's talking about.

17 For the purposes of the record, I will
18 acknowledge that the Presentence Report consists
19 of a cover sheet, one page, two page, three,
20 four, five pages of background information,
21 including the prior record, then it has sixteen
22 pages of police reports, incident reports,
23 arrest reports, continuation pages, death certificate,
24 one-page laboratory report, six-page autopsy report
25 and a copy of the two-page Indictment. All this --

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2 attention as to dates and places, I can't assist
3 the Court in completing the Presentence Report.

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22 pages of police reports, incident reports,
23 arrest reports, continuation pages, death certificate,
24 one-page laboratory report, six-page autopsy report
25 and a copy of the two-page Indictment. All this --

1 everything that's in this report has been made
2 available to Mr. Stone, either prior to trial,
3 during trial and, certainly, the report itself
4 has been made available to him today. I have no
5 corrections or applications based upon what's
6 in this report, and I think your Honor would
7 have certain notes concerning his family background
8 from his mother's testimony, from his own
9 testimony, so I have no additions or corrections
10 to make to the report.

11 THE COURT: Mr. De Fazio, to your knowledge,
12 are there any errors, omissions or deletions
13 as to the Presentence Report, sir?

14 MR. DE FAZIO: No, your Honor.

15 THE COURT: Now, if -- I note that the
16 Jury found the Defendant guilty of the Fourth
17 Count, charging possession of a weapon for an
18 unlawful purpose, and also the Fifth Count,
19 charging unlawful possession of a weapon. It
20 would appear to the Court that perhaps those two
21 Counts merge, for the purpose of sentencing.
22 Do you have any thought on that, Mr. De Fazio?

23 MR. DE FAZIO: I think the possession of
24 a weapon for an unlawful purpose probably would
25 merge with the murder offense, since the unlawful

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2 available to Mr. Stone, either prior to trial,
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11 THE COURT: Mr. De Fazio, to your knowledge,
12 are there any errors, omissions or deletions
13 as to the Presentence Report, sir?

14 MR. DE FAZIO: No, your Honor.

15 THE COURT: Now, if -- I note that the
16 Jury found the Defendant guilty of the Fourth
17 Count, charging possession of a weapon for an
18 unlawful purpose, and also the Fifth Count,
19 charging unlawful possession of a weapon. It
20 would appear to the Court that perhaps those two
21 Counts merge, for the purpose of sentencing.
22 Do you have any thought on that, Mr. De Fazio?

23 MR. DE FAZIO: I think the possession of
24 a weapon for an unlawful purpose probably would
25 merge with the murder offense, since the unlawful

1 purpose was, in fact, the murder of Clarence
2 MacMillan. I think we can clearly infer that
3 from the verdict.

4 The unlawful possession of a weapon charge
5 I don't think -- I don't think merges, under the
6 case law. That's my thought about it, Judge.

7 THE COURT: Anything Mr. Bovino?

8 MR. BOVINO: Judge, I would say that both
9 the Fourth and Fifth Counts should merge into
10 the First Count. Mr. De Fazio says the Fourth
11 Count merges into the First, because it is --
12 I assume by the Jury's verdict that it was, in
13 fact, the murder weapon. There's nothing to
14 indicate that Mr. Stone possessed the weapon
15 at any time prior to the murder, and I think
16 it would be the same set of facts and circumstances
17 that give rise to the conviction in the Fourth
18 Count and the Fifth Count, so I think both those
19 Counts should merge into the First Count.

20 Whether or not there's a question as to the
21 Third Count merging, in my own mind, I don't
22 understand the Jury's verdict. I -- I would say
23 that the incidents were so intertwined and
24 related in point of time that they really should
25 merge as a single transaction. Unfortunately,

1 purpose was, in fact, the murder of Clarence
2 MacMillan. I think we can clearly infer that
3 from the verdict.

4 The unlawful possession of a weapon charge
5 I don't think -- I don't think merges, under the
6 case law. That's my thought about it, Judge.

7 THE COURT: Anything Mr. Bovino?

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9 the Fourth and Fifth Counts should merge into
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11 Count merges into the First, because it is --
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21 Third Count merging, in my own mind, I don't
22 understand the Jury's verdict. I -- I would say
23 that the incidents were so intertwined and
24 related in point of time that they really should
25 merge as a single transaction. Unfortunately,

10
1 the Jury's verdict was not guilty of the felony
2 murder, so that sort of defeats my argument,
3 but I think, as a practical matter, it should
4 merge into Count 1, also.

5 I'm not as clear on the law as -- I think
6 the law is against me on that issue, but I think,
7 practically, it should merge.

8 THE COURT: Insofar as which?

9 MR. BOVINO: Count 2, 4 and 5 I have no
10 problem. I'm sure they should merge.

11 MR. DE FAZIO: Well, I can say this,
12 Judge: The robbery doesn't merge, as a matter
13 of law, with the murder. The purposeful murder
14 is one offense, and the finding of guilty on the
15 robbery is a separate and distinct offense,
16 and there's no merger. State v. Stenson would be
17 right on point. I know the case, because
18 I was the trial attorney on that.

19 THE COURT: Well, what about with regard
20 to the Fourth and Fifth merging with the First?

21 MR. DE FAZIO: Well, Judge, my memory
22 is that the unlawful possession of a weapon
23 doesn't necessarily merge. I think it's State v.
24 Ortiz is the case where it was a robbery case.
25 I believe that the law is that the unlawful possession

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2 murder, so that sort of defeats my argument,
3 but I think, as a practical matter, it should
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15 robbery is a separate and distinct offense,
16 and there's no merger. State v. Stenson would be
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18 I was the trial attorney on that.

19 THE COURT: Well, what about with regard
20 to the Fourth and Fifth merging with the First?

21 MR. DE FAZIO: Well, Judge, my memory
22 is that the unlawful possession of a weapon
23 doesn't necessarily merge. I think it's State v.
24 Ortiz is the case where it was a robbery case.
25 I believe that the law is that the unlawful pos- se

1 weapons charge merges. My position would be
2 that the Fifth Count, the unlawful possession
3 of a weapon, doesn't merge, as a matter of
4 law.

5 THE COURT: All right. We'll just take a
6 short recess until I make a determination on the
7 question of merger. I'd ask everyone to remain
8 right in the courtroom, please.

9 (Whereupon there is a brief recess.)

10 (Following recess.)

11 THE COURT: Under the rationale and the
12 reasoning of our Supreme Court in the case of
13 State v. Best, 70 N.J. 56 (1976), I find that
14 the Third Count, wherein the Jury rendered a
15 verdict of guilty to robbery, a second-degree
16 offense, does not merge with the First Count.
17 However, the Fifth -- strike that -- the Fourth and
18 Fifth Counts merge with the First Count, for the
19 purpose of sentencing.

20 Leonard Stone, also known as Joshua Leonard,
21 on the Jury's finding of guilty of the First
22 Count and Third Count of Indictment 1369 of the
23 '85 term, it is the sentence of this Court as
24 follows: On the Jury's finding of guilty
25 as to the First Count of Indictment 1369 of the

weapons charge merges. My position would be that the Fifth Count, the unlawful possession of a weapon, doesn't merge, as a matter of law.

THE COURT: All right. We'll just take a short recess until I make a determination on the question of merger. I'd ask everyone to remain right in the courtroom, please.

(Whereupon there is a brief recess.)

(Following recess.)

THE COURT: Under the rationale and the reasoning of our Supreme Court in the case of State v. Best, 70 N.J. 56 (1976), I find that the Third Count, wherein the Jury rendered a verdict of guilty to robbery, a second-degree offense, does not merge with the First Count. However, the Fifth -- strike that -- the Fourth and Fifth Counts merge with the First Count, for the purpose of sentencing.

Leonard Stone, also known as Joshua Leonard, on the Jury's finding of guilty of the First Count and Third Count of Indictment 1369 of the '85 term, it is the sentence of this Court as follows: On the Jury's finding of guilty as to the First Count of Indictment 1369 of the

'85 term, charging murder, it is the sentence of this Court, pursuant to N.J.S.A. 2C:11-3(c), that the Defendant be delivered to the custody of the Commissioner of the Department of Corrections for the remainder of his life, with the direction that he be required to serve the first thirty years of that term without any eligibility for parole. This sentence shall run concurrent with the sentence which the Court will impose on the Third Count.

And, Leonard Stone, also known as Joshua Leonard, on the Jury's finding of guilty of robbery under the Third Count of Indictment 1369 of the '85 term, it is the sentence of this Court that you be delivered to the custody of the Commissioner of the Department of Corrections for a term of seven years. This sentence will run concurrent with the sentence which the Court just imposed under the First Count of the subject Indictment.

Also, you're assessed a penalty of twenty-five dollars on each Count, a total of fifty dollars, payable to the Violent Crimes Compensation Board under N.J.S.2C:43-3.1, to be collected by the appropriate agency. Credit is to be given for time

'85 term, charging murder, it is the sentence of this Court, pursuant to N.J.S.A. 2C:11-3(c), that the Defendant be delivered to the custody of the Commissioner of the Department of Corrections for the remainder of his life, with the direction that he be required to serve the first thirty years of that term without any eligibility for parole. This sentence shall run concurrent with the sentence which the Court will impose on the Third Count.

And, Leonard Stone, also known as Joshua Leonard, on the Jury's finding of guilty of robbery under the Third Count of Indictment 1369 of the '85 term, it is the sentence of this Court that you be delivered to the custody of the Commissioner of the Department of Corrections for a term of seven years. This sentence will run concurrent with the sentence which the Court just imposed under the First Count of the subject Indictment.

Also, you're assessed a penalty of twenty-five dollars on each Count, a total of fifty dollars, payable to the Violent Crimes Compensation Board under N.J.S.2C:43-3.1, to be collected by the appropriate agency. Credit is to be given for time

spent in custody, if any, while awaiting disposition of this charge. There will be no costs allowed.

The reasons for the sentence imposed by this Court being, firstly, the serious and violent nature of this offense, causing and resulting in the death of Clarence MacMillan; secondly, the Defendant's prior record; thirdly, that this sentence will be a deterrent to this Defendant and others in the future; fourthly, the risk that this Defendant will commit another offense; and, lastly, the Court is mindful of the provisions of N.J.S.A. 2C:11-3(c).

Sir, you are advised you have the right to appeal this sentence, and if you cannot afford an attorney, one will be provided for you by the State at no expense to you.

Anything further in this matter?

MR. BOVINO: No, Judge.

MR. DE FAZIO: No.

THE COURT: All right. The Defendant is remanded to the Hudson County Jail for delivery to the custody of the Commissioner of the Department of Corrections.

1 spent in custody, if any, while awaiting disposition
2 of this charge. There will be no costs allowed.

3 The reasons for the sentence imposed
4 by this Court being, firstly, the serious and
5 violent nature of this offense, causing and
6 resulting in the death of Clarence MacMillan;
7 secondly, the Defendant's prior record; thirdly,
8 that this sentence will be a deterrent to this
9 Defendant and others in the future; fourthly,
10 the risk that this Defendant will commit another
11 offense; and, lastly, the Court is mindful
12 of the provisions of N.J.S.A. 2C:11-3(c).

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14 to appeal this sentence, and if you cannot
15 afford an attorney, one will be provided for you
16 by the State at no expense to you.

17 Anything further in this matter?

18 MR. BOVINO: No, Judge.

19 MR. DE FAZIO: No.

20 THE COURT: All right. The Defendant
21 is remanded to the Hudson County Jail for
22 delivery to the custody of the Commissioner
23 of the Department of Corrections.
24 -----
25

FILED IN JUDICIAL N.J. STATE COURT 1986

1
2
3
4
5 CERTIFICATE
6

7 I, KATHI L. TRINDADE, C.S.R. XI 00689,
8 and an Official Court Reporter of the State of
9 New Jersey, do hereby state that the foregoing
10 is a true and accurate transcript of my
11 stenographic notes of the within proceeding.
12
13
14
15
16

17 *Kathi L. Trindade*

18 Dated: December 1, 1986
19
20
21
22
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24
25

FILED IN JUDICIAL N.J. STATE COURT 1986

I, KATHI L. TRINDADE, C.S.R. XI 00689,
and an Official Court Reporter of the State of
New Jersey, do hereby state that the foregoing
is a true and accurate transcript of my
stenographic notes of the within proceeding.

Dated: December 1, 1980

[illegible]

[illegible]

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CASE NAME (Print/Type)		V (Defendant)		<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Non-Appeal	
State of New Jersey		Leonard Stone			
LOWER COURT DOCKET TYPE		LOWER COURT NUMBER		TRANSCRIPT REQUEST DATE	
<input checked="" type="checkbox"/> Indictment <input type="checkbox"/> Accusation <input type="checkbox"/> Complaint		1359-12-85		4/14/90	
DOCKET NUMBER		COURT		TRANSCRIPT REQUEST RECEIPT DATE	
A - 1973-8974		Hudson Superior		84/15/90	

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TO: REQUESTOR'S NAME ADDRESS
Frank Soltis, Dep. PD 20 Evergreen Pl, East Orange, NJ 07018

CASE INFORMATION

CASE NAME (Plaintiff)	State of New Jersey	Defendant(s)	Leonard Stone	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Non-Appeal
LOWER COURT DOCKET TYPE	Indictment	LOWER COURT NUMBER	1365-12-85	TRANSCRIPT REQUEST DATE 4/14/90
DOCKET NUMBER	A-1973-89T4	COURT	HUDSON	TRANSCRIPT REQUEST RECEIPT DATE 84/15/90

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A-1973-89T4
NO 34

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
INDICTMENT NO. 1369-12-85
APPELLATE NO. A-1973-89T4

THE STATE OF NEW JERSEY,
Complainant

VS.

LEONARD STONE,
Defendant.

REC'D
TRANSCRIPT DIVISION

OF

MOTION

May 25, 1989

Hudson County Courthouse
Jersey City, N.J.
07306

REC'D
APPELLATE DIVISION

APR 25 1990

BEFORE:

HONORABLE CHARLES J. HARRINGTON, JR.,

ORDERED BY:

FRANK J. SOLTIS, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER

FILED
APPELLATE DIVISION

APR 25 1990

APPEARANCES:

GAETANO GREGORY, ESQ.
Assistant Prosecutor for the State

LEONARD CARAPA, ESQ.
Attorney for the Defendant

LORRAINE M. CIRELLI, C.S.R., C.M.
OFFICIAL COURT REPORTER
LICENSE NO. X100977
HUDSON COUNTY COURTHOUSE
JERSEY CITY, NEW JERSEY 07306

A-1973-8974
NO 84

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
INDICTMENT NO. 1369-12-85
APPELLATE NO. A-1973-8974

THE STATE OF NEW JERSEY,
Complainant

VS.

LEONARD STONE,
Defendant.

REC'D
TRANSCRIPTS DIVISION

OF
MOTION

REC'D
APPELLATE DIVISION

May 25, 1989
Hudson County Courthouse
Jersey City, N.J.
07306

BEFORE:

HONORABLE CHARLES J. HARRINGTON, JR.,

ORDERED BY:

FRANK J. SOLTIS, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER

APPEARANCES:

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Assistant Prosecutor for the State

LEONARD CARAFA, ESQ.
Attorney for the Defendant

LORRAINE M. CIRELLI, C.S.R., C.M.
OFFICIAL COURT REPORTER
LICENSE NO. X100977
HUDSON COUNTY COURTHOUSE
JERSEY CITY, NEW JERSEY 07306

FILED
APPELLATE DIVISION

APR 25 1989

MR. GREGORY: Gaetano Gregory on Indictment

1369-12-85, State of New Jersey vs. Leonard Stone. It's a
return date for several motions pending a post conviction
relief application.

MR. CARAFA: Leonard J. Carafa, 29 Park Avenue,
Rutherford, assigned Counsel for Mr. Leonard Stone, your
Honor.

THE COURT: Let the record reflect that the
Defendant is present here in court.

I think the record should also reflect that -- I
don't remember the exact date and probably the attorneys can
assist the Court. Pursuant to the request of the Defendant,
the attorney for the Defendant made to the Court and to the
State -- arrangements were made and requests were made that
the Defendant's attorney could review all the evidence that
was admitted before the Court and jury in the trial of this
particular case.

MR. CARAFA: If I may just add to that --

THE COURT: Can I have the date? I don't recall
it.

MR. GREGORY: I believe it was May fourth, your
Honor, but I may be wrong.

MR. CARAFA: The date -- well, if I may your
Honor, what happened was we had a date set originally for
Mr. Stone to be brought up on April 14th.

MR. GREGORY: Gaetano Gregory on Indictment 1369-12-85, State of New Jersey vs. Leonard Stone. It's a return date for several motions pending a post conviction relief application.

MR. CARAFA: Leonard J. Carafa, 29 Park Avenue, Rutherford, assigned Counsel for Mr. Leonard Stone, your Honor.

THE COURT: Let the record reflect that the Defendant is present here in court.

I think the record should also reflect that -- I don't remember the exact date and probably the attorneys can assist the Court. Pursuant to the request of the Defendant, the attorney for the Defendant made to the Court and to the State -- arrangements were made and requests were made that the Defendant's attorney could review all the evidence that was admitted before the Court and jury in the trial of this particular case.

MR. CARAFA: If I may just add to that --

THE COURT: Can I have the date? I don't recall it.

MR. GREGORY: I believe it was May fourth, your Honor, but I may be wrong.

MR. CARAFA: The date -- well, if I may your Honor, what happened was we had a date set originally for Mr. Stone to be brought up on April 14th.

Your Honor, at that time, on April 11th, the Defendant contacted me for the first time in months by collect telephone call. That was on a religious holiday for him, it was a Friday, and that he will not be appearing on that date.

I immediately contacted the Court and the Prosecutor and a new date was set for April 20th, your Honor.

At that time, I came to court on April 20th and the Defendant was not produced because the State prison system indicated they had not received a formal piece of paper requesting them to bring him up, a writ, even though this Court did contact them by phone to advise them that we would have him brought up the next week, which would be April 20th.

Then, after that, your Honor sent a writ to have him produced on May 4th and that's when he was brought up here, on May 4th.

THE COURT: Okay.

Now, this Court was actively engaged in another trial and is still actively engaged in that same trial and you tell me if I'm wrong, but I believe I was advised informally by -- I don't recall who it was, but the evidence was available for the Defendant and you, sir, to review, but it was not reviewed for some reason.

2

3

1 Your Honor, at that time, on April 11th, the
2 Defendant contacted me for the first time in months by
3 collect telephone call. That was on a religious holiday for
4 him, it was a Friday, and that he will not be appearing on
5 that date.

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7 Prosecutor and a new date was set for April 20th, your
8 Honor.

9 At that time, I came to court on April 20th and
10 the Defendant was not produced because the State prison
11 system indicated they had not received a formal piece of
12 paper requesting them to bring him up, a writ, even though
13 this Court did contact them by phone to advise them that we
14 would have him brought up the next week, which would be
15 April 20th.

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18 here, on May 4th.

19 THE COURT: Okay.

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21 trial and is still actively engaged in that same trial and
22 you tell me if I'm wrong, but I believe I was advised
23 informally by -- I don't recall who it was, but the evidence
24 was available for the Defendant and you, sir, to review, but
25 it was not reviewed for some reason.

1 Is that correct?

2 MR. CARAFA: That's correct, your Honor. I have
3 here an original and a copy and, if the Court wishes, if
4 you'd like to mark it, in regards to Mr. Stone being present
5 on May 4th of 1989 on the ninth floor, in the Judge's
6 Lounge. The Investigator for the Prosecutor's Office was
7 present, Mr. Steven Moran was present.

8 At that time, I gave -- I hand-delivered a copy of
9 the jury selection transcript for Monday, April 21, 1986 of
10 134 pages which Mr. Stone acknowledged receipt of by his
11 signature.

12 Then, at that time, with the Prosecutor's
13 Investigator there and all the evidence from the evidence
14 locker and the entire Prosecutor's file, we were to
15 review -- my client myself -- and I and my client were going
16 to review this discovery.

17 Mr. Stone, the Defendant, petitioner, refused to
18 go through and review it and asked that he have copies of
19 everything given to him.

20 At that point in time, he was very hostile and
21 abusive to me and if at all he spoke to me, it was in an
22 uncooperative manner. He just asked to be brought back down
23 to Trenton State Prison.

24 The next I heard was that Mr. Stone had filed a
25 pro se motion for discovery. I never got a copy of it, but

3
1 Is that correct?

2 MR. CARAFA: That's correct, your Honor. I have
3 here an original and a copy and, if the Court wishes, if
4 you'd like to mark it. In regards to Mr. Stone being present
5 on May 4th of 1989 on the ninth floor, in the Judge's
6 Lounge. The Investigator for the Prosecutor's Office was
7 present, Mr. Steven Moran was present.

8 At that time, I gave -- I hand-delivered a copy of
9 the jury selection transcript for Monday, April 21, 1986 of
10 134 pages which Mr. Stone acknowledged receipt of by his
11 signature.

12 Then, at that time, with the Prosecutor's
13 Investigator there and all the evidence from the evidence
14 locker and the entire Prosecutor's file, we were to
15 review -- my client myself -- and I and my client were going
16 to review this discovery.

17 Mr. Stone, the Defendant, petitioner, refused to
18 go through and review it and asked that he have copies of
19 everything given to him.

20 At that point in time, he was very hostile and
21 abusive to me and if at all he spoke to me, it was in an
22 uncooperative manner. He just asked to be brought back down
23 to Trenton State Prison.

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1 I did review it briefly as to what was submitted to the
2 Court, and in effect, he was asking for grand jury
3 transcripts and all other discovery that was made available
4 to him at that date on May 4th.

5 I don't know if your Honor wishes to go into the
6 problems with the Grand Jury transcript. If you want to put
7 that on the record at this point in time, I will.

8 THE COURT: Well, you're anticipating my question.
9 I know that for a period of months, we have been waiting for
10 the transcripts of the jury selection process.

11 Have you received all of that yet, sir?

12 MR. CARAFA: No, your Honor, and at this point in
13 time, I have received personally up to April 22nd from Miss
14 Kathy Trinidad, May 1st, 5th and the 6th was received quite
15 some time ago. I forwarded those over to Mr. Stone. That
16 was taken by a different court reporter, however. Her name
17 was Wini Handel. She forwarded that to the Public
18 Defender's Office and had copies made for the Prosecutor,
19 copies for my client, and he received that.

20 Miss Trinidad has not yet completed her
21 transcribing of the jury selection. I was told on Tuesday
22 from the Public Defender's Office that the April 23rd
23 transcripts had arrived and they were in the process of
24 copying them and that I would get my copy, if I would pick it
25 up today after this hearing, or they would mail it to me in

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25 up today after this hearing, or they would mail it to me in

1 the mail. Mr. Stone would get his copy sent directly from
2 the Public Defender's Office, due to the situation as we
3 stand here and my motion pending.

4 I have spoken with Miss Trinidad as to the balance
5 of the grand jury selection transcripts. Miss Trinidad has
6 told me, as I reflected in my letter to this Court, that the
7 28th of April transcript is missing at this point in time.
8 She can't locate it. She is continuing to try and locate
9 it. However, at this point in time, she has not.

10 The balance of the jury selection transcript of
11 the 29th and 30th of April of 1988, I am told by her that
12 they should be completed by June 12th. I guess that would
13 be the Monday following June 10th, the Saturday.

14 These transcripts were or ordered by me,
15 originally, way back when Mr. Stone had initially told me
16 that he had requested me to do some research as to possible
17 issues during the jury selection.

18 I believe, your Honor, that was in June. If you
19 will bear with me, your Honor, June of 1988, by letter of
20 June 25, 1988.

21 I immediately contacted the Appellate Section of
22 the Public Defender's Office to try to secure the jury
23 selection transcripts.

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25 Assistant Deputy in charge, he researched the files at the

1 Appellate Section and went through and came up with the
2 transcripts of the trial.

3 However, although initially there was what they
4 call a blue sheet requesting a transcript of the jury
5 selection to be ordered, that request was then pulled and
6 there was no actual request for a jury selection transcript
7 for the appeal from Mr. Stone.

8 Therefore, although we originally thought -- or I
9 originally thought that the Appellate Section would have
10 those transcripts, they, in fact, were never ordered.

11 At that point in time, I immediately contacted the
12 Public Defender's Office in Hudson County and requested that
13 they order the transcripts.

14 Transcripts were eventually requested. However,
15 Miss Trinidad never received something in writing and not
16 until September was something sent in writing requesting
17 transcripts, in September of 1988 from the Public Defender,
18 Miss Koblitz, to Miss Trinidad to comply and produce those
19 transcripts.

20 In the interim, we were told by Miss Trinidad on a
21 variety of occasions that she was in the process of a
22 homicide case and she was very busy, et cetera. Each time I
23 requested another adjournment, I explained by letter to my
24 client, a letter to the Court with a C.C. to the Prosecutor
25 as to the problems we were having getting the transcripts.

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24 client, a letter to the Court with a C.C. to the Prosecutor
25 as to the problems we were having getting the transcripts.

1 Finally, your Honor, as I have stated about three
2 minutes ago, we are now getting them on a piece-meal basis.
3 This was based on my constant contacting of the Public
4 Defender's Office, Miss Koblitz, the Court Reporters Office,
5 the Court Reporter's Supervisor's office to get something
6 moving on this because it's been such a lengthy delay from
7 the time that we originally requested these transcripts from
8 the Court Reporter, after we learned that the Appellate
9 Section had not, in fact, ever ordered them for use on the
10 appeal.

11 I have tried to comply with my client's requests
12 in regard to getting all the discovery. The Prosecutor's
13 made his file available to me and I have copies of what he
14 has given to me.

15 However, since I received a letter dated February
16 5th from Mr. Stone, indicating that he was thinking of
17 taking action against me, that he was having problems with
18 some type of a conspiracy, intimating and suggesting that I
19 may be part of this with the Prosecutor, I thought it best
20 that we bring Mr. Stone up, personally, and that's why we
21 sought to bring him up here. So he could review the file,
22 himself, with me present and go over it with him and compare
23 it with the trial file that I received from the Public
24 Defender's Office.

25 Once again, your Honor, Mr. Stone at that time

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 24 Defender's Office.

25 Once again, your Honor, Mr. Stone at that time

1 refused to cooperate with me and asked to be brought back.

2 I think that basically covers where we're at right
 3 now, your Honor. If the Court has any other questions, I'll
 4 answer them as best I can.

5 THE COURT: Would you like to say anything, Mr.
 6 Stone.

7 THE DEFENDANT: Well, Judge, a small thing here,
 8 you know.

9 You see, it's obvious what Mr. Carafa has said,
 10 most of it is true. When I requested it, you know, for my
 11 discovery, I requested it for him to file a motion. I
 12 didn't request to come to view the evidence or jury
 13 discovery, whatever the hell it is. But anyway, right, that
 14 stuff -- you're standing too close to me here and I forget
 15 what I was about to say.

16 Anyway, you know, his motion -- you know, I'm down
 17 for his motion as far as getting him off my case and all.

18 THE COURT: You don't want him?

19 THE DEFENDANT: No, I don't want him on my case.

20 THE COURT: You don't want him to represent you
 21 anymore?

22 THE DEFENDANT: No, because he lied to me. He
 23 said -- he told me he reviewed -- he had the transcripts,
 24 the jury selection, and he reviewed them and found no issue.
 25 That's in his December 7th letter.

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5 transcribing it for the transcripts, but I still never
6 received nothing. And that right there is, as I said, I'm
7 hoping you grant his motion, really. I don't want him on
8 the case.

9 THE COURT: Well, you have --

10 MR. CARAFA: If I may respond, your Honor, that I
11 sent Mr. Stone a letter.

12 THE COURT: Do you have an application before the
13 Court?

14 MR. CARAFA: Yes, I do, your Honor.

15 THE DEFENDANT: Yes, he do, your Honor.

16 MR. CARAFA: If I may briefly respond to what Mr.
17 Stone has said?

18 THE COURT: May I ask this: do you wish to be
19 relieved, sir?

20 MR. CARAFA: Yes, your Honor, I do.

21 THE COURT: And you're a pool attorney, aren't
22 you.

23 MR. CARAFA: That's correct, sir.

24 THE COURT: Does the Public Defender's Office know
25 about that?

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 25 about that?

1 MR. CARAFA: I have tried to contact the Public
 2 Defender's Office and I just most recently again tried to
 3 reach Miss Koblitz. She was not in this morning.

4 THE COURT: The reason I say that, sir, is it's my
 5 understanding that the Public Defender's Office did does not
 6 allow individuals to select and choose who will represent
 7 them. They indicate who that person may be.

8 MR. CARAFA: Well, I understand that, your Honor.
 9 I understand that, but this is not the case. My client has
 10 not sought for me to be relieved. I am seeking to be
 11 relieved. It's the Public Defender that is going to have to
 12 say, we don't allow you to pick and choose, Mr. Stone.

13 Your Honor, it's my motion as assigned Counsel for
 14 the reasons I stated in my affidavit to this Court.

15 Just briefly to respond to what Mr. Stone said, in
 16 regards to sending him a letter, on December 7th, I
 17 indicated that I reviewed the Grand Jury transcript and that
 18 I find no legal issues that are meritorious. What I did not
 19 put in the letter, your Honor, was I received partial
 20 transcripts or I should have said the transcript of Miss
 21 Mini Handel.

22 Clearly, Mr. Stone and I realized that there were
 23 many more transcripts that had not been received.
 24 However --

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21 Wini Handel.

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23 many more transcripts that had not been received.

24 However --

25 THE COURT: Just a minute, sir.

1 MR. CARAFA: However, I then sent him a letter in
2 response to what he had written to me insinuating I had not
3 read the transcript, that I didn't know there were other
4 transcripts outstanding, when clearly we had ordered these
5 way in advance from the two separate Court Reporters.

6 I've had stated earlier, Miss Wini Handel's
7 transcript came in earlier than Miss Trinidad's. Those are
8 the ones that I referred to in my letter of December 7th.

9 Now, in my letter on February 10th to Mr. Stone, I
10 indicated to him, just as he said in his letter to me, about
11 the jury selection transcripts. They were not the
12 completed. The jury selection transcript was partial and
13 the bulk of the transcripts had still not been transcribed
14 by Miss Trinidad.

15 THE COURT: For the record, you filed your motion
16 on May 19th. However, this Court did not receive your
17 motion papers with the paperwork in the Clerk's office
18 until, I believe, yesterday, just for the record. That's
19 why I asked you whether you had an application. It's with
20 the file, but the Court was busy in another trial,
21 yesterday. Therefore, I did not have an opportunity to
22 review your affidavit, but I have reviewed it at this time.

23 Mr. Gregory?

24 MR. GREGORY: I have no real position, your Honor,
25 vis a vis Counsel and whether or not he should be excused or

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Mr. Gregory?

MR. GREGORY: I have no real position, your Honor, vis a vis Counsel and whether or not he should be excused or

relieved at this time.

My problem here is discovery. I don't know what the State is supposed to do in this instance, your Honor. I have allowed Mr. Carafa the opportunity to review my file. He went through the box and he told me what he wanted me to copy for him. It was copied for him. It took me several weeks to do it, but it was done.

I don't have any intention of providing the same opportunity to the Defendant nor do I have any intention now, after having had the file copied once for trial and once for the PCR, to copy it a third time. What I have, they have. That's all I can assume.

As to the issue of viewing of the evidence, this is not pretrial. This is not governed by Rule Rule 3:13-3. The evidence that was produced on May 4th was the evidence that was produced at trial. It was everything that was moved into evidence by both sides at trial. That evidence resides in the custody of my office, but it's really technically the Court's.

I am not in a position to copy clothing. I'm not in a position to copy keys or credit cards. I'm certainly not in a position to reproduce photographs. I don't believe that a photocopy of a photograph would serve anybody's purposes at this point.

That was why my suggestion to Mr. Carafa was, if

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5 Court's custody.

6 I don't know how I can satisfy Mr. Stone's demands
7 unless the Court tells me. I don't think that I should have
8 to. If he wants to see it, we'll produce it. If he doesn't
9 want to see it, then we won't produce it. But I'm not about
10 to start playing games, at this point.

11 THE DEFENDANT: Excuse me, Judge. On what the
12 Prosecutor said?

13 THE COURT: You'd like to say something?

14 THE DEFENDANT: Yes, I would.

15 THE COURT: Go ahead, Mr. Stone.

16 THE DEFENDANT: Just as to what he just said now.
17 right? He said that he had produced a copy of the discovery
18 and gave it to Mr. Carafa. Well, I requested, back in I
19 believe it was March, the earliest, for the discovery
20 package, okay?

21 Now, this shows that Mr. Carafa really doesn't
22 have my -- what you call it best interest, so I'm hoping
23 that you will grant his motion as far as getting him off my
24 case, in effect, your Honor.

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22 have my -- what you call it best interest, so I'm hoping
23 that you will grant his motion as far as getting him off my
24 case, in effect, your Honor.

25 MR. GREGORY: For the record, your Honor, Mr.

1 Carafa contacted me either February or March for the
2 copying. I agreed to do it. Mr. Carafa said that, however,
3 he wanted to look at my file. He came one Thursday and
4 spent several hours in my office, in a cubical, going
5 through the file.

6 When he selected the parts of the file that
7 weren't work product and that were relevant to the case,
8 itself, he then gave them to me and I was to have them
9 copied. Part of it was copied on one day. There were other
10 things that were extraneous to the file, wrap sheets and
11 miscellaneous papers, which were not copied at my direction.
12 I then had them copied and they were done.

13 When we reached April, we decided on that April
14 20th date to hand over the discovery and to do the viewing
15 all one one day. Mr. Carafa expressed to me his desire not
16 to mail the discovery.

17 MR. CARAFA: That's correct, your Honor. That's
18 absolutely correct, because I wanted to hand deliver it to
19 my client so there was no question of problems, especially
20 based upon the February 5th letter that Mr. Stone sent to
21 me, your Honor. That's why we had him brought up here.

22 Now, Mr. Stone can have a copy of everything that
23 we made. He's entitled to that, as far as I'm concerned. I
24 have it. When I say, I have it, unfortunately today when I
25 got up, I had a flat tire on my car. It's in my other car.

1 and I had to take my wife's car to work. But he will have
2 it tomorrow, Judge, because I have it.

3 I told him I had it when I came up May 4th. I
4 said, you can have it. I'll take it. I'll have you sign
5 for it and I'll mail it.

6 Judge, it's been my experience in twelve years or
7 thirteen years as a criminal defense attorney, that things
8 tend to get lost. They tend to get looked at, perused by
9 other people who shouldn't have had it. I can have them
10 personally hand-deliver, at this time, to Mr. Stone. They
11 were available and he can have them, Judge.

12 However, as far as what Mr. Gregory says, the only
13 thing he has not provided me with, which I had requested,
14 which is why we had Mr. Stone brought up on May 4th, was
15 that evidence that was in the evidence vault. That was the
16 evidence that Mr. Gregory says that he should not have to
17 copy and that's what he's alluding to.

18 THE COURT: Well, that was available on that
19 particular date, correct?

20 MR. CARAFA: Yes, it was available, your Honor.
21 That's why we had him brought up, Judge, because I had
22 requested everything. Albeit not by a formal motion, but
23 there was no need for it because the Prosecutor was
24 cooperating with me.

25 It's a voluminous file, around 700 pages, Judge,

1 not including what's in the evidence vault. That's why we
2 had Mr. Stone brought up -- attempted to have him brought up
3 ever since April 14th.

4 THE COURT: All right.

5 First, with regard to the motion to be relieved,
6 there is merit in the application.

7 However, I'm not going to relieve you, sir, from
8 representing this Defendant until we have another attorney
9 who can take over and represent him.

10 I'm not going to have any interruption in this
11 hearing and I want this matter heard as soon as possible on
12 the merits of the applications for post conviction relief.

13 How much time do you think it would take for
14 the Public Defender to assign another attorney?

15 MR. CARAFA: I would have to speak with Miss
16 Koblitz, your Honor. I tried to speak to her yesterday and
17 again, today, and I have not been able to reach her.

18 THE COURT: Well, you won't -- I'm sorry for
19 interrupting you. Won't have the transcript until June
20 12th, you stated?

21 MR. CARAFA: That's right, your Honor. June 12th,
22 I'm told by Miss Trinded.

23 THE DEFENDANT: Excuse me, Judge Harrington, they
24 have been ordered.

25 THE COURT: Excuse me. I know exactly what's

1 not including what's in the evidence vault. That's why we
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25 THE COURT: Excuse me. I know exactly what's

1 happening, sir. Just a minute.

2 THE DEFENDANT: Well, it seems like you are
3 following his lie.

4 THE COURT: You just keep quiet, sir. Do you hear
5 me?

6 THE DEFENDANT: Look, your Honor, they be here
7 and --

8 THE COURT: Did you hear me?

9 THE DEFENDANT: -- since 1986, your Honor. They
10 be here.

11 THE COURT: I'm talking. It's my turn.

12 THE DEFENDANT: It's in the Appellate Division
13 since 1986.

14 THE COURT: Do you understand?

15 THE DEFENDANT: What he's telling you is a lie.
16 Whether you accept it or not, the whole thing is just, you
17 know, getting him off the boat. It ain't going to work.

18 THE COURT: I'm going to set this matter down for
19 June 22nd. That will give you sufficient time to speak to
20 Miss Koblitz, the head of Public Defender's Office, and then
21 you should have the transcript by then, also.

22 I want you to convey the message that it appears
23 to this Court there is merit to this application, but I will
24 not relieve you as Counsel until there is another attorney
25 to represent Mr. Stone, so there's no interruption, at all,

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1 with regard to this proceeding.

2 Insofar as the evidence is concerned, the new
3 attorney can make arrangements to see the physical evidence
4 with Mr. Stone, but we're not going to play games.

5 Insofar as copies are concerned, Mr. Carafa, you
6 indicated that you'll make copies and get them to your
7 client by when?

8 THE DEFENDANT: Your Honor, tomorrow. I can have
9 them brought over to the Public Defender's Office. At the
10 latest, tomorrow, and then they will either hand-deliver
11 them or send them certified mail, directly to him. That's
12 the way I like to do it.

13 THE COURT: Within a week. Whatever comes to your
14 office, you make copies and they'll be sent by a week from
15 tomorrow. That would be the --

16 THE DEFENDANT: Was there a motion made for the
17 discovery? I like to ask him that.

18 MR. CARAFA: No, I never made a motion.

19 THE COURT: Mr. Carafa --

20 THE DEFENDANT: Therefore, it's not completed. I
21 guarantee it's not completed.

22 THE COURT: Mr. Stone, I made my ruling.

23 THE DEFENDANT: The discovery is not completed.
24 That is exactly what Mr. Bovino did when he represented me
25 at trial. Same thing. They took certain documents out of

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4 THE DEFENDANT: Hell, it's the Prosecutor who runs
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6 I have already -- the State knows what's happening. Man,
7 there is really no motion or authority to that.

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9 Defendant all the copies of --

10 THE DEFENDANT: As a matter of fact, you can
11 send -- the State can send whatever you want because I'm
12 not -- the Defendant going to sign for it.

CERTIFICATE

I hereby certify the foregoing to be a true and
accurate transcript of the proceedings had in the
above-entitled matter.

Lorraine M. Cirelli
LORRAINE M. CIRELLI, C.S.R. / C.M.
OFFICIAL COURT REPORTER
LICENSE NO X100977
HUDSON COUNTY COURTHOUSE
JERSEY CITY, NEW JERSEY 07306

Dated: April 16, 1990

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20

A-1973-89T4
No 6A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
(CRIMINAL)
INDICTMENT NO. 1369-12-85

STATE OF NEW JERSEY, :

-VS- :

LEONARD STONE, :

Defendant. :

POST-CONVICTION
RELIEF HEARING

Date: Thursday, November 9, 1989

Place: Hudson County Courthouse
Jersey City, New Jersey

BEFORE:

THE HONORABLE CHARLES J. HARRINGTON, JR., J.S.C.

APPEARANCES:

SUSAN B. GYSS, ESQ.,
Assistant Prosecutor
For the State.

STEVEN MENAKER, ESQ.
Attorney for the Defendant

FILED
APPELLATE DIVISION

REC'D
APPELLATE DIVISION

NOT ON CONTENT

DOLORES M. GENNARD, C.S.R.
OFFICIAL COURT REPORTER
HUDSON COUNTY COURTHOUSE
JERSEY CITY, NEW JERSEY 07306

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FILED
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NOTION CONTENT

DOLORES M. GENNARD, C.S.R.
OFFICIAL COURT REPORTER
HUDSON COUNTY COURTHOUSE
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THE COURT: Let the record reflect the defendant
is here in court.

Mr. Menaker.

MR. MENAKER: We're before the Court this morning
on Mr. Stone's pro se petition for Post-Conviction Relief.

He cites in his application two bases for this
Court to set aside his trial conviction and to grant a new
trial.

The first basis recited in his brief is prosecutorial
misconduct predicated upon prejudicial remarks recited by
the Assistant Prosecutor in his summation to the jury. He
sets forth what those remarks are.

I think the law is clear. In my opinion, it's a
factual finding that's required by this Court as to whether
those remarks constitute prosecutorial misconduct.

The second basis for relief is the ineffective
assistance of trial counsel, and that's predicated upon his
trial counsel's failure to effectively deal with the issue
of discovery being supplied to him during the course of the
trial. I've submitted a brief on that point. And because
of that, I'd like to amplify upon it just briefly.

The issue presented by that question is whether his
trial attorney should have effectively done anything in
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22 The issue presented by that question is whether his
23 trial attorney should have effectively done anything in
24 response to the receipt after the selection of the jury,
25 after the openings by counsel, and after the presentation of

1 testimony commenced with a fiber analysis --

2 THE COURT: Just a minute.

3 I'm sorry.

4 MR. MENAKER: The question is whether his trial
5 counsel should have done something to deal with the receipt
6 during the course of the trial of a fiber analysis report
7 which ultimately was used in rebuttal. The record revealed
8 that his trial counsel objected initially to the receipt of
9 that report and its use for any purpose but made no applica-
10 tion for a mistrial, no application for a continuance, no
11 application to bar or suppress the receipt of that information,
12 and then later when that information was presented as rebuttal
13 evidence, again failed to move for a mistrial, failed to move
14 to preclude or bar its presentation.

15 And the significant prejudice that the receipt
16 of discovery during the course of a trial has, and particularly
17 in a capital case is that -- I'm sure the Court could well
18 appreciate it -- a case like that is not one in which there
19 should be any surprises. It's a case in which both sides
20 have the right to demand early receipt of discovery and
21 demand a full measure of time to prepare and analyze the
22 facts and present their theories both as to prosecution and
23 as to defense. And in this case that was obviously done by
24 trial counsel in reliance upon certain evidence not being
25 in existence. It was that that he predicated his opening on,

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1 it was that that he predicated his entire theory of defense
2 on, and that rug was pulled out from underneath him abruptly
3 during the course of the trial. And that should have prompted
4 some more measured reaction than simply protesting its late
5 receipt.

6 He could have asked for a continuance to give him
7 the opportunity to engage an expert witness to rebut the
8 analysis. He could have asked for a mistrial based upon this
9 discovery violation. He could and should have done something
10 other than to simply accept it into evidence, albeit for the
11 limited purpose on rebuttal. And it's that basis that I
12 believe constitutes as presented the ineffective assistance
13 of counsel in this case, and it's that basis that this Court
14 is asked to reverse the conviction upon.

15 I've concluded. And I would simply ask the Court's
16 permission, if Mr. Stone wishes to, to address the Court to
17 amplify upon any of the reasons recited in his moving papers
18 or in my presentation.

19 THE COURT: Mr. Stone, is there anything further
20 you would like to add in addition to what Mr. Menaker has
21 already said to the Court, Sir?

22 THE DEFENDANT: No, I don't.

23 THE COURT: Ms. Prosecutor, do you wish to address
24 the Court?

25 MS. GYSS: Judge, there's a response brief filed

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19 THE COURT: Mr. Stone, is there anything further
20 you would like to add in addition to what Mr. Menaker has
21 already said to the Court, Sir?

22 THE DEFENDANT: No, I don't.

23 THE COURT: Ms. Prosecutor, do you wish to address
24 the Court?

25 MS. GYSS: Judge, there's a response brief filed

1 with the Court and I'm not going to belabor any of the law
2 that's set out in the brief.

3 My response to Mr. Menaker's eloquent argument is
4 that the one point that I don't think the defense makes out
5 at all is how the defendant was so prejudiced that a different
6 result might have occurred.

7 The Lab Report was not used in the State's direct
8 case. It was not used by the State until it was used to cross-
9 examine the defendant and then was moved in on rebuttal.

10 The entire State's case went in without the use of
11 this Lab Report. And I think that that should weigh heavily
12 in your Honor's determination as to whether a different result
13 would have resulted if the Lab Report had been produced
14 slightly earlier than it was.

15 The burden of proof is on the defendant to establish
16 by a preponderance of credible evidence his right to Post-
17 Conviction Relief. And I think the Court is well aware that
18 this is only done in extraordinary or exceptional circumstances.

19 Trials are never perfect. We seek to give the
20 defendant the best opportunity to defend against the charges
21 against him, but a trial will contain things that perhaps
22 if we sat and looked at it in retrospect might have been
23 done differently. These do not always rise to the level of
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here to grant the remedy the defendant is seeking.

I ask the Court to deny the petition.

THE COURT: This is a motion by the defendant to set aside the conviction as indicated by the defendant on two grounds, first on the ground of prosecutorial misconduct, and ineffective assistance of counsel.

On the first ground argued by the defendant, I find that there was no prosecutorial misconduct by the Prosecutor at the trial.

Further, on the second ground, ineffective assistance of counsel, the Court must note that the attorney representing him, the defendant, Mr. Bovino at that time, was a most experienced trial attorney who was trying cases for the Public Defender's Office in Hudson County for over ten years. He was an excellent, astute trial attorney. And I find that there was no ineffective assistance of counsel during the course of this trial.

But, in any event, it should be noted this Court presided over that trial. And there has been no showing on this motion of prejudice against this defendant.

It's also noted that the evidence presented before the jury was overwhelming in this case.

And for all the foregoing reasons, the motion is hereby denied.

The defendant is remanded to the State facility in

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I ask the Court to deny the petition.

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It's also noted that the evidence presented before the jury was overwhelming in this case.

And for all the foregoing reasons, the motion is hereby denied.

The defendant is remanded to the State facility in

the custody of the two Officers present in court.

Anything else at this time?

MR. MENAKER: No, your Honor.

MS. GYSS: The State will submit an order, Judge.

THE COURT: Please.

(Hearing concluded.)

CERTIFICATE

I DO HEREBY CERTIFY the foregoing to be a true and accurate transcript of the proceedings had in the above-entitled matter.

Dolores M. Gennaro
DOLORES M. GENNARO, C.S.R.
LICENSE NO. XT00902

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5 THE COURT: Please.

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8 - COTION CONTENT -
9 * * * * *

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11
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15 *Dolores M. Gennaro*
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17 LICENSE NO. X100502
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